



Degree Program in International Relations
Course of International Political Theory

'The Gender Status Quo'
– How Transitional Justice Has Failed
Women Victims of Sexual and Gender-
Based Violence.

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I dedicate this master's thesis to my grandmother Any in the hopes it would have made her proud. I also wish to dedicate this work to every woman and girl survivor of SGBV. This master's thesis will not change their life, but it shouts out one thing: we believe you.

ABSTRACT – KEY WORDS

Abstract:

Transitional justice is a field that was recently discussed through the prism of a gendered perspective. Feminist scholars intended to give a critical review of retributive transitional justice – the actions of tribunals and truth commissions – to propose a more efficient framework for justice to be done in the case of SGBV. This thesis has the objective of understanding why the traditional framework of transitional justice has failed women victims of SGBV. I propose an intersectional feminist theory, linking the ‘universal’ human rights doctrine and legal mechanisms to explain these shortcomings. Those two elements of transitional justice have in common a gender-blind character that is due to their liberal Western-centric character. This has prevented transitional justice in doing justice for women victims of SGBV, as this liberal framework is unable to consider the structural character of such violations, rooted in patriarchal ideology present both at the domestic level and international levels. I apply this theory to the example of the genocide of Rwanda in order to understand the sentiment of injustice felt by women despite the establishment of the ICTR and Gacaca Court. The previously built theory allows me to give some answers to this impunity for SGBV. In the end, the liberal system of transitional justice is structurally unable to render proper justice to women survivors.

Key Words:

Gender perspective; genocide of Rwanda; human rights; international law; liberalism; rape, sexual and gender-based violence; transitional justice; women’s rights

ACRONYMS

CAIR: Critical Approaches of International Relations

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for ex-Yugoslavia

ICC: International Criminal Court

RPF: Rwandan Patriotic Front

SGBV: Sexual and gender-based violence

UDHR: Universal Declaration of Human Rights

UN: United Nations

INTRODUCTION

“Don’t ask me many things. I am somebody who has lost her mind because of the problems that have occurred in my life. When you ask me many questions those questions are not going to help my own people who died to come back to life. I’m telling you what I saw and if I’m telling a lie, that those people are alive, that they were not killed, I should be punished for that.”¹

The International Courts established in reaction to the genocide in Rwanda (ICTR) and the war in ex-Yugoslavia (ICTY) are presented by the international community as a success in the fight against impunity.² They have indeed allowed the prosecutions of massive human rights violations in both conflicts and been at the origin of the Rome Statute (1998, entry into force 2002), creating the International Criminal Court (ICC), which represented important progress in developing international criminal law. The uniqueness of the statutes of both Courts is illustrated by the recognition of sexual and gender-based violence (SGBV) in conflict times in the law. The International Criminal Tribunal for Rwanda is particularly praised for its gendered jurisprudence through the Jean-Paul Akayesu case. Yet, the testimony of witness KK is one drawn from this case: these few sentences blatantly represent the traumatization of these women who have survived the genocide... and various sexual abuses subsequent to this genocide.

Unfortunately, the reality of women in Rwanda is different from the one presented by the United Nations or the ICTR. Binaifer Nowrojee thus presents a very different review of the ICTR’s action:

“(...) on the tenth anniversary of the Rwandan genocide, (as of May 2004) the ICTR has handed down 21 sentences: 18 convictions and three acquittals. An

¹ See appendix 6, The International Criminal Tribunal for Rwanda. (October 31, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu*. United Nations International Residual Mechanism for Criminal Tribunals.

overwhelming 90 percent of those judgments contained no rape convictions. More disturbingly, there were double the number of acquittals for rape than there were rape convictions. No rape charges were even brought by the Prosecutor's Office in 70 percent of those adjudicated cases.”³

The question is hence pertinent. What happened to the Akayesu jurisprudence? What justice was given to the women survivors of sexual abuses, which were systematic during the Rwanda genocide?

Transitional justice is a rather contemporary field that has known several evolutions since its theorization. Due to this, there are several definitions of transitional justice and its mechanisms. In order to frame this concept in the most ‘neutral’ way possible, I will present one of the United Nations⁴:

“For the United Nations, transitional justice comprises “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past violations and abuses to ensure accountability, serve justice, and achieve reconciliations.”⁵

Nevertheless, there are as many definitions as there are theories on transitional justice, and the specificity of such definitions also depends on the ‘wave’ scholars are situated in. The first wave can be found in the post-war period, as the initiation of transitional justice is often considered to be the Nuremberg Trials⁶, indicating a retributive justice, that is to say, a focus on criminal accountability and the reparation of human rights violations. Nevertheless, this perspective of transitional justice was mostly applied in the 1990s to the

² United Nations International Residual Mechanism for Criminal Tribunals (November 4-5, 2014). *7th Colloquium of International Prosecutors*.

³ Nowrojee, B. (2005). 'Your Justice is Too Slow': Will the ICTR Fail Rwanda's Rape Victims? *Occasional paper n°10*. Geneva: UNRISD: p. 1.

⁴ As it will be discussed in this master's thesis, the United Nations is not what could be considered purely neutral. However, it is the UN resolution 955 of November 4th, 1994, that created the ICTR, hence the definition of the same international institution seems legitimate and appropriate here.

⁵ United Nations Human Rights Office of the High Commissioner (s.d). *OHCHR: Transitional Justice and Human Rights*.

⁶ Kora, A. (2010). *Transitional Justice: A New Discipline in Human Rights* | *Sciences Po Violence de masse et Résistance - Réseau de recherche*.

ex-Yugoslavia and Rwanda cases: for this master's thesis, it will be essential to remember that theorizing transitional justice is an academic debate that has now evolved from the strict legalist perspective. Indeed, there are three subsequent waves in transitional justice theories: the second one qualified as 'restorative justice' from the mid-1990s to the 2000s, and the third wave from the 2000s to nowadays interested in including more social justice mechanisms. Those scholars seek to 'make transitional justice victim-centered, in opposition to the denounced over-focus on perpetrators from retributive transitional justice's perspective.'⁷

Here, I will then use this later view, and more specifically, an intersectional feminist approach, to evaluate the International Criminal Tribunal for Rwanda in its prosecuting of SGBV against women. To begin with some definition, SGBV, according to the UN, is "violence committed against a person because of his or her sex or gender. It is forcing another person to do something against his or her will through violence, coercion, threats, deception, cultural expectations, or economic means."⁸ Despite an expansive definition, I will argue in this master's thesis that transitional justice 'reduces' this definition to a liberal minimalistic account and recognizes only now 'visible' sexual violence.

The choice of the Rwandan case is not hazardous: as I said, the current jurisprudence on gendered crime has benefitted from this tribunal and yet has never been fully implemented to retribute the women victims of SGBV. I did not choose the International Criminal Tribunal for ex-Yugoslavia in part because the intersectional analysis would have been less impactful. Though ex-Yugoslavia was not part of 'the West' and cultural differences are present, these are far less pronounced than those between the West and Rwanda. Indeed, Rwanda as a former colony of a Western state – Belgium – allows me to add a postcolonial perspective to refine the analysis. The goal is not to hierarchize the causes, simply to point out that Rwandan women suffered discrimination because there

⁷ Kora, A. (2010). *Transitional Justice: A New Discipline in Human Rights* | *Sciences Po Violence de masse et Résistance - Réseau de recherche*.

⁸ United Nations Human Rights Office of the High Commissioner. (s.d). *Sexual and gender-based violence*.

were women, but also additional discrimination because there were non-Western marginalized women.

This master's thesis will then ask and answer the question: why does transitional justice, despite progress made in inscribing gender to its agenda, remain unable to achieve justice for women whose rights were violated? I will argue that the liberal structure of the international community, spilling over into transitional justice, does not properly address women's issue of justice when their rights are violated, especially when they are facing SGBV.

My aim is then to have a victim-centered approach, as far as possible, and follow what Fionnuala Ní Aoláin qualifies as a central strategy of feminist methodology: 'woman-centeredness.' Since the aim is to demonstrate how the legal mechanism of the ICTR has failed, I leaned on transcripts of the witness testimony in the Akayesu case – where rape was recognized as both a crime against humanity and a weapon of the genocide and the Muvuny case – where despite several shocking testimonies the count of rape was not recognized. I also relied on two testimonies of women survivors from the Genocide Archive of Rwanda, testimonies of women from Binaifer Nowrojee's article⁹, and the interviews of ICTR professionals from Jonneke Koomen's article.¹⁰ To analyze transcripts of the ICTR hearings, I used a qualitative method: after drawing out some thirty codes, they were reorganized into four different code trees referencing one bigger argument to facilitate the analysis and make it clearer. The list of codes (abbreviation, description, and examples) and the code trees can be found in Appendix 1. Regarding the ICTR transcripts, though the approach is centered on the women witnesses, the speaking of legal

⁹ See Nowrojee, B. (2005). 'Your Justice is Too Slow': Will the ICTR Fail Rwanda's Rape Victims? *Occasional paper n°10*. Geneva: UNRISD.

¹⁰ See Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2), 253-277.

professionals is sometimes also coded as it gives information on the process of the tribunal and how it treats the victims.

This master's thesis will be presented as follows. The first two chapters will refer to the development of the intersectional feminist theory in opposition to the currently prevailing liberal theory, while chapter three will refer to the application of the previously built argument on the Rwandan case. Firstly, Chapter One will present the hidden gender of the supposed 'universal' human rights doctrine through the analysis of selected liberal theories. Then, Chapter Two will argue the problematic approach of transitional justice through law in getting justice done for women's rights violations. Finally, Chapter Three will confront the feminist criticisms of the previous chapter with the example of the transitional justice mechanisms employed in the wake of the Rwandan genocide in an attempt to explain the feeling of 'injustice' felt by Rwandan women whose rights were violated.

I wish to prove that liberalism, reflected in both the human rights doctrine and the legal mechanisms of transitional justice, has failed women. In the case of Rwanda, though the legal jurisprudence gained some progress, notably regarding SGBV, and the country is now 'at peace', women are still seeking justice, healing, and retributions of some sort. Transitional justice in Rwanda has brought tremendous progress for the international community as a whole composed of States, but not for individuals. The feminist perspective allows me to not reject the Statist approach and rather be centered on what the victims want. This master's thesis is imperfect in some respects, notably too broad in some respects, but nonetheless attempts to give an overview of the link between the liberal male-centric human rights doctrine and legal mechanism in preventing women from feeling a true sentiment of justice through retributive transitional justice.

LITERATURE REVIEW

I situate my work both in the feminist account of transitional justice and the one on human rights, or rather women's rights. In order to build an intersectional feminist theory, I refer to several movements of feminism: liberal and radical feminism, Western feminist movements that have notably engaged with male-centric liberal literature, and postcolonial feminism, which have both criticized liberal theories and Western-centric theories.

Feminism engaging with transitional justice as a legal mechanism

The feminist movement's first step in discussing transitional justice from a gendered perspective was in the 1990s, in reaction to the mass rape in both the ex-Yugoslavia war and the genocide of Rwanda. The first action of feminists has been to engage with the law and include SGBV in the agenda of international law. Karen Engle presents this feminist advocacy through the ICTY trials, which culminated with the recognition of SGBV in the ICC's permanent statute.¹¹ Nevertheless, I would rather situate my work within the subsequent critique of this integrationist feminist strategy by Third Wave feminist scholars. I would like to emphasize here three prominent voices who engaged in the academic discussion: Catherine O'Rourke, Christine Bell, and Fionnuala Ní Aoláin.

Catherine O'Rourke denounces this tendency of favoring technical over transformative gain for feminists as it does not consider the structural and continual character of violence against women.¹² Similarly, Catherine O'Rourke and Christine Bell ask three questions – “Where are women, where is gender, and where is feminism in transitional justice?” – in an attempt to question the ‘feminist’ progress of transitional justice within a liberal structure.¹³ Fionnuala Ní Aoláin is also rather critical of the predominant ‘liberal’ feminist discourse in transitional justice in the sense it is “an uncritical

¹¹ Engle, K. (2005) Feminism and Its (Dis)contents: Criminalizing Wartime rape in Bosnia Herzegovina. *The American Journal of International Law*, 99(4), 778-816.

¹² O'Rourke, C. (2015). Feminist scholarship in transitional justice: a de-politicizing impulse? *Women's Studies International Forum*, 51, 118-127.

and narrowly conception of gender equality (which) directs our gaze away from the cultural, material and geopolitical sites in which transitional justice have emerged.”¹⁴ According to her, transitional justice being a liberal concept and form of ‘discursive colonization,’ gender perspective should not simply be ‘integrated’ within the system but rather search to achieve a different form of justice: bottom-up, transformative, centered on the victims rather than perpetrators.¹⁵ The Third Wave feminists call for the recognition of the structural and context-related SGBV against women, nonetheless, according to them, this can only be achieved in changing transitional justice’s perspective. It is a rather transformative account made here, leaving agency to bottom-up mechanisms, local empowerment, and adapted reparations.

Feminism engaging with Human Rights and Women’s rights

While situating only within Third Wave feminist scholars in my approach to transitional justice, regarding feminist scholars engaging with the human rights ‘universal’ doctrine and women’s rights, I needed to have a more significant account of the literature. Nevertheless, though trying to have an account of postcolonial feminism too, my analysis is more based on a liberal analysis of women’s rights than postcolonial feminism. This might be a personal bias that I have nevertheless tried to avoid and pointed out when it may interfere.

From a liberal standpoint, several scholars have engaged with the historic public/private divide, which kept the protection of women’s rights within the private sphere. Susan Okin indeed criticized John Rawls’s framework, notably due to its gender-blindness when considering the family as a just institution.¹⁶ Hillary Charlesworth denounces a similar divide within international law preventing the consideration of most

¹³ Bell, C., & O'Rourke, C. (2007). Does Feminism Need a Theory of Transitional Justice? An Introductory Essay. *The International Journal of Transitional Justice*, 1, 23-44.

¹⁴ Ní Aoláin, F. (2012). Advancing Feminist Positioning in the Field of Transitional Justice. *International Journal of Transitional Justice*, 6: p. 205

¹⁵ Ibid.

¹⁶ Okin, S. (1987). Justice and Gender. *Philosophy & Public Affairs*, 16(1), 42-72.

SGBV suffered by women.¹⁷ According to Martha Nussbaum and Susan Okin, there is the possibility of building ‘universal’ women’s rights, yet setting aside to do so ‘shocking cultural practices.’¹⁸ Postcolonial feminists, on the other hand, refute this idea of universalism and mostly its imposition by Western feminists. Alison Jaggar points out the role of the West, both as a colonizer power in the past and a neo-imperialist one nowadays, in such marginalization and injustice towards non-Western women.¹⁹

Most of the authors previously mentioned will be encountered again in the development of this master’s thesis, as their findings helped me in my attempt to build my theory.

¹⁷ Charlesworth, H. (2002). The Hidden Gender of International Law. *Temple International & Comparative Law Journal*, 16(1), 93-102.

¹⁸ Quoted in Jaggar, A. M. (2009). Transnational Cycles of Gendered Vulnerability: A Prologue to a Theory of Global Gender Justice. *Philosophical Topics*, 37(2), 33-52.

¹⁹ Ibid.

CHAPTER 1: TRANSITIONAL JUSTICE AS THE PROMOTION OF HUMAN RIGHTS– AN AMBIGUOUS PROTECTION FOR WOMEN’S RIGHTS

“Transitional justice is a subset, an offshoot, of the human rights movement. Its norms and devices – truth commissions, judicial processes, multisectoral reforms in the legal and law enforcement sectors, and open competitive political systems – carry a definite vision of the society they seek to create. The choice of transitional justice as the medium of change implies certain values and end results.”²⁰

Transitional justice, regarding human rights, has a twofold aim: dealing with the past and the future of the society, which benefits from the mechanism. It ought to condemn the mass violations that occurred during conflict while ensuring better respect for human rights.²¹

Historically, SGBV against women has been largely erased from the painting of transitional justice. The issue was then taken more seriously thanks to feminist advocates working on the ex-Yugoslavian and Rwandan cases. Nevertheless, this consideration of women’s rights in the framework of transitional justice, the nature of human rights, was put into question later by third-wave feminists, denouncing the impossibility of a serious account of such issues within the liberal framework of the Human Rights doctrine.

This chapter, hence, will attempt to account for this structural inability for women’s rights to be fully considered in liberal theories that have built the human rights doctrine. After deconstructing a pretended ‘universalism’ in truth liberal (section 1), I will argue the current human rights framework continues to set aside women due to the liberal historic

²⁰ Mutua, M. (2015). What Is the Future of Transitional Justice? *International Journal of Transitional Justice*, 9: p. 3.

public/private divide confining women's rights in the private sphere (section 2) and falsely taking into account SGBV, presented only through a 'liberal-acceptable' vision (section 3).

Section 1 : A false liberal universalism promoted as the norm by international institutions

On December 10th, 1948, the General Assembly of a freshly created UN proclaimed the Universal Declaration of Human Rights (UDHR). These thirty articles consecrate various rights to the peoples of all the States composing the international institution, nonetheless their "race, color, sex, religion, political or other national or social origins, property, birth or other status."²² All humans are born equal, should be treated as equal, and thus have the same rights because of their nature: universalism by essence.

However, this 'universalism' was denounced by scholars as purely 'liberal' and Western-centric, hence losing legitimacy. In international relations theory, liberalism is distinguished by the primacy of the individuals, individuals who are rational and aim at prosperity and peace. According to liberal scholars in international relations, there are three causes of peace: trade (Montesquieu's idea of '*doux commerce*'), institutions (Robert Keohane and Joseph Nye), and democracy (Immanuel Kant's democratic peace). Another key component of liberalism is the respect of the rule of law and a fair justice for all.

I will demonstrate in this section the liberal character of the UDHR, both through the ideal liberal democratic theory (1) and the more practical minimalistic account of human rights (2). In the end, I will purport that the real few universal rights, supposed to be observed and respected by all, further prove the lack of legitimacy and liberal character of those rights (3).

²¹ United Nations Human Rights Office of the High Commissioner (s.d.). *OHCR: Transitional Justice and Human Rights*.

²² United Nations. (December 10, 1948). *The Universal Declaration of Human Rights*: Article 2.

1. The ideal liberal democratic theory at the core of the Human Rights doctrine, lacking efficiency and consensus

The ideal liberal democratic theory stems from the ideas of ancient liberal theorists: John Locke's natural rights to life, liberty, and property, Immanuel Kant's democratic peace, John Stuart Mill's individual liberty and freedom of speech... All theories have in common one thing: the prima of the individual liberties and their universalist approach. From these perspectives stem the Universal Declaration of Human Rights, proclaiming in its first article: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."²³

When talking about 'ideal theory,' I wish to emphasize the particularly expansive agenda of the rights that were declared as 'universal' by the UN while being strictly liberal. The UDHR is the most known text promoting the universality of Human rights. However, it was later completed by two covenants: the International Covenant on Civil and Political Rights (16 December 1966, entry into force 23 March 1976) and the International Covenant on Economic, Social and Cultural Rights (16 December 1966, entry into force 3 January 1976). Those two texts add to the already thirty articles of the UDHR additional rights, notably second-generation social and economic rights, but also a commitment from the state parties.²⁴ Indeed, the Covenants are not declared as 'universal' as was the UDHR – not all States have yet ratified them – yet they illustrate the not-so-hidden liberalism within the international community.

²³ United Nations. (December 10, 1948). *The Universal Declaration of Human Rights*: Article 1.

²⁴ See United Nations (December 16, 1966). *International Covenant on Economic, Social and Cultural Rights*; United Nations (December 16, 1966). *International Covenant on Civil and Political Rights*.

However, in practice, despite their supposed ‘universalism,’ Human rights are not truly respected by member States of the International community. Firstly, those rights have no legal value, in the sense that UDHR’s text is not a legally binding one. Hence, the UN landmark resolution on Women, Peace, and Security, adopted by the Security Council on October 30, 2000, urging “all actors to increase the participation of women and incorporate gender perspectives”²⁵ and calling on “all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in a situation of armed conflict,”²⁶ as little ‘mandatory character’ on the international community. Furthermore, the liberal normativity within this pretended ‘universal rights’ reduces its impact as it could be seen by non-liberal Western States as a paternalist and imperialist imposition of certain values.²⁷ Particularly for postcolonial feminists, to see women’s rights through a universal approach is also a Western-liberal normativity imposition, thus benefiting only some women and leaving the other to be further marginalized.²⁸

Furthermore, though the term ‘democracy’ is not explicitly spoken in the charter²⁹, the UN institutions rely on the promotion of a democratic model. As stated by the UN, “democracy is a core value (...) the UN supports democracy by promoting human rights, development, and peace security” while linking the use of the expression ‘We the Peoples’ in the UN Charter’s preamble as a reflection of the international community’s democratic values.³⁰ Even if the UN specifically claims not to promote a specific model of governance,³¹ democracy linked with peace and the protection of rights is to be found in the liberal Kantian democratic peace thesis. Additionally, to link democracy and respect for

²⁵ United Nations (October 31, 2000). *Resolution on Women, Peace and Security (S/RES/1325)*.

²⁶ Ibid.

²⁷ See Mutua, M. (2015). What Is the Future of Transitional Justice? *International Journal of Transitional Justice*, 9, 1-9.

²⁸ See Chapter 1, Section 3

²⁹ To be noted: it nonetheless mentions a ‘democratic society’ in article 29.2 of the 1948 UDHR.

³⁰ United Nations (s.d). *Democracy*.

³¹ Ibid.

human rights is to claim only democracies would be able to ensure human rights protection.

Yet, a reflection on the Kantian ideal theory made by Michael Doyle has shown democracy are peaceful, but only among one another.³² Indeed, many contemporary wars launched by democracies against authoritarian regimes had been made under the seal of 'human rights' protection' under Walzer's 'Just war' theory. To state democracies are peace-prone and sole defenders of human rights is to dismiss the systematic violation of women's rights in all kinds of States and the nevertheless male-centric character of the Just War theory.³³

This overly expansive, false universal agenda has led some authors to propose a 'minimalistic account' of human rights in order to ensure a consensus on fewer rights that could then be better protected. Nevertheless, this represents another liberal account of Human rights as a universal given without considering a context-sensitive approach.

2. The minimalistic perspective on Human Rights: a better account of (men's) reality

One of the key thinkers of political liberalism is John Rawls, with his books *A Theory of Justice* (1971), *Political Liberalism* (1993), and his article *The Law of Peoples* (1993). His work presents notably blatant similarities with the current international system created by the United Nations. *The Law of Peoples* is particularly interesting here as it extends the thinking to the international realm. I highlight John Rawls's theory because it has been praised for

³² See Doyle, M. (1983). Kant, Liberal Legacies, and Foreign Affairs. *Philosophy & Public Affairs*, 12(3), 205-235.

³³ See Peach, L. J. (1994). An Alternative to Pacifism? Feminism and Just-War Theory. *Hypatia*, 9(2): p. 159.

giving a truthful account of the international community's reality, yet this account suffers from gender-blindness, as most liberal theories.³⁴

In *A Theory of Justice*, John Rawls presents 'justice as fairness,' a system described as just and chosen by the individuals. There are two core concepts to his analysis: the original position and the veil of ignorance. In the original position (level I), individuals would be placed under a 'veil of ignorance' regarding their specific character in order to choose basic principles of justice deemed just and impartial.³⁵ According to this view, individuals would choose two principles of justice, equal liberty and fair equal opportunity, with a hierarchization favorable to the first one.³⁶ This original position is translated in *The Law of Peoples* with some differences, though, since liberal peoples 'tolerate' decent peoples in the international realm. 'Peoples,' in Rawls's work, represent here not rational individuals but a State-centric approach, as in the international realm, those individuals are already incorporated within a political regime.³⁷ To be qualified as decent peoples, they must both reject aggressiveness and respect human rights, and have a certain impartial justice.³⁸ Hence, both liberal and decent peoples will have to choose their interpretation of the eight international justice principles.³⁹ When referring to Human Rights, John Rawls has a minimalistic approach covering only: the right to life, liberty, freedom of speech, and the security of a person.⁴⁰

I argue that John Rawls's work is far closer to reality than the ideal liberal democratic theory. First, it has the advantage of considering liberal democracy and other regimes composing the international community, without searching to impose them a liberal democratic framework. Furthermore, his eight principles of international justice mirror several legal texts of the international community:

³⁴ See Chapter 1, Section 1 & 2

³⁵ Rawls, J. (1971). *A Theory of Justice*. Cambridge: Harvard University Press.

³⁶ Ibid.

³⁷ Rawls, J. (1993). The Law of Peoples. *Critical Inquiry*, 2(1), 36-68.

³⁸ Ibid.

³⁹ Ibidem.

⁴⁰ Ibidem.

- 1) “Peoples (as organized by their governments) are free and independent, and their freedom and independence is to be respected by other peoples – UN Charter, article 2.1.
- 2) Peoples are equal and parties to their own agreements – UN Charter, article 2.1.
- 3) Peoples have the right of self-defense but no right to war – UN Charter, article 51.
- 4) Peoples are to observe a duty of nonintervention – UN Charter, article 2.7.
- 5) Peoples are to observe treaties and undertakings – Vienna Convention on the Law of Treaties.
- 6) Peoples are to observe certain specified restrictions on the conduct of war (assumed to be in self-defense) – Geneva Convention
- 7) Peoples are to honor human rights”⁴¹ – UDHR
- 8) Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime – UN Charter, article 55

Another key liberal thinker who has discussed the danger of this false liberal universalism is Michael Ignatieff in his book *Human Rights as Politics and Idolatry* (2001). He notably criticizes what he calls ‘the idolatry’ of human rights.⁴² In his view, human rights become dangerous when they are treated as an unquestionable moral authority.⁴³ He calls – such as Rawls calls for a ‘realistic utopia’ in *Laws of People* – for a balance between the idealism in human rights and the political realities of the international realm.⁴⁴ Though criticizing the idolatry of human rights in ideal democratic liberal theory, Michael Ignatieff nonetheless thinks a universal conception of human rights is possible, centered first and foremost on protecting negative liberties, especially bodily security.⁴⁵

⁴¹ Rawls, J. (1993). The Law of Peoples. *Critical Inquiry*, 2(1): p. 46.

⁴² Ignatieff, M. (2001). *Human Rights as Politics and Idolatry*. Princeton University Press.

⁴³ Ibid

⁴⁴ Ibidem

⁴⁵ Ibidem

Joshua Cohen, in his article “Minimalism About Human Rights: The Most We Can Hope For?” (2004), builds on Michael Ignatieff’s substantive minimalism to present his notion of ‘justificatory minimalism.’ In his view, “the central idea (...) is that a conception of human rights should be presented autonomously: that is, independent of particular philosophical or religious theories that might be used to explain and justify its content.”⁴⁶ Joshua Cohen, like Michael Ignatieff and John Rawls, seeks a universal agreement on human rights, but through the concept of membership; hence, potential disagreements among members of the international community would be on ‘what is required to be a member’ rather than the presumption of ‘natural rights.’⁴⁷ Nonetheless, he puts bodily security within the rights irrespective of membership, following Michael Ignatieff’s findings.⁴⁸

I argue this minimalistic account of human rights better captures the reality of the international community and its respect for human rights. Indeed, second-generation rights are far from being widespread among States, even some first-generation political or civil rights, and no matter what, the UDHR is not legally binding. Nevertheless, the international community agrees with shocking violations of human rights, touching on bodily security. This is reflected in the traditional, transitional justice mechanism implemented to condemn the violation of rights related to bodily security or negative liberties. This is also reflected in the notion of *jus cogens* in international law.

⁴⁶ Cohen, J. (2004). Minimalism About Human Rights: The Most We Can Hope For? *The Journal of Political Philosophy*, 12(2): p. 193

⁴⁷ Ibid

⁴⁸ Ibidem

3. The real universal and few human rights: the notion of *jus cogens* in international criminal law

In truth, though the 1948 Declaration proclaims the universality of human rights, it is rather an ideal to achieve for the member States of the international community. There are, nevertheless, ‘real’ universal rights that all member States agree on.

The specificity of international jurisdictions is they are ‘consented jurisdictions’: that is to say that a State whose internal jurisdiction did not recognize the competence of such international jurisdiction is not required to answer to them. It is indeed one of the fundamental flaws of international human rights law, the non-mandatory character of its respect. Nevertheless, some rights were established as ‘untouchable,’ resulting from a form of consent of the whole international community.

The 1953 Convention of Vienna declared the invalidity of treaties that would “conflict with a peremptory norm of general international law from which no derogation is permitted.”⁴⁹ The United Nations Commission of International Law describes a ‘peremptory norm’ or *jus cogens* norm as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law.”⁵⁰ This notion of ‘peremptory norm,’ or *jus cogens* in law, is distinguished here from the *jus dispositivum*⁵¹, notably through its *erga omnes*⁵² effect, the impossibility of derogating to such a norm.

⁴⁹ United Nations (May 23, 1969). *Vienna Convention on the Law of Treaties*: Article 53.

⁵⁰ United Nations. (April 29-June 7 & July 8-August 9, 2019). *Report of the International Law Commission (A/74/10)*: p. 142

⁵¹ From the latin, *jus cogens* means ‘compelling law’, while *jus dispositivum* means ‘dispositive law’.

⁵² From the latin, *jus cogens* means ‘compelling law’, while *jus dispositivum* means ‘dispositive law’.

To this day, the only recognized *jus cogens* crime by an international jurisdiction, namely the International Court of Justice, is the act of genocide.⁵³ Concurrently, legal doctrines define additional rights as *jus cogens*, such as the prohibition of torture or prohibition against racial discrimination.⁵⁴ For that matter, feminist scholars advocate for the recognition of the prohibition of gendered sexual violence and, more broadly, the prohibition of gendered discrimination against women as *jus cogens* norms.⁵⁵ The norm can also be linked to Michael's Ignatieff concept of minimalism in Human Rights: though his book was published in 2001, the *jus cogens* norms, prohibiting the acts of genocide, torture, but also racial discrimination – as acts of violence can be committed against a person because of his or her ethnicity – serve first and foremost to further protect bodily security by establishing it as a non-derogatory standard. The agenda of Human Rights is not reduced, but some rights are to be observed by all. In this view, the feminist discussion on making the respect of women's rights or prohibiting SGBV as a peremptory norm is all the more so pertinent.

However, for legal scholars, even the notion of *jus cogens*, the universal rights of universal rights, is not quite respected by States, with impunity rather being the norm than the exception.⁵⁶ Indeed, the *jus cogens* character of genocide has not held the Hutu government in Rwanda from massacring the Tutsi, and while the Rwanda genocide was prosecuted, other genocides, such as the one in the Democratic Republic of Congo, are yet to be recognized. Furthermore, the *jus cogens* character is quite difficult to define, notably

⁵³ See International Court of Justice. (July 11, 1996). Judgment in *Application of the Convention against Genocide (Bosnia-Herzegovina versus Yugoslavia)*; International Court of Justice. (May 28, 1951). Advisory Opinions in *Reservations to the Convention against Genocide*

⁵⁴ Coomaraswamy, R. (2002). Are Women's Rights Universal? Re-Engaging the Local. *Meridians*, 3(1), 1-18.

⁵⁵ See Chapter 2, Section 2.1

⁵⁶ Cherif Bassiouni, M. (1996). International Crimes: "Jus Cogens" and "Obligatio Erga Omnes". *Law and Contemporary Problems*, 59(4), 63-74.

because of the scholarly disagreement on the definition of a ‘peremptory norm,’⁵⁷ leading to a kind of ‘political’ dimension in defining what deserves to be *jus cogens*.⁵⁸

It is of interest to see this kind of hierarchy in human rights. The United Nations, declaring the peremptory character of certain norms, can implicitly lead to thinking of the rest of the rights protected by the Declaration as ‘optional.’ Is *jus cogens* the avowal from the international community that the rights proclaimed as universal are not followed by States and would thus not be universal? The problem in such is not the lack of universality of those rights but rather the emphasis of universality to justify a certain theoretical ideal, here liberalism. The United Nations postulate is the fair and equal treatment of all its peoples, but due to this false universalism, they are not rightly protected.

This false universalism has been denounced for its impacts on the population not ‘fitting’ the liberal standard. For that matter, I argue that women too, do not fit the liberal standard and have been marginalized by gender-blind liberal theories.

Section 2 : An Inability of liberal theorists to catch the structural character of women’s rights violations

Feminist scholars have persistently argued for the inclusion of women’s issues within the human rights agenda. In “International Human Rights and Feminism” (1992), Karen Engle presents three approaches of women’s rights advocates: doctrinalism, institutionalism, and external critiques. While the doctrinalists and institutionalists ‘play within the system,’ advancing the integration of women’s rights into the human rights doctrine, I rather

⁵⁷ Cherif Bassiouni, M. (1996). International Crimes: "Jus Cogens" and "Obligatio Erga Omnes". *Law and Contemporary Problems*, 59(4), 63-74.

⁵⁸ See Chapter 2, Section 2.1

sympathize with the external critiques' approach, which challenges the framework of those human rights.⁵⁹ Indeed, women's rights, as only integrated within the liberal agenda, do not provide significant protection for women, as they do not consider the structural character of SGBV against women.

In this section, I will argue that both the abstract character (1) and the public/private divide (2) within liberal theories prevent them from considering women's rights and, hence, their protection. As the international community and transitional justice evolved in the light of mass atrocities occurring in the 1990s, I will highlight that some SGBVs were recognized because they were acceptable by the liberal doctrine, yet this approach hides the deeper patriarchal roots of such violence (3).

1. The Abstraction within liberal theories, leaving aside practical realities of discrimination

The criticism of 'abstraction' in liberal theories from feminist theorists lies in the nature of both movements in international relations and political theory, namely, the difference between positivist and post-positivist.

Liberal theories are what could be called 'mainstream' positivist theories. Positivism relies on the scientific method as a unified method to explain social facts within the (international) realm. According to this movement, regular causalities exist, hence allowing for the creation of 'universal' explanations of the international social facts that can be empirically validated.⁶⁰ On the other hand, feminist scholars are part of the critical approaches of international relations (CAIR) and rest on a post-positivist approach. Post-positivism is characterized by four main elements: epistemologically, the rejection of universal law to understand; methodologically, the use of interpretative strategies;

⁵⁹ Engle, K. (1992). International Human Rights and Feminism: When Discourses Meet. *Michigan Journal of International Law*, 13(3), 517-560.

ontologically, the social construction of actors; and normatively, the will to develop theories questioning the dominant system, to then dissolve those structures.⁶¹ Post-positivists do not search for universal rules applying to all social situations but question the structures defined as ‘the norm’ by mainstream theorists. Abstraction lies in liberal theories because they purport to apply general law to different situations without taking into consideration historical, economic, or social realities.

In “Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls’ Theory of Justice,” Mari Matsuda criticizes the abstraction of the ‘original position’ within Rawls’s theory, as it leads to “the first step down the road of androcentric ignorance,” or in other words to denying the male-centric character of the world.⁶² Subsequently, Rawls’s assumption of ‘human nature’ as universal when individuals are placed under the veil of ignorance is denounced by the author as a presumption.⁶³ In the original position, ‘uniform’ individuals would inherently know some facts on life – the scarcity of goods or benefits of mutual cooperation, the constraining character of justice – which is why they would choose the two principles of justice as fairness.⁶⁴ However, for the author, those elements presented as facts are not and ignore “the dominant trend of scholarship that suggests little agreement over the degree to which various aspects of human nature are culturally, biologically, or historically determined.”⁶⁵ To presuppose all humans would be attracted towards the same elements is ignoring the (sometimes) hidden social reality: to suppose that women and men would want the same things in the realm of justice is denying the more vulnerable position of women in society.

⁶⁰ Chapitre 8 : Les approches post-positivistes. (2019). In D. Battistella, J. Cornut, and E. Baranets, *Théorie des relations internationales* (p. 237-309). Presses de Sciences Po.

⁶¹ Battistella, D. (2012). Post-positivisme. In F. Petiteville, P. Vennesson, M. C. Smouts and D. Battistella, *Dictionnaire des relations internationales* (p. 446-452). Dalloz.

⁶² Matsuda, M. J. (1986). Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice. *New Mexico Law Review*, 16: p. 619

⁶³ Ibid.

⁶⁴ Rawls, J. (1971). *A Theory of Justice*. Cambridge: Harvard University Press.

⁶⁵ Matsuda, M. J. (1986). Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice. *New Mexico Law Review*, 16: p. 626

A similar abstraction is to be found in the Just War theory, influenced by Kantian's democratic peace thesis. According to Lucinda Peach, the war is simply presented as an abstract, putting aside the reality of atrocities occurring 'in the name of Human rights' protection.⁶⁶ If going further on this point, the problem of this abstraction is the development of dichotomies, the 'other' opposed to the 'us, creating "enemies abstract enough to be killable"⁶⁷ and hiding human beings. Hence, even in the context of Just War, women are particularly vulnerable as they can be the 'two others': the enemy and femininity; yet liberal theories are unable to see behind the abstract they created.

2. The problematic historic public/private divide confining women and the protection of their rights to the private sphere

Gayle Binion, in "Human Rights: A Feminist Perspective" (1995), puts forward the gender-blind character of the traditional human rights framework, reflecting first and foremost the interest of men.⁶⁸ Though this 1995 criticism is now to be nuanced – since the United Nations committed to promoting gender equality with Security Council Resolution 1325 in 2000 – it can still be argued that women are one step behind men when the protection of their rights is at stake. In other words, women are not equal to men when comparing the protection of each gender's rights. This can be explained by another criticism made by the author: the artificial separation between the public and private spheres in human rights discourse, the rights considered as within the public sphere being protected in opposition to the ones concealed in the private spheres.⁶⁹

⁶⁶ Peach, L. J. (1994). An Alternative to Pacifism? Feminism and Just-War Theory. *Hypatia*, 9(2): p. 159.

⁶⁷ Ruddick, S. 1989, quoted in: Peach, L. J. (1994). An Alternative to Pacifism? Feminism and Just-War Theory. *Hypatia*, 9(2): p. 159.

⁶⁸ Binion, G. (1995). Human Rights: A Feminist Perspective. *Human Rights Quarterly*, 17, 506-526.

⁶⁹ Ibid.

Within States, women have historically been confined to the private spheres, mostly because they were first and foremost mothers and keepers of the household, whereas men were thought of as part of the public sphere. This is especially true in the traditional theories of war, with the figure of the male citizen-warrior opposed to the female peaceful housekeeper mother.⁷⁰ The division is also pointed out in political theory, Iris Marion Young emphasizing ‘women’s gendered vulnerability’ “founded on the family division of labor that assigns women primary responsibility for looking after the household, children, and other family members who need care.”⁷¹ This historical gendered division continues today yet is not recognized, particularly by the liberal theorist.

One of the most famous feminist critics of John Rawls’s work is Susan Okin.⁷² In “Justice and Gender” (1987), she demonstrates the gender-blindness of Rawl’s theory of justice on two of his points: the veil of ignorance, original position, and the monogamous family as a social institution.⁷³ She first shows the non-mentioning of the ‘sex’ criteria in the original position of Rawls. The failure of Rawls to raise this criterion poses the implicit thought that sex, or rather gender, is not of any consequence for individuals. According to Susan Okin, this could mean Rawls does not take into consideration the “lines of gender” in the general facts of human society.⁷⁴

She then shows that though the family is defined as a social institution, it is mentioned only three times in *A Theory of Justice*, with Rawls “in the third of these contexts (...) specifically mentions the family as a just institution.”⁷⁵ The problem here is to assume the family is just while many cases of abuse suffered by women are within the private circle – marital rape, domestic violence... – and would then not be considered in the idea of Rawls. Furthermore, if we extend the reflection on the previous findings, women having

⁷⁰ Tickner, J. A. (1992). Man, the State, and War: Gendered Perspectives on National Security. In *Gender in International Relations*. (pp. 27-66). New York: Columbia University Press.

⁷¹ Quoted in Jaggar, A. M. (2009). Transnational Cycles of Gendered Vulnerability: A Prologue to a Theory of Global Gender Justice. *Philosophical Topics*, 37(2): p. 39.

⁷² NB: despite criticizing John Rawls, Susan Okin still thinks possible to develop a liberal feminist approach resting on the Rawlsian framework : See Chapter 1, Section 3

⁷³ Okin, S. (1987). Justice and Gender. *Philosophy & Public Affairs*, 16(1), 42-72.

⁷⁴ Ibid.

been confined to the private sphere, justice could only be applied to women within this sphere, something unthinkable for Rawls as the institution of family is just and would never violate the rights of its members.

The characterization of the public/private divide in liberal theories of justice is important to understand its effect on human rights protection. According to Celina Romany, the public sphere, associated with the State's actions, is where human rights are recognized and protected, while the private sphere has been considered outside of its reach.⁷⁶ If women have been historically associated with the private sphere and the family declared as a just institution by liberals; hence there is a tendency to invisibilize the protection of women's rights in times of conflict, considering those violations as 'private matters.' And historically, transitional justice has tended to erase sexual violence and gendered crime: both statutes of the International Military Tribunal for Nuremberg and the International Military Tribunal for the Far East had no references to rape, the same can be said for judgments. The fact is not that rape did not occur – rape occurs in all conflicts – but despite evidence and the defendant being found guilty, the crimes were not mentioned.⁷⁷

However, it should also be noted that this public/private divide within international law is problematic by essence for women as most of the violence they will face is committed within the private sphere and will hence never be recognized.⁷⁸

The shift of such tendency occurred due to the massive and systematic sexual violence – more precisely, systematic rape – during both the ex-Yugoslavia war and the Rwanda genocide, which led to the public recognition of rape as a crime against humanity

⁷⁵ Okin, S. (1987). Justice and Gender. *Philosophy & Public Affairs*, 16(1): p. 48.

⁷⁶ Romany, C. (1993). Women as Aliens: Feminist Critique of the Public/Private Distinction in International Human Rights Law. *Harvard Human Rights Journal*, 6, 87-126.

⁷⁷ Kuo, P. (2002). Prosecuting Crimes of Sexual Violence in an International Tribunal. *Case Reserve Journal of International Law*, 34(3), 305-321.

within the international criminal law. Nonetheless, this visibilisation of rape was made within what is tolerable for the liberal human rights framework.

3. A showcasing of certain gender-based sexual violence in the liberal realm hiding their deeper patriarchal-rooted meanings

To quote Céline Bardet, “We are raping since the dawn of time in war. What's new, however, is the exponential increase in the number of rapes, which have become systematic weapons in today's conflicts [translated from French].”⁷⁹ To put it in other words: SGBV are systematic in conflict period. Yet, are they only weapons?

Feminist theorists had an important part in the politicization of SGBV, notably by putting in the public sphere a matter that was first considered as a private matter.⁸⁰ This politicization, possible thanks to the action of ‘integrationist’ feminist advocates, was particularly effective after the atrocities committed in Rwanda and Bosnia-Herzegovina as “they provide feminists and non-feminists alike with an opportunity for systematic consideration of the treatment of rape in international law” according to Karen Engle.⁸¹ However, I will advance here that, despite a broader consideration of SGBV, especially rape, the approach that was recognized is ‘applicable’ and ‘recognizable’ by liberal theorists. The problem lies in forgetting the deeper structural and patriarchal explanation of SGBV’s use in conflict times.

Donna Pankhurst, in “Sexual Violence in War” (2010), puts forward several explanations for rape in conflict times, notably an instrumentalist perspective. Rape as

⁷⁸ See Hilary Charlesworth & Christine Chinkin, *The Gender of Jus Cogens*, 15 HUM. RTS. Q. 63 (February 1993).

⁷⁹ Bardet, C. quoted in Guichenducq, P. (2023) *Les violences sexuelles en Ukraine, une arme de guerre utilisée par certain.e.s soldat.e.s russes. Institut du Genre en Géopolitique*. 2023.

⁸⁰ See Chapter 1, Section 2

instrumentality presents sexual violence as a ‘cheap weapon’ in war – individuals raping are seen here as rational and applying a strategic choice.⁸² It is interesting to see that this definition of rape is the one mostly used in transitional justice context and how it mirrors liberal theories in the sense it recognizes the rationality of the perpetrators.

However, to see SGBV only through the prism of instrumentality would be hiding the (hidden) gender construction behind rape. Indeed, rape as mythology frame perpetrators not only as rationale but as performing a ‘socio-cultural rite’ to perpetuate political power and gendered domination.⁸³ This category rejoins the structuralist and social constructionist ones of Paul Kirby, respectively illustrating women victims as a group and both men and women victims because of the dichotomy between femininity and masculinity.⁸⁴ To define rape, and more broadly SGBV, as strictly and only a ‘rational tool’ is to exclude the existing gendered dichotomy and the perpetuation of a patriarchal system outside the domestic order in the international realm.

Furthermore, the emphasis on the liberal order and transitional justice mechanisms on SGBV in wartime may also hide the everyday character of such violence for women. Though SGBV indeed drastically increases in conflict times, they are nonetheless part of women’s everyday lives. Chris Cuomo, in “War Is Not Just an Event” (1996), purports the ‘continuum’ of violence against women.⁸⁵ War would not be an event but a presence, “the eruptions and manifestations of omnipresent militarism.”⁸⁶ Catherine O’Rourke, in “Feminist scholarship in transitional justice: a de-politicizing impulse?” (2015), has a similar analysis applied to transitional justice: in her view, SGBV in conflict are “inextricably linked

⁸¹ Engle, K. (2005). Feminism and Its (Dis)contents: Criminalizing Wartime rape in Bosnia Herzegovina. *The American Journal of International Law*, 99(4), 778-779.

⁸² Pankhurst, D. (2010). Sexual Violence in war. In L. J. Shepherd, *Gender Matters in Global Politics: A feminist introduction to international relations*. (pp. 148-160). London and New York: Routledge.

⁸³ Ibid.

⁸⁴ Kirby, P. (2012). How is rape a weapon of war? feminist international relations, modes of critical explanation and the study of wartime sexual violence. *European journal of international relations*, 1-34.

⁸⁵ Cuomo, C. J. (1996). War Is Not Just an Event: Reflections on the Significance of Everyday Violence. *Hypatia*. 11(4): p. 32

⁸⁶ Ibid.

to broader gender power dynamics that both precede and follow periods of political violence.”⁸⁷ In this light, the liberal democratic peace would be a lie from women’s perspective, and showcasing violence only in specific times a lack of account of their experience.

Thus, liberal theories lack explanations for SGBV against women by not considering structural explanations and the patriarchal character of the international community. Despite everything, feminist approaches are plural, and lack of consensus on the element women’s rights should consider and SGBV it should condemn.

Section 3 : A debate among feminist movements on the nature of women’s rights

‘Saving Amina,’ the petition which divided the feminist. This first sentence is not only catchy but also the idea developed by Alison Jaggar in “Saving Amina”: Global Justice for Women and Intercultural Dialogue” (2005): how a ‘good Samaritan’ movement started by Western feminists to save Amina Lawal from death by stoning has been called out by feminists at the local level as causing more damages than good.

The feminist approach in international relations and political theory is far from being unified – as a critical approach, it seeks to participate in a broader discussion. Alison Jaggar, in her article, divides feminist scholars into two movements: Global radical feminists, also qualified as Western feminists or liberal feminists (Susan Okin, for example), and on the other side, postcolonial feminists. This section is an attempt to present both accounts, highlight their divergence (1), and, in the end, find a certain consensus (2).

⁸⁷ O'Rourke, C. (2015). Feminist scholarship in transitional justice: a de-politicizing impulse? *Women's Studies International Forum*, 51: p. 120

1. Western feminist and postcolonial feminist: an unsolvable debate?

The main postulate of Western feminists is the universality of patriarchy and the ideal of 'global sisterhood': they seek to establish that "women are a group subjected to a distinct form of oppression (...) and the existence of a worldwide women's culture."⁸⁸

Departing from this idea, and as mainstream male liberal theorists had already done, western women thus debated on whether liberal societies should tolerate illiberal cultural practices. Susan Okin and Martha Nussbaum notably worked on the issue and concluded that "women who seem content with unjust cultural practices suffer from adaptative preferences or learned desires for things that are harmful, a phenomenon called 'false consciousness.'⁸⁹ In other words, even though women seemed not disturbed by such cultural practices, it would be because they were raised to agree with them.

According to postcolonial feminists, and in Alison Jaggar's view, this approach is problematic as it perpetuates dichotomy (often inherited from colonial legacies) of 'educated white distinguished calm Western women' opposed to 'poor uneducated sexually constrained victimized Third World women.'⁹⁰ This criticism of practices stemming from culture and tradition is seen by those scholars as an 'imperial or orientalist feminism.'⁹¹

Indeed, the postulate of Western feminism is problematic, notably in the sense it reproduces mainstream liberal theories scheme in 'othering' non-Western women, who are already marginalized in the international community. The idea of imposing a new universality is disturbing, as it was precisely the contrary that I defended above. Nevertheless, the question might be asked to define women's rights and what abuses then

⁸⁸ Jaggar, A. M. (2005). "Saving Amina": Global Justice for Women and Intercultural Dialogue. *Ethics & International Affairs*, 19(3), 55-85: p. 56

⁸⁹ Okin, S and Nussbaum, M. quoted in Ibid: p. 58

⁹⁰ Jaggar, A. M. (2005). "Saving Amina": Global Justice for Women and Intercultural Dialogue. *Ethics & International Affairs*, 19(3), 55-85.

⁹¹ Ibid.

should be condemnable. In answering this question, the notion of ‘cultural relativism’ applied to human rights must be mentioned.

2. Should cultural relativism be taken into account in defining women’s rights?

I will start this point with a warning. As a white-Western woman who was born and lived her entire life in a liberal democratic regime, I am biased in favoring a feminist Western vision. Indeed, in my perspective, practices such as excision, defined as ‘cultural practices,’ are intolerable. I will hence try to be as neutral as possible but also point out that my perspective may rely on these consequent social factors.

The debate on universalism and cultural relativism within the human rights doctrine has been ongoing in both mainstream approaches and feminist ones. Gayle Binion and Martha Nussbaum denounce the relevance of ‘culture’ only as a defense when such practices deny fundamental rights to women.⁹² Feminist lawyers have advocated against the non-condemnation of ‘shock-the-conscience’ cultural violence.⁹³ However, postcolonial feminists have quite different discourses and denounce what is seen as ‘Western arrogance,’ emphasizing “the perceived victimization of women by non-Western cultural practices.”⁹⁴

In the end, I come down to highlight the position of Eva Brems as a potential solution to an endless debate. In “Enemies or Allies? Feminism and Cultural Relativism as Dissident Voice in Human Rights Discourse” (1997). She views feminist and cultural relativist approaches neither as irreconcilable nor as ‘friend’ but as searching for a common

⁹² Binion, G. (1995). Human Rights: A Feminist Perspective. *Human Rights Quarterly*, 17, 506-526 ; Jaggar, A. M. (2005). "Saving Amina": Global Justice for Women and Intercultural Dialogue. *Ethics & International Affairs*, 19(3), 55-85.

⁹³ See Coomaraswamy, R. (2002). Are Women's Rights Universal? Re-Engaging the Local. *Meridians*, 3(1), 1-18.

⁹⁴ Jaggar, A. M. (2005). “Saving Amina”: Global Justice for Women and Intercultural Dialogue. *Ethics & International Affairs*, 19(3), 55-85: p. 56

goal: “real inclusion of human beings requires attentiveness to their specificities.”⁹⁵ Both approaches highlight the implicit ‘uniformity’ in the universal human rights discourse as harmful to women’s rights.⁹⁶ Another way to solve this issue is Radhika Coomaraswamy’s perspective of a bottom-up, local change in treating violations of women’s rights in non-Western culture.⁹⁷ In other words, to give agency to non-Western women to take on the issue and decide by themselves, just as Western women ask the same things to male-centered institutions.

In my first Chapter, I gave a feminist account of how the current human rights doctrine, one of transitional justice’s main goals, prevents SGBV against women from being properly recognized. The false universalist approach built by liberal theories renders it impossible to consider SGBV as structural and patriarchal discrimination, hence requiring ‘different’ protection. It is all the more true for non-Western women facing further discrimination because they are only perceived as ‘marginalized victims.’

Hence, in light of those findings, in order for transitional justice to get proper justice for women, it should bear in mind these elements and implement mechanisms in accordance. However, as I will highlight in my second Chapter, the tendency for transitional justice to privilege ‘retributive justice’ through the prism of international (criminal) law and legal institutions prevents any real justice from getting done.

⁹⁵ Brems, E. (1997). Enemies or Alies? Feminism and Cultural Relativism as Dissident Voice in Human Rights Discourse. *Human Rights Quarterly*, 19 : p. 164

⁹⁶ Ibid.

⁹⁷ Coomaraswamy, R. (2002). Are Women's Rights Universal? Re-Engaging the Local. *Meridians*, 3(1), 1-18.

CHAPTER 2: TRANSITIONAL JUSTICE AS A LEGAL MECHANISM – AN OBSTACLE FOR WOMEN TO GET JUSTICE

“Feminist academics and practitioners are effectively fighting for gender to be mainstreamed throughout transitional justice processes that are already at the margins of political processes. To put it simply, women’s rights and gender justice are at the margins of the margins of international law.”⁹⁸

At the origin, transitional justice was mostly done in a ‘retributive’ perspective, emphasizing criminal accountability for the perpetrators and thus operating through legal mechanisms. Indeed, the International Center for Transitional Justice purports that “investigations and trials of powerful leaders (...) help strengthen the rule of law and send a strong signal that such crimes will not be tolerated in a society that respects rights” while adding trials represent a “key demand of victims.”⁹⁹

Binaifer Nowrojee highlights this demand from the victims, but in a more nuanced way, which could lead to not strictly seeing ‘retribution’ through the legal lens: what Rwandan women survivors are asking is for public recognition, and they express “deep concern that the ICTR is not fully and properly prosecuting the crimes that occurred against them.”¹⁰⁰ The focus on legal mechanisms was also denounced by Third-wave feminists as not giving enough space and agency for women to share their stories and have a sentiment of justice.

I will argue in this Chapter that the centrality of law in the implementation of transitional justice (Section 1) and the gender-blindness of international (criminal) law

⁹⁸ Vijayarasa, R. (2013). “Review Essays – Women at the Margins of International Law: Reconceptualizing Dominant Discourses on Gender and Transitional Justice”. *The International Journal of Transitional Justice*, 7: p. 359

⁹⁹ International Center for Transitional Justice (s.d). *Criminal Justice*.

(Section 2) fails to provide proper justice to women due to its inability to consider women's issue in their systemic and structural dimension.

Section 1 : The centrality of the law and legal institutions restricting the potential for righting the wrongs of gendered-based sexual violence

Transitional justice mechanisms, so far, have been characterized by a centrality of the legal normative and the re-establishment of the rule of law. Whether they be special criminal tribunals or truth commissions, legal mechanisms are predominant in the liberal vision of transitional justice. This can be explained by the emphasis on the rule of law and the importance of justice in liberal theories.

However, I will argue in this section that legal proceedings - investigation, the transformation of a story into a testimony, trial – suffer from their rigidity and uniformity in adapting to women victims of SGBV (1), which is further aggravated by the gender-blindness of international law and international criminal law (2).

1. The rigidity of legal proceedings in adapting to the specific character of sexual violence

The legal process is one strictly codified: in the investigation and collection of proof, which will then be transformed into testimonies to support the counts judged in Court. The problem of this systematization is it can erase features described as 'unessential' by the legal framework but essential for victims and their sense of recognition of the abuses they have suffered, or as Judith Shklar put it, "no theory of either justice or injustice can be complete

¹⁰⁰ Nowrojee, B. (2005). 'Your Justice is Too Slow': Will the ICTR Fail Rwanda's Rape Victims? *Occasional paper n°10*. Geneva: UNRISD: p. 6.

if it does not take account of the subjective sense of injustice and the sentiments that make us cry.”¹⁰¹

This process starts with the ‘fitting’ of the violation into a legal category, strictly defined according to the law, in this case, the international criminal law. If it fits, it will be investigated and legally recognized, if not, it will remain unpunished for the legal mechanism of transitional justice.¹⁰² Afterwards, the allegations need to be investigated. On this matter, the work of Jonneke Koomen, in “Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda” (2013), is remarkable in describing the reality behind investigations and creation of testimonies that will fit the legal framework of international criminal tribunals, more precisely the ICTR. She describes an institution laboring to adapt to a sensitive public and faced with situations where the legal framework was not the best choice.

Witness statements, in order to ‘fit in’ the proceeding of the Court, are standardized, “mediated narratives produced to fit the tribunal’s needs.”¹⁰³ Their stories are presented in a very specific way, here again to ‘fit’ the legal parameters of the Court. Faiza, an ICTR prosecutor, testifies that:

“If a witness is brought to Arusha to testify about sexual violence, she may want to tell the tribunal if her children were murdered before her eyes that same day.

Depending on the nature of the defendant’s indictment, the chronology of the crime,

¹⁰¹ Shklar J. quoted in Ní Aoláin, F. (2012). Advancing Feminist Positioning in the Field of Transitional Justice. *International Journal of Transitional Justice*, 6, p : 225.

¹⁰² Ibid.

¹⁰³ Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2), 253-277: p. 260

the witness's previous statements, and information previously disclosed to the defense team, this may not be acceptable to the tribunal.”¹⁰⁴

This statement illustrates the ‘legal-counter narrative’ identified by Julie Mertus when women’s stories of harm meet the legal requirements of proving the guiltiness of the perpetrator.¹⁰⁵ Hence, any elements not relevant in condemning the perpetrator will be void for the trial, a ‘collateral damage’ which will neither be considered nor recognized. The International Courts are too rigid in the sense they fail to provide a ‘forum’ for women to tell their full story on SGBV, not only the element interesting the tribunal.¹⁰⁶

The International Court framework consequently leaves few places for empathy and is rather built on the contrarian idea. According to Thérèse, a West African ICTR interpreter, the courtroom is a “setting that is meant to traumatize.”¹⁰⁷ Descriptive questioning on the abuses suffered, sometimes very detailed at the demand of Prosecutors, cross-examinations during which the credibility of the witness and veracity of her story is put into question by the defense: all of these elements built a hostile environment for women victims of SGBV. International law, and hence legal institutions, emphasize rationality, objectiveness, abstraction, setting aside the realm of emotion or feelings: the law is technical and should render a judgment considering the law only, not regarding *pathos* elements that may have touched legal professionals. This idea leads prosecutors to prepare witnesses in a way that refrains from potential emotional outbursts, as it would drift away from the legal standard of the Courtroom. As I will present in Chapter 3, Section 1.2, emotional outbursts are not well-viewed or handled by the Judges.

¹⁰⁴ Ibid: p. 264

¹⁰⁵ Mertus, J. quoted in O’Rourke, C. (2015). “Feminist scholarship in transitional justice: a de-politicizing impulse?” *Women’s Studies International Forum*, 51, pp. 118-127.

¹⁰⁶ Ibid.

¹⁰⁷ Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2), 253-277: p. 264

This uniformity of legal proceedings left aside any discrimination, emotions, or thoughts that would be ‘irrelevant’ in a trial, yet relevant for women’s sentiment of justice. Furthermore, this uniformity is, in general, imposed by Western-centric international institutions on non-Western States, leading postcolonial feminists to discuss the neo-imperialistic dimension of transitional justice.

2. A Western-centric normative imposition lacking legitimacy and an intersectional approach

The postcolonial account of transitional justice is to be noted, as those process often engages with post-colonial States through a purely Western liberal lens, through the lens of the ‘former colonizer.’

Makau Mutua, in “What Is the Future of Transitional Justice?” (2015), denounces a “blueprint ready for export”¹⁰⁸ vision of purely Western-imposed transitional justice, seen as a paternalistic and imperialistic approach, a view concurred by Khanyisela Moyo. The same discourse is held by Fionnuala Ní Aoláin, seeing a tendency for transitional justice to “engage with the exotic ‘other’ of locales, subjects, conflicts, and repressions elsewhere (almost never in the western ‘here’).”¹⁰⁹ By already marginalizing non-Western citizens, this reality of transitional justice even further marginalized non-Western women, who would end up at the bottom of the ‘hierarchy of rights,’ to illustrate the point. Failing to account for both the discrimination endured because they are women and non-Western citizens is further preventing the protection of their rights. Furthermore, the Western-centric lens has another flaw for non-Western women: the framing of a ‘victim woman,’ subordinated to patriarchal domination and cultural practices.¹¹⁰ This framing leads to disempowering non-

¹⁰⁸ Mutua, M. (2015). What Is the Future of Transitional Justice? *International Journal of Transitional Justice*, 9: p. 5.

¹⁰⁹ Ní Aoláin, F. (2012). Advancing Feminist Positioning in the Field of Transitional Justice. *International Journal of Transitional Justice*, 6: p. 206

¹¹⁰ See Jaggar, A. M. (2005). "Saving Amina": Global Justice for Women and Intercultural Dialogue. *Ethics & International Affairs*, 19(3), 55-85.

Western women and excluding them from the transitional process, all the more so when facing a foreign-imposed legal framework.

This imposition has practical consequences, as it may hack the ICTR's work and its legitimacy. Indeed, Khanyisela Moyo relates to the work of John Mukum, who attributes the institutional failure to "an elite-driven constitutional framework which lacks local legitimacy as it enshrines the value of former colonial masters and not those of the local communities which those rulers sought to govern."¹¹¹ Distrust towards ICTR professionals,¹¹² dispute of the interpreter's translations from Kinyarwanda-speaking defendants,¹¹³ cultural particularities inadequately considered...¹¹⁴ All those elements stemming from the Western-centric character of the tribunal reduce its potential to get justice for non-Western women.

3. Gender as a 'second-zone' matter in trials

The consideration of SGBV by international courts is already, in a sense, an important step in retributing women. Issues that were once erased from the paintings are now uncovered and prosecuted. But are they prosecuted as other human rights violations?

As I will see through the Rwandan example, gender matters are, in the majority, treated as a secondary issue, something that neither is the original focus of the trials nor deserving of his own indictment. The trial is limited to what gender harm the accused caused to the victim: the investigation hence starts with the perpetrator and adds in the process the victim's testimony, which may contain gender elements that may yet be recognized in the judgment.

¹¹¹ Mukum, J. quoted in Moyo, K. (2012). Feminism, Postcolonial Legal Theory and Transitional Justice: A Critique of Current Trends. *International Human Rights Law Review*: p. 238-239.

¹¹² See Chapter 3, Section 1.2.c

¹¹³ See Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2): p. 269

Fionnuala Ní Aoláin, on the other hand, calls for gender not to be lately ‘incorporated’ within investigations but to be the central entry point in a transitional context.¹¹⁵ She denounces the current approach of SGBV to be ‘tokenistic,’ unable to produce long-lasting effects on the functioning of International Criminal Courts, hence limiting the potential retribution for women.¹¹⁶

Hence, to view transitional justice only through trials, the law, through Western-centric uniform legal mechanisms, set aside ‘women’s stories’ that do not fit into the strict liberal legal framework. Gendered perspectives are indeed added, but no real effort is made to adapt to those specific victims and discrimination. Yet, this false consideration of SGBV and women survivors by legal mechanisms can also be found in the structure of international criminal law.

Section 2 : The gender-blindness of International (Criminal) Law, preventing to see sexual and gender-based violence as structural inequalities

Contrary to international (public) law, establishing the rules and standards that states must observe in their relationship, international criminal law defines international crimes and thus establishes individual criminal accountability, allowing perpetrators as individuals to be condemned in transitional processes. The latter is the one used in transitional processes, notably because “the large-scale nature of such crimes (mass human rights violations) means that they often cannot be processed through the ordinary criminal justice system –

¹¹⁴ See Chapter 3, Section 2.3.a

¹¹⁵ Ní Aoláin, F. quoted in Vijayarasa, R. (2013). “Review Essays – Women at the Margins of International Law: Reconceptualizing Dominant Discourses on Gender and Transitional Justice”. *The International Journal of Transitional Justice*, 7, pp. 358-369.

¹¹⁶ Ní Aoláin, F. (2009). Women, Security, and the Patriarchy of Internationalized Transitional Justice. *Human Rights Quarterly*, 31(4), 1055-1085.

generating an ‘impunity gap.’¹¹⁷ Nonetheless, international criminal justice stems from protecting human rights and, hence, international law. These laws fail to consider both gender perspectives and women’s experiences.

I will argue in this section that the application of the law, presented as neutral and just, is eventually a political choice setting aside women’s rights (1), while the showcasing of ‘visible’ SGBV has further erased subsequent discrimination not covered by the field of international criminal law (2).

1. The pretended neutral character of the law, making in truth political choices

In liberal societies, the rule of law, the respect of the law as governing the relations among people, is central. This law is seen as just, ‘justice as fairness,’ notably because every person is equal before the law. This principle is also consecrated in international law in Article 6 of the UDHR – “All are equal before the law” – and Article 7 – “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”¹¹⁸

However, though the principle of justice is seen by liberal theorists as universally accepted by all because they are just, as the incarnation of neutrality and impartiality, the law is indeed political. Or, to quote Fionnuala Ní Aoláin, “Allowing transitional justice work to be done under the banner of law enables certain issues to be characterized as ‘legal issues’ and not merely matters of political choice. The characterization can hide how law is colonized by politics and can be used to advance political decision making.”¹¹⁹ According to her, the legal domain tends to favor the ‘status quo’ and maintain the dominant patriarchal

¹¹⁷ International Center for Transitional Justice (s.d). *Criminal Justice*.

¹¹⁸ United Nations. (December 10, 1948). *The Universal Declaration of Human Rights*: Article 6 & Article 7.

hierarchies and gendered division¹²⁰. Indeed, Berta Esperanza Hernandez-Truyol describes the normative legal framework as “white, male, Christian, dominant language-speaking (English, Spanish), educated moneyed, propertied, heterosexual and able bodied.”¹²¹ Translation: every person not fitting into this category will be marginalized by law and not given the justice they deserve.

Hillary Charlesworth attacks the pretended ‘neutrality’ of the law, which in truth would have a ‘hidden gender.’ According to her, the masculine perspective has predominated over international law, prioritizing issues traditionally associated with men (trade, war, security...), while ‘women’s issues’ were seen as ‘private matters’ outside the scope of international law.¹²² The ‘voluntary’ character of international law, thus heavily relying on the State’s sovereignty, further emphasizes this male-centric character.¹²³ From the perspective of cultural feminists, “The language and imagery of the law underscore its maleness; it lays claim to rationality, objectiveness, and abstraction, characteristics traditionally associated with men, and is defined in contrast to emotion, subjectivity, and contextualized thinking.”¹²⁴ This has consequences, especially for women victims of SGBV, as the three later elements play an important role in the complete understanding of such assault.

To illustrate this politicization of the law, I wish to come back to the notion of *jus cogens*, those rights accepted by all and *erga omnes*. The main argument here is that both the ICJ, the only international jurisdiction able to recognize a legal norm as *jus cogens*, and the legal doctrine has remained reluctant to take into account the feminist perspective. In “The

¹¹⁹ Ní Aoláin, F. (2012). Advancing Feminist Positioning in the Field of Transitional Justice. *International Journal of Transitional Justice*, 6, 205-228: p. 222

¹²⁰ Ibid

¹²¹ Hernandez-Truyol, B. E. quoted in Ibidem: p. 221

¹²² Charlesworth, H. (2002). The Hidden Gender of International Law. *Temple International & Comparative Law Journal*, 16(1), 93-102.

¹²³ Ibid.

ICJ and Jus Cogens through the Lens of Feminist Legal Methods” (2017), Ekaterina Yahyaoui Krivenko illustrates the ICJ’s failure to engage with feminist methods, notably by relegating such an approach to dissenting opinions.¹²⁵ Several scholars such as Hillary Charlesworth, Christine Chinkin, and Radhika Coomaraswamy question the impossibility of reaching an argument on the prohibition against sexual violence and discrimination as *jus cogens*, notably comparing the *jus cogens* character, recognized by legal doctrines, to the prohibition against racial discrimination.¹²⁶ According to Radhika Coomaraswamy, this failure of recognition is because women’s rights are “the soft’ area of international human rights law, the area over which there is debate, discussion, and sometimes frivolity.”¹²⁷

The hidden politics within the law is described by Catherine O’Rourke as a ‘blindspot’ in scholarly inquiry, a reluctance, even from feminist advocates who have engaged with SGBV in transitional justice context, “to engage with the political dynamics that drive transitional justice in particular context and to examine the ways in which gender intersects with and cuts across those dynamics.”¹²⁸ Though the law has recognized SGBV, the tendency has been to privilege ‘the technical’ over the transformative power of gender for international criminal law.¹²⁹ In other words, the focus of feminist advocates, notably regarding the ICTR and ICTY, has been to incorporate gender within an already existing liberal mechanism. This perspective, nevertheless acknowledging the improvement gained from it, has secluded retribution for women mainly in a field of law that is structurally hostile to them. Notably, it has led to the visibilization of some SGBV, the one the

¹²⁴ Charlesworth, H. (2002). The Hidden Gender of International Law. *Temple International & Comparative Law Journal*, 16(1): p. 96

¹²⁵ Krivenko, E. Y. (2017). The ICJ and Jus Cogens through the Lens of Feminist Legal Methods. *The European Journal of International Law*, 28(3), 959-974.

¹²⁶ Charlesworth, H. & Chinkin, C. (1993). The gender of jus cogens. *Human Rights Quarterly*, 15(1), 63-76; Coomaraswamy, R. (2002). Are Women's Rights Universal? Re-Engaging the Local. *Meridians*, 3(1), 1-18.

¹²⁷ Coomaraswamy, R. (2002). Are Women's Rights Universal? Re-Engaging the Local. *Meridians*, 3(1): p. 6

¹²⁸ O’Rourke, C. (2015). Feminist scholarship in transitional justice: a de-politicizing impulse? *Women's Studies International Forum*, 51: p. 118

¹²⁹ Ibid

international criminal law can cover, while putting aside other harms suffered by women in conflict times.

2. The only presence of visible sexual violence in the law as a remain of the public/private divide

I have seen previously in Chapter 1, Section 2.1, the problematic character of the public/private divide in liberal theories of justice and feminist criticism, but also the recent improvement in recognizing sexual violence as part of the public sphere of justice. Thanks to the jurisprudence of the ICTY and ICTR, the Rome Statute, creating the International Criminal Court (ICC) recognized within the category of ‘crimes against humanity’ several gendered-sexual violence defined as “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence.”¹³⁰ The category is hence quite large but also quite vague: it can be argued in a tribunal what is or not is not ‘sexual violence.’ The text also illustrates another criticism of the feminist scholars towards transitional justice post-Rwanda and ex-Yugoslavia: the only focus on sexual violence.

Margaret Urban Walker, in “Gender and Violence in Focus: A Background for Gender Justice in Reparations” (2009), lists the various abuse women suffer in war and conflict:

“Women’s vulnerability to sexual violation, however, is but one of the threats and danger women face (...). Women too lose homes, land, possessions, sources of income, local networks of material and emotional support, and family members or

¹³⁰ International Criminal Court. (July 17, 1998). *Rome Statute of the International Court of Justice*.

whole families (...) Not all violations and harms suffered by women are sexual by nature.”¹³¹

Indeed, though prosecuting sexual violence is a first step for transitional justice, it has led to underestimating or simply not considering other discriminations committed against women in conflict. Julia Lemaitre, in “Transitional Justice and the Challenges of a feminist peace” (2020), emphasizes the now overly central focus of transitional justice mechanisms on sexual violence.¹³² As will be shown in Rwanda’s example, the count of rape is the sole held against the accused when talking about women’s rights violations, as if rape was now considered in the public sphere of justice, while the plethora of women’s rights violations were still within the private sphere.

This approach is too restrictive in various senses. First, it limits the scope of justice for women’s rights, hence leading to a partial legal recognition of the violence endured. Second, as claimed by Margaret Urban Walker, some of those harms derive from sexual violence:¹³³ in Rwanda, for example, many women suffered from HIV/AIDS after having been raped by soldiers, leading to both social exclusion and malfunctioning of reproductive health. Conway Henderson, in his article “The Political Repression of Women” (2005), calls out the international community to redefine its definition of ‘political violence’ in the context of transitional justice to include an approach that would consider all harms possible against women because of their gender.¹³⁴

However, are these additional discriminations within the scope of international criminal law, which governs the International Court nowadays and was governing the special International Courts? To put it simply, no. The Rome Statute of the ICC defines the

¹³¹ Walker, M. U. (2009). Gender and Violence in Focus: A Background for Gender Justice in Reparations. *Philosophy Faculty Research and Publications*: p. 19-20.

¹³² Lemaitre, J. (2020). Transitional justice and the challenges of a feminist peace. *I·CON*, 18(2), 455-460.

¹³³ Walker, M. U. (2009). Gender and Violence in Focus: A Background for Gender Justice in Reparations. *Philosophy Faculty Research and Publications*: 18-62.

¹³⁴ Henderson, C. W. (2005). The Political Repression of Women. *Human Rights Quarterly*, 26, 1028-1049.

crimes within its jurisdiction as the crimes of genocide, crimes against humanity, war crimes, and the crime of aggression.¹³⁵ This illustrated the problematic centrality of law in the process of transitional justice for women: many of the discrimination and harms they will suffer will simply not be covered by the international criminal law aimed to retribute them. In this case, criminal retribution is too restrictive for women, and the lack of adaptability of the legal framework, especially the retributive one, fails in the light of gender justice.

In this Chapter, I demonstrated the limits of the legal framework in making justice for women – a structural limit. Indeed, the rigidity and uniformity (universality) of legal mechanisms implicate the same treatment for everyone and the systematization of stories. This fact prevents us from considering the full experience of women, especially non-Western women who face the imposition of a foreign (postcolonial feminists would go as far as defining it imperialist) liberal Western system. Gender becomes a second zone matter in the trials, and this is better explained by the gender-blind character of international criminal law. Despite focusing on individual accountability, international criminal law, and more broadly international law, makes questionable political choices under cover of neutrality, choices that do not consider women's rights and their systematic character. An illustration of this tendency is found in the now showcasing of 'visible' SGBV, like rape or sexual torture, while not considering subsequent harms that are not covered by the field of international criminal law. It is, hence, a structural inability of the legal framework to give proper justice to women victims of SGBV.

The universal character of both the human rights doctrine and liberal legal framework seem to appear as a 'dead end' for women survivors of sexual abuse and violence. This theory I attempted to build in previous chapters finds an illustration in the

¹³⁵ International Court of Justice. (July 17, 1998). *Rome Statute of the International Court of Justice*.

example of Rwanda to understand how transitional justice has remained unable to get justice done for women.

CHAPTER 3: THE GENOCIDE OF RWANDA – THE INABILITY OF TRANSITIONAL JUSTICE TO CORRECTLY RETRIBUTE WOMEN VICTIMS OF SEXUAL VIOLENCE

“The international legal community must ask itself: are these international judgments really for the survivors of war and genocide, or are they for some lofty, albeit important, cause of “international justice”? And most importantly, are we expanding and strengthening international law on sexual violence at the expense of the rape survivors of genocide and war who come forward to testify?”¹³⁶

The Genocide of Rwanda took place between April and July 1994. For 100 days, more than 800,000 people, mostly Tutsi, were killed by Hutu. Before diving into the gender element of this genocide, a few words must be said on the colonial past and the ‘construction’ of the hate between these two ethnic groups.

Indeed, in the 19th century, Ruanda-Urundi (nowadays Rwanda) was attributed to Belgium by the League of United Nations in October 1924. Belgium then created a hierarchization between the Tutsi (14% of the population), presented by the colonial power as superior, and the Hutu (85% of the population).¹³⁷ This false hierarchization exacerbated the hate between the two groups, especially when the Hutu toppled the Tutsi power (with the help of Belgium). Rwanda finally gained independence in July 1962 and became a member of the UN in September 1962. However, the antagonism remained, and massacres of Tutsi started to occur, resulting in the formation of the Rwandan Patriotic Front (RPF) by exiled Tutsi in Uganda in 1987. The RPF eventually invaded Rwanda in October 1990,

¹³⁶ Nowrojee, Binaifer. 2005. ““Your Justice Is Too Slow”: Will the ICTR Fail Rwanda’s Rape Victims?” Occasional paper no. 10, UNRISD, Geneva: p. 24

¹³⁷ United Nations (s.d). *Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United Nations*; Mémorial de la Shoah. (s.d). *Le génocide des Tutsi au Rwanda*.

an invasion answered by racist propaganda against the Tutsi, notably the 'Radio Télévision des Milles Collines'.¹³⁸ The Arusha Peace Agreement was finally signed in August 1993 and seemed to put an end to the conflict between Hutu and Tutsi with a coalition Hutu-RPF Government. Yet, the crash of President Habyarimana's plane relaunched hostilities: the racist propaganda turned into the genocide of an entire part of the population, and Tutsi were killed, tortured, and massacred.

After the end of the genocide, the UN was left to deal with thousands of human rights violations, and thus, the UN Security Council established the ICTR through resolution S/RES/955 in November 1994¹³⁹. While uncovering the genocide's atrocities, the ICTR discovered another aspect of it: the mass SGBV against women, particularly the systematic raping of Tutsi women before being killed or not. Particularly, the first conviction of the ICTR for genocide, Jean-Paul Akayesu, concluded that rape was constitutive of crimes against humanity and could constitute acts of genocide. Though legal scholars have widely "praised the international tribunals as an important step forward in ending impunity for sexual violence against women (...) [notably] the landmark judgment of Akayesu that expanded international law on rape,"¹⁴⁰ Binaifer Nowrojee points out the opposite sentiment of victims, who feel the ICTR has failed to provide justice for the SGBV they suffered.

This Chapter will hence attempt to provide an answer to this denounced failure by first reviewing the action of the ICTR, which eventually presented a façade of gender sensitivity (Section 1), and the one of the Gacaca Courts, established a few years after the ICTR, which had mixed result for women's rights violation (Section 2).

¹³⁸ United Nations (s.d). *Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United*

¹³⁹ Ibid.

¹⁴⁰ Nowrojee, B. (2005). 'Your Justice is Too Slow': Will the ICTR Fail Rwanda's Rape Victims? *Occasional paper n°10*. Geneva: UNRISD: p. 5

Section 1 : The internationalist approach of the International Criminal Tribunal for Rwanda: a facade gender-sensitivity

To state the ICTR did not allow positive development in transitional justice's progress in prosecuting sexual violence would be a false claim. The Tribunal has been praised throughout the international community, in particular for the Akayesu Case, which has seen not only the recognition of rape as a crime against humanity but also as a weapon of genocide, a first in the history of transitional justice and prosecution of sexual violence. Nonetheless, when listening to the victims, the reality is different.

I chose to analyze the example of Rwanda from a gender perspective to rely on the testimonies of those women who were victims of SGBV in two cases of the ICTR: the Akayesu Case and the Muvuny Case. I have presented the first one and its outcome several times throughout this master's thesis, being seen as a landmark for the consideration of women's rights. Nonetheless, I wanted to analyze thoroughly the testimonies of witnesses in order to reflect their voice and side of the story, rather than the one of legal scholars and the international community. Concerning the Muvuny Case, it is one of the examples illustrating the difficulty for International Criminal Courts to recognize SGBV against women, as the accused was not found guilty, yet rapes were documented and proven.

The analysis of these ninth testimonies allowed me to uncover that despite an effort to include a gender approach in the prosecution (1), the ICTR has remained unable to give justice to women due to the sole use of legal mechanisms (2) and a purely liberal Western characterization of SGBV (3).

1. An effort of the tribunal to adapt its approach when faced with women victims of sexual and gender-based violence

a. The tryptic of a first gender-sensitive approach centered on witnesses: protection, specificity of sexual violence crime, and empathy

Through the analysis of the transcripts, three criteria emerged, illustrating an attempt to take into account the particular case of the witnesses in front of them. First, all witnesses testifying for sexual violence accusations have a pseudonym composed of one of several letters, such as ‘Witness H.’ Furthermore, judges, particularly the President of the Court, are concerned about the guarantee of anonymity for witnesses, but also for people mentioned who could still be alive and suffer consequences from being mentioned in a trial. In the Akayesu case’s hearing of October 31, 1997, it is one of the prosecutors that shows concern about the defense asking for the specific names of women that were raped:

MS. DAREHSHORI:

“We have some concern about the mentioning of names of people who survived who might have been witnesses.

(...)

R. TIANGAYE:

The names of persons mentioned are names of people who are already dead.

(...)

MS. DAREHSHORI:

No further questions but I would like to request

that the name of the surviving rape victim be removed from the record.¹⁴¹

¹⁴¹ See appendix 6, The International Criminal Tribunal for Rwanda. (October 31, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu*. United Nations International Residual Mechanism for Criminal Tribunals.

This guarantee of anonymity is crucial in prosecuting sexual violence, both to ensure rape victims will not face retaliation but also because the taboo of rape is significant in Rwanda. It has indeed been recognized by both Prosecutor Prosper in the Indictment and by the judges in the sentence of the Akayesu Case.¹⁴² This is significant for the victim as it recognizes their difficulty to come forward and testify in front of a Court. However, there was no such mention in the Muvuny case. The reflexive guideline of the ICTR has, for that matter, mentioned the taboo surrounding rape, leading sometimes witnesses to use euphemisms to describe the abuse they suffered.¹⁴³ Yet, despite this later recognition, the consideration of cultural relativism for the tribunal has been mixed.¹⁴⁴

Finally, some hearings show sincere empathy towards the witnesses from judges or prosecutors, an empathy that is yet more to be found in the Akayesu case than in the Muvuny one. On several occasions, ICTR professionals sympathize with the pain endured by these women and recognize their courage. In the Akayesu case's hearing on January 27, 1997, the President called to order the defense, asking them to avoid shocking details if they were not necessary to their argument, reminding the traumatism of the victim.¹⁴⁵

This tryptic has allowed victims to be in a less traumatic legal environment. In a sense, it is the Courtroom that adapted to the specific needs of such cases. Nevertheless, the Courtroom has also adapted because it needs the testimonies of women to prosecute

¹⁴² See appendix 5 and 7, International Criminal Tribunal for Rwanda. (June 17, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals; International Criminal Tribunal for Rwanda. (September 2, 1998). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁴³ See International Criminal Tribunal for Rwanda. (January 30, 2014). *Prosecution of Sexual Violence – Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Region: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda*.

¹⁴⁴ See Chapter 3, Section 2.2.b

¹⁴⁵ See appendix 2, International Criminal Tribunal for Rwanda. (January 27, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

sexual violence: as a West African ICTR prosecutor states, “Without These Women, The Tribunal Cannot Do Anything.”¹⁴⁶ Following the statement of Jonneke Koomen, stating international Courts are also social institutions,¹⁴⁷ this tryptic is a positive sign towards the ‘engendering’ of international Courts. Nonetheless, the analysis of the transcripts highlights this gender-sensitive approach has been widely used in the Akayesu Case but less in the Muvuny Case. Such a difference between the two Courtrooms is a problem, as will be discussed in the second paragraph, and can be explained by the ‘uniqueness’ of the Akayesu Case.

b. The importance of the Prosecutors and Judges in the recognition of sexual violence in the Akayesu Case

Firstly, the case was not, at the origin, prosecuting a count of rape. It is thanks to the testimony of Witness H, declaring her six-year-old daughter, that sexual violence was finally considered. This was made possible also thanks to Judge Navanethem Pillay, who asked further questions on sexual violence suffered by witness H, allowing to have finally enough evidence for the Prosecutor to add the charge of rape in the indictment on June 17, 1997. The word ‘finally’ is purposely used here because Prosecutor Pierre Prosper highlights the difficulty of investigating sexual violence, especially in getting enough evidence to consider the charge in a Courtroom.¹⁴⁸ Nevertheless, he goes on by emphasizing that sexual violence was used “as a weapon or as a tool” and the systematization of its use in Rwanda.¹⁴⁹ These pieces of evidence lead him to qualify rape as a crime against humanity. The systematic

¹⁴⁶ Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2): p. 253.

¹⁴⁷ Ibid.

¹⁴⁸ See appendix 5, International Criminal Tribunal for Rwanda. (June 17, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁴⁹ See appendix 5, Ibid.

character of rape is also recognized by the judges, who go even further by adding to the count of genocide a gendered dimension:

“With regard to Count I on genocide, the Chamber having regard particularly to the acts described in paragraphs 12 A, and 12B, 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 inflicting harm on the victim as he or she suffers both bodily, first of all, and mentally later on.”¹⁵⁰

It represented a groundbreaking decision, a setting-precedent decision for some legal scholars, which has ‘engendered’ international law.¹⁵¹ If compared to the treatment of rape in Bosnia-Herzegovina’s transitional justice, it can be argued that the Akayesu Case has done better, Catherine MacKinnon still claiming that rape in Bosnia Herzegovina was used as a weapon of genocide.¹⁵²

Furthermore, the insight of the judges on the definition of rape illustrates a true reflection on its systematic character in conflict and the imagery linked to it, a “form of aggression (...) which cannot be captured in a mechanical description of objects and body parts.”¹⁵³ The judgment goes as far as mentioning the patriarchal roots of societies to explain the consequences of whether it may be forced impregnation or, consequently,

¹⁵⁰ See appendix 7, International Criminal Tribunal for Rwanda. (September 2, 1998). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁵¹ Oosterveld, V. (2005). Gender-Sensitive Justice and the International Criminal Tribunal for Rwanda: Lessons Learned for the International Criminal Court. *New England Journal of International and Comparative Law*, 12(1), 119-133.

¹⁵² See Engle, K. (2005). Feminism and Its (Dis)contents: Criminalizing Wartime rape in Bosnia Herzegovina. *The American Journal of International Law*, 99(4), 778-816.

¹⁵³ See appendix 7, International Criminal Tribunal for Rwanda. (September 2, 1998). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

inability to procreate.¹⁵⁴ The Judges' reasoning mirrors the theory of Donna Pankhurst on the instrumentality of rape in wartime: rape as a 'cheap weapon' to eradicate the Tutsis group through the demeaning of Tutsis women.¹⁵⁵

Nonetheless, a positive outcome, this point is troubling: without those two professionals, what would have happened? Binaifer Nowrojee points out the determining factor in the choice of prosecutors in a case success, denouncing the dependence on such a 'hazardous' element.¹⁵⁶ Indeed, if one specific person allows the tribunal to consider gender perspective, another may also set it aside. As proven by the Muvuny case, representing most of the ICTR cases on SGBV, the feminist integrationist approach remains unable to consistently apply a gendered perspective, notably due to the structural character of the legal framework.

2. An illustration of the imperfect character of legal mechanisms in retributing women

a. An omnipresent lack of sensitivity from the legal framework towards witnesses

Nevertheless, the cases analyzed both presented a blatant lack of consideration and sensitivity at various points. Here, I will argue that the legal framework indeed incarnates

¹⁵⁴ See appendix 7, International Criminal Tribunal for Rwanda. (September 2, 1998). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁵⁵ Pankhurst, D. (2010) "Sexual Violence in war", in L. J. Shepherd, *Gender Matters in Global Politics: A feminist introduction to international relations*. London and New York Routledge: 148-160

¹⁵⁶ Nowrojee, B. (2005). 'Your Justice is Too Slow': Will the ICTR Fail Rwanda's Rape Victims? *Occasional paper n°10*. Geneva: UNRISD.

and applies the male-centric ‘rationality and abstraction’ notion against the female ‘emotional, contextualized things.’¹⁵⁷

It is not rare in the Courtroom to see witnesses ‘lose patience’ when asked numerous questions. Indeed, when questions asking for details that outside of a courtroom would be considered irrelevant arise – like the height of a tree to evaluate if someone could have climbed it to hide from an assailant¹⁵⁸ – most of the witnesses lose their temper. Remarks such as “I don’t remember the exact date, because I really wasn’t in any state of mind to remember what day it was,”¹⁵⁹ or “To tell you the truth, I was not wearing a watch,”¹⁶⁰ show the abstraction from practical realities of the legal framework. Bewildered witnesses face legal experts, not talking their language and thinking of possibilities and suppositions. For that matter, to ‘fit in’ the systematized legal narratives, legal professionals might need to cut the floor or remind the order of things to witnesses, imposing the timing of each and every information they will give. As an example, while witness QY was trying to testify of the rapes she witnessed and suffered, one of the Prosecutor stops her twice in her story:

“I got there in the evening, and Nyiramasuhuko arrived in a vehicle. She took the refugees to Rwabayanga to kill them, and as for the soldiers, the soldiers were raping girls.

Q. We'll come back to that, Madam Witness, but for how long did you stay at this office?

A. I do not know for how long I was there. All I know is that subsequently we were taken to the EER.

¹⁵⁷ Charlesworth, H. (2002). The Hidden Gender of International Law. *Temple International & Comparative Law Journal*, 16(1): p. 96.

¹⁵⁸ See appendix 2, International Criminal Tribunal for Rwanda. (January 27, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁵⁹ See appendix 2, International Criminal Tribunal for Rwanda. (January 27, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁶⁰ See appendix 9, International Criminal Tribunal for Rwanda. (June 13, 2005). *The Prosecutor of the Tribunal Against Tharcisse Muvunyi (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

Q. At the EER, what happened to you?

A. When I arrived at the EER, I was raped by a soldier in the woods.

Q. Madam, we'll come to that. How far is this place, the EER, from the office of the *préfecture* which you've just referred in your evidence?"¹⁶¹

Not only does this example illustrate the abstraction of the Courtroom, relying on a strict legal narrative to be strictly followed, but also a general lack of empathy.

Indeed, it is the legal professionals who are bewildered when facing the emotional side of the witnesses' story. Due to the sensitivity of the issues discussed by witnesses, an emotional outburst may happen. Of the nine testimonies analyzed, two witnesses have an emotional outburst, which is followed by a scolding of the President or a call to 'calm down.'¹⁶² Here, the emotions of witnesses, valid emotions, are repressed to preserve the 'rationale' thinking of the Courtroom. Other remarks – such as "Witness, answer the question. We don't want you to say a story. Answer the question. Whatever you want to say she will get out for you"¹⁶³ – shows the impossibility for the Courtroom to hear the entire story of women victims of SGBV and to be the focal point of justice.

b. Legal rigidity as an obstacle to justice for women: the Muvuny Case

The Muvuny case illustrated the problem faced when incorporating gender in the classic legal narrative rather than perceiving it in a broader framework.¹⁶⁴ Despite several testimonies with very explicit details of the witnesses' sexual assault, the count of rape is

¹⁶¹ See appendix 8, International Criminal Tribunal for Rwanda. (June 8, 2005). *The Prosecutor of the Tribunal Against Tharcisse Muvuny (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁶² See appendix 9 & 6, International Criminal Tribunal for Rwanda. (June 13, 2005). *The Prosecutor of the Tribunal Against Tharcisse Muvuny (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals; International Criminal Tribunal for Rwanda. (October 31, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁶³ See appendix 8, International Criminal Tribunal for Rwanda. (June 8, 2005). *The Prosecutor of the Tribunal Against Tharcisse Muvuny (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁶⁴ See Ní Aoláin, F. (2012). Advancing Feminist Positioning in the Field of Transitional Justice. *International Journal of Transitional Justice*, 6, 205-228.

denied due mostly to a procedural flaw from the Prosecutor's team in their choice of testimonies:

“While the Chamber recognizes that a defective indictment could, in certain limited circumstances, be cured by timely, clear, and consistent communications from the Prosecution after the indictment has been filed, it is the Chamber's view that the present situation raises a very different problem. With respect to the rape charge, the Chamber is of the view that the indictment is not vague. On the contrary, the indictment clearly states that soldiers from Ngoma camp committed rape. This is a clear and straightforward charge. There is no ambiguity in it. It follows that if the Prosecution wanted to rely on evidence of rape committed by soldiers from ESO or any camp other than Ngoma, the -- the appropriate thing to do would have been to amend the indictment pursuant to Rule 50 so as to include a specific pleading to that effect.”¹⁶⁵

Though the rape allegations are clearly supported by evidence, testimonies, and even recognized in the judgment; for count 4 ‘crime against humanity, rape,’ Tharcisse Muvuny is declared not guilty.

Even more than a failure of legal mechanisms, it is evidence supporting the claim that sole legal retribution is fallible for women, as the respect of the rules will always take precedence over the recognition of their abuses.

It could also be argued here that the Muvuny case illustrates ‘gender as a second-zone matter’ for the legal institution. In recognizing the raping of witnesses AFV and QY yet not condemning it, the Judges implicitly pose that those crimes are of no grand consequences for the re-establishment of justice in a post-conflict Rwandan society. According to Jonneke Koomen, it is rather that their story, though nourishing the work of the tribunal, ends up becoming “a sideshow in the grand unfolding narrative of

¹⁶⁵ See appendix 11, International Criminal Tribunal for Rwanda. (September 12, 2006). *The Prosecutor of the Tribunal Against Tharcisse Muvuny (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

international justice.”¹⁶⁶ Transitional justice would serve here a greater purpose, hence having little consideration for individual victims.

c. A perceivable distrust from witnesses towards the ICTR professionals

I decided to unfold this potential distrust after reading the interview of an ICTR interpreter stating that “most of the people in Rwanda, especially victims, they were accusing the international community for having forsaken them. You people abandoned us... and now you come back to ask questions.”¹⁶⁷

And indeed, throughout practically all the testimonies analyzed, this distrust can be felt (to various degrees). It is displayed through the witnesses questioning the role of legal professionals (“I said that he slapped me. Maybe it is the person who was making the investigation, maybe it is his fault”¹⁶⁸), but also more implicitly in the lacking element in investigations related by lawyers in the Courtroom. Indeed, several witnesses, when opposed they had not displayed an information before, claim the question was not asked to them. I argue this can illustrate the mistrust of Rwandan women towards ICTR international professionals in the light of Jonneke Koomen’s findings, notably that Rwandan women would have rather reported sexual violence to someone from their community or with local roots.¹⁶⁹

This finding accounts for a decolonization of the transitional justice project, highlighting the importance of local justice in correctly prosecuting and hearing SGBV testimonies.

¹⁶⁶ Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2): p. 275

¹⁶⁷ Ibid: p. 261

¹⁶⁸ See appendix 2, International Criminal Tribunal for Rwanda. (January 27, 1997). *The Prosecutor of the Tribunal Against Jean Paul Akayesu (ICTR-96-4-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

3. A treatment of sexual violence only through the Western liberal prism

a. A disregard for cultural differences

The Western character of the tribunal cannot be denied: it was established by a UN resolution, the two official languages are French and English... This leads the legal professionals to approach rape as they would in a Western court, in the manner of their legal culture.

However, this encounter of a Western culture dominating and imposing its norm on non-Western victims and their culture leads to a ‘clash of culture’ at the expense of Rwandan women witnesses. Indeed, as Kingsley Chiedu Moghalu pointed out, sexual violence is “unspeakable in their culture.”¹⁷⁰ In all ninth but one of the analyzed testimonies, witnesses used only the term ‘rape’ to describe their assault; it was only if the Prosecutor asked for further details that they would elaborate. The fact of being in front of Westerners asking very intimate questions and requiring the complete exposure of abuses that are even more taboo in their culture can be seen as supplementary, if not violence, traumatism for the victims. The testimony of Witness QY, on the hearing of June 8, 2005, is particularly explicit and leaves a sentiment of unease when seeing the Prosecutor asking for always more details each time she mentions a rape.¹⁷¹

This cultural particularity also implicates the use of ‘euphemism’ from witnesses. Again, Witness QY testifies of several rapes perpetuated by the same men through the

¹⁶⁹ Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2), 253-277.

¹⁷⁰ Moghalu, K. C. quoted in Koomen, J. (2013). Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda. *Signs: Journal of Women*, 38(2) : p. 265.

expression, “I became a sort of wife.” The following exchange between the witness and Prosecutor shows this nexus of culture:

“Q. Thank you very much, Madam Witness. When you say you were like a wife to him, what did this person do to you which made you conclude that he was making you like a wife?

A. The reason that I say that I had become like his wife is that he put me in a room, and when he went to the roadblock, he locked me up in that room. And then he would come back when he wanted to have sexual intercourse. But in any case, he was able to give me some food.”¹⁷²

Here, the term ‘wife’ is used as a euphemism for witness QY, in testifying that “he locked me in a room and whenever he would come back, he would rape me,” a euphemism that needs to be explained for the good comprehension of all the western legal professionals. Indeed, in a Western language, the notion of ‘wife’ supposes a feeling of love and mutual consent on sexual intercourse for both spouses,¹⁷³ which could lead to falsely believing these sexual intercourses were consented, leaving a strong argument for the defense against the veracity of the witness’s testimony. A disregard for such cultural differences could hence lead to misinterpretation and non-recognition of abuses. Though this difficulty was averted well by the Prosecutor’s team in the case of Witness QY, it still displays the problems faced when imposing a Western liberal order on non-Western people.

In this situation, the use of ‘cultural relativism’ could have been useful for the professionals of the ICTR, in providing a better understanding of the ‘hidden variable’, and hence build a different approach in questioning.

¹⁷¹ See appendix 8, International Criminal Tribunal for Rwanda. (June 8, 2005). *The Prosecutor of the Tribunal Against Tharcisse Muvunyi (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁷² See appendix 8, International Criminal Tribunal for Rwanda. (June 8, 2005). *The Prosecutor of the Tribunal Against Tharcisse Muvunyi (ICTR-00-55A-T)*. United Nations International Residual Mechanism for Criminal Tribunals.

¹⁷³ NB: marital rape also exists; it is a generalization and ‘normal’ meaning of the term.

b. A consecration of rape crime only through an instrumentalist liberal-acceptable perspective

As stated before, in the Akayesu case, the ICTR recognized the instrumentality of rape in conflict-time, later consecrated by the ICC's Rome statute. This choice of a 'liberal-friendly' definition of rape alone shows the limits of the integrationist feminist approach to international law. To perceive rape only through its instrumentality would be forgetting the power-reproduction function it performs.¹⁷⁴ Furthermore, despite the mentions of discrimination or harm consequent to rape to the Court, witnesses have seen no retributions for such pretends.

Hence, the ICTR's experience shows the limit for transitional justice resting on a strict legal framework and human rights doctrine, both liberal and in the impossibility to make justice for Rwandan women survivors of SGBV. Despite the integration of a certain gender sensitivity in the trials, it remained secluded in some cases and failed to systematize. Furthermore, the impossibility of liberal theories to consider women's rights is here translated into the failure of the ICTR to give justice to women victims of SGBV.

Nonetheless, the ICTR was not the sole mechanism of transitional justice in Rwanda. Faced with the immense amount of human rights violations, the Rwanda government later decided to transfer the cases to the Gacaca Court. These local Courts, inspired by Rwandan traditions and justice, also considered SGBV against women and ended with some mixed results in terms of justice.

¹⁷⁴ See Pankhurst, D. (2010). Sexual Violence in war. In L. J. Shepherd, *Gender Matters in Global Politics: A feminist introduction to international relations*. (pp. 148-160). London and New York: Routledge.

Section 2 : The local approach of the Gacaca Courts: a mixed success

Faced with the massive number of cases and the limitations of the ICTR in the rapidness of its legal procedure, the Rwandan government created the Gacaca Courts in 2001. The Gacaca Courts, ‘justice on the grass,’ can be considered as a grassroots approach to transitional justice: the system is based on Rwandan traditions, organized at different levels (cell, sector, district) depending on the gravity of the crime, with *inyangamugayo*¹⁷⁵ or judges if comparing to the liberal legal system elected by their community for their wisdom and knowledge.¹⁷⁶ The tribunals are outside, the setting is very simple, and present a puzzling element: the accused and victims are not separated. In addition to judging the numerous remaining people implicated in the genocide, the Gacaca Courts also have the purpose of reconciliation and pacification of the Rwandan society post-genocide.

In 2008, the previously secluded to the ICTR, rape cases were transferred to the Gacaca Courts by a government law. It notably provided that the cases would be heard in private to protect the victims. The combination of both international jurisdiction and local traditions of justice is one theorized by postcolonial feminist and post-Rawlsian theorists as a new, better way for transitional justice (1), yet, taken as one entity, the Gacaca system had some mixed results for women victim of sexual violence (2), and as the ICTR, failed to consider the entirety of discrimination stemming from SGBV (3).

¹⁷⁵ ‘Persons of integrity’ in Kinyarwanda.

¹⁷⁶ Molenaar, A. (2005). *Gacaca: Grassroots Justice after Genocide: The Key to Reconciliation in Rwanda?* University of Leiden. Leiden: African Studies Centre.

1. A way to combine liberal international jurisdiction and local tradition of justice

The idea of the Gacaca Court, or rather the broadening of transitional justice's scope, is one defended by postcolonial feminists.

Several scholars, while pointing out the problematic centrality of Western-centric legal institutions, put forward the need for extended local justice. Khanyisela Moyo calls for the 'decolonizing' of transitional justice mechanisms, notably the incorporation of local knowledge, justice practices, and postcolonial feminist perspectives.¹⁷⁷ However, she notes the need for more transformative justice, addressing the structural and historical inequalities within decolonized societies that mostly affect women.¹⁷⁸ Hence, she calls rather for a change of vision on transitional justice, putting an end to the strict liberal legalist perspective to consider broader and deeper structural inequalities, a perspective which I think does not describe the Gacaca Court, strictly considering criminal accountability and society reconciliation.

A better account of the idea at stake in Gacaca would be within post-Rawlsian theorists. Valentina Gentile and Megan Foster, in "Towards a minimal Conception of Transitional Justice" (2022), explore an interesting approach by linking transitional justice and John Rawls, which have not been extensively discussed. Their main goal is to propose a minimalist theory of transitional justice, namely one that disentangles transitional justice from the goal of fostering (liberal) democracy in post-conflict societies.¹⁷⁹ What is criticized here is the normative perspective of transitional justice, which aims to create a new order where peace, justice, and democracy can flourish, but implicitly, or not so much, a liberal

¹⁷⁷ Moyo, K. (2012). Feminism, Postcolonial Legal Theory and Transitional Justice: A Critique of Current Trends. *International Human Rights Law Review*, 237-275.

¹⁷⁸ Ibid.

¹⁷⁹ Gentile, V., & Foster, M. (2022). Towards a minimal conception of Transitional Justice. *International Theory*, 14(3), 503-525.

one.¹⁸⁰ Both authors thus propose this minimal version, with at its center internal stability and the basic rule of law, and not the imposition of external standards of democracies appearing as neo-imperialistic.¹⁸¹ In this idea, certain ‘urgent human rights’ should remain treated by the international court as they are “the immovable limits of international toleration”; however, subsequent rights’ violations should be treated by domestic local justices, which will potentially have a different significance of such or such rights.¹⁸² Valentine Gentile and Megan Foster’s theory has quite interesting features; in adapting Rawls’s theory, they allow us to avoid a pure Western-centric legalist and democracy-oriented approach to transitional justice. Nonetheless, the flaw here for radical feminist scholars will lay in the ‘minimalistic human rights account’ of Rawls, which mentions bodily security but never emphasizes the specificity of bodily harm suffered by women. This would then leave women’s rights within the realm of uncertainty. On the other hand, for cultural feminists, this would allow for abuses suffered by women to be treated in a ‘culture-sensitive’ context without applying the Western lens of universal women’s rights.

Witnessing in Section 1 the apparent failure of the ICTR to prosecute sexual violence, maybe the local justice of Gacaca has allowed some more recognition of women’s rights outside the liberal realms.

2. A success in mass justice yet a mixed success for women

On the side of the Rwandan Government, Gacaca Courts have been presented as a blatant success, and there is some positive conclusion to the local justice system. Lars Walfdorf

¹⁸⁰ Gentile, V., & Foster, M. (2022). Towards a minimal conception of Transitional Justice. *International Theory*, 14(3), 503-525.

¹⁸¹ Ibid.

¹⁸² Ibidem: p. 520.

points out the efficiency of this justice in processing a large number of cases, but also the community involvement and participation in the justice process and cultural appropriateness of Gacaca.¹⁸³ As seen through the example of the ICTR and the mistrust of witnesses towards Western professionals, this last point is not to be diminished, in particular regarding the reconciliation of the Rwandan population. However, the Gacaca system has also been called out for its flaws: a State-imposed narrative on the genocide, unfair trials, lack of legal representations for the accused, or impartiality from the judges part... are criticisms made by several scholars.¹⁸⁴ Another important criticism of Gacaca is also its (non)-treatment of sexual violence.

a. The patriarchal narrative within the Gacaca system: a factor of the reluctance of rape victim

Lars Waldorf points out the potential perpetuation of existing power imbalances as one of the problems of local justice mechanism.¹⁸⁵ In this context, for women who are structurally in a position of societal weakness, it can lead to their exclusion or lack of inclusion in the process of justice. Particularly, the positions of power within this system, namely the *inyangamugayo*, were mainly held by men untrained in dealing with cases of sexual violence.¹⁸⁶ Human Rights Watch, aside Women's group and Ibuka, report that several women believed "gacaca minimized the seriousness of their rape. (...) [and] the sentences to be too lenient, particularly when the accused confessed."¹⁸⁷

¹⁸³ Waldorf, L. (2006). Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice. *Temple Law Review*, 79, 1-88.

¹⁸⁴ See Molenaar, A. (2005). *Gacaca: Grassroots Justice after Genocide: The Key to Reconciliation in Rwanda?* University of Leiden. Leiden: African Studies Centre.; Waldorf, L. (2006). Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice. *Temple Law Review*, 79, 1-88.

¹⁸⁵ Waldorf, L. (2006). Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice. *Temple Law Review*, 79, 1-88.

¹⁸⁶ Molenaar, A. (2005). *Gacaca: Grassroots Justice after Genocide: The Key to Reconciliation in Rwanda?* University of Leiden. Leiden: African Studies Centre.

¹⁸⁷ Human Rights Watch. (May 2011). *Rwanda – Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*: p. 115

Furthermore, Beth Brewer, in “Women and the Rwandan Gacaca Courts: gender, genocide and justice” (2023), shows how Gacaca helped, in a way, women who were perpetrators in the genocide to defend themselves through a gendered vision of their place in society.¹⁸⁸ Relying on the ideal of a “peaceful and passive nature of Rwandan womanhood” to argue they would not be capable of genocidal acts, they and the other participants in the Court created a gendered narrative of Hutu wives acting violently because of a jealous marital episode.¹⁸⁹ On the other hand, for the women recognized as perpetrators, the Court was rather focused on morally judging the actions of those women, not because of their inhumane character, but because they had ‘transgressed’ their normal domestic role.¹⁹⁰ These findings demonstrate the patriarchal system of the Gacaca courts, unable to properly consider women victims of SGBV and denying them their place in the public sphere.

b. The private and yet public character of Gacaca:

The Gacaca system has also suffered from its very public character and participation of the whole community. Human Rights Watch report opposes the SNJG’s executive secretary’s declaration stating many women infected by HIV wanted their case to be heard in Gacaca to see justice be done before dying, to its own twenty interviewees who in the majority did not prefer their case to be heard in front of the local jurisdiction.¹⁹¹

Indeed, though Gacaca is a success for the local participation, testifying has become even more difficult for women, as many were fearing their abuses would end up being none by the whole community participating:

¹⁸⁸ Brewer, B. (2023). Women and the Rwandan gacaca courts: gender, genocide and justice. *Journal of Modern African Studies*, 61(1), 1-22.

¹⁸⁹ Ibid: p. 18.

¹⁹⁰ Brewer, B. (2023). Women and the Rwandan gacaca courts: gender, genocide and justice. *Journal of Modern African Studies*, 61(1), 1-22.

¹⁹¹ Human Rights Watch. (May 2011). *Rwanda – Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*. 144

“M2: [W]e did everything regarding trial in private but everything was spoken in public during the information-gathering phase. Besides, all the village or community knew everything. ... I just said that it was a certain person who did ‘so and so’. ... You would just mention the names of people who were among the attacking groups. Sometimes you didn’t even have to exactly explain further since the neighbours could find out themselves who you we were talking about. The neighbours already knew them.”¹⁹²

In a society that presents rape as a taboo, something that was already difficult to speak about in the strict closed-door anonymous setting of the ICTR, the private and yet public character of Gacaca led many to prefer to stay quiet. As presented by Judith Rafferty, the victims who decided to raise their case in front of Gacaca had also suffered subsequent harm to their rape: being positive for HIV, having lost several members of their family, or getting forcedly impregnated and having the child from this rape.¹⁹³ Many women interviewees also mention they raised their case because ‘they had nothing left to lose’:

“M1: My husband ... told me that he could no longer live with a woman who had been gang- raped. He told me that after announcing to me that my entire family had been murdered. His words hurt me so much that I finally decided that I needed to raise a case against the people who had raped me ... The truth is that if my husband hadn’t left me, I was not going to raise my rape case because I was too ashamed. I was gang-raped by a group of people that I don’t know. ... I was later cut with a machete. After enduring all that, my husband also left me, so I felt like I had nothing to lose.”¹⁹⁴

Here we have the illustration of these additional harms caused by rape – how it is indeed a tool of genocide to break social links, family bonds – and the reason why many women

¹⁹² Rafferty, J. (2020). *Analysing the justice needs of Rwandan female victim-survivors of conflict-related sexual violence and their experiences with the gacaca courts*. James Cook University, PhD Thesis: p. 211.

¹⁹³ Ibid.

¹⁹⁴ Ibidem: p. 207

prefer to stay quiet than lose everything while leaving with the shame and psychological consequences of such aggression.

However, according to Human Rights Watch, this ‘closed-door’ nature of Gacaca eventually caused more harm to the victim partially because it was going against the very own nature of the system.¹⁹⁵ Furthermore, as the rape trials were not public, they exist very little data on those trials from the official instance of Gacaca or outside observers that were not welcomed.¹⁹⁶

c. Giving women victims a choice: a new perspective for transitional justice

Gacaca has not been a complete failure in the treatment of sexual violence. On some occasions, it allowed more liberties than the Conventional Court: women had the right to be accompanied either by family members or trauma counselors within the Courtroom, offering emotional support, which is more than welcome in such circumstances.¹⁹⁷ The system has made an effort to adapt a local justice mechanism not originally built to deal with such sensitive issues: the victims could request to disqualify a judge in their hearing without having to prove his partiality, they could write a letter containing their testimony rather than appear in public hearings... various mechanisms that would simply not have been possible in a conventional Court.¹⁹⁸

In the end, as presented by the Human Rights Watch’s report “Women who appeared in gacaca in connection with rape cases had mixed experiences, with some feeling

¹⁹⁵ Human Rights Watch. (May 2011). *Rwanda – Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*. 144.

¹⁹⁶ Ibid.

¹⁹⁷ Ibidem.

¹⁹⁸ Ibidem: p. 117.

quite negative about the experience and others finding it less difficult than they expected.”¹⁹⁹ Of Judith Rafferty’s 23 interviewees, all but one declared their perpetrators had been found guilty and sentenced to life imprisonment.²⁰⁰ Compared to the ICTR’s result, the outcome is more favorable to Gacaca than the international institution. Furthermore, in light of the mixed feelings of interviewees in both Human Rights Watch’s report and Judith Rafferty’s thesis, it would be difficult to claim Gacaca has failed but also succeeded in prosecuting sexual violence.

Hence, Gacaca was not better or worse than ICTR for women because it depended on their own experience. A way to reconcile everyone could have been to give the choice to women, to propose a legal system centered on their needs, and the possibility to choose to go either before the Conventional Court, International Court, or Gacaca.

3. A similar flaw to the ICTR: the impossibility of recognizing subsequent harm to rape for legal mechanisms

Though the local justice system of Gacaca has allowed for various rape and sexual violence case to be condemned and recognized, the impossibility of recognizing other harms stemming from such violations persists. Retributive justice will then always reach a limit of what it can prosecute when faced with sexual violence. This is one of the conclusions of Mukau Mutua: “The key ultimately is to understand that none of these processes – truth commissions, tribunals, sectoral reforms, prosecutions, and others – will suffice alone.”²⁰¹

¹⁹⁹ Human Rights Watch. (May 2011). *Rwanda – Justice Compromised: The Legacy of Rwanda’s Community-Based Gacaca Courts*: p. 116.

²⁰⁰ Rafferty, J. (2020). *Analysing the justice needs of Rwandan female victim- survivors of conflict-related sexual violence and their experiences with the gacaca courts*. James Cook University, PhD Thesis: p. 225

As claimed by Julieta Lemaitre and Margaret Urban Walker previously, Gacaca Courts focus on visible violence, excluding non-visible harms, which yet have important consequences in the lives of victims. Josephine Murebwayire testimony summarizes effectively the various harms that resulted from rape:

“Josephine: (...) There are some who were raped and infected with HIV & AIDS. There are some girls who gave birth to children they didn't want, there are some who were hacked and do not have some limbs, some don't have hands. Some don't have eyes. They are different handicaps and then there are those who are emotionally handicapped. And physically they don't have a home, without a house to live in, many times they are next door to the ones who killed their families and injured them. You understand that it's adding more sorrow to an already broken heart.”²⁰²

In the Rwandan context, HIV/AIDS transmission via sexual assault is a problem that was not highlighted by legal institutions. According to the World Health Organization, the HIV prevalence rate increased from 1% to 11% after the genocide, with women having a higher prevalence rate than men.²⁰³ A study realized by AVEGA, an organization for widows of the genocide, has shown that 67% of rape survivors were infected by HIV.²⁰⁴ Some women died because the medication “just started coming in recently,” and others could not have children because of the risk of transmitting the infection. The ICTR could have considered this transmission as another tool of genocide – the issue was mentioned by (...) – considering the consequences it had on women’s lives and the Tutsis community in general. Furthermore, many Rwandan women ended up becoming widows after the genocide, leaving them to become the financial caretakers of the family:

²⁰¹ Mutua, M. (2015). What Is the Future of Transitional Justice? *International Journal of Transitional Justice*, 9: p. 7.

²⁰² See appendix 12, Genocide Archive of Rwanda. (March 5, 2007). *Oral History Testimony of MUREBWAYIRE Josephine*.

²⁰³ Garnett Russell, S., Lim, S., Kim, P. & Morse, S. (2016). The legacy of gender-based violence and HIV/AIDS in the post genocide era: Stories from women in Rwanda. *Health Care for Women International*, 37(7) : p. 724.

²⁰⁴ Ibid.

“Mathilde: However, apart from me, life is very hard for many of genocide survivors. I sometimes look at widows living with about five children added to other family orphans. Life is hard though there is a fund to support them but sometimes for example; children who go to school are obliged to get some level of success to get FARG's schooling support. In some cases they are not helped.”²⁰⁵

On that matter, despite generous economic reparations, both the ICTR and Gacaca are powerless to financially support women. Nonetheless, seeing Western institutions helping States presented as ‘the Souths’ would be quite neo-imperialistic.

However, various feminist scholars emphasize the role of NGOs, especially local NGOs, in a reparative conception of transitional justice for women. The Avega association of the genocide’s widows, for that matter, displays this socio-economic empowerment of Rwandan women but also a therapeutic approach for the traumatism by “decentralizing psychotherapy up to village level (...) a holistic way for mental health management.”²⁰⁶

Makau Mutua presents a holistic approach of transitional justice as key to a better account, not only liberal, of righting the wrongs.²⁰⁷ According to Alex Boraine, a holistic approach in transitional justice rests on “accountability, truth recovery, reconciliation, institutional reforms and reparations.”²⁰⁸

Hence, transitional justice for women in Rwanda, from an intersectional feminist perspective, seems insufficient. The ICTR’s legal accountability remained unable to procure a sentiment of justice for women. The analysis of the testimonies of women survivors illustrated the strict legal liberal Western account of the SGBV they suffered. On the other

²⁰⁵ See appendix 13, Genocide Archive of Rwanda. (February 16, 2007). *A Testimony of Mathilde Uwanyirigira*.

²⁰⁶ Association des veuves du genocide agahozo. (s.d). *Models*.

²⁰⁷ Mutua, M. (2015). What Is the Future of Transitional Justice? *International Journal of Transitional Justice*, 9, 1-9.

²⁰⁸ Boraine, A. quoted in Ibid: p. 5.

hand, the Gacaca Courts provided a different kind of justice for women yet presented shortcomings, particularly concerning the lack of anonymity and ‘patriarchal’ moral prevailing in the Courts.

In the end, both Courts showcase a similar problem: they fail to truly focus on the needs of women survivors. While the ICTR failed to provide a legal mechanism able to listen to the entirety of women’s stories and give proper reparation, the Gacaca Courts lacked a gender-sensitive approach in some respects, leading many Rwandan women to keep quiet about their abuse. Transitional justice has remained unable to get justice done in SGBV cases because it does not consider women’s needs and stems from a system that is structurally in opposition to their needs.

CONCLUSION

This master's thesis aimed to answer the failure of transitional justice to retribute women victims of SGBV correctly. However, the term 'retribute' here is not appropriate. As I have shown, the traditional retributive transitional justice is not adapted to give justice to women's rights violations. Justice for women only through the prism of legal mechanisms – trial in the example of this master's thesis, but this has also been said for Truth Commissions – is no true justice. The rigidity of the legal framework, a system imposed by a Western-centric and liberal power and fails to truly adapt to the traumatism and specificity of SGBV, governed by a gender-blind international law that has marginalized women's issues, led to a situation of persistent injustice.

Nonetheless, I argue that this mechanism alone is not the sole factor of transitional justice's failure. At its core, transitional justice aims to promote the protection of human rights. The problem is those human rights, presented as universal, are not, hence leaving non-Western, non-liberal, and non-male people outside of the scope of protection. Women's rights have been unacknowledged by liberal theorists, proposing a strictly egalitarian thesis without taking into account the specificity of women's issues and a social fact: people are not equal. Women are not equal to men, they are oppressed by patriarchal structures, whether they be domestic or international, and the liberal world is a reproduction of these oppressions. Hence, if the origin is rotten, the mechanism stemming from it will be too.

The example of Rwanda has proven the limits of transitional justice regarding those two elements. The strict legalistic retribution failed to properly and systematically consider SGBV, being added when convenient to the trials of the ICTR and having difficulties to impose within the Gacaca Courts. On the other hand, the specificity of SGBV, their structural character and patriarchal roots, were not uncovered leaving women's issues to be treated as any other harm occurring during the genocide. The Akayesu jurisprudence is

indeed progress, yet it failed to systematize and remains within what is permitted by the liberal character of the legal framework.

Considering these findings, I should say that international institutions must rethink the system and propose a different kind of transitional justice – like a ‘transformative’ one, emphasized by several feminist scholars. And some propositions are interesting: forums of discussion for women survivors to share their stories in the manner they chose, recenter transitional justice on the victims of SGBV as the first and main focus, condemning subsequent harms to SGBV...

Yet, I wonder if this new approach would be an efficient change within a system based on the promotion of universalism and the erasure of social and cultural particularities. Furthermore, rather than ‘treating the consequences’, should not the international community heal the causes of such SGBV, and try to overthrow the gender-division and Western/non-Western division of the world?

I have no true recommendations to make that could be integrated into the current system because I do not see the significant change they would provide. The essence of CAIR, of the feminist account, is to criticize the structures of domination to dismantle them. I would rather argue for this: a need to rethink the liberal system in its entirety so that women’s perspective, both Western and non-Western, is considered, so that gendered division becomes a thing of the past, so that SGBV is not anymore systematic in conflict times and in peace times. In the end, for the international realm to finally guarantee a ‘feminist peace’ to women.

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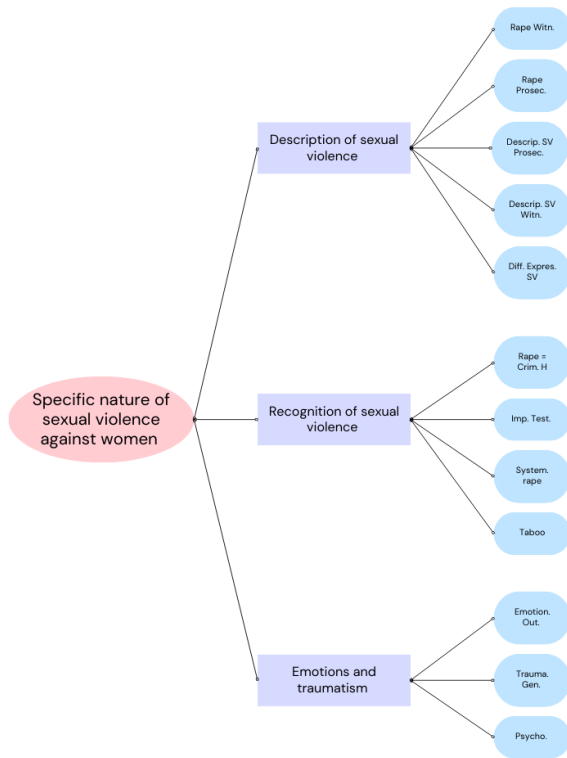
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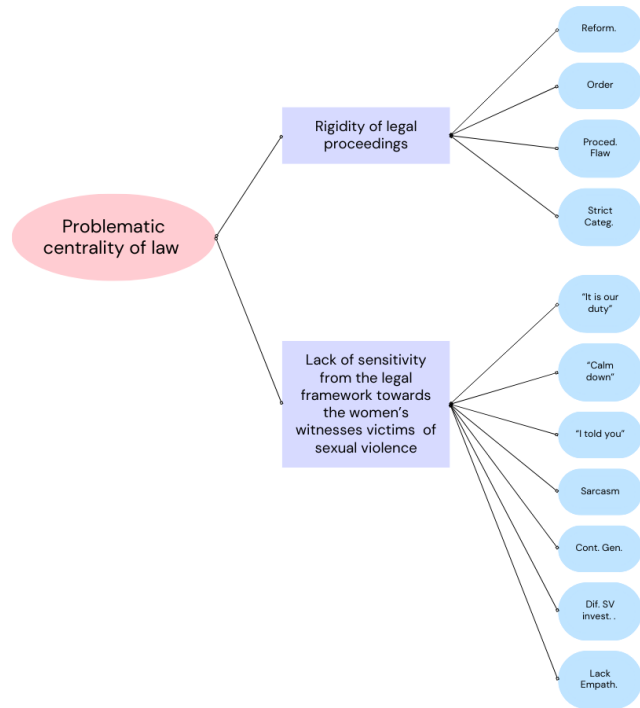
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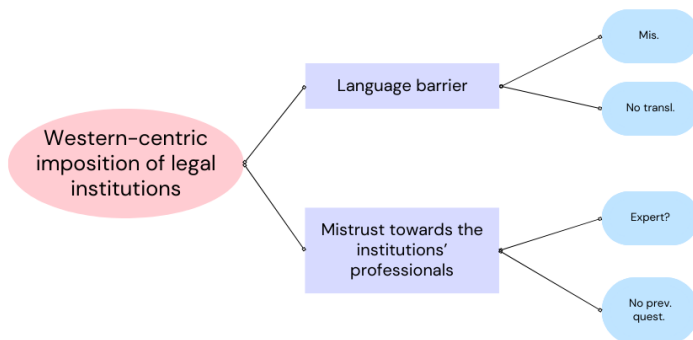
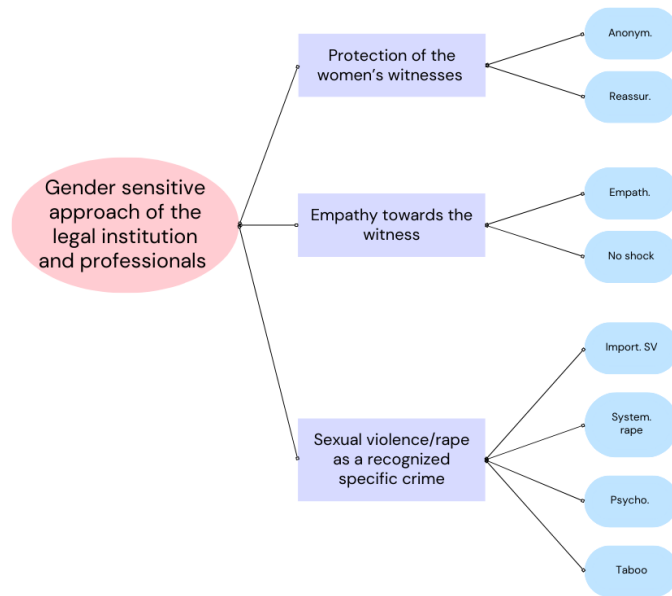
Appendix 1 – Codes and Code Trees

Codes	Description
Mis.	Refers to a misunderstanding occurring in the Court or difficulty to translate
No transl.	Refers to the impossibility to translate a specific word in the witness language (kinyarwanda) into an official language of the Court (English/French)
Expert?	Refers to the Witness questioning the expertise of professionals
No prev. quest.	Refers to the Witness mentioning no one asked her the question in previous interview with the Court investigators
Anonym.	Refers to the Court guaranteeing the anonymity of persons
Reassur.	Refers to the President or Prosecutor reassuring the witness of her protection
Empath.	Refers to the President or Prosecutor empathizing with the difficulty of the situation for the witness
Lack Empath.	Refers to the lawyers lacking of empathy towards the Witness
No shock	Refers to the President asking the Lawyers to avoid asking shocking details to the Witness if they are not necessary to the proceeding of the trial
Import. SV	Refers to the President or Prosecutor emphasizing the importance of recognizing and prosecuting sexual violence for the tribunal
System. Rape	Refers to rape being presented as systematic against women
Psycho.	Refers to the President or Prosecutor mentioning the psychological impact of rape
Taboo	Refers to the President or Prosecutor bringing forth the taboo surrounding sexual violence
Reform.	Refers to a legal professional asking for reformulation to the Witness
Order	Refers to the President or Prosecutor reminding the order of things, the procedure to be followed, in the trial
Cont. Gen.	Refers to the Witness reminding the context of genocide occurring when asked specific details or questioned around veracity
Trauma. Gen.	Refers to the Witness talking about the traumatisms caused by the genocide and abuses
Sarcasm	Refers to the witness sarcastically emphasizing her ignorance or omission of some details
“It is our duty”	Refers to the lawyers reminding the Court (and witness) they are simply doing their job
“Calm down”	Refers to the President asking a witness to calm down after an outburst

Dif. SV invest.	Refers to the need for proof in sexual violence investigation and prosecution
“I told you”	Refers to the Witness repeats things previously said to answer a question of lawyers
Rape Witn.	Refers to the Witness speaking only the word ‘rape’ at her initiative
Rape Prosec.	Refers to the Witness speaking the word ‘rape’ after being asked by the Prosecutor
Descrip. SV Prosec.	Refers to the Witness describing in details the rape and sexual violence after being asked by the Prosecutor
Descrip. SV Witn.	Refers to the Witness describing in details the rape and sexual violence at her initiative
Spec. Rape	Refers to the Prosecutor describing rape as a specific crime against women
Imp. Test.	Refers to the Prosecutor emphasizing the importance of witness testimonies in prosecuting sexual violence
Emotion. Out.	Refers to an emotional outburst of a witness
Conseq. Rape	Refers to the consequences of rape, leading to additional discrimination
Diff. Expres. SV	Refers to the Witness using a different expression or word to explain her rape
Proced. Flaw	Refers to a procedural flaw in the trial
Strict Categ.	Refers to the strict categorization of legal count







***Appendix 2 – Coded Extract of the
testimony of Witness J in the Akayesu
Case (January 27, 1997)***

27 JANUARY 1997

1

AKAYESU

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

2 CASE NO.: ICTR-96-4-T THE PROSECUTOR
3 OF THE TRIBUNAL

4 AGAINST

5 JEAN PAUL AKAYESU

6

7

8 27 January 1997
9 9:30

10

11 Before: Mr. Justice Laity Kama, President
12 Mr. Justice Lennart Aspegren
13 Madame Justice Navanethem Pillay

13

14 For the
15 Registry: Dr. Antoine Mendua

16

17

For the

18 Prosecution: Mr. Yakob Haile-Mariam.
Mr. Pierre-Richard Prosper
19 Ms. Sarah Darehshori

20

21

22

For the

23 Defence: Mr. Nicholas Tiangaye
Mr. Patrice Monthe

24

25

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ICTR – CHAMBER 1

27 JANUARY 1997

2

AKAYESU

1

2

3

4

I N D E X
WITNESS

5

6 For the Defence

7

WITNESS G

8 Direct Examination 4

9 Cross-Examination. 54

10 Redirect Examination. 80

11 WITNESS J.

12 Direct Examination. 90

13 Cross-Examination 108

14 Redirect Examination. 150

15 E X H I B I T S

(...)

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AKAYESU

1 Before we hear your testimony, I would
2 like you to be sworn in. You will make
3 the following solemn declaration, you
4 will repeat after me. This will be
5 interpreted for you in Kinyarwanda.
6 You will, as I said, repeat after me.
7 Please stand up. Raise your right hand
8 and repeat after me.
9 I solemnly swear.

10 THE WITNESS:

11 I solemnly swear.

12 MR. PRESIDENT:

13 To tell the truth.

14 THE WITNESS:

15 To tell the truth.

16 MR. PRESIDENT:

17 The whole truth.

18 THE WITNESS:

19 The whole truth.

20 MR. PRESIDENT:

21 And nothing but the truth.

22 THE WITNESS:

23 And nothing but the truth

24 MR. PRESIDENT:

25 Thank you. You may be seated. As I have

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AKAYESU

1 done for other witnesses, I would like to

2 explain that you are under protection.

3 You will remain anonymous. No

4 photographs will be taken of you. There

5 will be no cameras taken in the courtroom

6 and in the public gallery. No one will

7 be allowed to use any sort of recording

8 device. I would also like to explain to

9 the witness that you are not being

10 accused. You have come simply to give

11 your testimony and to tell the truth

12 pursuant to the declaration that you have

13 just made. So please speak without fear,

Commenté [BG1]: Anonym.

14 but then also without hatred, emotion, or

15 without taking sides.

Commenté [BG2]: Reassur.

16 Now you have sworn to tell the truth, the

17 whole truth, and nothing but the truth.

18 Mr. Prosecutor you have the floor to

19 examine the witness.

20 MR. HAILE-MARIAM:

21 Thank you, Mr. President, Honorable

22 Judges.

23 WITNESS J.

24 having been sworn to tell the truth, the whole truth

25 and nothing but the truth testified as follows:

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AKAYESU

1 DIRECT EXAMINATION

2 BY MR. HAILE-MARIAM:

3 Q. Good afternoon. Madam, could you please

4 tell us where you used to live in 1994?

5 We are not interested in your present

6 address.

7 A. In 1994 I was living in the commune of
8 Taba in the Gishyeshye sector, in the
9 Gishenye cellule.

10 Q. Who did you live with?

11 A. I was living with my parents and also

12

13

14 Q. Did anyone else live with you besides the
15 ones you have told us?

16 A. There were others, that is to say my
17 children and my sister, my sisters but
18 they were younger.

19 Q. How long did you live in Taba commune?

20 A. Do you mean before the war.

21 Q. Yes, before the war?

22 A. I lived in Taba since the time I was
23 born, up until 1994.

24 Q. In 1994 did you have an ID card?

25 A. Yes, I had an identity card.

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AKAYESU

- 1 Q. What did that identification card say
2 about your ethnic background?
- 3 A. The card indicated that I was Tutsi.
- 4 Q. Did you know Jean-Paul Akayesu?
- 5 A. Yes, I knew him.
- 6 Q. For how long did you know him?
- 7 A. I knew Akayesu since the time when he was
8 a teacher, and I also knew him when he
9 was a bourgmestre.
- 10 Q. Could you please get up from your seat,
11 look around the room. If you can see
12 Akayesu point him out and briefly
13 describe what he is wearing.
- 14 A. He is over there. He's wearing a white
15 shirt. He has a bluish jacket and he has
16 headphones on his head.
- 17 Q. Thank you. You may take your seat.
18 On April 19th, 1994, in the morning, did
19 anybody come to your house?
- 20 A. Yes, people did come to our house.

21 Q. Were they led by any particular person?

22 A. Among them there was a teacher whose name

23 was Nyagatare and many other people from

24 our region.

25 Q. Did they say anything as to who sent them

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AKAYESU

1 to your house?

2 MR. PRESIDENT:

3 Excuse me, Mr. Prosecutor. One of the

4 Judges has brought to my attention the

5 fact you have not asked that we have the

6 record show that the witness has

7 identified and described the Accused. So

8 let that please go down into the record,

9 that the witness has indeed identified

10 the Accused. Normally the prosecutor does

11 ask for that, but did not do it this

12 time.

13 MR. HAILE-MARIAM:

- 14 Q. I am sorry, and I thank you very much.
- 15 Who did Nyagatare come with to your
- 16 house?
- 17 A. He came with a lot of other teachers, one
- 18 of them his name was Japhet. And there
- 19 was also a man called Nyamutengari, and
- 20 many others. There were a lot people.
- 21 Q. Who sent them to your house?
- 22 A. When they came, they said that it was
- 23 Akayesu who had sent them.
- 24 Q. Who were they telling to, that Akayesu
- 25 sent them to your house?

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AKAYESU

- 1 A. Well, they came, we were in our house and
- 2 we heard them say that.
- 3 Q. When they came to your house did they
- 4 enter the house?
- 5 A. Yes, they did come into the house.
- 6 Q. Did they say why they came to your house?

7 A. They said that they had come to search
8 the house looking for the Kinihira
9 documents.

10 Q. What was your brother doing at the time
11 when they came?

12 A. When they came he was in bed.

13 Q. When they came to your house were they
14 armed?

15 A. Yes, they were armed with machetes,
16 clubs, and spears.

17 Q. Did they ask for permission to come into
18 your house?

19 A. No.

20 Q. When they came into the house where were
21 you?

22 A. I was inside the house at that time.

23 Q. Did you ever leave the house while they
24 were there?

25 A. No, I stayed there.

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AKAYESU

- 1 Q. Were you in the house or in the compound
2 of the house?
- 3 A. We were in front of the house, in the
4 courtyard.
- 5 Q. The people who came to your house, they
6 asked that they be given the Kinihira
7 document. Did your brother ever go to
8 Kinihira?
- 9 A. I don't know if he went to Kinihira, but
10 they were asking for documents from
11 Kinihira.
- 12 Q. Do you have friends and relatives in
13 Kinihira?
- 14 A. To my knowledge I did not, except for one
15 person who was a friend of my brother's
16 who did, indeed, live in Kinihira.
- 17 Q. So did your brother ever go to Kinihira
18 to visit his friend?
- 19 A. I remember that he did go once in the
20 past, he did go to Kinihira, but that was

21 a long time ago.

22 Q. Do you know how many times he had gone to

23 Kinihira?

24 A. All I know is that he went once to

25 Kinihira.

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AKAYESU

1 Q. Did these people who came to your house,

2 did they search the house?

3 A. Yes, they searched the entire house.

4 Q. After they searched the house, what did

5 they do to you, your brother and your

6 other siblings?

7 A. Well, they took us with them right away

8 and they took us to the commune office.

9 Q. Who did you meet in the commune office?

10 A. When we were there we met Akayesu and the

11 police officers from the commune.

12 Q. When you met Akayesu, did he say anything

13 about a meeting in Gitarama?

14 A. He said that they had received orders in
 15 Gitarama to kill the Tutsi, because the
 16 Tutsi were planning to kill the Hutu.
 17 Q. Were you standing close by when he said
 18 this?
 19 A. Yes, I was very near him.
 20 Q. So what did he say should be done to the
 21 Tutsis?
 22 A. He said that the Tutsi should be killed.
 23 Q. So, from the commune office, where did
 24 you go?
 25 A. We went to the mass grave site where my

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AKAYESU

1 brother was killed.
 2 Q. Where was your brother at the time?
 3 A. A lot of people surrounded him. We were
 4 at this grave and they began to beat him
 5 up.
 6 Q. When they were beating him up, at the

- 7 beginning, was Akayesu there?
- 8 A. No, at that point in time Akayesu was
- 9 still at the bureau communal.
- 10 Q. So, when you saw your brother being
- 11 beaten what did you do?
- 12 A. I immediately went to see Akayesu. I met
- 13 him midpoint. He was coming towards the
- 14 mass grave where they were in the process
- 15 of killing my brother.
- 16 Q. Did Akayesu eventually go to the mass
- 17 grave?
- 18 A. He went there immediately and he also hit
- 19 my brother with a club.
- 20 Q. Were there other people there, too?
- 21 A. There were lot of other people.
- 22 Q. So what did they do to your brother?
- 23 A. They immediately killed him and threw him
- 24 into the mass grave that was there.
- 25 Q. What did they kill him with?

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AKAYESU

1 A. They killed him by machete blows and they
2 also had small clubs and cudgels that
3 they used.

4 Q. Was Akayesu there all the time when your
5 brother was being killed?

6 A. Yes, Akayesu was there.

7 Q. Then, from the grave site, where did you
8 go?

9 A. We went back to our house.

10 Q. What did you do in your house?

11 A. When we got back to our house we did not
12 dare go inside, because we were afraid.

13 So we went and spent a night there in the
14 banana grove.

15 Q. So you spent a night there in the banana
16 grove?

17 A. Yes, we did spend the night in this
18 grove, because immediately after we had
19 come back to our house, they came back,
20 they killed our cows, they ate our cows,

21 and they broke down the doors to our

22 home.

23 Q. So what happened the next day?

24 A. The next day they killed my father and my

25 mother, as well as my son.

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AKAYESU

1 Q. Where did they kill your mother?

2 A. They killed her at the house.

3 Q. And what happened to her body?

4 A. They threw her body in the toilet.

5 Q. Was anybody else thrown into the toilet?

6 A. They also threw my child's body into the

7 same toilet.

8 Q. Where did they kill your father?

9 A. My father was killed just a little

10 further down from our house.

11 Q. Where were you at this time when your

12 father was being killed?

13 A. As they were killing my father I was

14 hiding in a large tree at the neighbor's
15 house. I had climbed up the tree and
16 they killed my father right below this
17 tree.

18 Q. Could you see your father being killed
19 while you were up the tree?

20 A. Yes, I did see them kill him.

21 Q. Can you tell us some names of the people
22 who participated in the killing of your
23 father?

24 A. One of them, his name was Martin
25 Turigimana. There was another Hakigimana

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AKAYESU

1 Augista, as well as Nyagatare and a lot
2 of other people.

3 Q. When your father was being killed, was
4 Akayesu anywhere around?

5 A. No, Akayesu was not around.

6 Q. Did the killer say anything about the

113

7 killing of your father?

8 A. They said that they had been sent by

9 Akayesu to kill him.

10 Q. Could you hear them saying this, that

11 they were sent by Akayesu to kill your

12 father?

13 A. I heard them very clearly, because I was

14 in the tree and this tree was right near

15 where they were killing my father.

16 Q. How long did you stay in the tree?

17 A. I stayed in this tree for a long time.

18 Q. Days or hours? How long?

19 A. I stayed in the tree for approximately a

20 week and when I felt that I was going to

21 die of hunger I went to a neighbor's

22

23 Q. During this time you were up on the tree

24 were you getting down once in awhile to

25 get some food?

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AKAYESU

- 1 A. I did not have enough strength, because I
2
3 brought me food and so then I would spend
4 the night in the tree. But the fact was
5 that I was pregnant and that is why I was
6 discouraged.
- 7 Q. How many months pregnant were you?
- 8 A. I was six months pregnant.
- 9 Q. From there where did you go?
- 10 A. I went to Mungere's house, and when I
11 arrived there he immediately went to
12 Nyagatare's and his group so that they
13 could kill me. However, when his wife
14 saw that she immediately hid me behind
15 the house in the banana grove.
- 16 Q. So, from your hiding where did you go
17 next?
- 18 A. After that I went to Kabgaye.
- 19 Q. Did anybody go with you?
- 20 A. I was with my daughter, who had been

21 raped.

Commenté [BG3]: Rape Witn.

22 Q. When was she raped?

23 A. They raped her when they had come to kill

24 my father.

25 Q. How many men did rape your daughter?

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AKAYESU

1 A. Three men.

2 Q. Was this question ever put to you by the

3 investigators of the Tribunal?

4 A. No, they did not ask me this question.

Commenté [BG4]: No prev. quest.

5 Q. Did Akayesu ever come to Kabgaye?

6 A. Yes, I saw Akayesu at Kabgaye.

7 Q. I would like to ask you one question,

8 which I skipped when I was asking

9 concerning the rape of your daughter.

10 How old was your daughter?

11 A. She was six years old.

12 Q. I don't have any more questions, Mr.

13 President. Thank you.

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14 MR. PRESIDENT:

15 Your daughter was raped by three men you
16 say? Do you know these three men or some
17 of the three men? If you know them what
18 are their names?

19 THE WITNESS:

20 Yes, I know them.

21 MR. PRESIDENT:

22 What are the names of the three men who
23 raped your daughter?

24 THE WITNESS:

25 One is called Jonathan Nyagatare --

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AKAYESU

1 Johnson Nyagatare.

2 The other one is known as Martin

3 Musonera.

4 MR. PRESIDENT:

5 And the third?

6 THE WITNESS:

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7 The other one is Musonera's younger
8 brother who is known as Nyomungeri.

9 MR. PRESIDENT:

10 The Tribunal wants to ask you what the
11 situation was in Kabgaye. Were they
12 protected in Kabgaye or was it an open
13 place where the Interahamwe could come
14 whenever they wanted?

15 MR. PRESIDENT:

16 Kabgaye was not a protected area.

17 MR. PRESIDENT:

18 Did the Interahamwe come to Kabgaye?

19 THE WITNESS:

20 Even in Kabgaye there were some

21 Interahamwe.

22 MR. PRESIDENT:

23 And what were they doing?

24 THE WITNESS:

25 They came and they were killing people?

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AKAYESU

1 MR. PRESIDENT:

2 Were they killing them there or did they
3 take them away to kill them?

4 THE WITNESS:

5 Some people were killed right there and
6 then, but others were taken away towards
7 a place they called CND.

8 MR. PRESIDENT:

9 What does CND mean?

10 THE WITNESS:

11 It was a forest, a large forest where
12 people were taken to be killed, but I
13 don't know why it was known as CND.

14 MR. PRESIDENT:

15 I am giving the floor to Judge Aspegren.

16 Thank you, ma'am.

17 JUSTICE ASPEGREN:

18 Madam, I simply wish to know about these
19 men who killed the members of your family
20 and raped your daughter. Were they

21 members of the Interahamwe?

22 THE WITNESS:

23 Yes, they were Interahamwe.

24 JUSTICE ASPEGREN:

25 How did you know that?

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AKAYESU

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1 THE WITNESS:

2 I know because after having killed my
3 brother they came and killed my parents
4 and my child.

5 JUSTICE ASPEGREN:

6 Yes, I understand that, but how did you
7 know that these people were Interahamwe?

8 THE WITNESS:

9 I don't know how I knew.

10 JUSTICE ASPEGREN:

11 But are you certain that these were
12 definitely members of the Interahamwe?

13 THE WITNESS:

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14 Yes, I know that they were members of the

15 Interahamwe?

16 JUSTICE ASPEGREN:

17 Is it because you knew them or did they

18 wear a particular mark or sign on them?

19 THE WITNESS:

20 They were wearing berets.

21 JUSTICE ASPEGREN:

22 What kind of berets?

23 THE WITNESS:

24 Some had berets on which was written

25 MRND, and others had berets on which was

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AKAYESU

1 written MDR.

2 JUSTICE ASPEGREN:

3 Thank you, Madame.

4 MR. PRESIDENT:

5 I shall give the floor to Judge Pillay.

6 JUSTICE PILLAY:

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7 Was it after Akayesu spoke at the bureau
8 commune office, was it after that that
9 the killing of your brother took place at
10 the grave site?

11 JUSTICE PILLAY:

12 When Akayesu spoke in front of the bureau
13 communal my brother had not been killed,
14 but they had started to beat him.

15 JUSTICE PILLAY:

16 Did they start to beat him at the bureau
17 communal?

18 THE WITNESS:

19 No, they started beating him on the way,
20 when they were taking him away from our
21 house.

22 JUSTICE PILLAY:

23 So they took him from your house to the
24 bureau communal and then to the grave
25 site?

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AKAYESU

1 THE WITNESS:

2 No, they did not take him to the bureau
3 communal because the ground where he was
4 killed is quite close to the bureau
5 communal and so he was taken directly to
6 this ground where he was killed, the
7 grave site.

8 JUSTICE PILLAY:

9 Why do you refer to this place as the
10 grave site?

11 THE WITNESS:

12 That is how that place is known, a place
13 where you bury somebody who is dead is
14 known as that.

15 JUSTICE PILLAY:

16 Were there other bodies there besides
17 your brother's?

18 THE WITNESS:

19 I don't know.

20 JUSTICE PILLAY:

21 Now this Nyagatare and others, did you
22 see them at the bureau communal, as
23 well?

24 THE WITNESS:

25 Yes, I saw them at the bureau communal

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AKAYESU

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1 and it is even them who took us away from
2 our home.

3 JUSTICE PILLAY:

4 Does that include the three names you
5 have mentioned, the three men who raped
6 your daughter -- those three men were
7 also at the bureau Communal?

8 THE WITNESS:

9 Among the three people only Musonera was
10 not there.

11 JUSTICE PILLAY:

12 Thank you.

13 MR. PRESIDENT:

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14 If the defence counsel is ready we shall
15 give them the floor for the
16 cross-examination of Witness J.

17 MR. MONTHE:

18 Thank you, your Honors.

19 CROSS-EXAMINATION.

20 BY MR. MONTHE:

21 Q. Good afternoon, Madame.

22 Madam, you stated to the Tribunal that
23 the persons who came to your home had
24 been sent by Jean-Paul Akayesu. Is that
25 correct?

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AKAYESU

1 A. Yes, it's correct.

2 Q. I was made to understand that you knew
3 this because these people, when they came
4 to your home, were speaking amongst
5 themselves and they were saying that it's
6 Akayesu who had sent them. Is that

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7 correct?

8 A. They came and they were saying it aloud,
9 that it was Akayesu who had sent them.

10 Q. Did they say that whilst they were in the
11 house?

12 A. Even when they were coming they were
13 saying this.

14 Q. Madam, according to you, these people who
15 were sent by Akayesu, what was their
16 interest in saying, when they were
17 arriving, that it was Akayesu who had
18 sent them? Were they responding to a
19 given question?

20 A. I don't know why, I don't know what the
21 reason was.

22 Q. But nobody asked them why they came?

23 A. Nobody asked them anything because they
24 came and they started beating us.

25 Q. So, of their own accord they entered the

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AKAYESU

1 house and stated that it was Akayesu who

2 had sent them?

3 A. Yes.

4 Q. I thank you.

5 Did you have any indication on the

6 documents that they were looking for?

7 A. They only said that they were looking for

8 the Kinihira documents. I don't know

9 anything else.

10 Q. Madam, you told us just now, in response

11 to the question put to you by the

12 prosecutor, that your family didn't have

13 any relationship in Kinihira apart from

14 your brother's friend who he went to see

15 one time long ago. Is that correct?

16 A. Yes, he went there.

17 Q. He went there one single time? That's

18 what I want to know.

19 A. I only know that one time.

20 Q. And apart from that one time you didn't

21 hear him say that he was in Kinihira?

22 A. No I don't know anything about that.

23 Q. Madam, however, you stated to the

24 investigators of the Tribunal the

25 following, and I am quoting; When the

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AKAYESU

1 killers came to your house you said, "I

2 heard them asking my brother to give them

3 the document which he had brought back

4 from Kinihira," and in your statement it

5 is placed in a bracket, "the place where

6 the RPF was before the 6th of April, 1994

7 in Byumba Prefecture".

8 And you say, "I know that my brother went

9 several times to that place before the

10 war. I don't know why he was going

11 there".

12 Now, madam, your brother, did he go one

13 single time to Kinihira or did he go

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14 there several times?

15 A. He went there only once. I am saying

16 only what I know.

17 Q. Very well, but I am noting that there is

18 a contradiction. What is the

19 relationship between your brother and the

20 Inkotanyi?

21 A. I do not know of any relationship between

22 them.

23 Q. Was he found at your home by these people

24 who --

25 MR. PRESIDENT:

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AKAYESU

1 You wanted to know the relationship

2 between his brother and the Inkotanye.

3 The Tribunal would like to know whether

4 she knows what Inkotanyi means?

5 THE WITNESS:

6 I know that the Inkotanyi were people

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7 like others, but I don't know anything

8 else.

9 MR. PRESIDENT:

10 You stated that, "My brother did not

11 have any relationship with the

12 Inkotanyi." That means you know what the

13 Inkotanyi are. Now you are saying there

14 was no relationship. Do you know who the

15 Inkotanyi are?

16 THE WITNESS:

17 At that time there was no relationship

18 between my brother and the Inkotanyi.

19 MR. PRESIDENT:

20 But what are the Inkotanyi to you, if

21 there is no relationship?

22 THE WITNESS:

23 Until now the Inkotanyi are people like

24 any other person.

25 MR. PRESIDENT:

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AKAYESU

1 But what are these people who are like

2 any others?

3 THE WITNESS:

4 They are people like us.

5 MR. PRESIDENT:

6 The Tribunal will not insist, but we give

7 the floor back to counsel.

8 MR. MONTHE:

9 Mr. President, I thank you.

10 BY MR. MONTHE:

11 Q. Madam, on that day when these people,

12 accompanied by Nyagatare, came to your

13 home, indicating that they were sent by

14 Akayesu, they searched your house?

15 A. Yes, they searched our house.

16 Q. Now during the search did they find any

17 document, whatsoever?

18 A. They didn't find any documents except a

19 letter which was written to my brother by

20 a friend, and they were saying that this

21 letter was written by Inkotanyi.
 22 Q. Was it a letter or was it a notebook?
 23 A. It was a letter.
 24 Q. Those who were being brought here by
 25 Nyagatare, who said that the letter was

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AKAYESU

1 written by Inkotanyi? What were they
 2 referring to when they were referring to
 3 the Inkotanyi?
 4 A. They were saying that Ngambage was going
 5 to Kinyihira to the Inkotanyi. That's
 6 what they were saying. And then they said
 7 that the letter from the Inkotanyi should
 8 be given to them.
 9 Q. Thank you, ma'am. When they found
 10 Ngambage with this letter, did they ask
 11 Ngambage to follow them, to go with them?
 12 A. Yes, they took him right away. And they
 13 said that they were taking him to

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14 Akayesu.

15 Q. I didn't hear that.

16 A. They said they were taking him to

17 Akayesu.

18 Q. And did they take him to Akayesu, in

19 fact?

20 A. Yes, they took him to Akayesu, because I

21 was with them.

22 Q. What day was that?

23 A. It was the 19th of April, 1994.

24 Q. At what time of day?

25 A. It was nine in the morning.

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AKAYESU

1 Q. The two places to which they came and

2 took Ngambage up to the bureau communal,

3 is it a great distance? The place from

4 which they took Ngambage up to the bureau

5 communal, what was the distance between

6 those two places?

7 A. It is forty-five minutes walk.

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8 Q. Yes, thank you.

9 Did they take Ngambage by car or did they
10 walk?

11 A. They walked him there.

12 Q. And when he was taken to bureau communal,
13 once they got there, was he taken to
14 Akayesu?

15 A. When they got to the graveyard, where
16 they were beating him, I ran up to
17 Akayesu to tell him what had happened,
18 and I met him when he, also, was coming
19 to this grave site and Akayesu slapped
20 me.

21 MR. PRESIDENT:

22 We will give the floor to Judge Aspegren
23 who wishes to have a clarification.

24 JUSTICE ASPEGREN:

25 Now you are speaking about a graveyard,

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AKAYESU

1 are you talking about a mass grave or a

2 communal grave?

3 THE WITNESS:

4 It was a hole which had been dug and it

5 was in this--

6 JUSTICE ASPEGREN:

7 So it was a is fosse communal and not a

8 fosse commune? I have understood.

9 MR. MONTHE:

10 Thank you, your Honor.

11 BY MR. MONTHE:

12 Q. Madam, I want to come back to the

13 question I just asked you. Ngambage was

14 taken to the bureau communal. When he

15 arrived there was he taken to --

16 MR. PRESIDENT:

17 We shall give the floor to Judge Pillay

18 who wants to give us clarification.

19 JUSTICE PILLAY:

20 Mr. Monthe, I think you rephrased your

21 question. The witness did not say that
 22 her brother was taken to the bureau
 23 communal, because I asked her that
 24 question. She said he was taken from the
 25 house to the grave site.

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AKAYESU

1 MR. PRESIDENT:

2 Do you want a clarification, if you are
 3 not clear about the question?

4 MR. MONTHE:

5 Mr. President, I did not understand the
 6 answer. This is why I put the question
 7 in a different way.

8 MR. PRESIDENT:

9 You should be very simple. When he was
 10 taken from the house, he was taken
 11 directly from the grave site. This is
 12 what we are going to do because it will
 13 be quicker for us if you are clear and

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14 simple.
15 Now, when your brother was taken from
16 home, was he taken directly to the bureau
17 communal or to the mass grave?

18 THE WITNESS:

19 This grave is at the bureau communal.

20 MR. PRESIDENT:

21 Where did they take him to?

22 THE WITNESS:

23 He was taken to the mass grave and they
24 began to beat him, and I ran towards
25 Akayesu to tell him that, and I met him,

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AKAYESU

1 because he was also coming to the grave
2 site, and I told him that they were going
3 to kill my brother and then Akayesu
4 slapped me. And we went back to the
5 common grave and even Akayesu hit my
6 brother with a cudgel and I saw him do

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7 that with my own eyes.

8 MR. PRESIDENT:

9 So he was beating him at this mass

10 grave?

11 THE WITNESS:

12 Yes. They were beating him there and they

13 immediately threw him out into the mass

14 grave. He was not quite dead when they

15 threw him in.

16 MR. PRESIDENT:

17 And when they started to beat him at the

18 mass grave, had you gone to Akayesu to

19 tell him to come and intervene?

20 THE WITNESS:

21 Yes, I went to tell this to Akayesu so

22 that he could come, because I knew that

23 Akayesu was his friend.

24 MR. PRESIDENT:

25 And Akayesu, to the contrary, slapped

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AKAYESU

1 you?

2 THE WITNESS:

3 Yes, he slapped me.

4 MR. PRESIDENT:

5 At that time, where was he when he

6 responded like that?

7 THE WITNESS:

8 He came immediately towards the mass

9 grave.

10 MR. PRESIDENT:

11 No, when Akayesu slapped you, where was

12 he?

13 THE WITNESS:

14 I went to tell him and I met him half

15 way. He was coming from the bureau

16 communal towards the mass grave and that

17 is where I found him.

18 MR. PRESIDENT:

19 Thank you.

20 Counsel, we apologize for that

21 interruption because we were seeking

22 clarification.

23 MR. MONTHE:

24 I accept that without any difficulty,

25 whatsoever.

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AKAYESU

1 BY MR. MONTHE:

2 Q. Madam, I would like you to clarify
3 something for me, because you did say
4 that when your brother was taken to the
5 mass grave you went with him. Is that
6 correct?

7 A. Yes, we went together right up to the
8 mass grave.

9 Q. And around that pit you said there were
10 many people.

11 A. That is true, there were many people.

12 Q. But at that time Akayesu was not there?

13 A. I already said that when they started to

14 beat my brother I went to see Akayesu and

15 I met him, because he was also coming

16 towards the mass grave.

17 Q. Did Akayesu go right up to the grave site

18 with you?

19 A. Yes, he came to the grave site with me.

20 Q. At what place, exactly, did he slap you?

21 Where exactly did he slap you?

22 A. He slapped me before we came back to the

23 mass grave and we went back together to

24 the mass grave.

25 Q. After you got to the mass grave, what did

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AKAYESU

1 Akayesu do, madam?

2 A. He hit my brother with a cudgel and the

3 others started to cut him up with

4 machetes.

5 Q. Could you please speak a bit louder,

6 because with the fan I have difficulty in

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7 hearing you. Madam, this is what you
8 indicated to the investigators on this
9 matter.
10 You said, "When we arrived at the grave
11 site Akayesu went to the bureau communal
12 of Taba. Several people were there around
13 the grave. They were killers. One of
14 these people hit my brother on the head
15 with his cudgel and my brother fell.
16 Other members of the group used machetes
17 to kill him. When I saw that I went
18 running to the Taba bureau communal. I
19 told Akayesu what had happened. Akayesu
20 blamed me for the killing of my brother,
21 who normally went to Kinihira, and then I
22 fled with my two sisters and we went back
23 home."
24 This is the end of the quotation.
25 A. Akayesu said that he blamed me for the

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AKAYESU

1 death of my brother. I did not say that.

2 Q. It's not Akayesu who said that. You are
3 the person who talked to the
4 investigators of the Tribunal and you
5 said what I have just read what you said.

6 A. Can a person kill oneself?

7 Q. I am asking a question, if you cannot
8 respond, do not. I am saying simply that
9 in your statement you said something
10 quite different from what you are saying
11 today. You must understand that.

12 A. No, I did not say that. I am explaining
13 what I saw concerning Ngambage, who I am
14 being blamed for his death. I don't
15 understand that.

16 MR. PRESIDENT:

17 Thank you. We appreciate what you have
18 said. The Tribunal would wish to inform
19 you that in relation to the statement you
20 made to the prosecutor there are

21 differences, essentially two differences.
 22 Today you stated that when you told
 23 Akayesu what had happened to your brother
 24 he slapped you. Before the prosecutor
 25 you said he blamed your brother for his

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AKAYESU

1 behavior, because he had gone to Kinihira
 2 to meet the Inkotanyi. Now the defence
 3 is asking you, did you make that
 4 statement before the prosecutor, because
 5 you said that Akayesu blamed your brother
 6 for his behavior and he didn't slap you.

7 THE WITNESS:

8 I said that he slapped me. Maybe it is
 9 the person who was making the
 10 investigation, maybe it is his fault.

Commenté [BG5]: Expert?

11 MR. PRESIDENT:

12 The second thing we want you to observe
 13 is that you were not precise in that it

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14 was Akayesu who hit him with a cudgel.

15 Is that correct?

16 THE WITNESS:

17 I explained by saying that Nyakwiziga,

18 Japhet had also done it and he also hit

19 him.

20 MR. PRESIDENT:

21 So who hit him with a cudgel?

22 THE WITNESS:

23 It was Japhet Nyakwiziga who hit him with

24 a cudgel, but Akayesu also hit him with a

25 cudgel, so it's Japhet and Akayesu.

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AKAYESU

1 MR. PRESIDENT:

2 So there were two blows with a cudgel?

3 THE WITNESS:

4 Yes, the others were hitting him with

5 machetes.

6 MR. PRESIDENT:

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7 Thank you, Madame.
8 Counsel we are going to adjourn. Then you
9 will continue with your cross-examination
10 after the adjournment.
11 Court is adjourned.
12 Adjourned at 16.00 Hours
13
14 Resumed at 16.25 Hours.
15 MR. PRESIDENT:
16 The court is in now in session.
17 I give the floor to the defence to
18 continue who will continue with the
19 cross-examination of the witness.
20 Please bring in the witness.
21 MR. PRESIDENT:
22 Counsel you have the floor to continue
23 your cross-examination of Witness J.
24 MR. MONTHE:
25 Thank you, Mr. President.

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AKAYESU

1 BY MR. MONTHE:

2 Q. As far as I remember we were still
3 discussing this issue of the cudgel and
4 that is when the President asked for
5 clarification.
6 Now, on this matter, Mr. President,
7 because I feel that this is an important
8 point. I would like to remind the
9 witness of her statement that she gave to
10 the office of the prosecutor when she was
11 questioned, and she declared the
12 following. "At our house it was Ngabaje
13 who hit my brother first. Once we
14 arrived at the mass grave it was Japhet
15 who delivered a cudgel blow to my
16 brother."
17 Now, at no point in time -- Akayesu
18 giving or did he deliver the cudgel
19 blows, according to this statement. I
20 simply want to clarify this point, madam.

21 When you arrived at the bureau communal
 22 on that day, were there people there that
 23 you recognized?

24 A. I knew the people who had taken us from
 25 our house to the bureau communal and I

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AKAYESU

1 also saw Akayesu, whom I knew.

2 Q. In addition to the people who had taken
 3 you from your house, to the bureau
 4 communal, did you see other people at the
 5 bureau communal whom you knew?

6 A. I really didn't have the time to pay
 7 attention to these people, so I didn't
 8 see anyone.

Commenté [BG6]: Cont. Gen.

9 Q. Thank you.
 10 At the bureau communal, when you were
 11 there, when Akayesu alluded to this
 12 meeting in Gitarama, to whom was he
 13 speaking?

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14 A. He was talking to the people who had
15 brought my brother and he was telling
16 them to kill Tutsi, and he was saying
17 that the Tutsi were going to kill the
18 Hutu. That is all that I heard and that
19 is what I am now stating. I heard this
20 with my own ears.

21 Q. Thank you, very much.
22 Did Akayesu know that you were a Tutsi?

23 A. I don't know anything about that.

24 Q. But I'm sure, at least, that he knew that

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AKAYESU

1 A. Well, it is clear that he knew that we
2 were Tutsi because in the commune records
3 everybody's ethnic group was indicated.
4 As bourgmestre he knew.

5 Q. But if Akayesu knew that you were Tutsi,
6 and he was killing Tutsi, why didn't he
7 kill you?

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- 8 A. Don't ask me why he did not kill me.
- 9 He's the one who knows why he did not do
- 10 it.
- 11 Q. No, because Akayesu, according to you,
- 12 gave instructions to kill Tutsi?
- 13 A. But if I didn't go into hiding, then I
- 14 would probably would have been killed.
- 15 Q. Now, according to you he simply slapped
- 16 you. That's all that he did to you?
- 17 A. Yes, it is true that he did not kill me.
- 18 Q. So, there were Tutsi that Akayesu did not
- 19 kill.
- 20 A. It is not that there were Tutsi that
- 21 Akayesu did not kill, rather when they
- 22 killed my brother I immediately left to
- 23 go hide into the tree. But if I did not
- 24 hide, I would be dead today. When you
- 25 say Akayesu did not kill me, I think that

Commenté [BG7]: Cont. Gen.

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AKAYESU

1 you shouldn't ask this question.

Commenté [BG8]: Expert?

Commenté [BG9]: Cont. Gen.

2 Q. I would simply like to remind you that,

3 according to your statement, Akayesu

4 slapped you, and that's all.

5 Madam, you said to us that you went to go

6 hide and that you hid in a tree near your

7 home. What kind of tree was it, madam?

8 A. It was a big tree that was near

9 somebody's fence and some of the branches

10 had been cut away.

11 Q. Could you please tell us what type of

12 tree it was? Was it a mango tree,

13 avocado tree, what kind of tree was it?

14 THE INTERPRETER:

15 Excuse me, I only know the name of the

16 tree in Kinyarwanda. I don't know it in

17 French. So if she tells me in Kinyarwanda

18 I may not know what it means in French.

19 It was not a fruit tree, at any rate.

Commenté [BG10]: No transl.

20 BY MR. MONTHE:

21 Q. Very well, in your opinion, how tall was
22 this tree?

23 A. How could I know?

Commenté [BG11]: Sarcasm

24 Q. You climbed up the tree. It is fine if
25 you don't know what type it is, but could

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AKAYESU

1 you at least estimate how tall it was?

2 A. I don't know how to estimate how tall it
3 was, because it was not a small tree, it
4 was not a cactus, it was an Umvuvu tree,

5 (Interpreter-I don't know what the word

6 is in French) and I don't know how tall

Commenté [BG12]: No transl.

7 it was.

8 Q. Was it as tall as I am?

9 A. It was taller than you.

10 Q. You stated that the branches of the tree
11 had been cut?

12 A. This is true. Well, when the branches
13 are cut from the tree normally new

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14 branches grow and the tree becomes
15 taller.

16 Q. I'm sure when you cut the branches they
17 grow back. Now, I am asking, you said
18 the branches had been cut?

19 A. Yes, the branches had been cut of this
20 tree, and, in fact, the tree was in the
21 banana grove, but there was foliage on
22 this tree.

23 Q. Thank you. Madam, if this tree was
24 taller than I am, and given the fact that
25 you were six months pregnant, are we to

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AKAYESU

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1 believe that it was easy for you to climb
2 a tree?

3 A. Well, I can tell you that this is a very
4 difficult question that you are asking.

5 If somebody was chasing you, you would be
6 able to climb a tree. You would even be

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7 able to climb on to the roof of your

8 house if you were faced with this

9 situation.

Commenté [BG13]: Cont. Gen.

10 Q. Thank you very, much.

11 Now, you indicated, madam, that you did

12 not sleep in the tree. Is that true?

13 A. That is true. I would go down and I

14 would spend the night under the tree.

15 Q. So you would climb down from the tree at

16 night and in the morning you would climb

17 back up?

18 A. Yes, in the morning about 4:00 a.m. in

19 the morning I got back up the tree

20 because the killers would come to kill

21 during the day but not at night.

22 Q. Very well. So then if you had enough

23 energy, because you were being chased, if

24 you had enough energy then to climb this

25 tree the first day, then I assume that

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AKAYESU

1 the following days of the week, when you
2 got up in the morning you were no longer
3 being chased by the killers.

4 A. Well, listen, they were chasing people
5 every day.

Commenté [BG14]: Cont. Gen.

6 Q. And so for an entire week you climbed
7 this tree every morning and then came
8 down every night?

9 A. Yes, that is true.

10 Q. Thank you, madam.

11 Madam, when your parents were killed was
12 Akayesu among those people there?

13 A. No, Akayesu was not among those people.

14 Q. Therefore Akayesu doesn't know the
15 conditions in which your parents were
16 killed?

17 A. Maybe he knew even if he was not there.

18 He was the one who had given the orders
19 for them to come and kill them.

20 Q. Madam, how long did it take you to bury

21 your father?

22 A. It did not take me a lot of time because
23 he was killed at about 5:00 in the
24 afternoon and I buried him at about 10:00
25 in the night. I simply dug a small hole

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AKAYESU

1 and I put him in the hole so that the
2 dogs wouldn't eat him because the dogs
3 were eating bodies.
4 Q. Thank you, Madame.
5 Now, when you left your home, to go to
6 Kabgaye, what road did you take, if you
7 remember?

8 A. I do remember. I went through the bush,
9 I went near a place called
10 Gituragahenge. I was only walking at
11 night. I did not walk during the day and
12 every time I would come to the place
13 during the morning I would hide in the

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14 bush in order to remain hidden during the
15 day. So it took me two days to get to
16 Kabgaye. I was pregnant, I also had my
17 daughter, the one who had been raped.

18 Q. When you got to Kabgaye where did you
19 find refuge?

20 A. I went to hide in a place called -- in a
21 school, a college, in the Kabgaye
22 compound.

23 Q. Were there a lot of you there?

24 A. There were a lot of us.

25 Q. But did you leave your hiding place from

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AKAYESU

1 time-to-time?

2 A. We would leave our hiding place in order
3 to go get our manioc rations.

4 Q. Do you remember exactly when you arrived
5 at Kabgaye?

6 A. I don't remember the exact date, because

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7 I really wasn't in any state of mind to

8 remember what day it was.

Commenté [BG15]: Cont. Gen. / Trauma. Gen.

9 Q. Was it still in April, 1994?

10 A. It was near the end of the month of

11 April.

12 Q. When you got to Kabgaye or along the way,

13 did you see any roadblocks?

14 A. Yes, I did cross a few roadblocks.

15 Q. And did they ask for your identification?

16 A. I was stopped at one roadblock and they

17 asked me to show them my identification

18 card and I told them that I did not have

19 one. They let me go saying that it would

20 not be proper to kill a pregnant woman.

21 I was almost killed when I arrived at the

22 office of the prefecture in Gitarama. It

23 was a teacher whose name was Musekuye,

24 who was from Katurabwenge, he is the one

25 who saved me from the killers. At that

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AKAYESU

- 1 point in time Paston Munguye, who was a
2 father at Kabgaye, gave money to the
3 killers and they freed me.
- 4 Q. Madam, before we get to Gitarama, I would
5 like us to stay, with your permission, at
6 Kabgaye. Now, while you were hiding at
7 Kabgaye did you ever see Jean-Paul
8 Akayesu?
- 9 A. Yes, I did see him.
- 10 Q. Did he ever come to Kabgaye?
- 11 A. I saw him at Kabgaye.
- 12 Q. Did he come by foot or in vehicle?
- 13 A. When I saw him he was in a car.
- 14 Q. Do you remember what kind of car he was
15 driving?
- 16 A. I do not remember very well. I do not
17 really pay any attention, but I did see
18 him get out of the vehicle.
- 19 Q. Was it a pickup truck or was it a normal
20 car, four-door car?

21 A. It was a Toyota pickup truck.

22 Q. When you saw him, did he get out of the

23 vehicle or was he still inside the

24 pickup?

25 A. I saw him get out of the vehicle.

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AKAYESU

1 Q. Do you remember how he was dressed?

2 A. I do not remember.

3 Q. Was he armed?

4 A. Yes, he was armed, he had a gun. That's

5 the only thing I remember.

6 Q. Did he only have a gun?

7 A. Yes, he only had a gun.

8 Q. Did Jean-Paul Akayesu see you?

9 A. He did not see me, but I saw him. I was

10 in the crowd when I saw him. When I saw

11 him I got down on the ground so that he

12 could not see me.

13 Q. Approximately how far were you from

160

14 Jean-Paul Akayesu on that day?

15 A. He found us at the school in the

16 buildings of the college. We were inside

17 in the internal courtyard of the

18 building. And so I left immediately and

19 went inside the building and I did not go

20 back outside to see what was happening.

21 Q. Thank you.

22 In your opinion, what was Jean-Paul

23 Akayesu doing at Kabgaye with a gun?

24 A. I don't know.

25 Q. Thank you, Madame.

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AKAYESU

1 Mr. President, your Honors, I have no

2 further questions.

3 BY MR. TIANGAYE:

4 Q.

5 Madam, you stated that the Interahamwe

6 would come to take people out of

161

7 Kabgaye.
8 Sometimes they would kill them on site,
9 and sometimes they would take them to a
10 place called CND in order to kill them.
11 Did you ever see Jean-Paul Akayesu take
12 refugees out of Kabgaye and take them
13 away with the Interahamwe?
14 A. No, I never saw him do that. The only
15 time that I saw him was the time that I
16 just described. I don't know how he got
17 in and what he did.
18 Q. Thank you.
19 MR. PRESIDENT:
20 Judge Aspegren has the floor.
21 JUSTICE ASPEGREN:
22 Madam, I would like to come back to the
23 rape of your young daughter, and this is
24 going to be very difficult for you, but I
25 would like you to explain to us what

Commenté [BG16]: Empath.

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AKAYESU

1 happened. You gave the name of the three
2 young men who had committed this crime.
3 Now do you see any link between these
4 people, this crime, and Mr. Akayesu?

5 THE WITNESS:

6 Yes, I think there is a link between
7 these three things, these young people,
8 the crime and Akayesu. Before Akayesu
9 told people to kill Tutsi nobody killed
10 anybody.

11 JUSTICE ASPEGREN:

12 In your opinion he had a certain direct
13 responsibility in this crime?

14 THE WITNESS:

15 Yes, he does have a responsibility in all
16 this. Because before he launched the
17 killings nobody did this type of thing.

18 JUSTICE ASPEGREN:

19 When you say launched the killings, do
20 you also mean launching other activities

21 such as rape?

22 THE WITNESS:

23 That is possible, because before people

24 were killed, sometimes they were raped.

25 JUSTICE ASPEGREN:

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AKAYESU

1 Thank you.

2 To your knowledge were there any other

3 incidents of rape in Taba?

4 THE WITNESS:

5 I heard it said that there were young

6 girls who were at the bureau communal who

7 were raped. I heard that, but I did not

8 see it.

Commenté [BG17]: Rape Prosec.

9 JUSTICE ASPEGREN:

10 Thank you very much, Madame.

11 MR. PRESIDENT:

12 Counsel Tiangaye has the floor to

13 continue.

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14 MR. TIANGAYE:

15 Thank you, Mr. President.

16 BY MR. TIANGAYE:

17 Q. Good afternoon, madam?

18 A. Good afternoon, sir.

19 Q. You stated that your brother only went to

20 the city of Kinyihira one time. But

21 before the prosecutor you said that he

22 had gone several times?

23 A. That is false. I did not say that.

24 Q. Have you, personally, been to Kinyihira?

25 A. No. I don't even know where Kinyihira is.

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AKAYESU

1 How can I have gone there.

Commenté [BG18]: Sarcasm

2 Q. Before April 6th, 1994, was the city of

3 Kinyihira controlled by the RPF or the

4 Rwandan Armed Forces?

5 A. I know nothing about that.

6 Q. What relationship did your brother have

165

- 7 with the RPF?
- 8 A. What I said was that there was a young
- 9 man, a teacher, who was our neighbor, who
- 10 would go to Kinihira.
- 11 Q. Excuse me?
- 12 A. What I said was that there was a young
- 13 man, a teacher, who was a neighbor of
- 14 ours who lived in Kinihira he's the one
- 15 that I knew went only once to Kinihira
- 16 and that was a long time ago.
- 17 Q. And so was this the friend who had
- 18 written to your brother?
- 19 A. I don't know.
- 20 Q. What did they find at your brother's
- 21 place? Was it a letter or a notebook?
- 22 A. They found a letter there.
- 23 Q. And what did this letter say?
- 24 A. I don't know because I did not read it.
- 25 Q. When your brother went to Kinihira did he

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AKAYESU

1 talk to you about this trip?

2 A. He told me that he was going to visit
3 this young man and then he did not stay
4 for very long, I think he only went for
5 one day.

6 Q. How did he go, on foot or by car?

7 A. I don't know, because we didn't go
8 together.

9

10 to the mass grave?

11 A. It was Nyagatare, Japhet, Muhiga
12 Nyangaramba, and a lot of other people
13 whose names I don't remember.

14

15 the mass grave without first going by the
16 bureau communal, is this true?

17 A. Yes.

18 Q. I am going to read a portion from the
19 statement that you made when you were
20 interviewed.

21 A. Except that this mass grave is just next
 22 door to the bureau communal, it's very
 23 close to the bureau communal.
 24 Q. Here's what you stated. "When they found

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AKAYESU

1 myself and my two young sisters to the
 2 office of the commune of Taba." Do you
 3 remember having made this statement?
 4 A. Yes, I did say that.
 5 Q. So then today --
 6 A. But as regards the notebook I did not say
 7 anything about a notebook.
 8 Q. Excuse me?
 9 A. I did not say a notebook.
 10 Q. But as regards the path that you took.
 11 A. Yes.
 12 Q. So you did first go by the bureau
 13 communal?
 14 A. Well, we did not go by the bureau

15 communal. We went to the mass grave.
16 Q. Now, you did say that you left with your
17 brother and your two younger sisters.
18 Why didn't not talk about your son when
19 you talked with the investigators from

20 the office of the prosecutor?

21 A. As regards my son --

22 Q. Yes, your son. Today you talked about

23 your son. You mentioned him today?

24 A. Well, I answered the questions that

25 people put to me. I couldn't answer

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AKAYESU

1 something that they did not ask.

Commenté [BG19]: No prev. quest. / Expert?

2 Q. Today you talked about your son where as

3 nobody asked you questions about your

4 son, which you said that your son was

5 killed?

6 A. I said that they had killed my child.

7 Q. Okay, your child.

8 A. But they asked me who had been killed,

9 along with my mother, who had been thrown

10 into the latrine, and I said that it was

11 my child who had been thrown into the

12 latrine along with my mother.

13 Q. Your mother was thrown into the latrine

14 or was she buried?

15 A. Excuse me?

16 Q. Buried in the latrine.

17 A. No.

18 Q. Was she buried?

19 A. She was thrown into a latrine and then

20 they covered it over with some dirt.

21 MR. PRESIDENT:

22 Counsel Tiangaye, unless this is

23 completely necessary for your defence,

24 could you pass this up quickly, because

25 it is so difficult for the witness. We

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AKAYESU

1 have understood that her mother was

2 thrown into the latrine. Unless this is

3 necessary for your defence. If not I

4 think that you should go on to the next

5 question.

Commenté [BG20]: No shock / Empath.

6 MR. TIANGAYE:

7 Yes, Mr. President, because the

8 variations between the statements she has

9 made today and those which she gave to

10 the investigators, which are in her

11 written statement, I think that is

12 particularly important.

13 MR. PRESIDENT:

14 But in these cases you should

15 say; "Madame you said that she was buried

16 or--" without asking her about the

17 details about the latrine. Just ask her

18 whether what she said was true or not.

19 These are shocking details. We really

20 don't need to go into them. But if this

21 is really necessary for your defence then

22 fine, we cannot really do anything about

23 it. But if not, don't put too much

24 emphasis on this.

Commenté [BG21]: No shock / Empath.

25 MR. TIANGAYE:

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AKAYESU

1 We think that the questions we are

2 asking, Mr. President, are necessarily

3 linked to the interest of our defence.

Commenté [BG22]: Lack Empath. / "It is our duty"

4 MR. PRESIDENT:

5 But counsel, please understand me. If

6 she has made a statement to the office of

7 the prosecutor which is not the same as
 8 what she says today, then say; "Madam
 9 you said to the prosecutor the following,
 10 today you are saying this. Which is
 11 true?" That is all. You don't have to
 12 go into all the details about the grave
 13 or the latrine. I think it's a little
 14 bit difficult for her.

Commenté [BG23]: No Shock / Empath.

15 MR. TIANGAYE:

16 Yes, Mr. President, because in her
 17 statement she said that the killers
 18 buried the body of my mother.

Commenté [BG24]: Lack Empath. / "It is our duty"

19 MR. PRESIDENT:

20 Then ask her about that. But I hope you
 21 understand our concern, the Tribunal's
 22 concern that this is a very painful
 23 experience for the witness.
 24 Please continue.

25 MR. TIANGAYE:

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Annexes

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AKAYESU

1 Well, Mr. President, that is our duty as

2 the defence.

Commenté [BG25]: Lack Empath. / "It is our duty"

3 MR. PRESIDENT:

4 Continue, continue. Ask your question.

5 Just bear this in mind.

6 BY MR. TIANGAYE:

7 Q. Madam, you stated, according to the

8 prosecutor, that it was the killers who

9 buried your mother. Is it yourself or

10 who-- that is not the question that I

11 want to ask.

12 Concerning her mother she had said this

13 afternoon that her mother was thrown into

14 a latrine. Now, before the prosecutor,

15 she said that her mother was buried by

16 the killers. And I see that these two

17 statements are not in line with one

18 another.

19 A. It is not different because I said that

20 my mother had been killed, but I did not

21 witness the killing, but she was thrown

22 into the latrine and the soil, which had

174

23 been removed from the pit, was used to
24 cover her up.

25 Q. Let's go back to the place, the mass

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AKAYESU

1 grave where your brother was killed. Is
2 that far from the bureau communal?

3 A. The mass grave is quite close to the
4 bureau communal.

5 Q. About how many meters?

6 A. I don't know. What I know is that the
7 mass grave is close to the bureau
8 communal.

9 Q. With the authorization of the Tribunal,
10 if we could have projected the picture of
11 the bureau communal?

12 Thank you, your Honor.

13 Can the witness indicate to us, on the
14 slide, where the mass grave was?

15 A. This is the road, and that is the bureau
16 communal. When you continue on this
17 road, when you go towards the forest,
18 that's where the mass grave was. When

19 you go down from that tree it's a bit
20 further on.
21 Q. I wanted to know if the mass grave is on
22 this side?
23 A. You go towards the forest and the mass
24 grave is in the forest.
25 Q. Where is the forest?
(...)

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**Appendix 3 – Coded Extract of the
testimony of Witness H in the Akayesu
Case (March 6, 1997)**

00001

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

2

CASE NO: ICTR-95-1-T THE PROSECUTOR
OF THE TRIBUNAL
AGAINST
JEAN-PAUL AKAYESU

6

7

8

06 March 1997

9

9:30

10

Before: Mr. Justice Laity Kama, President
Mr. Justice Lennart Aspegren
Mr. Justice Navanethem Pillay

12

13

14

For the.

15 Registry:

Mr. Antoine Mindua

16

17 For the.

Prosecution:

18

Mr. Pierre-Richard Prosper
Ms. Sara Darehshori
Mr. Yacob Haile-Mariam

19

20 For the.

Defence:

21

Mr. Nicholas Tiangaye.
Mr. Patrice Monthe

22

23

24

25

00002

1

2

3

I N D E X

4

Witness

5

6 For the Prosecutor

7

Witness U

8

9

10 Direct Examination by the prosecutor 1

11 Cross-examination by Patrice Monthe 31

12

13

WITNESS H.

14

15

16 Direct Examination. 87

17

18

19

20

21

22

23

24

25

(...)

00100

1

inkotanyi. And they were saying that the

2

inkotanyi were the Tutsi. People were

3

saying that all Tutsis must be killed.

4 Q.

When you heard these -- these noises, I

5

guess, outside your house, what did you

6

do?

7 A.

Some people, especially men, went to find

8

out what had happened. But when they

9

went to see what had happened, they

10

realized that somebody had been killed.

11

Akayesu, himself, came to the place and

12

he held a meeting. He held a meeting at

13

which he said that the enemy was single

14

and it was the Tutsi who should be

15

killed.

16

MR. PRESIDENT:

17

(Interpreter) She is going a bit too

18

fast towards Akayesu. Can she wait for

19

the questions from the prosecution?

20

MR. PROSPER:

21

Could you please keep an eye on me so I

Commenté [BG26]: Order

22 can signal you if we want to stop in a
23 certain area.
24 THE WITNESS:
25 Understood.

Annexes

00101

- 1 BY MR. PROSPER: (Cont'g.)
2 Q. Just so we're clear, this meeting with
3 Akayesu that you just told us about, did
4 you attend this meeting?
5 A. I didn't participate at that meeting, but
6 the people who went there told us what
7 was said during the meeting.
8 Q. Well, on this particular day or evening,
9 did you stay at home?
10 A. Yes. We stayed at home.
11 Q. At any time following this incident --
12 (Tape No. 1, p.m., concludes, Tape No.2,
13 p.m., begins.)
14 A. (Off microphone) -- when our house was
15 being attacked, we would -- we would
16 leave our house.
17 BY MR. PROSPER: (Cont'g.)
18 Q. Okay. Let's talk about this for a
19 minute.
20 When did this particular attack take
21 place?
22 Was it the same night that this teacher
23 was killed, or days following? Do you
24 know?
25 A. It was in the days following the killing

00102

1 of that person.

2 Q. Do you recall approximately how many days
3 following this that this took place?

4 A. It was approximately after two, three or
5 four days.

6 Q. Can you tell us about this, what
7 happened?

8 A. The first attack came, and people who
9 were attacking had destroyed the houses
10 belonging to Garrett and Aaron, who were
11 our neighbors. This attack took place
12 late in the evening, and it was the
13 cattle that were taken away first. After
14 having looted and taken away the cattle,
15 they began to destroy the houses.
16 Immediately, we left our house and we
17 went into the bushes.

18 Q. Well, where were these bushes; were they
19 next to your house or far away?

20 A. When the third attack came about, we were
21 in the banana plantation which was just
22 in front of our house.

23 Q. Well, let's talk about this first attack
24 on your house. You said you went to the
25 bushes.

00103

- 1 Where were these bushes in relation to
2 your house?
- 3 A. We went into a bush which was a little
4 bit far off from our house.
- 5 Q. From where you were, could you see what
6 was happening to your house?
- 7 A. We didn't see what happened to our house.
8 We didn't even know who took our cattle
9 away.
- 10 Q. On this occasion how long did you stay in
11 the bushes or in that particular area?
- 12 A. We remained in those bushes, and then we
13 tried to visit people in their houses to
14 see if they could provide us with
15 shelter.
- 16 Q. Did anyone provide you with shelter?
- 17 A. Yes. Some people hid us, but other
18 people looked at us with an evil eye and
19 wanted even to kill us.
- 20 Q. At this point in time, did you ever go
21 back to your house?
- 22 A. We -- our house had been destroyed, and
23 so we could not go back to it.
- 24 Q. Do you know a person by the name of
25 Pierre Ntyere?

00104

- 1 A. Yes. I know Pierre Ntyere.
2 Q. During these days, I guess, while you
3 were out in the bush or seeking shelter,
4 did you ever see him?
5 A. Yes. I had seen him.
6 Q. Where was he when you first saw him on
7 this occasion?
8 A. When I saw him for the first time he was
9 also hiding in the bushes.
10 Q. Do you know if he was able to stay in the
11 bushes?
12 A. The Interahamwe came to seek us out, and
13 Ntyere climbed into a tree and the
14 inkotanyi threw stones at the tree, and
15 he fell from that tree. When he fell, he
16 broke his leg. He was taken in -- on a
17 stretcher and taken to the bureau
18 communal.
19 Q. Who took him to the bureau communal?
20 A. The people took him to the bureau
21 communal.
22 Q. Now, after this happened, were you still
23 out, I guess, seeking shelter places and
24 hiding in bushes and fields?
25 A. Yes. We remained in the bushes.

00105

1 Q. Now, you mentioned earlier -- it appears
2 that there were three attacks. You've
3 talked about one on your house.
4 Do you remember the second attack that
5 was, I guess, launched against you?

6 A. During the first attack, we fled, as well
7 as the second -- and on the second attack
8 as well. But, with the third attack, our
9 hiding place was discovered.

10 Q. Okay. Now, let's talk about this third
11 attack. You said you were discovered.
12 Can you tell us what happened at this
13 time?

14 A. This attack was mounted by the people
15 from the Gishyeshye and Taba sectors.
16 They found us where we were sitting in a
17 banana plantation near our house. And
18 there was someone living in that house
19 who would bring us food. We saw people
20 pass close by where we were. They were
21 shouting and they were using whistles.
22 We ran. When we ran, we saw that we were
23 being followed by others.

24 Q. Before we get to the point where you ran,
25 how many people were in your group?

00106

- 1 A. Where we were sitting, we were about
 2 seven in number.
- 3 Q. Were any of those people members of your
 4 family?
- 5 A. Yes. There were members of my family
 6 amongst them.
- 7 Q. And when this attack came, did you all
 8 run together as a group, or did you split
 9 up and break into separate groups?
 10 Explain that for us, please.
- 11 A. Each person ran alone.
- 12 Q. Now, can you please tell us what happened
 13 to you at this time?
- 14 A. These two people caught up with me. I
 15 didn't know who they were, but I
 16 recognized one of the two. He is called
 17 Inhuruziza (phonetic spelling). They
 18 took off my clothes. They took the
 19 turban I had on my head and the cloth
 20 around my waist in which I had tied some
 21 money. They left me, and they told me
 22 that I should tell no one that they had
 23 taken my money. So, I continued on my
 24 way. I met another person, who was named
 25 Karijaya (phonetic spelling). He caught

Commenté [BG27]: Diff. Expres. SV

00107

- 1 me and he took me into a sorghum field
2 and he raped me.
3 After some time, I saw my father
4 approach, and he told me he had come to
5 fetch me, and he said also that he had
6 found other members of my family who were
7 still alive. He told me also that he had
8 heard it said that there were people who
9 had taken refuge in the bureau communal
10 and who had not been killed. So, we went
11 to the bureau communal.
12 Q. Stop here for a second. Who all went to
13 the bureau communal?
14 A. It was myself and my father, my mother,
15 and one of my brothers and my little
16 sister.
17 Q. Now, did you go there on foot or by
18 vehicle? Can you explain that for us?
19 A. We went there on foot.
20 Q. And when you arrived at the bureau
21 communal, I mean, the moment you first
22 arrived, can you describe for us what you
23 saw at that location?
24 A. When we arrived there, there were other
25 people there, too. But there, there was

Commenté [BG28]: Rape Witn.

00108

- 1 no security either, because the
2 Interahamwe were beating us.
- 3 Q. Do you recall how many days after the
4 killing of this teacher you told us about
5 before, that you arrived at the bureau
6 communal?
- 7 A. I don't really recall that all that well.
- 8 Q. You mentioned that there were a lot of
9 people there.
10 Could you give us, I guess, an estimate
11 of how many?
- 12 A. There were many people, and even others
13 were still arriving.
- 14 Q. Well, when you say many people, are we
15 talking about ten, twenty?
- 16 A. Approximately, when we got there, there
17 may have been about a hundred and fifty
18 -- one hundred and fifty people.
- 19 Q. Of these one hundred and fifty people, I
20 mean, can you describe them for us, were
21 they men, women, children?
- 22 A. Most were women, young girls and
23 children.
- 24 Q. Well, when you arrived at the bureau
25 communal, what -- I mean, what was this

00109

- 1 group doing there?
2 A. They would spend the day sitting about.
3 They weren't doing anything.
4 Q. Did you join this group?
5 A. Yes. We joined the group.
6 Q. Now, you mentioned that people kept, I
7 guess, arriving.
8 Were these, I guess, other people who
9 would come and sit there outside the
10 bureau communal?
11 A. Yes. We were sitting at the bureau
12 communal.
13 Q. Do you know the bourgmestre of the
14 commune of Taba?
15 A. Yes. I know him.
16 Q. Actually, to be precise, who the
17 bourgmestre was back then, in April of
18 1994?
19 A. It was Jean-Paul Akayesu.
20 Q. At this time, with the Chamber's
21 permission, I would like for you to, I
22 guess, stand up, take a look around the
23 courtroom and tell us if you see this
24 person, Akayesu, Jean-Paul, here today.
25 A. Yes. I see him.

00110

- 1 Q. Can you please point to him and tell us
2 what he is wearing today, please?
- 3 A. I see he is there. He is wearing a black
4 jacket, a white shirt. And he is wearing
5 a tie which has black and white on it.
- 6 Q. Thank you. You may be seated.
- 7 MR. PROSPER:
- 8 Your Honor, may the record please reflect
9 that the witness has pointed to and
10 identified the accused, Jean-Paul
11 Akayesu.
12 Thank you.
- 13 BY MR. PROSPER: (Cont'g.)
- 14 Q. Now, while you were at the -- I guess,
15 the bureau communal with this group of
16 women, girls and children, did you ever
17 see Jean-Paul Akayesu?
- 18 A. When I arrived he wasn't there, but he
19 came subsequently to the bureau communal.
- 20 Q. When you saw him later, what was he
21 doing?
- 22 A. He wasn't doing anything. He was walking
23 about and he was looking at the people
24 who were there.
- 25 Q. Well, during this time did you ever see

00111

1 the -- the communal police at the bureau
2 communal?

3 A. Yes. The commune police officers were
4 there.

5 Q. Do you recall how many police officers
6 you may have seen?

7 A. I remember seeing four commune police
8 officers.

9 Q. Do you know whether or not they were
10 armed, had weapons?

11 A. Yes. They had guns. They were carrying
12 guns.

13 MR. PRESIDENT:

14 (Interpreter) The session is adjourned
15 and shall be resumed shortly.

16 (A recess was taken.)

17 MR. PRESIDENT:

18 (Interpreter) Before continuing with
19 this trial, the Tribunal would like to
20 render its decision as regards the motion
21 that was submitted by the prosecutor from
22 January 20th, 1997.

23 During the hearing of January 23rd, 1997,
24 this is -- the Tribunal had asked the
25 prosecutor verbally to give them all of

00112

1 the minutes and reports from witness
2 statements in this -- in this present
3 case. The Tribunal would like to confirm
4 -- reiterate -- this instruction through
5 its decision of the 28th of January 1997.
6 February 4th, 1997, the prosecutor had
7 not complied with these instructions and
8 had presented a motion to the Tribunal
9 for re-examination of the decision of the
10 28th of January 1997. Whereas, it is
11 useful to state that pursuant to Article
12 12, paragraph 3(c) of the statute and of
13 the rules of procedure and evidence,
14 following all basic legal principles in
15 the world and also the rules and
16 procedure and evidence of the Tribunal,
17 also pursuant to Rule 89(b) of the rules
18 of procedure and evidence we are applying
19 the rules in order to have a fair trial.
20 The Tribunal is surprised to have been
21 seized with such a motion asking for
22 re-examination of its own decision and
23 order, since this request, or this
24 motion, is not stipulated, neither by the
25 rules nor by the rules for the I.C.T.Y.,

00113

1 nor is this acceptable in the large
2 portion of legal systems throughout the
3 world. That there can be interpretation
4 of this decision when the terms appear to
5 be ambiguous, and circumstances were
6 perhaps unknown to the -- to the Chamber
7 when they took this decision, but this is
8 the first time that we have had such a
9 motion asking for reconsideration.
10 Whereas, if there is one party that is
11 not happy with the decision of justice,
12 they have all possible means of recourse
13 which are available to this party.
14 It is for these reasons that the Tribunal
15 considers that the motion submitted by
16 the prosecutor is not -- is inadmissible,
17 and we ask the prosecutor to immediately,
18 without further delay, execute the
19 decision of the 28th of January 1997, by
20 which the prosecutor was asked to hand
21 over the witness statements in this case.
22 And this by virtue of the -- the
23 exceptional infractions retained. Thus,
24 it has been decided.
25 Bailiff, please bring in the witness.

00114

1 THE INTERPRETER:

2 Interpretation of this decision was
3 unofficial as the English booth did not
4 have a copy.

5 MR. PRESIDENT:

6 It was thus decided. The Tribunal will
7 not allow for any response.

8 MR. PROSPER:

9 This is not a response or an argument --

10 MR. PRESIDENT:

11 I said, Mr. Prosecutor, we do not want to
12 have an incident here. There will be no
13 argument. Our decision has been made.
14 That is how it works in this system.

15 MR. PROSPER:

16 All I want to do is ask for a recess,
17 because it is my understanding that our
18 office is seriously considering appealing
19 this issue, seeking an interlocutory
20 appeal, which will have the effect of
21 stopping the proceedings today.
22 I would ask this Chamber if we can recess
23 for an hour while I address this issue.

24 MR. PRESIDENT:

25 The Tribunal feels that you have all the

00115

1 time in the world to make your appeal,
2 that we do not need to interrupt this
3 witness's examination. You may make your
4 appeal when you deem it necessary, but we
5 will continue now this trial with the
6 hearing of the witness.
7 You may continue with your examination.
8 BY MR. PROSPER: (Cont'g.)
9 Q. Ma'am, when we left off, you were at the
10 bureau communal with approximately one
11 hundred and fifty people, and you said
12 that more people were arriving.
13 You had seen Jean-Paul Akayesu there,
14 walking around, seeing what was
15 happening. And you also saw the communal
16 police there, and they were armed.
17 In response to a previous question, I
18 think you mentioned that it was -- and
19 forgive me if I don't have the exact
20 words, it was also not secure there
21 because there were Interahamwe, there
22 being the bureau communal. Let's talk
23 about this.
24 Did you personally see Interahamwe while
25 you were at the bureau communal?

00116

- 1 A. Yes. I did see Interahamwe at the bureau
2 communal.
- 3 Q. Do you know if the Interahamwe that you
4 saw at the bureau communal -- were they
5 coming in from the outside or were they
6 staying at the bureau communal?
- 7 A. It was Interahamwe from the same commune.
- 8 Q. How many Interahamwe members did you see?
- 9 A. There were many.
- 10 Q. Well, when you say "many", can you give
11 us an estimate as far as numbers?
- 12 A. I could approximate that there were ten.
- 13 Q. Do you know whether or not they were
14 carrying any weapons?
- 15 A. I often saw them armed with machetes and
16 sticks.
- 17 Q. I probably should have asked you this
18 question before, but how did you know
19 they were Interahamwe?
- 20 A. These people would come and they would
21 hit us.
- 22 Q. Okay. Let's talk about this. What did
23 you personally see the Interahamwe doing
24 while you were at the bureau communal?
25 (Tape No. 2, p.m. Was turned to side B.)

00117

- 1 A. (Off microphone)?
 2 A. They would beat people and they would
 3 rape women.
 4 Q. Did you personally see women being raped?
 5 A. Yes. I personally saw that.
 6 Q. Where would this happen; would it happen
 7 right there on the premises of the bureau
 8 communal?
 9 A. Sometimes the girls would be taken in
 10 front of the bureau communal into a
 11 mosque that was there.
 12 Q. Well, where was the communal police while
 13 this was happening?
 14 A. The commune police officers were also
 15 present.
 16 Q. Did they ever do anything to prevent this
 17 type of activity?
 18 A. No. They didn't do anything.
 19 Q. Where was Akayesu?
 20 A. Akayesu was also there, but he didn't say
 21 anything about what was happening.
 22 Q. Now, these people that were there, the
 23 women, girls, and you said, children, do
 24 you know whether or not these people --
 25 do you know if they were Hutu or Tutsi?

Commenté [BG29]: System. rape

00118

- 1 A. These people were Tutsi.
2 Q. How do you know this?
3 A. I can confirm that, because they were
4 Tutsi who had fled towards the bureau
5 communal, and it was their homes that had
6 been destroyed.
7 Q. And as for you, I guess, back then, what
8 were you considered to be, Hutu or Tutsi?
9 A. At the time, I considered myself to be
10 Tutsi.
11 Q. Did you ever see any, I guess, government
12 of Rwanda, you know, soldiers at the
13 bureau communal?
14 A. No. I didn't see any soldiers at the
15 bureau communal.
16 Q. You said the Interahamwe were also
17 beating people.
18 What were they beating them with?
19 A. According to what I saw, they had sticks
20 and cudgels.
21 Q. Also, earlier you told us that Pierre
22 Ntyere was taken to the bureau communal.
23 While you were there did you ever see
24 him?
25 A. Yes. I did see him at the bureau

**Appendix 4 – Coded Extract of the Testimony
of Witness H in the Akayesu Case (March 7,
1997)**

00001
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

In the Matter of
JEAN-PAUL AKAYESU
Case No. ICTR-96-4-T
Volume 8

DATE: 7 March 1997

TRIBUNAL MEMBERS: President Laity Kama
Mr. Lennart Aspegren
Madame Navanethem Pillay

PROSECUTORS: Mr. Pierre Richard Prosper
Ms. Sara Darehshori
Mr. Yakob Haile Mariam

DEFENCE: Mr. Patrice Monthe
Mr. Nicolas Tiangaye

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28 (...)
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Witness U., Previously Sworn	3
Cross Examination by Mr. Monthe	

1
2
3
4 00029
5 1 THE WITNESS:
6 2 We stayed there. We were beaten and
7 3 raped.
8 R 4 JUSTICE PILLAY:
9 5 Could you leave?
10 6 THE WITNESS:
11 7 We had no place else to seek refuge.
12 8 JUSTICE PILLAY:
13 9 Would you say that you were in the same
14 10 condition as prisoners, that you couldn't
15 11 leave, you had no choice to leave?
16 12 THE WITNESS:
17 13 Yes, we were like prisoners because the
18 14 Interahamwe were still there. We really
19 15 couldn't leave the place.
20 16 JUSTICE PILLAY:
21 17 Are you saying that the Interahamwe were
22 18 guarding you and preventing you from
23 19 leaving?
24 20 THE WITNESS:
25 21 In a certain respect, they were guarding
26 22 us, because if we tried to flee, to go to
27 23 other houses to ask for water or
28 24 whatever, we would be in danger, as well
29 25 as the person who would give us the
30
31 00030
32 1 water.
33 2 JUSTICE PILLAY:
34 3 Were the Interahamwe armed?
35 4 THE WITNESS:
36 5 Yes, they were armed.
37 6 JUSTICE PILLAY:
38 7 You told us that you witnessed women and
39 8 girls being raped. Was this at the
40 9 premises of the bureau communal?
41 10 THE WITNESS:
42 11 Yes, it did occur at the bureau communal.
43 12 JUSTICE PILLAY:
44 13 Is it in the compound of the bureau
45 14 communal or outside the compound that the
46 15 rapes occurred?
47 16 THE WITNESS:
48 17 We were not in the compound of the bureau
49 18 communal. We were further down on the
50 19 road.
51 20 JUSTICE PILLAY:

Commenté [BG30]: Rape With.

1 21 Is that where the rapes occurred or is
 2 22 that where you were sheltering, your
 3 23 group?
 4 24 THE WITNESS:
 5 25 That's where we were. And when they
 6
 7 00031
 8 1 raped the women, some of them would be
 9 2 taken to a bush area nearby, or they
 10 3 would do it there on site. They were not
 11 4 afraid of anything.
 12 5 JUSTICE PILLAY:
 13 6 Can you tell us -- I'm not asking you for
 14 7 the exact number, but can you give us an
 15 8 idea of the number of women and girls who
 16 9 were raped on this site?
 17 10 THE WITNESS:
 18 11 The cases of which I personally know,
 19 12 there were three of them.
 20 13 JUSTICE PILLAY:
 21 14 Who was in charge of the Interahamwe?
 22 15 THE WITNESS:
 23 16 Do you mean the person who gave them
 24 17 orders to do this?
 25 18 JUSTICE PILLAY:
 26 19 Yes.
 27 20 THE WITNESS:
 28 21 There at that site?
 29 22 JUSTICE PILLAY:
 30 23 Yes.
 31 24 THE WITNESS:
 32 25 No one gave them orders. They just came
 33
 34 00032
 35 1 and did what they wanted.
 36 2 JUSTICE PILLAY:
 37 3 Would you say that Akayesu was aware that
 38 4 these rapes were going on?
 39 5 THE WITNESS:
 40 6 I don't know. What I can tell you is
 41 7 that it happened at the bureau communal
 42 8 and he knew that we were there.
 43 9 JUSTICE PILLAY:
 44 10 You said that the communal police were
 45 11 present. Were they aware of the rapes?
 46 12 THE WITNESS:
 47 13 I don't know.
 48 14 JUSTICE PILLAY:
 49 15 Well, you told us in evidence that
 50 16 communal police did not prevent the
 51 17 rapes. Will you explain that?

Commenté [BG31]: Descrip. SV Prosec.

1 18 THE WITNESS:
2 19 What is the role of the police officers
3 20 of the commune? It's to maintain peace
4 21 and security. When we were being beaten,
5 22 they did nothing to prevent this.
6 23 JUSTICE PILLAY:
7 24 Who was in charge of the communal police?
8 25 THE WITNESS:
9
10 00033
11 1 It was Akayesu. Who else?
12 2 JUSTICE PILLAY:
13 3 You told us that at the grave site, the
14 4 Interahamwe would invite passing men,
15 5 such as farmers, to take a girl. Can you
16 6 explain what was the purpose of this?
17 7 THE WITNESS:
18 8 I don't know what the reason is. What I
19 9 do know is that when these farmers would
20 10 choose somebody that they would leave
21 11 with, they had to write this person's
22 12 name, and write their own name, as well,
23 13 on a list. So, these people were taken
24 14 away. I think they were being taken away
25 15 so they could locate them in order to
26 16 kill them later.
27 17 There is also a man who took a young girl
28 18 of ten or twelve years old, and after the
29 19 war, I had learned that this girl had
30 20 been killed.
31 21 JUSTICE PILLAY:
32 22 And you say Akayesu was present at the
33 23 grave site when this was happening?
34 24 THE WITNESS:
35 25 That was during the first time. He was
36
37 00034
38 1 there -- he was not there the first time,
39 2 but at the second time.
40 3 JUSTICE PILLAY:
41 4 Well, when did this happen, the first or
42 5 second time when young girls were offered
43 6 to passing men?
44 7 THE WITNESS:
45 8 It was during the first time.
46 9 JUSTICE PILLAY:
47 10 So, your evidence, then, is that these
48 11 young women were being forcibly handed
49 12 over to men for the purpose of being
50 13 killed, not for the purpose of being
51 14 saved?

1 15 THE WITNESS:
2 16 Yes, they were going to kill them later.
3 17 JUSTICE PILLAY:
4 18 Thank you.
5 19 MR. PRESIDENT:
6 20 Judge Aspegren has the floor.
7 21 JUSTICE ASPEGREN:
8 22 Madam, as Judge Pillay just did, I would
9 23 also like to ask you a few questions
10 24 concerning the rapes.
11 25 To begin with, I would like to ask you,
12
13 00035
14 1 do you know the name of the man who raped
15 2 you in the sorghum field?
16 3 THE WITNESS:
17 4 Yes, I know him very well.
18 5 JUSTICE ASPEGREN:
19 6 What was his name?
20 7 THE WITNESS:
21 8 It was Karadjay Iya (phonetic spelling).
22 9 JUSTICE ASPEGREN:
23 10 Do you know where he currently is?
24 11 THE WITNESS:
25 12 Yes, he's in hiding.
26 13 JUSTICE ASPEGREN:
27 14 When you were interviewed by the
28 15 investigators of the office of the
29 16 prosecutor, did they ask you questions
30 17 about the rape?
31 18 THE WITNESS:
32 19 Yes, they did ask me questions about it.
33 20 JUSTICE ASPEGREN:
34 21 And during this interview, did you also
35 22 provide the name of Mr. Karadjay Iya?
36 23 THE WITNESS:
37 24 Yes, I did give the name.
38 25 JUSTICE ASPEGREN:
39

1 00036
2 1 As regards the rapes which you witnessed
3 2 at the bureau communal, I would like to
4 3 know how many men were raping women or
5 4 young girls?
6 5 THE WITNESS:
7 6 I was not raped at the bureau communal.
8 7 I don't have a lot of details about that.
9 8 JUSTICE ASPEGREN:
10 9 Did you witness any rapes, any other
11 10 women or girls being raped?
12 11 THE WITNESS:
13 12 Yes, I did witness that.
14 13 JUSTICE ASPEGREN:
15 14 Do you know the names of the men who
16 15 committed these acts?
17 16 THE WITNESS:
18 17 Yes, I know them.
19 18 JUSTICE ASPEGREN:
20 19 How many were there?
21 20 THE WITNESS:
22 21 There were many of them.
23 22 JUSTICE ASPEGREN:
24 23 A lot?
25 24 THE WITNESS:
26 25 Unless I give you the names of the ones
27
28 00037
29 1 that I remember, those that I remember
30 2 and whom I know, there were ten of them,
31 3 approximately ten.
32 4 JUSTICE ASPEGREN:
33 5 So, you're saying approximately ten?
34 6 THE WITNESS:
35 7 Yes.
36 8 JUSTICE ASPEGREN:
37 9 When you were interviewed by the
38 10 representatives of the prosecutor, did
39 11 you provide these names?
40 12 THE WITNESS:
41 13 I only gave the name of the person who
42 14 raped me on another occasion.
43 15 JUSTICE ASPEGREN:
44 16 But now we're talking about when -- the
45 17 time when you were not touched, but when
46 18 you were present, when you witnessed
47 19 other women or young girls being raped.
48 20 That's what we're talking about. Did you
49 21 provide the names of these ten men?
50 22 THE WITNESS:
51 23 No, I did not give their names.

1 24 JUSTICE ASPEGREN:
2 25 They didn't ask you?
3
4 00038
5 1 THE WITNESS:
6 2 They did not ask me that.
7 3 JUSTICE ASPEGREN:
8 4 No one asked you for these names?
9 5 THE WITNESS:
10 6 I don't remember very well, but I don't
11 7 remember having given the names.
12 8 JUSTICE ASPEGREN:
13 9 At that time, I understand that there
14 10 were two times when you were interviewed,
15 11 or rather there were two different
16 12 occasions when there were rapes. The
17 13 first time, was Akayesu present?
18 14 THE WITNESS:
19 15 Yes, he was.
20 16 JUSTICE ASPEGREN:
21 17 In your opinion, did he also see what was
22 18 happening?
23 19 THE WITNESS:
24 20 I don't know if he saw it.
25 21 JUSTICE ASPEGREN:
26 22 But you know that he was present?
27 23 THE WITNESS:
28 24 Yes, he was there.

Commenté [BG32]: No prev. quest.

1 **Appendix 5 – Coded Extract of the pleading of**
 2 **Mr. Prosper in the Indictment of the Akayesu**
 3 **Case (June 17, 1997)**

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
 2 CASE No.: ICTR-96-4-T THE PROSECUTOR
 3 OF THE TRIBUNAL
 4 AGAINST
 5 JEAN-PAUL AKAYESU
 6 17 June 1997
 7
 8 Before: Mr. Justice Laity Kama, President
 9 Mr. Justice Lennart Aspegren
 10 Madame Justice Navanethem Pillay
 11
 12 For the Prosecution: Mr. Pierre-Richard Prosper
 13 Ms. Sara Darehshori
 14
 15 For the Accused Akayesu: Mr. Nicolas Tiangaye
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 5 (...)
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1 actions. And lastly the merits of the issue,
2 whether or not there is enough evidence to
3 support the amendment of the indictment.

4
5 On that last issue my colleague Miss Sara
6 Darehshori will be addressing the Chamber with
7 the Chamber's permission and will speak on that
8 issue.

9
10
11
12 **System. Rape**

I think it's safe to say that the issue of
sexual violence is of great importance to the
Office of the Prosecutor and we take this issue
very, very seriously. We feel that sexual
violence being used as a weapon or as a tool is
deplorable and cannot be accepted.

16
17
18
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21
22
23 **Dif. SV invest.**

In this case it is clear throughout the
testimony that there had been hints that there
were acts of sexual violence occurring in the
Taba commune. It came up not only in the
testimony of Witness J or Witness H but I have
to say it also came up in prior investigations,
but the prior investigations unfortunately was
not enough. The information we received before,
in our opinion, was not enough to link the

1 accused to the acts of sexual violence.

2

3 And I would like to add also that we received

4 some witness statements from a nongovernment

5 organization of acts of sexual violence in Taba

6 Dif. SV invest. commune. We reviewed those statements, and this

7 was last summer, and, in our opinion, at that

8 time the evidence was not enough. We continued

9 to investigate. We continued to look into it.

10 In fact, last fall or end of summer a sexual

11 violence team was formed in our office to look

12 into these issues. We investigated and again

13 Dif. SV invest. found acts of violence but it was just not

14 enough at that time.

15

16 Why we couldn't come up with this information is

17 unclear. Maybe because the shame that sometimes

18 accompanies these acts prevented the women from

19 testifying or declaring what occurred to them or

20 Taboo also I'm ready to admit maybe sometimes we were

21 not as sensitive as we should have been on the

22 issue. But I have to say -- and actually there

23 is one issue I want to discuss right now -- is

24 that there has been a significant amount of

25 attention on this issue from outside

1
2

1 organizations and specifically I am speaking of
2 an amicus curiae.

3
4 I would like to say to this Chamber right now
5 and make it perfectly clear that the amicus
6 curiae is not motivating us today. It is not
7 motivating us today and, in fact, it can only be
8 considered as a factor. And I say this as a
9 factor because what it does is it reminds us of
10 the importance of the issue of sexual violence.

11
12 So what we did is we start to examine the
13 evidence we had presented to date before this
14 Tribunal and specifically I'm speaking of the
15 testimony of Witness H.

16
17 If you recall, Witness H testified to certain
18 events that occurred at the bureau communal. At
19 the bureau communal she mentions how women were
20 being pulled by the Interahamwe and raped. This
21 testimony shed light on the issue and made the
22 picture more and more clear for the Office of
23 the Prosecutor.

Imp. Test.

24
25 Immediately after her testifying what we decided

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5 (...)
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1 ordinarily prudent man to believe that a suspect
2 has committed a crime. By the second standard a
3 prima facie case is a credible case which would,
4 if not contradicted by the defence, be a
5 sufficient basis to convict the accused on the
6 charge.

7
8 Under either standard the prosecutor believes we
9 now have enough evidence to charge the defendant
10 with the crime against humanity of rape, the
11 crime against humanity of inhumane acts, and
12 **System. Rape** with outrages upon personal dignity including
13 rape and indecent assault under common Article 3
14 and Additional Protocol II.

15
16 These charges constitute Counts 13, 14, and 15
17 in the proposed amended indictment. Adding
18 these charges does not substantially alter the
19 form of the indictment. If you look at the
20 proposed changes you will see that we have only
21 added three paragraphs to the indictment,
22 Paragraph 10-A which defines sexual violence and
23 Paragraphs 12-A and B which describe the events
24 at the bureau communal.

1
2

1 We have not changed the substance of the
2 original indictment at all other than to add
3 these three paragraphs.

4
5 If you recall, as my colleague has mentioned,
6 when we left off in March we heard from Witness
7 H, a young Tutsi woman who sought refuge at the
8 bureau communal after her house was destroyed.
9 Hundreds of other Tutsi women and children also
10 went to the bureau communal.

11
12 Witness H testified to having been beaten while
13 she was there and to having witnessed rapes in
14 and around the bureau communal premises.
15 Akayesu, she testified, was in charge of the
16 bureau communal and in charge of the communal
17 police. Paragraphs 12-A and 12-B essentially
18 parallel Witness H's testimony.

19
20 The reason we seek to amend with additional
21 charges on sexual violence can be found in the
22 five witness statements that have been given to
23 you for purposes -- for consideration in
24 deciding whether or not to grant leave to amend.
25

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1 The new statements aren't compelling. Indeed,
2 as Witness H testified, they describe how
3 hundreds of Tutsis, mostly women and children,
4 went to the bureau communal seeking protection
5 after their houses had been destroyed or after
6 they had been threatened.

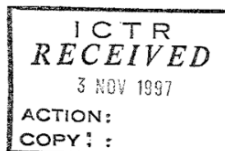
7
8 The statements set forth horrible conditions
9 there. Instead of being protected as they hoped
10 they were terrorized by Interahamwe who walked
11 around freely armed with machetes, knives, axes.
12 The Interahamwe regularly beat and killed people
13 seeking refuge around the bureau communal.

14
15 The new statements also describe how women were
16 taken and openly raped in the courtyard of the
17 **System. Rape** bureau communal, in nearby bushes and banana
18 groves, and on the road in front of the bureau
19 communal. Resisting meant, as the statement of
20 NN puts it, certain death.

21
22 The women were frequently raped by multiple
23 assailants. As my colleague mentioned, two of
24 the witness statements discuss women being raped
25 with wooden sticks.

1 **Appendix 6 – Coded Extract of the testimony**
 2 **of Witness KK in the Akayesu Case (October**
 3 **31, 1997)**

1
 2 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
 3 CASE No.: ICTR-96-4-I THE PROSECUTOR
 4 OF THE TRIBUNAL
 5 AGAINST
 6 JEAN PAUL AKAYESU
 7
 8 31 October 1997
 9 10.30
 10
 11 Before: Mr. Justice Laity Kama, President
 12 Mr. Justice Lennart Aspegren
 Madame Justice Navanethem Pillay
 13 Registrar: Dr. Antoine Mindua
 14
 15 For the
 16 Prosecution: Ms. Sara Darehshori
 17 Mr. Pierre-Richard Prosper
 Ms. Patricia Viseur Sellers
 18
 19 For the
 20 Defence: Mr. Nicolas Tiangaye
 21
 22
 23 Court
 24 Reporters: Marilyn G. Young
 Sally G. Kohn
 Rex A. Lear
 25
 REX LEAR, OFFICIAL REPORTER
 ICTR-CHAMBER I



1

2

1 I N D E X

2

3 WITNESSES

4

5 For the Prosecution:

6

7

8 Witness KK

9

10 Direct Examination 3

11 Cross-Examination 53

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SALLY G. KOHN, OFFICIAL REPORTER
ICTR - CHAMBER I

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3 (...)
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- 1 was brought medicines to me.
- 2 Q. Do you know teachers of Rukoma who were
- 3 killed?
- 4 A. I was a woman and I did not know those
- 5 teachers. I was able to know
- 6 Rukundkuvuga, Tharcisse, as well as a
- 7 girl who was called Gerante and who was
- 8 killed together with her fiancé. I did
- 9 not know the others.
- 10 Q. What was your husband's profession?
- 11 A. He was a farmer and livestock breeder.
- 12 Q. **Rape Prosec.** How many acts of rape did you witness?
- 13 A. The rape I witnessed was that of a woman
- 14 who was selected from among other women
- 15 at the bureau communal. Another case was
- 16 that of Chantal, the girl whom I saw do
- 17 exercises when she was naked and they
- 18 said that they were going to sleep with
- 19 **Descrip. SV** her first. Another case was that of a
- 20 **Witn. /** woman whom I saw spread out on the road
- 21 **Diff. Expres. SV** surrounded and a piece of wood was being
- 22 forced into her genital organ, she was in
- 23 agony, she was not yet dead.
- 24 Q. All women raped, were they killed?
- 25 A. Some of them were killed and others came
- REX LEAR, OFFICIAL REPORTER
ICTR-CHAMBER I

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- 1 out physically disabled, others caught
 2 AIDS and yet others contracted incurable
 3 Conseq. Rape diseases because they do not have the
 4 means to have treatment. There are
 5 associations that come to our aid and
 6 which provide us free treatment, since we
 7 have no means.
- 8 Q. Who told you that some of those women had
 9 contracted AIDS?
- 10 A. Some of them were examined by the
 11 associations which came to our aid and it
 12 was realized that they had contracted the
 13 HIV, that AIDS.
- 14 Q. Do you know Mr. Gahizi's wife?
- 15 A. It is those cases that I mentioned to you
 16 that I saw who were in agony and in whose
 17 genital organ pieces of wood were being
 18 inserted.
- 19 Q. Do you know her husband, Mr. Gahizi?
- 20 A. I did not know him. I knew him of that
 21 woman because people said that that woman
 22 was the wife of Gahizi.
- 23 Q. Do you know Mr. Gahizi's ethnic group?
- 24 A. No. It was said that his wife was a
 25 Tutsi. When he was killed it was said

REX LEAR, OFFICIAL REPORTER
 ICTR-CHAMBER I

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1 that she was found with a radio and was
2 in communication with the Inkotanyis.
3 Q. Was it customary to rape Tutsi women
4 married to Hutu men?
5 A. It all depended if the person was thought
6 to be an intellectual, he would go to the
7 Inkotanyis, but most of them were left
8 alone because it was said that these
9 women deliver Hutu children.
10 Q. Is it imaginable that Hutus would rape
11 the women of other Hutus?
12 A. They were not raping them.
13 Q. Why, then, was Gahizi's wife raped,
14 Gahizi who is Hutu?
15 A. It was said that the woman was in
16 communication with the Inkotanyis and
17 that she had a radio which she used to
18 communicate with the Inkotanyis, that is
19 why she was killed.
20 Q. Was the radio found?
21 A. They said that they found the radio, but
22 they never showed it to anybody because
23 nobody ever saw it. The radio was like
24 the documents. They were pretext to kill
25 people, the documents were pretext to
REX LEAR, OFFICIAL REPORTER
ICTR-CHAMBER I

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1 kill people.

2 Q. Could you talk to us about Mr. Algion

3 (Phonetic) in detail, Eldion (Phonetic).

4 A. In what connection.

5 Q. In respect of acts of rape?

6 A. What I have just told you, I was not

7 responsible for looking or seeing the

8 "I told you" women who had been taken away or raped.

9 I'm telling you what I saw.

10 Q. Mr. Aldion (Phonetic), did he rape women?

11 A. Who is Aldion? I don't know him.

12 Q. Id-Edy-Dum (Phonetic), Edy-Dum

13 (Phonetic), Edy-Dum (Phonetic)?

14 A. Maybe you are, maybe you are

15 Mis. mispronouncing the name. He had him

16 housed behind the bureau communal, he was

17 called Heridion.

18 MR. PRESIDENT:

19 The counsel says that probably is the

20 same person.

21 THE WITNESS:

22 I do not know whether he raped women.

23 BY MR. TIANGAYE:

24 Q. You stated before the prosecutor that the

25 rapist were Heridion, Bongo, Nytrinkindi,

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ICTR-CHAMBER I

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1 Habarurema, and Kimonyo. Do you maintain
2 that statement?

3 A. Mis. Can you repeat the names, Counsel? I did
4 not mention the name of Heridion.

5 Q. This is page 6 of the record. I quote.
6 She was taken to the bureau communal, she
7 was beaten and then raped. The rapists
8 were Heridion, Bongo, Nytrinkindi,
9 Habarurema, Kimonyo and several others?

10 A. Expert? Maybe that is not my statement. I
11 remember having talked about Habarurema,
12 Bongo, because I saw them with my own
13 eyes and Nytrinkindi and others whose
14 names I did not know, but I did not talk
15 about Heridion with regard to the raping
16 of women.

17 MR. PRESIDENT:

18 I'll give the floor to Judge Aspegren.

19 JUSTICE ASPEGREN:

20 Madam please if you did not talk
21 about Heridion in connection with the
22 rapes did you talk about Heridion in
23 connection with the murder of a young
24 teacher.

25 I believe you said before today there was

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1 a young teacher who was killed near the
2 bureau communal while it was raining?

3 THE WITNESS:

4 I said that I found Interahamwe who were
5 with my, who were with my husband in
6 front of Heridion's home because Heridion
7 was living behind the bureau communal. I
8 told you that is where I found him when
9 he told him, when my husband told him to
10 have pity on him, to give him time to
11 speak with his wife.

12 JUSTICE ASPEGREN:

13 Is it only on that occasion you were able
14 to see Heridion act?

15 THE WITNESS:

16 I told you I found Interahamwe who had
17 put my, who had surrounded my husband in
18 front of Heridon's home, they were
19 armed. I also told you that they told my
20 husband, my husband to hurry up to talk
21 to me quickly. I started crying, they
22 dragged him away, they took him away and
23 my husband told me, bye-bye, he bid me
24 farewell, that his fate was sealed.

25 JUSTICE ASPEGREN:

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1 Thank you, madam.

2 MR. PRESIDENT:

3 Now I'd like to come back to the question

4 asked by Judge Aspegren. It would appear

5 that this morning you talked about the

6 death of a teacher, the first teacher who

7 was killed, and that teacher was working

8 at a technical school of Rukoma.

9 THE WITNESS:

10 I talked about Tharcisse, he was taken

11 from behind the bureau communal where he

12 was living.

13 MR. PRESIDENT:

14 Is that the first teacher who was

15 killed?

16 THE WITNESS:

17 Yes.

18 MR. PRESIDENT:

19 Who killed him? Since you were present,

20 who killed Tharcisse?

21 THE WITNESS:

22 It is Interahamwes.

23 THE PRESIDENT:

24 She had given names which are those

25 names?

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ICTR-CHAMBER I

1 THE WITNESS:

2 There was Bongo, Habarurema, Kimonyo,
3 Francois.

4 MR. PRESIDENT:

5 And Heridion is not among --

6 THE WITNESS:

7 No.

8 Those who were there were the communal
9 police.

10 BY MR. TIANGAYE:

11 Q. How many cases of rape did you witness?

12 A. I explained to you I saw them take the
13 women to the cultural center, which was
14 there, is there, and the girl called
15 "I told you" Chantal, who was tortured by being asked
16 to take off her dress and the woman whom
17 I met in whose genital organ people were
18 inserting pieces of wood.

19 Q. Could you give us the names of the other
20 women?

21 (Pages 68 through 94 by R. Lear)

22

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ICTR-CHAMBER I

1 Q Could you give us the names of the other women?
2 A We were there as refugees and I did not know
3 their names.
4 Q You did not know the name of the woman called
5 (deleted)?
6 MS. DAREHSHORI:
7 We have some concern about the mentioning of
8 Anonym. names of people who survived who might have been
9 witnesses.
10 MR. PRESIDENT:
11 Prosecutor, if you want to take the floor you
12 ask for it and I will give it to you.
13
14 The prosecutor is requesting that the witness
15 should not mention the names of survivors.
16 MR. TIANGAYE:
17 We understand, Mr. President, anonymity can be
18 justified only if it represents a risk for
19 people who could come before the Tribunal later
20 on.
21 MR. PRESIDENT:
22 Not necessarily.
23 MR. TIANGAYE:
24 The names of persons mentioned are names of
25 people who are already dead.

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1 MR. PRESIDENT:
2 That has not yet been established.
3 MR. TIANGAYE:
4 It is in the record.
5 MR. PRESIDENT:
6 Are you referring to the women who were raped?
7 Were all of them killed? Earlier on she said
8 all of them were not killed. There are some of
9 them who have been disabled she said.
10 THE WITNESS:
11 Some of them were released and who sought refuge
12 elsewhere.
13 MR. PRESIDENT:
14 Therefore, some of them are still alive. They
15 have AIDS. They are disabled but they are
16 alive.
17 MR. TIANGAYE:
18 The witness witnessed the raping of three
19 women. Of the three women two died, only one
20 survived, and I'm asking her to mention the name
21 of some of those women. She was unable to do
22 so.
23 MR. PRESIDENT:
24 I think we should proceed in an orderly manner.
25 She confirmed that she mentioned three women,

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1 two of whom were killed and one survived. Now I
2 will ask her whether she confirms that and what
3 are the names of the two women who were killed.
4

5 First of all, does she confirm that she declared
6 to the prosecutor that she knows three women who
7 were raped, two of whom were killed and one who
8 survived?

9 THE WITNESS:

10 I confirm that (deleted) was from our sector.
11 She is the one who survived.

12 MR. PRESIDENT:

13 So her name should not be given. This is
14 precisely what we were saying. This is what I
15 wanted to avoid, to give the names of
16 survivors.

17 BY MR. TIANGAYE:

18 Q Do you know Tutsi women who were saved by Hutus
19 or unmarried persons, unmarried males?

20 A Are you referring to bachelors or married males
21 who saved Tutsi women? I know those who took
22 them during the war but in the meeting it was
23 said that those who had women, Tutsi women,
24 would see their houses destroyed and that they
25 will be asked to pay a fine. There is a young

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ICTR - CHAMBER I

- 1 man who was living below the hill. He had a
 2 girl whom he decided to keep in his house. In
 3 that meeting he was told to hand over the girl
 4 and to give them money. He was taken away
 5 forcibly and his house was searched and the
 6 assailants who came from that meeting, we heard
 7 that the assailants took him to Kinihira to kill
 8 him, to kill her or to kill him, and he paid a
 9 fine.
- 10 Q During the war did Hutus marry Tutsis in order
 11 to save them?
- 12 A Some of them did that but after this meeting
 13 those women were looked for. They were taken
 14 away forcibly and killed. Don't ask me many
 15 things. I am somebody who has lost her mind
 16 because of the problems that have occurred in my
 17 life. When you ask me many questions those
 18 questions are not going to help my own people
 19 who died to come back to life. I'm telling you
 20 what I saw and if I'm telling a lie, that those
 21 people are alive, that they were not killed, I
 22 should be punished for that.
- 23 Q Madam, I'm also sensitive, touched by your pains
 24 or sorrow, but we have the duty to know the
 25 truth. It is not a pleasant duty for me to ask

Trauma. Gen. /
 Psycho. /
 Emotion. Out.

Empath. /
 "It is our duty"

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 ICTR - CHAMBER I

1 you these questions. I think this also depends
2 on the freedom. These questions may also lead
3 to the freedom of an individual. I am at last
4 going to conclude. You talked about a certain
5 Chantal who was raped after having done some
6 exercises. Did you know that young lady
7 Chantal?
8 A This is the reason why I knew this young girl.
9 I knew her during the war, during this war.
10 When I found her in a place where she was hidden
11 we met there when I was asking those people to
12 also hide my children and they told me this is
13 another person we are hiding. "We cannot hide
14 many people," they said, "especially as we are
15 living very close to the bureau communal," they
16 said.
17 Q Did that person survive after the rape?
18 A She was killed because when she was taken away
19 to be raped I left. I heard it said that the
20 Interahamwes were wicked people. They sleep
21 with a girl and thereafter they kill her.
22 Q Did you know the people who killed your husband?
23 A I know some of those who killed my husband. I
24 knew the names of some of them. The others I do
25 not know them because when I was there I lived

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1 as a girl. There is a proverb in my country
 2 which says that the house of the girl is where
 3 she is married. Some of them I did not know
 4 because I had not been living there for a long
 5 time.

6 Q During your stay at the bureau communal did you
 7 see Mr. Akayesu kill someone?

8 A I saw him supervising the Interahamwes. I saw
 9 him with the firearm whereas before he did not
 10 have the firearm. I did not see him kill
 11 someone apart from the fact that he gave orders
 12 for people to be killed and people were killed
 13 before him.

14 Q Did you see him rape a woman? Did you see
 15 Akayesu rape a woman?

16 A "I told you" No, I did not. If I did I would have said so
 17 here. I would not say what I did not see.

18 MR. TIANGAYE:
 19 I have ended, Mr. President.

20 MR. PRESIDENT:
 21 Thank you, Counsel.

22 THE WITNESS:
 23 Thank you.

24 MR. PRESIDENT:
 25 The Prosecutor, do you have additional

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 ICTR - CHAMBER I

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1 questions?

2 MS. DAREHSHORI:

3 No further questions but I would like to request

4 Anonym. that the name of the surviving rape victim be

5 removed from the record.

6 MR. PRESIDENT:

7 I will give the floor to Judge Pillay.

8 JUSTICE PILLAY:

9 Witness KK, I'm really sorry about the loss and

10 Empath. suffering that you have endured. I have a few

11 questions. You referred to Chantal as a child.

12 How old was she?

13 THE WITNESS:

14 I did not know her age because we only knew one

15 another during the war but it was said that she

16 was a student in a secondary school.

17 JUSTICE PILLAY:

18 Now, before the war were you and your husband

19 being mixed marriage, were you accepted by your

20 neighbors?

21 THE WITNESS:

22 We were living in good relations without

23 problems except when there were problems I

24 believe in 1994 -- 1991, sorry -- the houses of

25 some Tutsis were destroyed and we went to live

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ICTR - CHAMBER I

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1 on the hills but the situation of calm
2 returned. Houses did not continue to be
3 destroyed and those who did that, who destroyed
4 houses, were imprisoned. That is why this time
5 again we went to the commune thinking that it
6 was going to be like the first time and that the
7 burgomaster was going to take care of the
8 situation.

9 JUSTICE PILLAY:

10 You said that the situation really was, the
11 killings were after the meeting that was
12 addressed by the accused.

13 THE WITNESS:

14 Yes, after the meeting they started searching
15 houses and the Hutu who had hidden a Tutsi drove
16 him away because that was an order given by the
17 burgomaster and so we Hutu women, people came to
18 even search in our homes saying that we should
19 go and die together with our husbands and
20 children since we had decided to live together
21 with Tutsis.

22 JUSTICE PILLAY:

23 Now, this attestation certificate that you spoke
24 of, you said that if the accused issued you one
25 it would have saved your children. My question

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1 is, did the accused have the power to issue such
2 a certificate?
3 THE WITNESS:
4 Yes, he had the power because he was the person
5 who was leading, is still leading the commune.
6 JUSTICE PILLAY:
7 (Question inaudible.)
8 THE WITNESS:
9 His children have the right to live in this
10 sector because that's where I had taken refuge.
11 He could put the commune stamp and anyone could
12 come and look, find it, and I was going to show
13 him the burgomaster's attestation or he was
14 going to call a meeting and say I stop people
15 from going to search houses in this commune but
16 he did not do that. On the other hand, he told
17 people go search everywhere and if you find a
18 person hiding someone else they will pay a fine
19 and his animals will be given as a reward to
20 people who killed and the person who was hiding
21 Tutsis also had to pay a fine of five thousand
22 francs.
23 JUSTICE PILLAY:
24 You spoke about the fact that you lost the right
25 to own your husband's property and that it was

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1 distributed.
2 THE WITNESS:
3 Yes.
4 JUSTICE PILLAY:
5 Was that because you were a Hutu married to a
6 Tutsi or was that something that happened to all
7 widows?
8 THE WITNESS:
9 That happened to Tutsis. Even if the wife of
10 the Tutsi was a Hutu she did not have a right to
11 live on the property. You could not take
12 anything away from the property.
13 JUSTICE PILLAY:
14 Thank you.
15 MR. PRESIDENT:
16 The Accused.
17 THE ACCUSED:
18 Thank you, Mr. President. As always you might
19 ask my counsel if I have any questions. I would
20 like to ask if you allow me to talk to my
21 counsel for a few seconds before you give him
22 the floor to end the cross-examination.
23 MR. PRESIDENT:
24 Do you want to talk to your counsel? The
25 accused always is the last person to have the

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1 floor.

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3 Okay. In the meantime I would like to ask a
4 question to the witness. According to her, she
5 survived thanks to God because she is a Hutu.

6 THE WITNESS:

7 This could be a miracle from God because when I
8 was beaten when I was pregnant I could have
9 died. I wasn't fed and I was in the rain.

10 MR. PRESIDENT:

11 Did you feel the assailants -- did you feel like
12 they had the intent to kill you? Did you feel
13 that they had the intention to kill you?

14 THE WITNESS:

15 They hit me so that I could reveal the secrets
16 my husband brought back from Kinihira.

17 MR. PRESIDENT:

18 Did they hit you to kill you?

19 THE WITNESS:

20 No.

21 MR. PRESIDENT:

22 Thank you. The defence has the floor.

23 BY MR. TIANGAYE:

24 Q Madam, my client says that he gave you an
25 attestation so that you can move around with

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1 your children. Do you recognize that fact?
2 A Does he say that he gave me the attestation?
3 Can he state that for a fact? If he had given
4 that to me why didn't I go everywhere? If he
5 had given it to me I would have stayed there.
6 Q Where were your children killed? Which sector?
7 A I did not know well the place but the
8 Interahamwes arrested me. I was fleeing from
9 the place where I had hid my children and I was
10 saying I should go to the sector which was not
11 near the commune but this was still in Taba and
12 I fled, left one problem and went towards
13 another because the orders of Akayesu were the
14 same in his commune. It's because I think he
15 thinks that I'm lying. There was never a
16 genocide. I think God is my witness that he has
17 never given me a witness on the attestation. I
18 cannot forgive him because this is -- I cannot
19 blame him here because it is not going to bring
20 back my people if he had not caused problems.
21 He should admit and any other person should --
22 the people happen in that way and should ask for
23 pardon. Instead of asking for pardon he is
24 saying things that I didn't say. If I'm the
25 only person coming here to testify about Taba

Emotion. Out./
Trauma. Gen.

MARILYN G. YOUNG, OFFICIAL REPORTER
ICTR - CHAMBER I

1 let me be punished for it. A lot of Tutsis were
2 killed in his commune. If we could show them
3 where they had been killed, buried, the place is
4 very big and a lot of people came to help us to
5 rebury the bones and they all saw that. If it's
6 a disease which came to kill these people let
7 them explain that if that's the case.

8 MR. PRESIDENT:

9 « Calm down » I'm asking the witness to calm down.

10 THE WITNESS:

11 This happens because he is lying.

12 MR. TIANGAYE:

13 Mr. President, the witness had not been in the
14 sector of Rukoma. Is it true that she was in
15 the sector of Rukoma?

16 THE WITNESS:

17 I went there when I was fleeing from Taba, which
18 is in the commune of Taba, because in this
19 commune there were roadblocks everywhere and
20 when I arrived at the roadblock in Bogoba they
21 took the children and that's where my ID card
22 was thrown away and my children were taken away
23 saying they were going to be judged by the
24 prefect whereas the prefect was the river. I
25 was able to ask them to leave me with the kid I

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1 had on the back and they answered that in Rukoma
2 you don't have any problems. They left. They
3 left in the wombs of their mothers and on the
4 backs of their mothers. I lost my people and I
5 am not even asking that I like asking him to die
6 but I'm asking him to ask for mercy that he says
7 he should not going to do that again.

Emotion. Out./
Trauma. Gen.

8 MR. TIANGAYE:
9 That's it, Mr. President. Thank you very much.

10 MR. PRESIDENT:
11 Thank you very much, Counsel. Thank you very
12 much, Witness KK.

13
14 You have the floor.

15 THE ACCUSED:
16 Thank you, Mr. President. Mr. President, I am
17 very sorry. If you allow I would like to talk
18 to the Tribunal but with closed-door session.

19 MR. PRESIDENT:
20 The rules of procedure allow you to give your
21 own testimony and you do it sincerely. You
22 cannot otherwise directly talk to the Tribunal
23 but you can ask to give testimony on certain
24 facts. You understand that?

25 THE ACCUSED:

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**Appendix 7 – Coded Extract of the Judgment
in the Akayesu Case (September 2, 1998)**

AKAYESU

2 SEPT 98

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-96-4-T THE PROSECUTOR

OF THE TRIBUNAL

AND

JEAN PAUL AKAYESU

2 SEPTEMBER 1998

Before:

Mr. Justice Laity Kama, President

Ms. Justice Navanethem Pillay

Mr. Justice Lennart Aspegren

For the Office of the Prosecutor:

Mr. Pierre Prosper

Mr. Mohammed Othman

Mr. Udo Gehring

Mr. James Stewart

For the Defendant Akayesu:

Mr. Nicholas Tiangaye

Mr. Patrice Monthe

For the Registry:

Dr. Ugwu Okali

Mr. Tobias Ruge

Court Reporters:

Ms. Gifty C. Harding

Mr. Petrus Chijarira

J U D G E M E N T

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GIFTY HARDING, OFFICIAL REPORTER
ICTR - CHAMBER I
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AKAYESU 2 SEPT 98

1 was transferred from Zambia to Arusha on
 2
 3 26th May 1996 to be detained at the
 4
 5 detention facility of the
 6
 7 tribunal. Jean Paul Akayesu made his
 8
 9 initial appearance before this Chamber on
 10
 11 30 May 1996. At that time, he pleaded
 12
 13 not guilty to each of the counts charged.
 14

15
 16
 17 The trial on the merits opened on 9
 18
 19 January 1997. During the trial, the
 20
 21 chamber heard Forty- two witnesses called
 22
 23 by the parties. The proceedings
 24
 25 generated more than four thousand pages
 26
 27 of transcripts and one hundred and
 28
 29 twenty- five documents entered in
 30
 31 evidence.
 32

33
 34
 35 In the course of the trial on 17 June
 36
 37 1997, the chamber granted the prosecutor
 38
 39 leave to amend the indictment in order to
 40
 41 add three new counts relating to
 42
 43 allegations of rape and sexual violence
 44
 45 to which several witnesses had testified
 46
 47 earlier during their appearance before
 48
 49 the chamber. Jean Paul Akayesu also
 50
 51

Commenté [BG33]: Imp. Test.

GIFTY HARDING, OFFICIAL REPORTER
ICTR - CHAMBER I

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AKAYESU

2 SEPT 98

pleaded not guilty to the counts of rape
and other inhumane acts constituting
crimes against humanity and other
outrageous upon personal dignity,
violations of Article 3 common to the
Geneva Conventions and of additional
Protocol II thereto.

In it's judgement, the Chamber then gives
a profile of the accused, the
responsibilities he had in Taba and the
line of defence that he adopted during
the trial. Jean Paul Akayesu, a Rwandan
national, was born in 1953. He is
married with five children. Prior to
becoming burgomaster 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 Des
Movements Democratique Republican, 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.

GIFTY HARDING, OFFICIAL REPORTER
ICTR - CHAMBER I

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AKAYESU

2 SEPT 98

In April 1993, Akayesu whose candidacy
was supported by several key figures and
influential groups in the commune, was
elected burgomaster of Taba. He held
that position until June 1994 when he
fled Rwanda. Based on the evidence
submitted to it, the Chamber notes that
in Rwanda the burgomaster 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
burgomaster.

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 tutsi took place in Taba commune in 1994. The

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defence argues that Jean Paul Akayesu was helpless to prevent the commission of such acts because the balance of favours in the commune was in favour of the Interahamwe, who were under the strict authority of one Silas Nkubimana. The defence argues further that the accused was allegedly so harassed by the Interahamwe that he himself had to flee Taba temporary. It submits that as soon as the massacres became widespread, the accused was stripped of all authority and

1 13 lacked the means to stop the killings.
2
3 14 The defence state or stated further that
4
5 15 Jean Paul Akayesu could not be required
6
7 16 to be a hero to lay down his life in a
8
9 17 futile attempt to prevent the massacres.
10
11 18 Lastly as concerns acts of sexual
12
13 19 violence and rape which were allegedly
14
15 20 committed in Taba Jean Paul Akayesu
16
17 21 maintains that he never heard of them and
18
19 22 considers that they never even took
20
21 23 place.
22
23 24
24
25 25 Before rendering its findings of the acts
26
27
28

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6 1 with which Akayesu is charged and the
7
8 2 applicable law, the Chamber is of the
9
10 3 opinion that it would be appropriate for
11
12 4 a better understanding of the events
13
14 5 alleged in the indictment to briefly
15
16 6 summarise the history of Rwanda. To this
17
18 7 end, it recalled the most important event
19
20 8 in the country's history from the
21
22 9 pre-colonial period up to 1994 reviewing
23
24 10 the pre- colonial period and the
25
26 11 revolution of 1959 by Gregoire Kayibanda.
27
28 12
29
30 13 The Chamber most particularly highlighted
31
32 14 the military and political conflict
33
34 15 between the Rwandan Armed Forces, the
35
36 16 RFA, and the Rwandan Patriotic Front and
37
38 17 its armed wing from 1990. This conflict
39
40 18 led to the signing of the Arusha Peace
41
42 19 Accords and the deployment of a United
43
44 20 Nations Peace-keeping Force known as
45
46 21 UNAMIR. The Chamber then considered
47
48 22 whether the events that took place in
49
50 23 Rwanda in 1994 occurred solely within the
51

24 context of a conflict between the RAF and
25 the RPF as some maintain or whether the

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1 massacres that occurred between April and
2 July 1994, constituted genocide. To that
3 end, and even if the chamber later goes
4 back on its definition of genocide, it
5 should be noted that genocide means, as
6 defined in the convention for the
7 prevention and punishment of the crime of
8 genocide of 1948, genocide means as the
9 acts of committing certain crimes, crimes
10 described in the convention and which
11 include the killing of members of the
12 group or causing serious physical or
13 mental harm to members of the group with
14 the intent to destroy in whole or in part
15 a national, ethnical, racial or religious
16 group as such. Even though the number of
17 victims is not -- is yet to be known with
18 accuracy, no one can reasonably refute

the fact that many tutsis were killed
during this period throughout the
country.

Dr. Zachariah, who at that time was a
member of Medicin sans Frontiers and who
appeared as an expert witness before the

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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,

1
2 14 before the chamber indicated that members
3
4 15 of the FAR and the presidential guard
5
6 16 went to houses in Kigali that had been
7
8 17 previously identified including the house
9
10 18 of the former prime minister, soon after
11
12 19 the 5th of April, the date of the crash
13
14 20 that claimed the life of President
15
16 21 Habyarimana, in order to kill.
17
18 22
19
20 23 Another witness, the British cameraman,
21
22 24 Simon Cox, took photographs of bodies in
23
24 25 various localities in Rwanda and
25
26
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6 1 mentioned identity cards strewn on the
7
8 2 ground all of which were marked Tutsi.
9
10 3
11
12 4 Consequently, in view of these widespread
13
14 5 killings the victims of which were mainly
15
16 6 Tutsi, the first requirement for there to
17
18 7 be genocide has been met to which killing
19
20 8 and causing seriously bodily harm to
21
22 9 member of the group.
23
24 10
25
26 11 The second requirement is that these
27
28 12 killings and serious bodily harm be
29
30 13 committed with the intent to destroy in
31
32 14 whole or in part a particular group
33
34 15 targeted as such. In the opinion of the
35
36 16 Chamber, many facts show that the
37
38 17 intention of the perpetrators of these
39
40 18 killings was cause the complete
41
42 19 disappearance of the Tutsi people. In
43
44 20 this connection, Alison Desforges, a
45
46 21 specialist historian on Rwanda, who
47
48 22 appeared as an expert witness stated as
49
50 23 follows, I quote; on the basis of the
51

24 statements made by certain political
25 leaders, on the basis of songs and

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1 slogans, popular among the Interahamwe, I
2 believe that these people had the
3 intention of completely wiping out the
4 tutsi so -- from Rwanda so that as they
5 said on certain occasions, their children
6 later on should not know what a Tutsi
7 looked like unless they referred to
8 history books, unquote. This testimony
9 given by Dr. Desforges was confirmed by
10 two prosecution witnesses who testified
11 separately before the tribunal that one
12 Silas Nkubimana said during a public
13 meeting chaired by the accused himself,
14 that all the tutsi had to be killed so
15 that some day hutu children would not
16 know what a tutsi looked like.

18 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 anywhere tutsi. Their plan called
 for doing whatever was possible to

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prevent any Tutsi from escaping and thus
 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 incidently in several
 photographs shown in court throughout the
 trial, throughout the trial. She
 explained that the intent in that gesture
 was to send the Tutsi back to their
 origin, unquote. To make them -- I quote
 again -- to make them return to
 Abyssinia, unquote, in accordance with

the notion that the Tutsi are a foreign
group in Rwanda believed to have come
from Nilotic regions.

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
new born babies were not spared. Many
testimonies given before the chamber
concur on the fact that it was a Tutsi as
members of an ethnic group who were

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targeted in the massacres. General
Dallaire, Dr. Zachariah and particularly
the accused himself unanimously stated so
before the chamber.

Numerous witnesses testified before the
chamber that the systematic checking of
identity cards on which the ethnic group

1 9 was mentioned made it possible to
2
3 10 separate the hutu from the Tutsi with the
4
5 11 latter immediately being arrested and
6
7 12 often killed, sometimes on the spot at
8
9 13 the road blocks which were erected in
10
11 14 Kigali soon after the crash of the plane
12
13 15 of President Habyarimana, and thereafter
14
15 16 everywhere in the country.
16
17 17

18
19 18 Based on the evidence submitted to the
20
21 19 chamber, it is clear that the massacres
22
23 20 which occurred in Rwanda in 1994 had a
24
25 21 specific objective namely; the
26
27 22 extermination of the Tutsi who were
28
29 23 targeted especially because of their
30
31 24 Tutsi origin and not because they were
32
33 25 RPF fighters. In any case, in any case,
34
35

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1 the tutsi children and pregnant women
2
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5
6 1 the tutsi children and pregnant women
7
8 2 would naturally not have been among the
9
10 3 fighters. The chamber concludes that
11
12 4 along side the conflict between the RAF
13
14 5 and the RPF, genocide was committed in
15
16 6 Rwanda in 1994 against the tutsi as a
17
18 7 group. The execution of this genocide
19
20 8 was probably facilitated by the conflict
21
22 9 in the sense that the conflict with the
23
24 10 RPF forces served as a pretext for the
25
26 11 propaganda inciting genocide against the
27
28 12 tutsi by branding RPF fighters and tutsi
29
30 13 civilians together through the notion
31
32 14 widely disseminated particularly by Radio
33
34 15 Television Libres des Milles Collines,
35
36 16 RTLM, to the effect that every tutsi was
37
38 17 allegedly an accomplice of the RPF
39
40 18 soldiers or Inkotanyi. However, the fact
41
42 19 that the genocide, while the RAF were in
43
44 20 conflict with the RPF, obviously cannot
45
46 21 serve as a mitigating circumstance for
47
48 22 the genocide.
49
50 23
51

24 Consequently, the chamber concludes from
25 all the foregoing that it was indeed

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1 genocide that was committed in Rwanda in
2 1944 against the Tutsi as a group. The
3 Chamber is of the opinion that genocide
4 appears to have been meticulously
5 organised. In fact, Dr. Alison Desforges
6 testified before the tribunal, before the
7 chamber rather, on 24 May 1997, and
8 talked of centrally organised and
9 supervised massacres. Some evidence
10 supports this view that the genocide had
11 been planned; first the existence of
12 lists of Tutsi to be eliminated is
13 corroborated by many testimonies. In this
14 respect, Dr. Zachariah mentioned the case
15 of patients and nurses killed in a
16 hospital because a soldier had a list
17 including their names. Of course there
18 was also the propaganda carried out

1 19 throughout the conflict by the media and
2
3 20 particularly the RTLM.
4

5 21
6
7 22 The Chamber holds that the genocide was
8
9 23 organised and planned not only by members
10
11 24 of the RAF, but also by the political
12
13 25 forces who gathered around what was
14
15

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26 1 called Hutu Power. The genocide was
27
28 2 executed mainly by civilians and not only
29
30 3 by soldiers and among these civilians you
31
32 4 have armed militia and even ordinary
33
34 5 citizens, neighbours killing neighbours.
35
36 6 In fact, Tutsi victims in particular,
37
38 7 were non-combatants including thousands
39
40 8 of women and children.
41
42 9

43
44 10 Having said that the Chamber then
45
46 11 recalled that the fact that genocide was
47
48 12 indeed committed in Rwanda in 1994 and
49
50 13 more particularly in Taba, cannot
51

influence it in its findings in the
 present matter. It is the Chamber's
 sole responsibility 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

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manner bearing in mind that the accused
 is presumed innocent before this chamber.
 The Chamber then turned to the question
 of assessment of evidence. The evidence
 produced by the parties of the case was
 mainly testimonial yet, human testimony
 often has the short-coming of being

1 9 imminently fragile and fallable.
2
3 10 Consequently, the chamber considered the
4
5 11 credibility of the testimonies, all the
6
7 12 more so as there were three problems;
8
9 13 firstly, the fact that most of the
10
11 14 witnesses directly experienced the
12
13 15 terrible events they were narrating and
14
15 16 that such trauma, and that such trauma
16
17 17 could have an impact on their
18
19 18 testimonies. Secondly, the impact of
20
21 19 cultural and social factors on
22
23 20 communication with the witnesses, and
24
25 21 thirdly, difficulties in interpreting the
26
27 22 statements made by the witnesses most of
28
29 23 whom spoke in Kinyarwanda. |
30
31 24
32
33 25 Despite the difficulties experienced, the
34
35
36

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Commenté [BG34]: Psycho.

Commenté [BG35]: Taboo

Commenté [BG36]: Mis.
Commenté [BG37]: Dif. SV invest.

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1
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4
5
6 1 chamber wishes in this regard to thank
7
8 2 once again each witness, be they defence
9
10 3 or prosecution witnesses for their
11
12 4 disposition -- for their deposition at
13
14 5 the hearing and commends the strength and
15
16 6 courage of survivors who narrated
17
18 7 extremely traumatic experience they had,
19
20 8 sometimes rekindling extremely painful
21
22 9 emotions. Their testimonies were
23
24 10 invaluable to the chamber in its search
25
26 11 for the truth on the events that happened
27
28 12 in Taba commune in 1994.
29
30 13
31
32 14 The Cham -- the Chamber then ruled on the
33
34 15 admissibility of some evidence. It
35
36 16 concluded in essence that in accordance
37
38 17 with the statute and rules of procedure
39
40 18 and evidence, it would apply the rules
41
42 19 which in its view best favour a fair
43
44 20 determination of the matter before and
45
46 21 are consonant with the spirit and general
47
48 22 principles of law. It noted in particular
49
50 23 that when only one testimony is presented
51

Commenté [BG38]: Conseq. Rape / Psycho. / Dif. SV
invest.

24 on a fact, it is not bound to apply the
25 adage Unus Testis, Nullus Testus --

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1 Testis, sorry, whereby corroboration of
2 evidence is required if it is to be
3 admitted. The chamber determined to
4 freely assess the probative value of all
5 relevant evidence in accordance with Rule
6 89, that it would receive any relevant
7 evidence having probative value subject
8 to it being in accordance with the
9 requisite -- requisites of a fair trial.
10 The chamber also found that hearsay is --
11 hearsay evidence is not admissible parse
12 but that such evidence should be
13 considered with caution.

15 Having made all these preliminary
16 remarks, the chamber dealt with the
17 specific facts of the case, it rendered
18 its detailed factual conclusions, it

rendered its fact -- its detailed factual
 conclusions by scrupulously analysing for
 each fact all the related prosecution and
 defence witnesses 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

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convinced beyond a reasonable doubt of
 the following;

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 burgomaster, 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

14 prominent figures, the inhabitants
 15 respected him and followed his orders.
 16 Akayesu himself admitted before the
 17 chamber that he had the power to assemble
 18 the population and that they obeyed his
 19 instructions. It has also been proven
 20 that a very large number of Tutsi were
 21 killed in Taba between 7 April, and the
 22 end of June 1994 while Akayesu was
 23 burgomaster of the commune and attempted
 24 to prevent them from killing only until
 25 18 April 1994, date after which he not

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1 only stopped trying to maintain law and
 2 order in his commune, but al -- but was
 3 also present during the acts of violence
 4 and killings and sometimes even gave
 5 orders himself for bodily or mental harm
 6 to be caused to certain tutsi and
 7 endorsed and even ordered the killing of
 8 several Tutsi. With regard to the facts

alleged in paragraphs 12A and 12B 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, I quote; each time that you met assailants, they raped you, unquote. Numerous

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1 incidents of such rape and sexual
 2 violence against tutsis women occurred
 3 inside or near the bureau communal. It
 4 has been proven that some communal
 5 policemen, armed with guns, and the
 6 accused himself were present when some of
 7 these rapes and sexual violence were
 8 being committed. Furthermore, it has
 9 been proven that on several occasions by
 10 his presence, his attitude and his
 11 utterances, Akayesu encouraged such acts.
 12 One particular witness testifying that
 13 Akayesu addressed the Interahamwe who
 14 were committing the rapes and said that,
 15 I quote; never ask me again what a tutsi
 16 woman tastes like, unquote. In the
 17 opinion of the Chamber, this constitutes
 18 tacit encouragement to the rapes that
 19 were being committed.

20
 21 Regarding the facts alleged in paragraph
 22 13 of the indictment, the prosecutor
 23 failed to demonstrate that they are

Commenté [BG39]: System. rape

24 established. As regards the facts
25 alleged in paragraphs 14 and 15 of the

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1 indictment, it is established that in the
2 early hours of 19 April 1994, Akayesu
3 joined a gathering in Gishyeshye and took
4 this opportunity to address the public.
5 He led the meeting and conducted the
6 proceedings. He then called on the
7 population to unite in order to eliminate
8 what he referred to as the sole enemy,
9 the accomplices of the Inkotanyi, as the
10 RPF soldiers were referred to at the time
11 and the population understood that he was
12 thus urging them to kill the tutsi.
13 Indeed Akayesu himself knew of the impact
14 of his statements on the crowd, and of
15 the fact that his call to fight against
16 the accomplices of the Inkotanyi would be
17 understood as exhortations to kill the
18 tutsi in general. Akayesu who had to

1 19 see from the Interahamwe documents
2
3 20 containing lists of names, did in the
4
5 21 course of the said gathering, summarise
6
7 22 the contents of the same to the crowd by
8
9 23 pointing out in particular that the names
10
11 24 were those of RPF accomplices. He
12
13 25 specifically indicated to the
14
15
16

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26 1 participants that Euphrem -- that one
27
28
29
30 3 Akayesu admitted before the chamber that
31
32 4 during the period in question, the fact
33
34 5 that one was labelled as an accomplice of
35
36 6 the RPF, put such a person in danger.
37
38 7 The statements thus made by Akayesu at
39
40 8 that gathering immediately led to the
41
42 9 widespread killings of tutsi in Taba.
43
44 10
45

46 11 With respect to the allegations in
47
48 12 paragraph 16 of the indictment, it is
49
50 13 also established that on 19 April 1994,
51

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 Muganzi, one Francois, a member of the

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Interahamwe militia in the presence of the accused himself. One of Victim V's ribs was broken as a result of the beating.

Regarding the acts alleged in paragraph 17, proof has not been provided by the prosecutor to establish them. 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 destroyed his house and that of his mother. They then went to search the brother-in-law in Musambira commune and found his three brothers there. When the namely; Simon Mutijima, Thaddee Owanyiligira and Jean Chrysostome Gakuba, tried to escape, Akayesu ordered that they be captured and ordered that they be killed and participated in the killing.

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6 1 Regarding the allegations in paragraph
7
8 2 19, the Chamber is satisfied that on or
9
10 3 about 19 April 1994, Akayesu took from
11
12 4 Taba communal prison eight refugees from
13
14 5 Runda commune, handed them over to
15
16 6 Interahamwe militiamen and ordered that
17
18 7 they be killed. They were killed by the
19
20 8 Interahamwe using various traditional
21
22 9 weapons including machetes and small axes
23
24 10 in front of the bureau communal and in
25
26 11 the presence of Akayesu who told the
27
28 12 killers; do it quickly. The refugees
29
30 13 were killed because they were tutsi. The
31
32 14 prosecutor has proved that as alleged in
33
34 15 paragraph 20 of the indictment, on that
35
36 16 same day, Akayesu ordered the local
37
38 17 population to kill intellectuals and to
39
40 18 look for one professor called Samuel who
41
42 19 was then brought to the bureau communal
43
44 20 and killed with a machete, and killed
45
46 21 with a machete blow to the neck.
47
48 22 Teachers in Taba commune were killed
49
50 23 later on Akayesu's instructions. The
51

24 victims included the following; Tharcisse
 25 Twizyumuremye, Phoebe Uwineze and her

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1 fiance whose name is unknown. They were
 2 killed by the population and the
 3 Interahamwe with machetes and
 4 agricultural tools on the road in from of
 5 the bureau communal. Akayesu personally
 6 witnessed the killing of Pharsis -- of
 7 Tharcisse.

8
 9 The Chamber finds that the acts alleged
 10 in paragraph 21 have been proven. It has
 11 been established that on the evening of
 12 20 April 1994, Akayesu and two
 13 Interahamwe militia and a communal
 14 policeman, one Muganzi who was armed at
 15 the time of the event in question went to
 16 the house of Victim Y, a 69 year old Hutu
 17 woman, to interrogate her on the
 18 whereabouts of a certain Alexia, the wife

of a teacher called Ntereye. During the
questioning 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

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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 her -- to drive
over her if she failed to give the
information he sought. Furthermore, as
regards the allegations in paragraph 22
and 23 of the indictment, it has been
established that on the evening of 20
April 1994, in the course of
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 Muganzi,
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 -- the militia --
the victims were later on tied together.
Victim Y, was beaten on the back with the
blade of a machete.

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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 serious violations of Additional
Protocol II of the Geneva Convention 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. 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

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Commenté [BG40]: Spec. rape

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4
5
6 1 recalls the painful reluctance and
7
8 2 inability of witnesses to disclose
9
10 3 graphic anatomical details of sexual
11
12 4 violence they endured. The Chamber
13
14 5 defines rape as a physical invasion of a
15
16 6 sexual nature committed on a person under
17
18 7 circumstance which are coercive. Sexual
19
20 8 violence, including rape, is not limited
21
22 9 to physical invasion of the human body
23
24 10 and may include acts which do not involve
25
26 11 penetration or even physical contact.
27
28 12 The chamber notes in this context that
29
30 13 coercive circumstances need not be
31
32 14 evidence by show of physical force,
33
34 15 threats, intimidation, extortion and
35
36 16 other forms of duress, which prey on fear
37
38 17 and desperation may constitute coercion.
39
40 18
41
42 19 The chamber reviewed Article 61 of the
43
44 20 Statute on the individual criminal
45
46 21 responsibility of the accused for the
47
48 22 three crimes constituting rationae
49
50 23 materiae of the tribunal. Article 6(1)
51

Commenté [BG41]: Taboo

24 enunciates the basic principles of
25 individual criminal liability which are

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1 probably common to most national criminal
2 jurisdictions.

3
4 Article 6(3) by construct -- by contrast
5 constitutes something of an exception to
6 the principles articulated in Article
7 6(1), an exception which derives from
8 military law namely; the principle of the
9 liability of a commander for the acts his
10 subordinate -- for the acts of his
11 subordinates or command responsibility.

12 Article 6(3), does not necessarily
13 require knowledge on the part of the
14 superior to render him criminally liable,
15 the only requirement is that he had
16 reason to know that his subordinates were
17 about to commit or had committed a crime
18 and failed to take the necessary or

reasonable measures to prevent such acts
or punish the perpetrators thereof.

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

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in other words, cumulative charges, which
would render multiple convictions
possible for this case marked as a result
a particular act may constitute both
genocide and crimes against humanity as
is found in the indictment.

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 of 1948. The Chamber notes that

Rwanda acceded by legislative decree to a
convention of genocide on 12 of February
199 -- 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 perpetrators were
liable to be brought before competent
courts of Rwanda to answer for this
crime. 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

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6 1 one of the acts mentioned in Article 2 of
7
8 2 the Statute is committed with the
9
10 3 specific intent to destroy in whole or in
11
12 4 part a national, ethnic, racial or
13
14 5 religious group as such. Genocide is
15
16 6 distinct from other crimes in as much as
17
18 7 it embodies a special intent or *dolus*
19
20 8 *specialis*. Special intent of a crime is
21
22 9 the specific intention required as a
23
24 10 constitutive element of the crime which
25
26 11 requires that the perpetrator clearly
27
28 12 seeks to produce the act charged. The
29
30 13 special intent in the crime of genocide
31
32 14 lies in the intent to destroy in whole or
33
34 15 in part a national, ethnical, racial or
35
36 16 religious group as such.
37
38 17
39
40 18 Specifically for any of the acts charged
41
42 19 under Article 2 (II) - Article 2,
43
44 20 paragraph 2 of the Statute, to be a
45
46 21 constitutive element of genocide, the act
47
48 22 must have been committed against one or
49
50 23 several individuals because such
51

24 individual or individuals were members of
25 a specific group and specifically because

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1 they belonged to this group. Thus the
2 victim is chosen not because of his
3 individual identity, but rather on
4 account of his being a member of a
5 national, ethnical, racial, or religious
6 group. The victim of the act is
7 therefore a member of a group targeted as
8 such. Hence, the victim of a crime of
9 genocide is the group itself and not the
10 individual alone.

12 On the issue of determining the offenders
13 specific intent, in the case of genocide,
14 the Chamber considers that intent is a
15 mental factor which is difficult, even
16 impossible, to determine. This is why in
17 the absence of a confession from the
18 accused or in the general context

concerning the perpetration of other
 reprehensible acts systematically
 directed against a group that these were
 committed by other persons.

In other facts such as the level of the
 acts committed, their general nature in a

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region or a country, or furthermore the
 fact of deliberately of systematically
 targeting victims in account of their
 membership of a group while excluding
 members of other groups, can enable the
 chamber to infer the genocidal intent of
 a particular act. Apart from the crime
 of genocide, Jean Paul Akayesu is charged
 with complicity in genocide and direct
 and public incitement to commit genocide.

In the opinion of the chamber an accused
 in an accomplice -- 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. In other words, he simply must
 know that in aiding or abetting others to
 provoke genocide, he was aware it is not
 necessarily himself who is to commit the

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genocide.
 2
 Now, regarding the crime of direct and
 public incitement to commit genocide, the
 Chamber defines, defines it mainly on the
 basis of Article 91, as -- of the Rwanda
 Penal Code as directly provoking another
 to commit genocide either through

1 9 speeches, shouting or threats uttered in
2
3 10 public places or at public gatherings or
4
5 11 through the sale or dissemination, offer
6
7 12 for sale or display of written material,
8
9 13 or printed matter in public places at
10
11 14 public gatherings or through the public
12
13 15 display of placads and/ or posters or by
14
15 16 any other means of audio/ visual
16
17 17 communication. The moral element of this
18
19 18 crime lies in the intent to directly
20
21 19 encourage or provoke another to commit
22
23 20 genocide. It presupposes the desire of
24
25 21 the guilty to create by his actions
26
27 22 within the person or persons whom he is
28
29 23 addressing, the state of mind which is
30
31 24 appropriate to the commission of a crime.
32
33 25 In other words, the person is inciting to
34
35
36

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6 1 commit genocide -- in other words the
7
8 2 person who is inciting to commit genocide
9
10 3 must have the specific intent of
11
12 4 genocide, that of destroying in whole or
13
14 5 in part a national, ethnical, racial, or
15
16 6 religious group as such. The Chamber
17
18 7 believes that incitement is a formal
19
20 8 offence for which the mere method used is
21
22 9 culpable. In other words, the offence is
23
24 10 considered to have been completed once
25
26 11 the incitement has taken place and that
27
28 12 it is direct and public, whether or not
29
30 13 it was successful. In the English
31
32 14 version, there is the use of the term
33
34 15 inchoate offences.
35
36 16
37
38 17 The second crime which comes within the
39
40 18 jurisdiction of the tribunal and of which
41
42 19 Jean Paul Akayesu is charged, is that of
43
44 20 crimes against humanity. On the other --
45
46 21 on the law applicable to this crime, the
47
48 22 chamber reviewed the case of the law on
49
50 23 this crime from the judgements rendered
51

24 by the Nuremberg and Tokyo tribunals to
25 more recent cases, including the two

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1 Touvier et Papon, cases in France nobly
2 -- notably and Eichmann -- and the
3 Eichmann trial in Israel. It indicated
4 the circumstances under which the charges
5 of crime under -- crimes against humanity
6 would be leveled as provided by Article 3
7 of the Statute under which the attack
8 must be committed as part of a widespread
9 or systematic directed against a civilian
10 population or discrim -- on
11 discriminatory grounds.

12
13 The third crime on which the chamber
14 rendered its conclusions is that for
15 which it has competence pursuant to
16 Article 4 of the Statute which provides
17 that the tribunal is empowered to
18 prosecutor 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 Convention extends a minimum

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threshold of humanitarian protection as
well as to all persons affected by a
non - international conflict, a
protection which was further developed
and enhanced in the 1997 Additional
Protocol II.
The Chamber, 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 standards enacted under
Article 4 of its statute constitute a
part of customary international law. It
finally recalled that the violation of
standards defined in Article 4 of the
Statute may in principle, commit criminal

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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 of 1949, and the
Additional Protocol II thereto of 1977.

1 9
2
3 10 On the basis of the factual conclusions
4
5 11 just shown, the Chamber delivered the
6
7 12 following legal conclusion;
8
9 13
10
11 14 With regard to Count I on genocide, the
12
13 15 Chamber having regard particularly to the
14
15 16 acts described in paragraphs 12 A, and
16
17 17 12B, of the indictment, that is rape and
18
19 18 sexual violence, the Chamber wishes to
20
21 19 underscore the fact that in its opinion
22
23 20 they constitute genocide in the same way
24
25 21 as any other act as long as they were
26
27 22 committed with the specific intent to
28
29 23 destroy in whole or in part a particular
30
31 24 group targeted as such. Indeed, rape and
32
33 25 sexual violence certainly constitute

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6 1 infliction of serious bodily and mental
7
8 2 harm on the victims and are even
9
10 3 according to the Chamber, one of the
11
12 4 worst ways of inflicting harm on the
13
14 5 victim as he or she suffers both bodily,
15
16 6 first of all, and mentally later on.
17
18 7
19
20 8 In light of all the evidence above, or in
21
22 9 light of all the evidence before it, the
23
24 10 Chamber is satisfied that the acts of
25
26 11 rape and sexual violence described above,
27
28 12 were committed solely against tutsi
29
30 13 women, many of whom were subjected to
31
32 14 worst public humiliation, mutilated, and
33
34 15 raped several times, often in public at
35
36 16 the bureau communal premises or in other
37
38 17 public places and often by more than one
39
40 18 assailant. These rapes resulted,
41
42 19 resulted in doing harm to members of
43
44 20 their families and their communities.
45
46 21 Thus through the women who were victims,
47
48 22 the tutsi women who were victims, it is
49
50 23 the entire tutsi group which was
51

targeted, which was a victim. These acts
were specifically directed against tutsi

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women and only against tutsi women. A
tutsi woman married to a tutsi man told
the court that she was not raped because
her identity was not known.

As part of the propaganda campaign geared
to mobilise the Hutu against the tutsi,
the tutsi women were presented as sexual
objects. Indeed the chamber was told
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
quote-- in order, I quote, to display the
heart -- the thighs of tutsi women,
unquote. The Interahamwe who raped
Alexia said as he threw her on the ground

and got on top of her, quote, let us now

see what the vagina of a tutsi woman

tastes like, unquote. As stated above,

Akayesu himself, speaking to the

Interahamwe who were committing the rape

said to them, quote, don't ever ask again

what a tutsi woman tastes like, unquote.

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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 intent to kill those

women. Many rapes were perpetrated near

mass graves where the women were taken to

be killed. After a gang rape, a witness

heard Akayesu say tomorrow they will be

killed and indeed they were killed. It

therefore appears clear -- it is

therefore clear 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 the tutsi women
 suffer and to mutilate them even before
 killing them with the intent to kill,
 destroy the tutsi group while effecting
 acute suffering on its members in the
 process. The Chamber has already
 established that genocide was committed
 against the tutsi group in Rwanda in
 1994, throughout the period covering

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events -- the events alleged in the
 indictment. There were widespread
 killings in nature, and for the fact that
 the victims were systematically and
 deliberately selected because they
 belonged to the tutsi group with persons
 belonging to other group beings excluded,
 the Chamber is able to infer beyond

reasonable doubt the genocidal intent of
the accused in the commission of the
above mentioned crimes.

In conclusion regarding Count 1 on
genocide, the Chamber is satisfied beyond
reasonable doubt that these acts, these
various acts were committed by Akayesu
and that Akayesu is criminally liable
under 6 (1) for having committed or
encouraged the commission of the above
mentioned acts as described in paragraphs
12, 12A, 12B, 16, 18, 19, 20, 22, and 23
of the indictment, acts which constitute
the crime of killing members of the tutsi
group and causing serious bodily and
mental harm to members of the tutsi group

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6 1 with the intention or the specific
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8 2 intention of destroying the group as
9
10 3 such.
11
12 4
13
14 5 Regarding Count 2 on the crime of
15
16 6 complicity in genocide, the Chamber is of
17
18 7 the opinion that the crime of genocide
19
20 8 and that of complicity in genocide, are
21
22 9 indeed two distinct crimes and that the
23
24 10 same person could certainly not be both
25
26 11 the principal perpetrator and accomplice
27
28 12 of the same offence. Given that genocide
29
30 13 and complicity in genocide are mutually
31
32 14 exclusive by definition, the accused
33
34 15 cannot obviously be found guilty of both
35
36 16 these crimes for the same act. However,
37
38 17 since the prosecution has charged the
39
40 18 accused with both genocide and complicity
41
42 19 in genocide for each of the alleged acts,
43
44 20 the chamber deems it necessary in the
45
46 21 instant case to rule as Counts 1 and 2 --
47
48 22 to rule on Counts 1 and 2 simultaneously
49
50 23 so as to determine as far as each proven
51

24 fact is concerned, whether it constituted
25 genocide or complicity in genocide. It

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1 concludes that the same facts cannot be
2 punished simultaneously.
3
4 Count 3 of the indictment on crimes
5 against humanity - extermination, on this
6 count the Chamber concludes that the
7 matter of the eight refugees described in
8 paragraph 19 of the indictment, as well
9 as the killing of Simon Mutijima, Thaddee
10 Uwanyiligira and Jean Chrysostome Gakuba,
11 Samuel, Tharcisse and Phoebe Uwineze and
12 her fiance described in paragraph 20 of
13 the indictment constitute beyond
14 reasonable doubt a crime of extermination
15 perpetrated during a widespread and
16 systematic attack against a civilian
17 population on ethnic grounds and as such,
18 constitutes a crime against humanity for

which Akayesu is individually criminally
responsible.

Regarding Count 4, the Chamber on the
basis of the fact described in paragraphs
14 and 15 of the indictment and which it
believes are well founded, is convinced

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that Akayesu had the intent to directly
create a particular state of mind in his
audience necessary to lead to the
destruction of the group as such.
Accordingly, the Chamber finds that the
said acts constitute the crime of direct
and public incitement to commit genocide.

Furthermore, the Chamber finds that the
direct and public incitement to commit
genocide as engaged in by Akayesu, was
indeed successful and did lead to the
destruction of a great number of tutsi in

the Taba commune.

On Count 5 of the indictment, the accused

is charged with crimes against humanity

and -- but in this case crimes of

assassination. In fact the facts alleged

in paragraphs 15 and 18 of the

indictment, the chamber is convinced or

satisfied beyond reasonable doubt that

the killing of Simon Mutijima, Thaddee

Uwanyiligira and Jean Chrysostome Gakuba,

was committed as part of a widespread and

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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.

On Count 7 of the indictment, crimes
against humanity, still with regard to
murder, for the facts alleged in
paragraph 19 of the indictment, the
Chamber also finds beyond reasonable
doubt that the killing of the eight
refugees constitutes murder committed as
part of a widespread or systematic attack
on civilian popular -- of a civilian
population on ethnic grounds and as such,
constitute a criminal or crime against
humanity. Accordingly, the Chamber
concludes that the accused having ordered
the said killings has incurred individual
criminal responsibility as charged in
count 7 of the indictment.

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6 1 On Count 9 of the indictment, the accused
7
8 2 is charged with a crime against humanity,
9
10 3 still murder, pursuant to Article 3A of
11
12 4 the Statute for the acts alleged in
13
14 5 paragraph 20 of the indictment. The
15
16 6 Chamber finds beyond a reasonable doubt
17
18 7 that the killing of the five individuals
19
20 8 does indeed constitute murder as part of
21
22 9 a widespread or systematic attack against
23
24 10 a civilian population of -- against a
25
26 11 civilian population on ethnic grounds and
27
28 12 as such constitutes a crime against
29
30 13 humanity. Accordingly Akayesu has
31
32 14 incurred individual criminal
33
34 15 responsibility for having ordered, aided
35
36 16 and abetted in the planning and execution
37
38 17 of the crime.

39
40 18
41
42 19 With respect to Counts -- Count 11, 20,
43
44 20 22, and 23- assaults which constitute
45
46 21 torture, the Chamber is convinced that
47
48 22 these were acts of torture committed in
49
50 23 the context of a widespread attack and
51

24 consequently, constitute a crime against
25 humanity and therefore Akayesu incurs

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1 individual criminal liability for having
2 ordered, aided and abetted in the
3 commission of this crime.
4
5 With regard to Counts 13 and 14 regarding
6 allegations mentioned in 12A and 12B, the
7 Chamber of -- is of the opinion that
8 these constitute acts of rape and other
9 inhumane acts committed in the context of
10 a systematic and widespread attack and
11 therefore constitute crimes against
12 humanity which render Akayesu criminally
13 responsible for having ordered them and
14 for having been present during their
15 commission which led to -- which amounts
16 to tacit encouragement.
17
18 As -- or with respect to Counts 6, 8, 10,

Commenté [BG42]: System. rape

12 and 15, relating to the facts
mentioned in paragraphs 10, 12, and -- of
the indictment, Akayesu is charged with
violations of Common Article 3 of the
Geneva Conventions and of the violation
of Common -- and of the Additional
Protocol thereto. The Chamber recalls

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(...)

**Appendix 8 – Coded Extract of the testimony
of Witness QY in the Muvuny Case (June 8,
2005)**

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-55A-T THE PROSECUTOR
CHAMBER II OF THE TRIBUNAL

v.

THARCISSE MUVUNYI

WEDNESDAY, 8 JUNE 2005

1437H

CONTINUED TRIAL

Before the Judges:

Joseph Asoka de Silva, Presiding

Flavia Lattanzi

Florence Rita Arrey

For the Registry:

Ms. Félicité A. Talon

Mr. Edward Matemanga

For the Prosecution:

Mr. Charles Adeogun-Phillips

Ms. Adesola Adeboyejo

Ms. Renifa Madenga

For the Accused Tharcisse Muvunyi :

Mr. William E. Taylor

Mr. Jean Flamme

Court Reporters:

Ms. Diane Hermann

Ms. Jean Baigent

I N D E X

WITNESS

For the Prosecution:

WITNESS QY

Examination-in-chief by Ms. Madenga 10

EXHIBITS

Exhibit No. P. 18 11

1
2
3
4 Q. How old were you when the events of 1994 unfolded?
5 A. I was*****.
6 Q. Did you remain at your house or did you go subsequently somewhere?
7 A. At one point, after the soldiers abducted the person in question, they came and
8 distributed firearms amongst the members of the population. Then these people, in turn, set up
9 roadblocks manned by others with firearms and traditional weapons. The *conseiller* specifically
10 had firearms. On that evening, Tutsis were gathered in the school complex.
11 MR. PRESIDENT:
12 Witness, answer the question. We don't want you to say a story. Answer the question.
13 Whatever you want to say she will get out for you. [redacted]
14 MR. TAYLOR:
15 May it please the Court --
16 MR. PRESIDENT:
17 Answer that particular question.
18 MR. TAYLOR:
19 The answer -- I got the Court's -- the gist of what the Court just said, but the answer is
20 completely something that is not even remotely addressed in any statement that we've received
21 or -- and there's no, no will-say statement. I object to going into something about distributing
22 arms by soldiers. That's just entirely new with this witness, and --
23 MR. PRESIDENT:
24 You can ask the witness as to why she did not include all this.
25 MR. TAYLOR:
26 Well, the Prosecutor is the one that's got the duty to disclose something like this that's brand
27 new.
28 MR. PRESIDENT:
29 And this --
30 MR. TAYLOR:
31 There's nothing, there's nothing in any statement that relates remotely to this.
32 MR. PRESIDENT:
33 Maybe it's coming out for the first time.
34 MR. TAYLOR:
35 No, she's been testifying for years. And she's, and she's been in many courts, to include this
36 Tribunal, and I know of no -- nothing that she ever has testified to or said about soldiers
37 distributing arms to people, and I object. [redacted]
38 MS. MADENGA:
39 If I can respond, with your leave, Your Honours. Firstly, the Prosecutor cannot will-say what
40 the Prosecutor is hearing for the first time. Secondly, although she has testified before, it also
41 depends on the question she has been asked. Thirdly, it's within the parameters of the
42 indictment that we have already charged. So even if she has not included it in her statement, this
43 will come out in cross-examination when my learned colleague will actually verify why the
44 witness waited until now to disclose that to the Court. Thank you, Your Honours.
45 MR. PRESIDENT:
46 Yes, Witness, you -- (*Microphone not activated*)...as I told you earlier. Listen to the question and
47 then give an answer. She will get all what she wants from you and what you have to say.
48 MS. MADENGA:
49 Thank you, Your Honour. I don't know whether at this juncture I should furnish the Court with
50 the documents we --
51 MR. PRESIDENT:

Commenté [BG43]: Order / Lack Empath.

Commenté [BG44]: Order

Commenté [BG45]: No prev. quest.

Commenté [BG46]: Order

1 You have the documents now?
2 MS. MADENGA:
3 Yes, we have.
4 MR. PRESIDENT:
5 Yes, please, give them to the Court now.
6 MS. MADENGA:
7 Thank you, Your Honour. Whilst my colleague from the registry is distributing the documents,
8 with your leave, I can continue.
9 MR. PRESIDENT:
10 You agree and accept that the documents are correct?
11 MS. MADENGA:
12 Oh, thank you, Your Honour.
13 MR. PRESIDENT:
14 Please give them.
15
16 Yes, you may continue.
17 MS. MADENGA:
18 Thank you, Mr. President.
19 BY MS. MADENGA:
20 Q. Madam, you just explained that the security situation was deteriorating, and then my
21 follow-up question was, where did you go from your home when you noted that the security
22 situation was deteriorating?
23 A. I went to a primary school.
24 Q. What is the name of the primary school you went to?
25 A. It was the ***** primary school.
26 Q. Madam, how far is ***** primary school ***** 1994? You can
27 *****to ***** primary school.
28 A. That distance could be covered in ten minutes, or thereabouts.
29 Q. When you went to ***** primary school, on arrival what did you observe?
30 A. I saw *Interahamwe*s armed with traditional weapons and firearms there. I also saw other
31 refugees.
32 Q. The refugees you saw, could you establish from what ethnic group?
33 A. They were Tutsis.
34 Q. Can you just explain to the Court how many refugees, approximately, did you find at
35 ***** primary school?
36 A. There were many of them. I am not in a position to give you an estimate.
37 Q. Thank you, madam. I also want you to explain to the Court their condition. Can you
38 briefly say what was their condition?
39 A. The refugees did not stay there for long. They had arrived at around 6 p.m., and they
40 were killed at around 8:00.
41 Q. Who killed the refugees at around 8:00?
42 A. It was the Hutus who were there and then the soldiers who arrived later.
43 Q. Madam, at what stage during the course of the attack at ***** primary school did you
44 see the soldiers arriving?
45 A. The fact is that we were -- as if we were on a cross, like Jesus Christ. I cannot tell you the
46 time at which they came.
47 Q. It was a very difficult time, but you said people were killed. Do you know how many
48 people survived the attack at ***** primary school?
49 A. So far, I know only three persons.
50 Q. And the three persons include yourself, madam?
51 A. Yes.

Commenté [BG47]: Empath.

1 Q. Since you survived this attack, can you just explain to me, what was the role of the
2 soldiers who arrived subsequently?

3 A. Given that there were many refugees, I thought that the members of the population had
4 asked for assistance from the soldiers. Then suddenly a vehicle appeared, and they spread petrol
5 all over the place and there was fire, and we took some clothing and we tried to put out the fire.

6 Q. As a result of this attack, did you sustain injuries?

7 A. I was inside the classroom that was set on fire. I came out of that classroom because I
8 knew one of the *Interabamwes*. I was begging him to assist me, and then he dealt me a blow on
9 the head. And the soldiers fired to force witnesses -- or, rather, to force the refugees back into
10 the room, and then they did. I had a wound on my head, and later on I realised that even my
11 arm had been burned.

12 Q. Sorry for that, Madam Witness, but do you want to indicate to the Court where you said
13 the *Interabamwe* dealt you with a blow on your head?

14 A. He hit me where I am indicating. I have received treatment because before it looked like
15 there was a sort of hole on my forehead. It was even possible to put some water into it, and that
16 water would remain in the hole for some time.

17 MS. MADENGA:

18 For the purpose of record, Your Honours, the witness is indicating the forehead where there is a
19 scar.

20 BY MS. MADENGA:

21 Q. You also indicated that you realised that you were burned on the arm or hand. Do you
22 want to indicate to the Court the injuries you sustained?

23 A. I am also receiving treatment, and it is getting better and better, but it was not like this
24 before.

25 Q. Thank you, Madam Witness. After this attack, where did you go to?

26 MS. MADENGA:

27 Before I go to that question, Your Honours, for the record I just want to confirm that she was
28 indicating her left hand which was burned from the hand and could not open the fingers.

29 MR. PRESIDENT:

30 (*Microphone not activated*)...witness shows the left hand to Court which bears burn marks.

31 MS. MADENGA:

32 Thank you, Your Honour.

33 BY MS. MADENGA:

34 Q. Madam Witness, I just indicated the other person was -- where did you go after these
35 injuries?

36 A. Sometime later there were *Interabamwes* who came. I was amongst the dead bodies; I was
37 the only survivor. The *Interabamwes* came and finished off those who were still alive, and they
38 left with me.

39 MR. PRESIDENT:

40 Madam Prosecutor, Judge Arrey says that she has observed that the witness said that she
41 received a blow. From what was -- that was not clarified, so clarify that also.

42 MS. MADENGA:

43 Thank you, Your Honours.

44 BY MS. MADENGA:

45 Q. Madam Witness, you indicated that you received a blow. What was used to hit you on the
46 forehead?

47 A. A machete.

48 Q. And also, can you explain how you sustained the hand injuries? What caused those
49 injuries?

- 1 A. I did not know what had happened to my arm. Since I was carrying a bag, I thought that
 2 the bag had caught fire which led to this wound. Later, I realised that there were wounds on this
 3 arm when I came back to myself.
- 4 Q. Can you recall how long after the injuries you stayed at *****?
- 5 MR. PRESIDENT:
- 6 Before, before that. This Court observes that the witness has a big scar on her forehead.
- 7
- 8 Yes.
- 9 MS. MADENGA:
- 10 Thank you, Your Honours.
- 11 BY MS. MADENGA:
- 12 Q. Madam Witness, we're just discussing the period you spent at *****, that is, from the
 13 time you were injured to the time when you say you were taken away from ***** primary
 14 school. Approximately how long did you stay at the primary school after the injuries?
- 15 A. I stayed there for about three days.
- 16 Q. During the course of the three days, did you get any assistance in the form of medical
 17 assistance or basic things like food?
- 18 A. I was there alone with dead bodies only, and those dead bodies could not do anything for
 19 me.
- 20 Q. After the three days, how did you leave ***** primary school?
- 21 A. There were *Interahamwe*s who had come to finish off the people who were still alive. They
 22 were the ones who took me away with them.
- 23 Q. How did they take you away? Were you walking? Did they carry you?
- 24 A. They carried me up. There were three of them. It was like my neck was going to break
 25 off from the rest of my body. That is what other people told me.
- 26 Q. And where did they take you to? Where did they carry you to?
- 27 A. They took me to the house of a Tutsi that they had killed before that.
- 28 Q. At the house of the Tutsi who was now deceased, did you at least get any assistance from
 29 anyone?
- 30 A. No.
- 31 Q. How long did you stay at this house?
- 32 A. I was left there and those people went away.
- 33 Q. How long did you stay at this house where you were left alone?
- 34 A. I spent the night and the following day, and then on the evening of that next day, I left.
 35 This was when a Hutu person came and said that I had to be taken away. Given that the father
 36 of this person had a firearm, he sent a message to the lady saying that if he found an *Inyenzi* in
 37 her house, he was going to kill the *Inyenzi* and the person -- or her daughter who was hiding that
 38 *Inyenzi*.
- 39 Q. After this threat, where did you go to, madam?
- 40 A. The lady who was hiding me became frightened and contacted the person who had
 41 brought me to say that the situation was serious and asked him to take me away from there.
 42 They took me to a building known as *Projet SIDA* and which was under the responsibility of
 43 some white people. The *Interahamwe* came and looted that building, and there was nothing left of
 44 it, not even the doors.
- 45 Q. How long did you stay at the *Projet SIDA*?
- 46 A. I do not know how many days I stayed in that house. Many people passed by there.
 47 There is even a girl who took my clothes and my underwear, and even said that she wanted to
 48 see the private parts of Tutsis.
- 49 Q. Where did you go from this place?
- 50 A. From there I went to the university hospital.
- 51 Q. How long did it take you to go from this place to the university hospital?

- 1 A. I was taken there by a Red Cross vehicle. I do not know when that vehicle left, and I do
2 not know how much time it took us to cover that distance.
- 3 Q. At the university hospital, did you receive medication?
- 4 A. When I arrived there, I received treatment from a nurse, and after that Dr. Gatera came
5 and told the nurse that the others had been killed and asked her why she was treating somebody
6 who could not be cured.
- 7 Q. After those comments from Dr. Gatera, what did you do?
- 8 A. I did not do anything. The doctor struck me with a small hatchet that he had in his
9 pocket. I lost consciousness.
- 10 Q. Madam --
- 11 A. And there is a lady who came and took me away from there.
- 12 Q. After the lady took you away from the university hospital, where did you go next?
- 13 A. Well, the fact is the lady in question told me that he had taken me -- she had taken me to
14 the forest, but I recovered consciousness after returning to the hospital.
- 15 Q. After you regained consciousness, where did you go from the university hospital?
- 16 A. Since there was no security, I went on without knowing where I was going. I headed
17 towards the ESO.
- 18 Q. When you headed towards the ESO, where did you end up?
- 19 A. When I got to the level of the ESO, I found a roadblock manned by soldiers. They asked
20 me where I was coming from and where I was going to, and I told them that I was coming from
21 the university hospital.
- 22 Q. Madam, these soldiers who were manning the roadblock, do you know where they were
23 coming from?
- 24 A. It was at the ESO where there was a military camp.
- 25 Q. Can you tell the Court what you observed at this roadblock?
- 26 A. At that roadblock I was asked to present identification papers. I said I did not have any.
27 A while later a vehicle arrived, and the vehicle was trying to take a Tutsi to Burundi to get the
28 Tutsi to flee, and the soldiers intervened.
- 29 Q. How did the soldiers intervene?
- 30 A. I saw them run towards the vehicle. I stood there, and after a while I went my way. And
31 when I realised that nobody was coming behind me, I just went on.
- 32 Q. When you managed to go through this roadblock, where did you end up? Where did you
33 go?
- 34 A. I went to the office of the *préfecture*, but on my way I went through another roadblock
35 which was downtown in the *quartier arabe*.
- 36 Q. This second roadblock, who was manning it?
- 37 A. Soldiers. They asked me where I was coming from. I told them I was coming from the
38 hospital. They asked me why I went to the hospital. I told them that I went to receive treatment
39 since I had been injured by Hutus.
- 40 Q. Did you manage to pass through this roadblock?
- 41 A. I was able to leave that roadblock because I deceived them by saying that my father was a
42 Hutu and that it was my mother who was a Tutsi. They undressed me, looked at the various
43 parts of my body, then they laughed out and said that, "In any case, you can be reached
44 notwithstanding your profession. Now, you see, you have saved yourself, even with a lie."
- 45 Q. After that incident, did you manage to go ahead? Did you manage to flee from the
46 roadblock?
- 47 A. Yes, I was able to flee from that roadblock.
- 48 Q. Where did you end up going?
- 49 A. I first went to the *préfecture*.
- 50 Q. What did you find at the *préfecture's* office?

- 1 A. I found a red vehicle, and I was told that that vehicle belonged to the *bourgmestre*, and the
 2 *bourgmestre* used the vehicle to carry people whom he deceived, saying that he would take them
 3 back to their native *communes*.
- 4 Q. Who else was at the *préfecture's* office?
- 5 A. There were soldiers and gendarmes near the office of the *préfet*.
- 6 Q. Can you just explain the difference between the people you are referring to as soldiers
 7 and those you are identifying as gendarmes?
- 8 A. Normally, gendarmes wear red berets.
- 9 Q. Can you describe what the soldiers were wearing when you arrived at this office?
- 10 A. They were in their military gear.
- 11 Q. Did they carry anything on them?
- 12 A. They were carrying guns and clubs.
- 13 Q. What were the soldiers doing at this office when you arrived?
- 14 A. I got there in the evening, and Nyiramasuhuko arrived in a vehicle. She took the refugees
 15 to Rwabayanga to kill them, and as for the soldiers, the soldiers were raping girls.
- 16 Q. We'll come back to that, Madam Witness, but for how long did you stay at this office?
- 17 A. I do not know for how long I was there. All I know is that subsequently we were taken
 18 to the EER.
- 19 Q. At the EER, what happened to you?
- 20 A. When I arrived at the EER, I was raped by a soldier in the woods.
- 21 Q. Madam, we'll come to that. How far is this place, the EER, from the office of the
 22 *préfecture* which you've just referred in your evidence?
- 23 A. There is a distance that could be covered in five minutes.
- 24 Q. How did you leave the office to go to EER?
- 25 A. It was raining, and the *préfet* said that we should be taken to the EER. We were
 26 accompanied by soldiers and young bystanders.
- 27 Q. At what stage did the soldier rape you? You said you were raped by a soldier. At what
 28 stage did this happen?
- 29 A. That happened upon our arrival at the EER.
- 30 Q. Do you recall, Madam Witness, whether you arrived in the evening? What time of the day
 31 was it when you arrived at EER?
- 32 A. In the evening, around 6 p.m.
- 33 Q. And madam, this place we are referring to as EER, can you describe it? What was it?
- 34 A. This is a place where a second -- a primary school, I beg your pardon, was.
- 35 Q. You also indicated in your evidence that you were taken away to the woods. You were
 36 taken away from where? What place in EER were you before you were taken away to the
 37 woods?
- 38 A. We were at the verandah, and the others were in the courtyard.
- 39 Q. The person who took you whom you have identified as a soldier, can you again tell the
 40 Court how this person was dressed?
- 41 A. He was in military gear.
- 42 Q. Did the person carry anything on his person?
- 43 A. He had a gun.
- 44 Q. This person who had a gun, dressed in military gear, do you know the name of that
 45 person?
- 46 A. No, I do not know.
- 47 Q. You said he was a soldier. Did you know from which camp he was coming from?
- 48 A. No, but it was very close to the ESO, and that is where the military camp was. Even
 49 those who were at the office of the *préfet* were from the ESO.
- 50 Q. Madam Witness, can you explain to the Court what you mean by the soldier raped you?
 51 What is it that the soldier did which you are referring to as rape?

Commenté [BG48]: Rape Witn.

Commenté [BG49]: Order

Commenté [BG50]: Rape Witn.

Commenté [BG51]: Order

1 A. When we got to the woods, the person who took me there forced me to take off my
 2 clothes. He removed his trousers and remained in his underpants.

3 Q. Madam, what happened when he undressed and when he had forced you to undress?

4 A. He put his sexual organ into mine and raped me.

5 Q. When he had had sexual intercourse with you, what did you observe on your person?

6 A. I was, I was bleeding, and shortly thereafter he asked me to leave. He took me to the
 7 lower part of the woods and asked me to lie down, and that is what I did.

8 Q. When you laid down, what did he do to you?

9 A. When I lay down, he once again put his sexual organ into mine and did the same exercise,
 10 and after that he said, "We are going to put our blood together, and I will not kill you."

11 Q. Madam Witness, when he said those words, what did you do?

12 A. I did nothing. I was bleeding profusely. My clothes were totally wet, and he took me to
 13 where other refugees were.

14 Q. Thank you, Madam Witness, for sharing that reality with us, but it's important for the
 15 Court to know, when you say you were bleeding profusely, you were bleeding from where?

16 A. From my sexual organ.

17 Q. Thank you, madam. What happened after he had had sexual intercourse with you for the
 18 second time?

19 A. What happened is that he said that he was not going to kill me because we had put our
 20 blood together, so he accompanied me to where other refugees were.

21 Q. You indicated that you were at EER. Can you just explain to the Court whether there
 22 were bathing facilities?

23 A. There was no water. I remained in the same clothes. I was stinking, and I was even
 24 secluded by those who were with me.

25 Q. Meanwhile, Madam Witness, earlier on you told us that you had sustained those injuries.
 26 At this stage when you were raped, what was your condition relating to the previous injuries?

27 A. I had my injuries, and worms were even coming out of my wounds, especially the one on
 28 my head.

29 Q. After this -- after the rape incidents you've just described to the Court, where did you go
 30 from EER?

31 A. I went towards a building which was very close to the woods, and many people had
 32 gathered there.

33 Q. Did anything happen to you at this building?

34 A. I didn't mention it, but I was saddened by what had happened. I felt totally down.
 35 Soldiers came in the night, they killed refugees and, in particular, they were seeking out the men.

36 Q. At one stage did you go back to the *préfecture's* office?

37 A. We went back to the office of the *préfecture* a few days later. There were five of us, two
 38 women and three men. One of the men had chlorine. We drank it, and two of the men died,
 39 and in the morning there were two of us in agony.

40 Q. Did anything besides the chlorine incident happen to you when you were at the *préfecture's*
 41 office?

42 A. You did not understand me well. We were still at the EER when we drank the chlorine,
 43 but at the office of the *préfecture* --

44 THE ENGLISH INTERPRETER:
 45 Says the witness, nothing happened to her thereafter.

46 BY MS. MADENGA:
 47 Q. Thank you, Madam Witness. How long did you stay at the EER after the incident, that is,
 48 the rape incidents you've just described to the Court?

49 A. I do not remember the number of days we spent there because for us, a day was as good
 50 as ten.

Commenté [BG52]: Descrip. SV Prosec.

1 Q. Thank you, Madam Witness. I just want you to recall whether the two incidents you
2 described to the Court were the only incidents where you were raped.

3 A. When we returned to the office of the *préfecture*, I was raped again.

Commenté [BG53]: Rape Witn.

4 Q. This time, who raped you at the office of the *préfecture*?

5 A. I was raped by three soldiers who took me to Rwabayanga. There was a sort of drinking
6 place, and there was a room in that drinking place.

Commenté [BG54]: Rape Witn.

7 Q. Madam Witness, can you clarify to the Court the place you've referred to as Rwabayanga?
8 How far was it from the office you were?

9 A. The two places were close to each other. They were separated by a distance which could
10 be covered between five to ten minutes. However, I should point out that I was feeling sick and
11 I was walking with difficulty, but it would not take more than ten minutes to cover that distance.

12 Q. Madam, in addition to your description, can you further clarify the place Rwabayanga?
13 What was it being used for during the genocide, do you know?

14 A. There was a restaurant and a bar, but I only discovered the restaurant and the bar when I
15 got there. I was not familiar with the area.

16 Q. When you arrived at Rwabayanga, where specifically did the three soldiers take you to?

17 A. There was a small house which looked like a toilet, and that is where they took me.

18 Q. When they took you to this small house which looked like a toilet, what did they do to
19 you which you are describing as rape?

20 A. They put me down on a bed which was there. One got on me, the other one spread my
21 legs apart, and the other took to one side and took one of my legs, and the other took the other
22 leg.

23 Q. After they put you in that position, what did they proceed to do?

24 A. One of the soldiers got on me, and they took turns, and then they left.

25 Q. When you say they took turns, what did they do to you?

26 A. They took turns, and each of them introduced his sexual organ into mine.

27 Q. After they took turns to have sexual intercourse with you, did they leave at the same
28 time?

29 A. They left at the same time.

30 Q. What did you do after --

31 A. But one of the soldiers asked the other to put the butt of the gun into my sexual organ,
32 but the others opposed and saying that it was part of theirs, too.

33 Q. Did you understand what they were saying?

34 A. What they meant was that I had become their woman and that they could come whenever
35 they wanted to rape me.

Commenté [BG55]: Descrip. SV Prosec.

36 Q. What happened -- after this incident, did you see any one of them, any of the three
37 soldiers who had sexual intercourse with you?

38 A. Given that this happened at night, I was not able to recognise them. And we were going
39 through a very difficult time, so it was not possible for me to observe them the way I should
40 have.

41 Q. Thank you, Madam Witness. After this incident, did anything else happen to you?

42 A. Subsequently, I was raped by a soldier who took me to the back courtyard of the *préfecture*
43 office.

Commenté [BG56]: Rape Witn.

44 Q. How long after the rape incident you have just described to the Court, perpetrated by
45 three soldiers, you were again raped at the place you are just describing now?

46 A. It was two weeks after that, but I am just estimating.

47 Q. Thank you, Madam Witness. The times were difficult, but are you in a position to recall
48 the months? Are we talking of the month of April? Was it in May? Can you recall?

49 A. I do not remember the month.

50 Q. How far was this place where this soldier took you which you said was the backyard of
51 the *préfecture's* office?

- 1 A. This was about a three-minute walk from the *préfecture* office.
- 2 Q. And can you describe what happened there which you are referring to as rape?
- 3 A. There was a very small house which he opened; he put me inside. And he put me up
4 against the wall, he did not lie me down, and then he raped me up against the wall.
- 5 Q. Did the soldier have sexual intercourse with you in the small room?
- 6 THE ENGLISH INTERPRETER:
7 The witness says she has not fully understood your question.
- 8 MR. PRESIDENT:
9 (*Microphone not activated*)...
- 10 MS. MADENGA:
11 Thank you, Mr. President.
- 12 BY MS. MADENGA:
13 Q. You had just described that this soldier raped you, so what I wanted you to clarify is what
14 you are referring to as rape? What did the soldier do to you which you say he raped you?
- 15 A. He took his sexual organ and introduced it into mine.
- 16 Q. After this incident, what did you do?
- 17 A. After he finished raping me, he left. I stayed in the small house for a while, but thereafter
18 I went back to where the refugees were. When I arrived, I realised that Nyiramasuhuko had
19 taken away some of the refugees, so there was some degree of calm, and I joined the group.
- 20 Q. The refugees who were taken away, have you ever seen any one of them?
- 21 A. No. All those who were taken away were killed.
- 22 Q. Madam Witness, after this incident of rape which you have just described to the
23 Honourable Court, what, if anything, happened to you?
- 24 A. After that rape, I returned to the *préfecture* office where the other refugees were.
- 25 Q. Did anything else happen to you after the -- after you returned to the office?
- 26 A. One soldier came back and he told me that he wanted to rape me on that day, but he
27 could not because I was hungry, and so he gave me some rice. Later on, he came back and asked
28 for the girl to whom he had given the rice.
- 29 Q. Madam Witness, can you just further explain to the Court, what did you understand when
30 you said he could not rape you when you were hungry? Were the refugees not getting food?
- 31 A. No, the refugees did not have any food. We were living in very difficult conditions.
- 32 Q. So when this soldier said he will bring you rice, did he subsequently bring the rice to you?
- 33 A. Yes, he gave me some rice.
- 34 Q. Do you know from which camp this soldier who gave you rice was coming from?
- 35 A. No, I do not know from which camp he came.
- 36 Q. What happened after the rice incident?
- 37 A. He came back and asked where the girl was to whom he had given rice. I managed to
38 mingle in the crowd, and people took pity on me. And all the girls had suffered the same fate as
39 me, and since he asked where I was, the other members of the group hid me. They hid me and
40 did not tell him where I was hiding.
- 41 Q. Thank you, Madam Witness. After this incident, did anything else happen to you at the
42 *préfecture's* office?
- 43 A. After that, they continued raping us. As you know, we were raped by many people.
44 There was a person who was dressed in civilian clothes, and he took me to a place known as
45 *Chez* Mahenga.
- 46 Q. Let's focus on the civilian you are talking about who took you to a place called
47 *Chez* Mahenga. I just want to know from you, when you were taken to *Chez* Mahenga, the
48 soldiers were still at the *préfecture's* office?
- 49 A. Yes, there were still soldiers there.
- 50 Q. You also indicated that people would just come and take you to rape you. Did this
51 happen when the soldiers were still present?

Commenté [BG57]: Descrip. SV Prosec.

Commenté [BG58]: Mis.

Commenté [BG59]: Descrip. SV Prosec.

Commenté [BG60]: Rape Witn.

- 1 A. The soldiers were practically living there. They were at the same place as ourselves.
- 2 Q. This place called *Chez* Mahenga, how far is it from the office you were taken from?
- 3 A. From the *préfecture* office to *Chez* Mahenga, one could take about seven minutes to cover
- 4 that distance.
- 5 Q. And can you briefly describe to the Court this place we are referring to as *Chez* Mahenga?
- 6 What was it?
- 7 A. It was a drinking place, but there were also rooms there. It was a bar.
- 8 THE ENGLISH INTERPRETER:
- 9 Says the witness.
- 10 BY MS. MADENGA:
- 11 Q. Madam Witness, when you went to *Chez* Mahenga with this civilian, did you see any
- 12 soldiers at *Chez* Mahenga?
- 13 A. There were soldiers there who had forcibly married other girls whom I found there.
- 14 These girls were in rooms opposite mine, so I was able to see these girls across the verandah
- 15 from my own room.
- 16 Q. Madam Witness, these girls who were forcibly married, can you explain to the Court, they
- 17 were from which ethnic group, the ones who were forcibly married by soldiers?
- 18 A. They were Tutsis who were living with me.
- 19 Q. Do you recall generally their age groups?
- 20 A. They were girls of my age.
- 21 Q. Thank you, Madam Witness. Let's focus on you. When you went to *Chez* Mahenga, what
- 22 happened to you? We are now at *Chez* Mahenga. Can you now explain to the Court what
- 23 happened?
- 24 A. When I went there, I became a sort of wife to this person who had brought me there, but
- 25 the good thing he did to me there was that he gave me water to wash myself.
- 26 Q. Thank you very much, Madam Witness. When you say you were like a wife to him, what
- 27 did this person do to you which made you conclude that he was making you like a wife?
- 28 A. The reason that I say that I had become like his wife is that he put me in a room, and
- 29 when he went to the roadblock, he locked me up in that room. And then he would come back
- 30 when he wanted to have sexual intercourse. But in any case, he was able to give me some food.
- 31 Q. Can you just further describe to the Honourable Court this room where you were locked
- 32 in? Did the room have facilities, toilet facilities?
- 33 A. Yes, there was a toilet, and there was water.
- 34 Q. You also indicated that there were other Tutsi girls who were around the compound.
- 35 Were you able to talk to the other Tutsi girls?
- 36 A. No, it was not possible for us to meet with each other. I could only come out when this
- 37 man was present, and when he wanted to lock the door, I had to go inside.
- 38 Q. How long did you stay at *Chez* Mahenga?
- 39 A. I do not remember the time that I spent there. I believe that I stayed there for about two
- 40 or three days, and it was when it was announced that there would be a search at *Chez* Mahenga,
- 41 the man took me away from there.
- 42 Q. From *Chez* Mahenga, where were you taken to by this man?
- 43 A. He took me back to the *préfecture* office.
- 44 Q. After the incident at *Chez* Mahenga, did anything else happen to you which you still
- 45 recall?
- 46 A. We had become their women. We had no idea when they were going to come and take us
- 47 out of where we were. We had simply become like their women. Nobody was spared; everybody
- 48 was raped.
- 49 Q. Just a follow-up on what you have just said, that nobody was spared, everybody was
- 50 raped, at what times would these soldiers come to take people, women, to rape them? Do you
- 51 recall the specific times, whether it was during the morning, during the day, or in the evenings?

Commenté [BG61]: Diff. Expres. SV

Commenté [BG62]: Diff. Expres. SV

Commenté [BG63]: System. Rape

1 A. Generally, they would come in the evening. There were other victims who were kept in --
2 or, rather, where people were detained in the sort of gaol, and this was where the women were
3 kept during the daytime.

4 Q. You also indicated that the other girls, were your age mates, were being raped by soldiers.
5 What subsequently happened to these girls who were frequently raped by soldiers?

6 A. Many people were raped, and most of them died. There are others who were traumatised
7 and still others who even had children with the rapists.

Commenté [BG64]: Conseq. Rape

8 Q. What subsequently happened to you? When did you leave this office, the *préfecture's*
9 office?

10 A. The *préfet* came and told us that he was going to take us to a secure place. In the evening,
11 the buses came. I do not remember exactly how many buses were there, but I think there were
12 three of them. Refugees were loaded onto these vehicles, but not everyone could get in. And
13 so, the *préfet* said that some should be taken away and the others taken along later. And those
14 who were taken away were taken to a hill or *colline* whose name I no longer remember. I think it
15 was in Nyange.

16

17 THE ENGLISH INTERPRETER:

18 Says the witness.

19 THE WITNESS:

20 The refugees were taken to Nyange, and the *Interahamwes* of Nyange killed those refugees that
21 same night. There was only one survivor, and he was a little boy.

22 BY MS. MADENGA:

23 Q. Did you manage to speak to the little boy who survived the Nyange massacre?

24 A. It was this little boy who came back during the night and who arrived the *préfecture* office
25 in the morning who told us that all the people who had been taken away from the *préfecture* had
26 been killed. So, the same -- the following day when they wanted to take us away, we refused.
27 And the person who was acting as *bourgmestre* told us that if we did not board the buses, he would
28 bring people from the street to kill us with traditional weapons, that is, hatchets, clubs, and
29 machetes. This is what those people from the streets used to carry.

30 Q. Thank you, Madam Witness. How did you subsequently leave this office?

31 A. We were forcibly taken. We were told that if we did not board the vehicles, we were
32 going to be killed with clubs. So there was nothing we could do, so we boarded the vehicles, and
33 we knew that we were going to be killed. But there was a bus that left before us, and when we
34 arrived at Nyaruhengeri the bus on which we found ourself (*sic*) broke down, whereas the first
35 bus had already arrived its destination. That is where the other refugees had already been killed.
36 The people who were in the bus which had broken down were taken out and some of them
37 killed.

38 (Pages 1 to 25 by Diane Hermann)

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Annexes

1630H

BY MS. MADENGA:

Q. From the place where you had the breakdown, where did you go?

MR. PRESIDENT:

How long will you take?

MS. MADENGA:

I'm almost finished, Your Honour.

MR. PRESIDENT:

In five minutes?

MS. MADENGA:

Yes, Your Honour.

THE WITNESS:

When the bus broke down we were taken back to the *préfecture* office. Subsequently, the driver who had been driving us handed us over to the *préfet*. The following day, the *préfet* asked us to board a bus and we were taken to Rango Forest. It was the *bourgmestre* and other gendarmes who took us to that forest. Upon arrival at Mukoni, the *bourgmestre* at the time told the driver to take a different road than that leading to Tumba.

MS. MADENGA:

Thank you very much, Madam Witness.

Your Honour, maybe this is a convenient time to take a break.

MR. PRESIDENT:

Yes. The Court is adjourned for ten minutes.

(Court recessed at 1630 to 1650H)

MR. PRESIDENT:

Yes, Counsel.

MS. MADENGA:

Thank you, Mr. President.

BY MS. MADENGA:

Q. Madam Witness, just to remind you, you had explained to the Court that you were now at Rango Forest. In conclusion, I just want you to confirm that that is where you were rescued from; is that correct?

A. That is correct.

Q. You want to state who rescued you at Rango Forest?

A. The RPF.

Q. When you were rescued, did you get an opportunity to get a report as to what had happened to your family? In brief, can you just tell us what happened to your family?

A. People who had sought refuge in Burundi, told me that members of my family had been killed.

Q. Before the genocide, how many were you in your family, including your parents?

A. We were ten of us.

Q. Of the ten members of your family, how many survived the genocide?

A. Only two.

Q. Thank you, Madam Witness, and also I just want clarification. You described to the Court that before you received medication, the scar on your forehead was deep and it could

actually hold water. I just want to know from you, do you have, like, a picture which shows the scar before the medication you referred to?

A. Yes, I had a picture of it.

Q. Madam, did you bring that picture with you so that the Court can have an opportunity to see how you looked like before you received the medication?

A. The picture in question is where I reside.

Q. Thank you very much, Witness.

MS. MADENGA:

Your Honour, I will not insist that she produces it now, but if there are no objections, then we would be tendering that picture as an exhibit.

MR. TAYLOR:

There's been an objection, that has not been disclosed.

MS. MADENGA:

Your Honour, just to respond to my learned colleague -- this came as a result of the witness's description, that's why I actually thought -- because the way she described that the wound could actually hold water, I thought it will be in the interests of justice for us to see what she means, because now she's, like, referring as to what she looks like after the medication. So I thought if -- if there is evidence of any sort then that will assist us.

MR. PRESIDENT:

Yeah. You can be permitted to produce it in re-examination.

MS. MADENGA:

Thank you very much, Your Honour.

MR. PRESIDENT:

Yes Counsel, you may start your cross-examination.

MS. MADENGA:

Your Honour, before the cross-examination I only have a minor issue to resolve with this witness. I wanted to refer to the witness statement of the 24th of July, 2000. It's the statement of the 24th of July, 2000.

MR. PRESIDENT:

(Unintelligible)

MS. MADENGA:

Indeed the original is in English, the original which the witness signed.

MR. PRESIDENT:

Yes, please hand it over to the Defence. They have it in the -- the English one *(Microphones overlapping)*... asked for the French translation.

MS. MADENGA:

I think they were served with copies of English and French, the 24th of July, 2000.

BY MS. MADENGA:

Q. Madam Witness, do you recall making a statement on the 24th of July, 2000?

A. I was questioned by many people.

Q. Yes. I wanted to refresh your memory and ask you whether you were also questioned in connection with that statement when you appeared in the Butare case on
*****?

A. I do not quite remember; I did not take any notes. You might perhaps want to remind me of the circumstances in which I was interviewed.

Q. I'll just say briefly, refresh your memory because I actually asked you the question that did you make any corrections to your statement because I want to know whether you are adhering to the corrections you made on *****. That is the only clarification I'm seeking from you.

A. I made a number of corrections and pointed out errors that had been committed.

Q. Do you adhere to the corrections you made when you gave your testimony on *****?

A. I do.

Q. Thank you very much, Madam Witness, for your strength.

Commenté [BG65]: Empath.

MS. MADENGA:

Thank you very much, Your Honours.

MR. PRESIDENT:

Yes, Mr. Taylor.

MR. TAYLOR:

May it please the Court, I would like the witness removed for a motion. I'd like to have the witness removed so that I can make a motion out of her presence.

MS. MADENGA:

With your direction, Your Honours, I don't know whether the witness has to be moved for a motion; I don't know the nature of a motion which (*Microphones overlapping*)...

MR. PRESIDENT:

We can't -- can't prevent anything going into her ears.

MR. TAYLOR:

Well, I don't -- may it please the Court, it's going to be a lengthy argument that I'm going to make. It's a legal argument; it has nothing to do with any cross-examination as it stands right now. But, it's a legal argument that I have to proffer some matters to the Court for their consideration, and I would prefer that it not be done in the presence of the witness, because of certain matters that I'm going to have to say.

MR. PRESIDENT:

She's having a problem with regard to --

Yes, witness --

THE ENGLISH INTERPRETER:

The President's microphone.

MR. PRESIDENT:

Yes, the witness can be taken out. Ask her to -- yes.

One second, Mr. Taylor, the stenographer --

Witness, Witness, you may go out. We will call you in a little while.

Can a technician in the booth help the court reporter, please.

Yes, Mr. Taylor, what is your objection?

MR. TAYLOR:

May it please the Court, at this point in time I want to point out to the Court that this is one of the witnesses that was added to the witness list by the Prosecution pursuant to the Court's order,

dated 24 March 2005, wherein the Court allowed this -- the Prosecutor to add to its previous witness list only on those -- those matters that related to Count 4 and Count 5. This witness, as the Prosecutor describes the conduct that they're going to rely on during that -- that urgent motion that the Prosecutor filed relating to extra witnesses, as you will recall, had some 29 more witnesses.

This witness was -- was -- was added on, according to the Prosecutor list, as it relates to Count 4, crimes against humanity as stipulated -- as stipulated in Article 36-6, (3). Relying on the pre-trial this, I assume, and I will for the sake of the record assume that this was -- would be considered an addendum to the pre-trial brief describing the testimony of this witness.

In this synopsis of the proffered evidence that was -- is -- was going to be offered through this witness you will note that as it relates to rape in the -- in the synopsis of the testimony. The only -- only mention of liability as it relates to this defendant in that regard was about the forceful rape of the witness during her stay at the EER by one soldier. There was no mention at all in this proffer of evidence about any other conduct that related to rape that would -- would incur liability on the part of this defendant.

During the testimony of this witness in the Butare case as proffered through the Prosecution, there was no mention of any of the other occurrences that were attributable to soldiers or civilians about -- about rape or abuse against this witness. The only suggestion -- the only suggestion that there would be any type of -- of testimony about that matter comes in the statement, handwritten statement in English, that describes other conduct that she was a victim of at the *préfecture*. And at no time in that -- those statements was there any mention of any involvement of any person for which this defendant could be held responsible.

Commenté [BG66]: Proced. Flaw

The -- the fact of the matter is, the first time that any member of this Defence team has heard of the allegations that have been made by this witness relating to the conduct of soldiers other than that soldier that was at the EER comes on this very day; this very day. And I would suggest to the Court that this is in the nature of new misconduct alleged by the Prosecution, new misconduct that they have put on for the consideration of the Court. Aside from the fact that I think that a motion to strike would be inappropriate and it's something that the Court could consider, it is obvious from what I've just said, and it's -- it is something that I think I could put on in evidence to prove, if the Court was so inclined to want that. The fact of the matter is, if the Court is going to consider for any purpose the other conduct that is for -- for the first time alleged to have occurred by members of the armed forces, for which this defendant was a member during this period -- and I assume the Prosecution's theory in that regard is under 6, 6(3) he is responsible for that -- obviously this Defence team has had no opportunity to prepare any kind of cross-examination against this witness, if the Court, after considering a motion to strike, chooses not to strike the testimony.

Therefore, it is my urgent request that in the interests of justice the Court adjourn this proceeding so that this defendant can consult with his client -- with his Defence team and prepare some meaningful kind of cross-examination about these new events. I was prepared, and I will say this very candidly for the Court, I was prepared to offer some limited amount of impeachment based on what she told the Prosecution and told the other Chamber relating to the

events relating to the -- the soldier at the EER, but I had no inkling that he was -- there was going to be other testimony relating to other soldiers' misconduct that occurred at the *préfecture* that related to this particular witness.

I would say further that -- on reading the -- the transcript of her testimony at the previous trial, I saw no mention of the other -- of the other events that she is now testifying to. As the Court can clearly see, there is no mention of those -- those matters as they relate to the soldiers in her -- her statements that have been proffered to the Court. And frankly, may it please the Court, I'm not prepared to go forward with this full matter based on the tenor of her testimony at this particular time. So I would ask the Court to give me time to prepare a meaningful and a coherent cross-examination based on all these matters, if the Court, after hearing the motion asking for the -- the testimony to be struck, does not favourably rule in that regard.

MR. PRESIDENT:

Yes, Mr. *(sic)* Prosecutor, what's your response, please.

MS. MADENGA:

Thank you very much, Mr. President.

The Prosecution views this motion as a motion to strike the wit -- the evidence of this witness on the same basis the Defence argued when they wanted to exclude the evidence of Witness CCR. What the Prosecution wants to do is to refer specifically to this Honourable Chamber's decision in that case, also to refer specifically to the Appeals Chamber decision, which clearly shows that where the Prosecution is not alleging a new fact -- and the Prosecution here is not alleging a new fact. We've charged the Accused with rape, and the witness is simply giving details of the rapes. So this is not like a new charge. So what I would suggest is for the Court to give us time so that we actually refer to the specific contents of the Appeal's decision, the specific contents of this Chamber's decision. And meanwhile, I don't see what bias my learned colleague from cross-examination of the witness *(sic)*. Thank you,

Your Honours.

MR. PRESIDENT:

Mr. Taylor, I think we have considered your application. *(Unintelligible)* is that you should have or your objection should have come at the time this witness was giving evidence and now everything has gone on the record, so in fairness, we will consider your second application to grant you time to cross-examine this witness, and for that purpose I think we can direct the Prosecution to recall this witness at a subsequent stage, if you find any new material to cross-examine this witness.

MR. TAYLOR:

May I speak?

MR. PRESIDENT:

Yeah, if we give one week's time, is it all right, for cross-examination of this witness?

MR. TAYLOR:

Excuse me?

MR. PRESIDENT:

If we grant you time till Monday, will that be all right with you?

MR. TAYLOR:

That will be all right with me, but let me make a comment about *(sic)* the record now. I've been urging motions on new matters, and every time I do that, the Court says, "Well, the Prosecution

is not to know what these witnesses are saying." So I take it from the -- the Court's ruling -- the Court's suggestion, I guess -- I guess it's not a ruling, it's a statement that you made to me about not preserving error. And I guess what you're telling me is I better get up and make an object each time, even though the Court's ruling is going to be the same: they're not to know what these witnesses are going to say and let's proceed. I guess that's what you're telling me.

MR. PRESIDENT:

What we observed was that when the witness comes out with something new that is on the basis of disclosure to you. It's not -- it's not introducing new material or new charges.

MR. TAYLOR:

May it please the Court, I got up today and objected to her -- her saying something about arms being delivered to soldiers. And I was -- as I recall what happened was, your -- your -- the Court response was the Prosecutor is not to know what they were going -- they were going to say and so we will continue. But I guess now what you're saying is I've preserved the record in that regard by making the objection and having the Court overrule my objection. And I will continue -- I will do that, then, if that's what the Court is telling me that the Court's -- in the Court's mind, I have waived any right to have testimony struck because I didn't make an objection in a timely fashion as to new material, regardless of whether or not the indictment, or any other matter as I would later develop, spoke about those new matters. I don't -- I didn't understand that to be the law, but I guess I will make my objections as we go.

MR. PRESIDENT:

Yeah, now, to solve the problem at hand, I think we can ask the Prosecutor to present this witness for cross-examination on Monday. We will adjourn the proceedings now and *(unintelligible)* we can get *(unintelligible)* the witness, and once that witness is over we can get this witness back for cross-examination.

The Prosecution, are you ready with another witness tomorrow?

MR. ADEOGUN-PHILLIPS:

Possibly tomorrow, Your Honour, but certainly not today.

MR. PRESIDENT:

(Microphones overlapping)...yes.

MR. ADEOGUN-PHILLIPS:

I'm just wondering about the practical effect of keeping this witness beyond -- over the weekend and bringing her in on Monday again.

My learned friend said he prepared his cross-examination on the basis that his -- his client or the one soldier who was involved in this attack which we attribute to his client. At a minimum, he should be prepared to cross-examine on that basis and start right away, and then he can continue. He has prepared something. He should start cross-examining on the basis of what he's prepared, and then the additional material can be carried over. But to stop the proceedings and do nothing is, in our humble submission, not appropriate.

MR. TAYLOR:

May it please the Court, the witness would be back on Monday in any event, and that doesn't make a lot of sense to me because the fact of the matter is I would assume from what the Court's saying that you will allow me to cross-examine -- he would envisage me cross-examining this witness as to that one event and then adjourning till Monday. Now, that doesn't make a lot of sense and that doesn't -- that is not going to economically deal with the Court's time. I will

guarantee you that it's not going to be just an hour's time for that one event in any event, because there were other matters that went part and parcel with her testimony, or lack thereof, relating to that particular event.

I would suggest to the Court that it's -- it's not -- I would rather the Court say that they will consider my motion to strike, but I get the tenor of the Court as I stand here. So, I would suggest to the Court that their -- their solution as it relates to continuing would be best served by having this witness come back on Monday, since she's going to be coming back anyway on some matters.

MR. PRESIDENT:

Mr. Prosecutor, do you rely on other rapes? You have alleged one rape. Isn't it enough for your purposes?

MS. MADENGA:

Thank you very much, Mr. President.

What the Prosecution is saying is it's actually made allegations under Count 4 in the indictment and also described [the nature of the rapes perpetrated during the genocide in the pre-trial brief, that this was widespread and systematic]. So what the witness is actually coming to say now is what we've already alleged; it's not even a new issue. If you --

MR. PRESIDENT:

(Microphones overlapping)...but the objection is in regard to the rape.

MS. MADENGA:

Yes. What I'm saying is that if you listen to the evidence of the witness, she said, "We were raped on several times." So the reason why we did not lead those "several times" is we got the completion strategy without finishing the -- the rapes were so systematic, so we only managed to extract five or six of them, so I don't know the nature of the objection. We cannot rely on one when so many happened. We limited ourself *(sic)*. She wanted to go -- she said, "We were raped on several occasions." But we did not go on to say each of the occasion because that will mean that we will never go home.

MR. PRESIDENT:

Do you have a witness ready for tomorrow?

MR. ADEOGUN-PHILLIPS:

We have a witness on standby. When I met with him yesterday, he had a stomach problem, but I will check again. But we should be able to have a witness ready tomorrow.

MR. PRESIDENT:

So we will permit you to cross-examine this witness after we finish with the other witness tomorrow. And we will adjourn now.

Commenté [BG67]: System. rape

***Appendix 9 – Coded Extract of the Testimony
of Witness QY in the Muvuny Case (June 13,
2005)***

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-55A-T THE PROSECUTOR
CHAMBER II OF THE TRIBUNAL
v.
THARCISSE MUVUNYI

MONDAY, 13 JUNE 2005
1440H
CONTINUED TRIAL

Before the Judges:

Joseph Asoka de Silva, Presiding
Flavia Lattanzi
Florence Rita Arrey

For the Registry:

Ms. Félicité A. Talon
Mr. Sheha M. Mussa

For the Prosecution:

Mr. Charles Adeogun-Phillips
Ms. Adesola Adeboyejo
Ms. Renifa Madenga
Ms. Memory Maposa

For the Accused Tharcisse Muvunyi:

Mr. William E. Taylor
Mr. Jean Flamme

Court Reporters:

Ms. Leslie Todd
Ms. Diane Hermann

I N D E X

WITNESS

For the Defence:

WITNESS QY (*continued*)

Cross-examination by Mr. Taylor 7

EXTRACTS

Extracts 8

(...)

P R O C E E D I N G S

MR. PRESIDENT:

Good afternoon, ladies and gentlemen. The sessions are on. There is no change in the appearances.

Before we commence, I find that there is some motion on the table here dated the 13th. That is today. What is this all about?

MR. TAYLOR:

May it please the Court, this is a request from the Defence to have the Trial Chamber review the filings of the Prosecutor relating to witnesses that were added to the original list pursuant to a grant of authority that the Trial Chamber granted to the Prosecutor after the Prosecutor filed its urgent motion to have witnesses added for the purposes of prosecuting counts 3 and 4 -- counts 4 -- 3 and 4 -- counts --

MR. PRESIDENT:

Four and five.

MR. TAYLOR:

-- 4 and 5, 4 and 5, crimes against humanity. One is -- 3 is the genocide by virtue of having meetings --

MR. PRESIDENT:

Did I hear you correctly, Mr. Taylor, when you said that you want us to reconsider the decision?

MR. TAYLOR:

I want you to reconsider the grant, number one. Number two, I want you to review --

MR. PRESIDENT:

Do we have jurisdiction to hear or to waive our own decisions? We have already granted the decision.

MR. TAYLOR:

Well, but my suggestion to the Court is that the witnesses that were added to the list did not, number one, in three instances, did not comply with the order of the Court in that they spoke to matters other than counts 4 and 5. That's the first ground. |

Commenté [BG68]: Proced. Flaw

The second ground is to bring the Court's attention to the pleadings relating to these witnesses and the pre-trial brief, as amended, relating to these witnesses, and pointing out to the Court that in each of the five instances -- each of the five instances of witnesses brought pursuant to counts

4 and 5 of the indictment, none of these witnesses is a named victim in the indictment of the Accused in this matter. You will -- in referring to the indictment, you will see that there are no witnesses -- there are no victims alleged in the indictment that comport with the names and/or the pseudonyms of these five witnesses.

Further, when reviewing the amended pre-trial brief relating to the witnesses and how they relate to the Accused and how they are going to be shown to be the responsibility -- their testimony is going to develop a liability or a responsibility on the part of the Accused, the Court should clearly note that in each instance of the pre-trial brief where these witnesses are mentioned, it would be clear that none of these witnesses have their names asserted in the indictment of the Accused and none of the assertions in the pre-trial brief or the amended pre-trial brief points out, as is required by law, points out how liability on the part of the Accused is going to be established by virtue of their testimony. There's no -- there's no assertion pursuant to Article 6.1 or -- 6.1, or no assertion as it relates to Article 6.3, liability on the part of the Accused. There's -- clearly, as far as 6.3 is concerned, there is no assertion in the pre-trial brief about how the liability on the part of the Accused is going to be established by virtue of the testimony that is going to be offered through these witnesses. Because of that and because there is no adequate notice in the indictment, there's no adequate notice -- absolutely no adequate notice in the pre-trial brief about how the Accused is going to be held accountable or liable under the indictment or the pre-trial brief.

Pursuant to the law of this Tribunal, I would suggest to the Court that the testimony as it relates to these five witnesses, and more particularly QY, as it stands right now is not appropriately considered by this Tribunal.

MR. PRESIDENT:

The only thing is, Mr. Taylor, now, when you say no notice, notice can be given in several ways, not only from the indictment. It can be by way of pre-trial brief, indictment, statements --

MR. TAYLOR:

Well, I would suggest to the Court the findings in the case of Muhimana, this particular Tribunal's decision suggests more specifically that there's got to be -- there's got to be pleadings to support the allegations of rape. The pleadings can't, in most cases, be cured by a pre-trial brief, and more particularly there has -- as it relates to other matters, as it relates to notice, there has to be notice, as the Court points out, in either the pre-trial brief, the indictment or the statements. I would suggest to the Court as it relates to 6.1 liability, there's absolutely no allegation that the defendant was a party, as that term is known, or aided or contributed to the allegations as that article envisions. And as to 6.3 liability, there is no assertion or allegation that the defendant either knew or should have known by virtue of some -- of some event that is going to be established that would incur liability in the part -- on the part of the Accused pursuant to that article. Because there is absolutely no notice as to how this particular charge or these particular charges that are going to be developed through these witnesses are going to inure to the detriment of the defendant or the Accused, I suggest that the Court should not entertain any -- any of the testimony that these witnesses are prepared to give, I assume.

MR. PRESIDENT:

Mr. Taylor, I think with regard to this motion, there is one witness now to be cross-examined today. And with regard to her, we made an order on Friday, and you are canvassing that order

again. And, on the other hand, isn't your application belated? Because the notice of summoning these witnesses was given on the 5th of May.

MR. TAYLOR:

I would suggest to the Court, even though these particular witnesses were proposed to be added to the list of witnesses to be called by the Prosecution --

MR. PRESIDENT:

Yes.

MR. TAYLOR:

-- pursuant to the Court's previous order relating -- relating to our timely -- what I thought was a timely-filed motion to exclude evidence relating to the statement of the Accused, in that finding the Court told me that my filing of that motion was not timely; I had to wait until the matter was -- the issues were joined at court. In other words, I had to wait until there was an offer of said evidence before the issues were joined and before my motion to exclude that said testimony could be heard. And pursuant to that order in this case, I would suggest to the Court, I would suggest to the Court, that my motion is not timely until the offer of the testimony of the particular witnesses. If the Court is to be consistent in that regard, then I would suggest to the Court that I have no opportunity to offer the exclusion of testimony until the testimony is offered by the Prosecution. Because each one of these witnesses is almost identical as it relates to the indictment, as it relates to the pre-trial brief, and as it relates to the statements themselves.

I would suggest to the Court that this is the first time that I can be able to offer a motion to exclude because this is the -- Thursday, as a matter of fact, was the first time that the issues were joined and I could complain about the offer of such testimony pursuant to any kind of Court order that the Court might have as it relates to the additional evidence. I would suggest to you that what you were telling me in my first motion, the first motion I filed, was that I had to wait until the Prosecutor has offered the evidence to complain about the evidence, and that's what I'm doing today.

Before the Court subjects this witness to any type of cross-examination and after the evidence was offered by the Prosecutor, I suggest to the Court that now is the -- is the timely period or it is timely right now for me to offer my motion to exclude the testimony. Because only Thursday were the issues joined, and I told the Court very clearly then, I thought, that at the time I wanted time, that I was going to file a motion to have the Court exclude this testimony because I didn't think it was proper. Not only was there new matters which were clearly -- clearly in her testimony that weren't properly noticed, if you look at testimony as new testimony as such, but until she testified, until she offered evidence pursuant to the indictment, as alleged, the issue that I'm complaining about was not joined. And therefore I'm asking the Court to consider and to rule on my motion in its entirety, relating to not only this witness but to the four other witnesses, before we proceed.

MR. PRESIDENT:

Yes. With regard to the witness in question, that is QY, we have already given an order, so, therefore, I don't think that we could give another order. With regard to the others, we will make an order after listening to the Prosecutor.

MR. TAYLOR:

Well, may it please the Court, I think that the witness here, as you noticed in my -- as you might have noticed in my motion, not only testified as to previous matters that were adduced not only in her statements but in -- to matters that were related to the trial in Butare, the Butare trial, but as you will notice, and you well noted and gave time for the very purpose, that this witness offered testimony by her own admission that was being offered for the first time on Thursday, the 8th of June. And, consequently, because there was no timely notice in that regard as to all of the new testimony, I would suggest to the Court that even if the Court is not prepared to consider my motion to exclude her testimony at this time relating to the testimony concerning what happened at the EER, if the Court wants to reserve hearing and deciding on that motion at a later date, I think that it is clear from the evidence and from the proffer of testimony as it appeared in the record on the 8th of June that all the new matters were revealed to the defendant and his team on the 8th of June. There was no mention of any other conduct that could remotely be considered the responsibility of this defendant, except for the occurrence on the 8th of June, and, therefore, I would suggest to the Court that it's certainly the right and just and equitable thing to do.

If the Court wants to reserve its ruling as it relates to the matters at the EER, the Court should clearly exclude any other matters relating to described misconduct that was not previously disclosed to us. It seems to me that the law is fairly clear that misconduct that is revealed on the day of trial is not misconduct that can support a judgement. Because that misconduct cannot support a judgement, it seems clear to me that that testimony should not be considered by the Trial Chamber.

MR. PRESIDENT:

I think some of these remarks that you made, Counsel, I think should be appropriately made at the closing stage in your final submission. You can ask to exclude all the evidence, not only of this witness.

MR. TAYLOR:

Well, as I -- I mean, that's a little bit frustrating because the Court directed me early on because of the submission I made relating to an illegal interview related to this defendant that I couldn't bring that -- the Court's attention to that issue and the Court would not make a ruling on that issue until the issues were joined. That was the wording of the Court related to our submission to you that the statement taken by my client was illegally taken. That suggests to me that until issues are drawn, I have no ability to complain about irrelevant testimony. And if the Court would just read the indictment, the Court would see very clearly that these witnesses -- not one of the five witnesses that is being brought by the Prosecution has been alleged in the indictment so that the defendant can either under 6.1 or 6.3 -- so that the defendant can prepare his defence. I think it is clear from the cases that I have cited in my motion that that is a very -- that is something that is required. Based on the allegations of the Prosecution in their indictment, it's clear to me -- it seems clear to me why the Prosecution had chosen not to pursue those issues had the Court granted their motion to amend the indictment. But --

MR. PRESIDENT:

Well, Counsel, I think the five witnesses, that we permitted them to be called, may cover 4 and 5. But in the process if they speak about other counts also, you can prevent that, because you can say that this witness's evidence should be limited only to this.

MR. TAYLOR:

Commenté [BG69]: Strict Categ.

Yeah, well, but I would suggest to the Court that the Court instructed that they would entertain only those -- those new witnesses --

MR. PRESIDENT:

Also --

MR. TAYLOR:

You said, Judge, that you would only entertain an amendment to the list of witnesses for counts 4

and 5. Three of those witnesses were added pursuant to other counts, pursuant to other counts as that particular matter was addressed in their amendment to the pre-trial brief. Clearly, those three witnesses -- those three witnesses should not have been added -- could not have been added pursuant to your directive as it relates to the other two -- other two witnesses that we are talking about, one of them being the witness on the stand today. [The Court surely is required to -- in reviewing an additional witness and reviewing whether something is relevant, would have to review the allegations in the indictment, the pre-trial brief, and determine whether or not the testimony should -- could properly be considered as relevant in the trial.

Commenté [BG70]: Strict Categ.

At this point in time, I would suggest to you that there is absolutely no nexus between the indictment and the allegations therein and the testimony the Prosecutor is offering by these witnesses. And the logic that I'm trying to foster is that when the Court says the Court will entertain allowing the Prosecutor to amend the indictment -- to amend its list of witnesses to add witnesses for counts 4 and 5, it doesn't follow that the Prosecutor can just add witnesses that don't relate to this defendant just as long as the underlying offence that the witness is prepared to testify to is the allegation of rape.

Commenté [BG71]: Strict Categ.

MR. PRESIDENT:

We will listen to the Prosecutor and see.

JUDGE LATTANZI:

I would like to refer to what the President has dealt with before. They are two separate issues. First, the witness of today, and the Court has already taken a decision on this on the basis of two subsidiary motions in your oral motion, Mr. Taylor, either to exclude the evidence or to give you a little more time to prepare for the cross-examination. That is what the Court did by ruling in favour of the second alternative. And as the President has already said, I believe that the issue of the witness of today has already been resolved, and for the others, the matter is simple. We are going to listen to the arguments of the Prosecutor and assess the issues that you have raised and the grounds on which you have raised them, and then the Court will make its ruling either today or tomorrow or later on. We still have to consult on that.

MR. PRESIDENT:

Have you finished, Mr. Taylor?

THE ENGLISH INTERPRETER:

Microphone, Mr. President.

MR. PRESIDENT:

If you have concluded, we can listen to the Prosecutor now. If he is ready, I don't know. I don't know if he is ready because this is a matter that came up suddenly, but in view of the urgency, I request the Prosecutor to respond orally, if possible, or if he wants time till tomorrow, we can give.

MR. ADEOGUN-PHILLIPS:

Good afternoon, Your Honours. I'm grateful for the opportunity.

Your Honours, my learned friend has constantly referred to the law being fairly clear on many of the issues that he has brought to your attention this afternoon. And suffice it to say that I have not up until this moment received a filed copy of his motion, but, nevertheless, the issues raised are quite straightforward, and I will deal with them accordingly.

First of all, Your Honours, yes, indeed, the law is fairly clear on the matters -- some of the matters raised. And in that regard, let me represent to Your Honours that my learned friend has had from the 24th of March 2005 to raise the motion that he raises before you this afternoon. By virtue of the provisions of Rule 72(a) and (b)(ii), he has 30 days from the 24th of March 2005, at any rate, to have raised this issue as far as they concern objections based on defects in the form of an indictment, which is pretty much what his application is based upon. The 24th of March 2005. Rule 72 says you make your objections within one calendar month. If you haven't done so, you are simply time barred.

Now, in relation to the issues raised in the second limb of his argument and that concerning the ability of witnesses to go beyond the scope of the evidence as indicated in either a pre-trial brief or indeed an indictment, or in this particular peculiar situation their ability or our ability as Prosecutors to limit their evidence to the confines of the allegation that support count 4 and count 5, I make two submissions. First, my learned friend's application is premature because as your learned -- as the learned President rightly pointed out, these are matters that he can deal with in closing at the end of the case. Secondly, my second submission is that Your Honours are at liberty in deliberating on this case to disregard any part of the evidence that has been alleged before you at that appropriate time, and therefore the issue again is premature.

The -- as Your Honours have rightly pointed out, the issue concerning Witness QY has already been dealt with, and the issues concerning AFV, TM, QPB and QCS, my learned friend is time barred from raising them. He's known about this since the 24th of March. He sat on his rights, did nothing for two and a half months, and then holds you to ransom this afternoon, the 13th of June, and says that you should consider striking out witnesses.

We would respectfully submit that you dismiss his motion in its entirety. We are grateful.

MR. PRESIDENT:

Thank you, Counsel.

With regard to the present witness that is in the box, we will continue with the evidence today. With regard to the rest, we will give a written decision tomorrow or maybe the day after.

Yes, Counsel, you may call the witness.

MR. ADEOGUN-PHILLIPS:

QY.

MR. PRESIDENT:

Yes, Counsel.

Yes, Mr. Taylor. Yes, Mr. Taylor.

MR. TAYLOR:

May it please the Court.

WITNESS QY (*continued*),

CROSS-EXAMINATION

BY MR. TAYLOR:

Q. Good afternoon, Witness QY. My name is Bill Taylor. I'm the lawyer representing Tharcisse Muvunyi in this case.

A. Good afternoon, Counsel.

Q. Let me ask you some preliminary questions before we get into your testimony from, I believe it was, last Wednesday. Was it last Wednesday that you testified? I think I'm right, anyway.

Have you testified before at this Tribunal?

A. Yes.

Q. And when was that?

A. In the*****.

Q. Do you know who the defendants were that were -- that you were testifying against?

A. Pauline Nyiramasuhuko.

Q. Was your testimony taken sometime in*****?

A. Yes.

Q. Have you testified at any other time besides that time in Arusha?

A. No.

Q. Have you appeared in any other tribunal or court against a -- any person who was accused of crimes that occurred between April and July of 2- -- of 1994?

A. I testified before Rwandan jurisdictions.

Q. How many times?

A. Two times.

Q. Can you tell us who the defendants were that you testified against?

A. I do not believe I should mention those here because these are cases that took place in Rwanda,

MR. TAYLOR:

May the Court instruct the witness to answer the question?

MR. PRESIDENT:

Witness, it doesn't matter. You can give the names. Those names will not be revealed to any -- to any Rwandan authorities. You can answer that question, please. There is no danger.

THE WITNESS:

I testified in (*By order of the Court, this name has been extracted and filed under seal*) case.

BY MR. TAYLOR:

Q. That was one.

A. And on the second occasion it was in the (*By order of the Court, this name has been extracted and filed under seal*) case.

Q. When was the testimony in the (*By order of the Court, this name has been extracted and filed under seal*) case?

MR. ADEOGUN-PHILLIPS:

Objection, Your Honour. The line of questioning that my learned friend is pursuing would definitely identify this witness. You are linking the witness to a testimony that she gave, and you

Commenté [BG72]: Anonym.

are seeking to know the date and probably the location. I mean, counsel should know better than that.

MR. PRESIDENT:

Yeah, Counsel, you must not put these witnesses in jeopardy. If you want a closed session, we can give it to you.

THE ENGLISH INTERPRETER:

With the leave of the Court, the witness's last answer was "I do not recall."

MR. PRESIDENT:

Please keep the two names that the witness mentioned under seal.

Commenté [BG73]: Anonym.

BY MR. TAYLOR:

Q. And how many times have you met with the Prosecutor or the Prosecutor's investigators about this case?

A. I do not remember the number of times.

Q. Did you talk to the Prosecutor who led your testimony on Wednesday before you testified?

A. Yes.

Q. When was that that you met with her?

A. On Wednesday.

Q. The very day that you testified?

A. No. Before I came to the courtroom.

Q. But only on that same day?

A. On what day, Counsel?

Q. You said you met with the Prosecutor before you testified last Wednesday. When was it that you met with her?

A. Before I came into the courtroom, I first met the Prosecutor.

Q. How long did you talk to her before you came into the courtroom?

A. I believe you should put questions to me concerning me, Counsel. I think that question should be put to the Prosecutor.

Commenté [BG74]: Emotion. Out.

MR. PRESIDENT:

Witness, don't get angry. You can answer those questions. Those are simple questions that you can answer.

Commenté [BG75]: "Calm down"

And, Mr. Taylor, there is nothing to prohibit the Prosecutor from meeting the witness.

MR. TAYLOR:

I didn't say there was, Judge. I think I've been on the record, may it please the Court, on more than one occasion of saying that it was, in fact, proper, and that any Prosecutor who didn't do it probably was engaged in malpractice. I've never said anything to the contrary.

MR. PRESIDENT:

(Microphone not activated)

MR. TAYLOR:

I think, frankly, may it please the Court, that there are other issues in this trial that relate to that interview that I need to develop with this witness, and that's what I'm asking.

MR. PRESIDENT:

Yes.

Yes, Witness, please answer: How long were you meeting with the Prosecutor?

THE WITNESS:

I came to Arusha on Monday and I met with the Prosecutor on Tuesday.

BY MR. TAYLOR:

Q. And how long was that meeting on Tuesday?

A. To tell you the truth, I was not wearing a watch.

Commenté [BG76]: Sarcasm

Q. Could you estimate how long it took?

A. One hour, but then that is an estimate.

Q. Did you have an interpreter with you at the time that you met with her?

A. Yes.

Q. Did you go over the previous statements that you had made while you were talking to the Prosecutor?

A. Yes.

Q. Are you aware that there are five statements that you have given at various times relating to this case?

A. Yes.

Q. Would you agree with me that the first statement you made related to this case was on the 15th of January 1997?

A. That I do not recall.

Q. Was your statement read to you during the time that you prepared for your testimony?

A. I do not remember.

Q. When you *****, did you also go over the statements that you've made in this case with the Prosecutor that prepared your case for trial?

A. Yes.

Q. And did they read to you on that occasion your statements as they appeared in the case at the time?

A. There's a statement that I did not agree with.

Q. Well, I didn't ask you whether there was a statement that you didn't agree with. I asked you whether or not you went over the statements with that Prosecutor.

Commenté [BG77]: Order

A. Yes.

Q. And on Tuesday of this past week when you went over the statements -- went over the material with the Prosecutor, did the Prosecutor also review with you the statements that you made in the case that you testified in in Butare -- in the Butare case in*****?

A. No, we did not do it all over again.

Q. So you didn't talk to her about what you had testified to in **** in this Tribunal?

A. My statement in **** has relation with the one I'm -- before this Court. I lived through this same event.

MR. TAYLOR:

May it please the Court, may the witness be shown her statement dated 15 January 1997?

MR. PRESIDENT:

Yes.

THE WITNESS:

I do not know how to read.

***Appendix 10 – Coded Extract of the
Testimony of Witness TM in the Muvuny Case
(June 22, 2005)***

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-55-A.T THE PROSECUTOR
CHAMBER II OF THE TRIBUNAL
v.
THARCISSE MUVUNYI

WEDNESDAY 22 JUNE 2005
1430H
CONTINUED TRIAL

Before the Judges:

Joseph Asoka de Silva, Presiding
Flavia Lattanzi
Florence Rita Arrey

For the Registry:

Mr. Carlos Javier Ortega
Mr. Ramadhani Juma

For the Prosecution:

Mr. Charles Adeogun-Phillips
Ms. Adesola Adeboyejo
Ms. Memory Maposa
Mr. Dennis Mabura

For the Accused Tharcisse Muvunyi:

Mr. Willie E. Taylor
Mr. Jean Flamme

Court Reporter:

Mr. Petrus Chijarira
Ms. Regina Limula

1 I N D E X

2

3 WITNESS

4 For the Prosecution:

5 WITNESS TM

6 Examination-in-chief by Mr. Mabura 1

7 Cross-examination by Mr. Taylor 6

8 Re-examination by Mr. Adeogun-Phillips 9

9 EXHIBITS

10 Prosecution Exhibit No. P. 22 2

11 Defence Exhibit No. D. 19 10

12

13 (...)

14

15 A. There were eight members of my family.

16 Q. Can you tell the Trial Chamber what happened at your home on mid-April 1994?

17 A. In mid-April, people came to look for any Tutsis who may have been hiding in my home.
18 And they found a young man called --

19 Q. Madam Witness, I will repeat the question because we did not get a complete answer.

20 MR. PRESIDENT:

21 Yes, you said that there was a young man, what was the name of that young man?

22 THE WITNESS:

23 His nickname was *****.

24 BY MR. MABURA:

25 Q. These people who came to your house, who were they?

26 A. There were two soldiers among those people. I used to see those soldiers usually at the
27 roadblock.

28 Q. Could you tell the Trial Chamber the names of these two soldiers?

29 A. One of them was Katabirora and the other was Sebuhero. Katabirora is spelt as follows,
30 K-A-T-A-B-I-R-O-R-A. Sebuhero is spelt S-E-B-U-H-O-R-O.

31 Q. Apart from Katabirora and the other soldier, were there any other people who came to
32 your house?

33 A. There were other soldiers, or rather there were other people with those soldiers, and it
34 was the latter who brought the young man to kill him.

35 Q. Could you tell the Trial Chamber, if you know the names of the other people who came
36 with the two soldiers?

37 A. There was a person called Ntawuhiganayo, there was another person called Ndayisaba,
38 and a man called Isidora. Ntawuhiganayo is spelt as follows, N-T-A-W-U-H-I-G-A-N-A-Y-O;
39 Ndayisaba is spelt as follows, N-D-A-Y-I-S-A-B-A.

40 Q. The two soldiers who attacked your house, were they carrying anything with them when
41 they came to your house?

42 A. They were carrying firearms.

43 Q. What about the other people, Ndayisaba, Nzeyimana and Uzakunda, were they carrying
44 any other -- were they carrying any weapons with them?

45 A. They were carrying weapons. They were carrying small hoes and machetes.

46 Q. When they arrived at your house, what did they do?

47 A. Are you referring to Ndayisaba and the others?

48 Q. Yes, Witness TM, when the two soldiers, Katabirora and Ndayisaba and the others when
49 they came to your house, what did they do?

50 A. Some of them brought that child called *****. Katabirora and Isidora
51 stayed at home while the others ran after the child.

Commenté [BG78]: Reform.

1 Q. These people who ran after the child, did they catch the child, *****?

2 A. Yes, they caught up with the child and killed him on the way, and killed him immediately.

3 Q. How far is the spot where they killed ***** from where you were standing?

4 A. If we were to measure distance by footsteps, I would say that the distance was about 16
5 footsteps.

6 Q. After these people killed the child *****, what did they do to the body of
7 *****?

8 A. They brought down his body and buried him below our house in our property, in our
9 land.

10 Q. What was the ethnicity --

11 MR. PRESIDENT:

12 Before going into that, I think you have to clarify, from where the child, *****, come,
13 where was this ***** before these people came.

14 BY MR. MABURA:

15 Q. Witness TM --

16 MR. PRESIDENT:

17 When you said that some people came with soldiers and searched homes, where was this
18 ***** at that time?

19 THE WITNESS:

20 He was at home. He was in our home inside the house.

21 Q. Who were ***** parents?

22 A. His mother was called ***** whereas his father was
23 *****
24 *****.

25 Q. What was the ethnicity of this young child, *****?

26 A. He was Tutsi and so were his mother and father.

27 Q. After this incident, Witness TM, could you please tell the Trial Chamber what the
28 attackers -- what did the attackers do next?

29 A. After that incident, the assailants raped me.

30 Q. Who was the first or what is the name of the first assailant who you say raped you?

31 A. Katabirora.

32 Q. In what location were you?

33 A. I was standing on the verandah when the child was brought in, and Katabirora pushed me
34 inside the house and that is where I was raped.

35 Q. When you say you were raped, could you please describe the -- what you understand by,
36 "They raped me." Could you describe to the Trial Chamber, I know it is a painful experience,
37 but could you please describe to the Trial Chamber your experience?

38 A. The assailant thrust his sexual organ into mine.

39 Q. After this incident, could you tell the Trial Chamber what happened after?

40 A. As you know at the time, I was pregnant for six months. That is what happened after
41 that incident. Three days after the rape -- excuse me, I forget something. The attackers left me
42 on the scene. I spent a lot of time there, and it was my husband who came and took me away
43 when he realised that the attackers had left.

44 Q. How many people raped you after Katabirora?

45 A. I only remember Katabirora. He is the one who took off my clothes and placed them
46 over my eyes. He was with other assailants. I saw Katabirora, and Ntawuhiganayo.

47 Q. You said you were pregnant at that time, how many months were you pregnant?

48 A. Six months.

49 Q. What happened to you after the rape?

50 A. I felt ill at ease, and three days later, I aborted the child or I had a miscarriage.
51 Q. Do you suffer --?

Commenté [BG79]: Reform.

Commenté [BG80]: Rape Witn.

Commenté [BG81]: Rape Witn.

Commenté [BG82]: Empath.

Commenté [BG83]: Descrip. SV Prosec.

Commenté [BG84]: Conseq. Rape

1 MR. PRESIDENT:
2 Before that, I think, Counsel, when you were attacked on the verandah, who else was at home?
3 Was anybody at home?
4 THE WITNESS:
5 There was nobody apart from my husband who had been driven away. They had been ordered
6 to kill the child. He objected to it, and he went into hiding. My children were also present, but
7 the attackers drove them away.
8 BY MR. MABURA:
9 Q. I will take you back to Katabirora; did you know the ethnic group of these soldiers,
10 Katabirora?
11 A. I did not know his ethnic origin, but generally, those who stayed around roadblocks were
12 Hutu.
13 Q. Did you know this Katabirora before the incident?
14 A. I knew him, but I did not know where he lived. We saw each other on the way.
15 Q. You said -- you testified earlier that you saw Katabirora on a roadblock, how far,
16 approximately, is that roadblock from your house?
17 A. About one kilometre.
18 Q. Now, Witness TM, did you suffer any other physical consequences following the rape by
19 Katabirora?
20 A. I have pains in my back because I resisted, and he hit me and I also have pains around my
21 head. I do not know what object he used to hit me. It must have been a metallic object.
22 Q. Witness TM, I want you -- I would like you to tell the Chamber, I would ask if these
23 events that you have told the Trial Chamber are correct and accurate?
24 A. What I have just testified to you here today is correct. These are incidents that I
25 personally witnessed and which happened to me.
26 Q. Witness TM, the last set of question I will ask you is; what time of the day was -- did
27 these attackers come to your house?
28 A. It was in the afternoon towards the evening before sunset.
29 Q. And, Witness TM, can you tell the whereabouts of you husband now?
30 A. He is at home.
31 MR. MABURA:
32 Mr. President, I would like to stop, and that is the end of the examination-in-chief.
33 MR. PRESIDENT:
34 Witness, is your husband at home, he is living with you?
35 THE WITNESS:
36 Yes, we are living together.
37 MR. PRESIDENT:
38 Do you have any questions?
39 MR. TAYLOR:
40 No. I am debating that. The only thing I want to ask the witness is where her house was.
41
42 CROSS-EXAMINATION
43 BY MR. TAYLOR:
44 Q. Mr. Witness, my name is --
45 MR. ADEOGUN-PHILLIPS:
46 I am just worried about that.
47 MR. TAYLOR:
48 Just for --
49 MR. PRESIDENT:
50 You want to close the session -- are you?
51 MR. TAYLOR:

Commenté [BG85]: Order

Commenté [BG86]: Lack Empath.

Commenté [BG87]: Conseq. Rape

1 Before we close the session, I have just a few things that would bear on the soldiers.
2 MR. PRESIDENT:
3 You are free to ask any questions.
4 MR. TAYLOR:
5 Thank you.
6 BY MR. TAYLOR:
7 Q. Witness, my name is Willie Taylor; I represent Tharcisse Muvunyi in this case. The first
8 thing I want to establish is how often had you seen these soldiers before this incident took
9 place?
10 A. I saw him at the roadblock which I mentioned.
11 Q. Well before the death of President Habyarimana, there was no roadblock; was there?
12 A. I did not see any roadblock before the death of Habyarimana.
13 Q. Had you seen these two soldiers that you mentioned before the death of Habyarimana?
14 A. I knew them. We walked past each other, but I do not know their exact data. I did not
15 know where they resided, but then we saw each other.
16 Q. Did you know where they worked as soldiers?
17 A. The soldiers worked in Gikongoro town, but I do not know where their camp was, I
18 never went there.
19 Q. Can you -- not familiar with what -- what soldiers were stationed in Dokore (sic) town;
20 is that true, Gikongoro town, sorry?
21 A. I do not know how many they were, but I knew them. It is difficult not to know people
22 who live in the same areas as you do.
23 Q. You mentioned in your statement, I believe, that one of the soldiers was not wearing a
24 uniform. Do you know whether or not that was because he was no longer in the service of the
25 FAR?
26 A. The one who was not wearing a uniform was referred to as JP, presidential guard, I guess.
27 Q. Were both of these soldiers of the presidential guards?
28 A. No, it was said that one of them was a presidential guard, whereas Katabirora was an
29 ordinary soldier.
30 Q. Can you tell me where it was that you gave your statement on July 27, 2000?
31 A. At a mine in Gikongoro.
32 Q. I am sorry I didn't catch?
33 A. In my home at a mine in Gikongoro.
34 Q. And I know you don't read and write, and at least I assume from your information sheet
35 that you don't read or write because you affixed your thumb print to your statement?
36 A. I do not know how to write.
37 Q. The information sheet indicated that it was in IBUKA office. Is that -- do you remember
38 whether, it is factual, whether or not that is not true?
39 A. That is true, what is written in that document is correct.
40 Q. Are you a member of that organisation?
41 A. I do not know any association.
42 MR. TAYLOR:
43 Can I -- now I just like to go into the closed session just to establish with her army's relationship
44 to other things. I think the record shows that.
45 MR. PRESIDENT:
46 (Microphone not activated)
47 *(At this point in the proceedings, a portion of the transcript [page 8] was extracted and sealed under separate*
48 *cover as the session was heard in camera)*
49 *(Pages 1 to 7 by Petrus Chijirira)*
50
51

Commenté [BG88]: Misunderstanding

MR. ADEOGUN-PHILLIPS:

Your Honour I have further -- a few questions in re-examination, that would take, five -- ten minutes.

RE-EXAMINATION

BY MR. ADEOGUN-PHILLIPS:

Q. Madam Witness, you were asked by learned counsel.

MR. PRESIDENT:

Yes.

BY MR. ADEOGUN-PHILLIPS:

Q. You have been asked by my learned counsel for the Defence about the soldiers; don't you?

A. Yes.

Q. You testified that one of them was said to be from the presidential guard. Do you recall telling you?

A. I do.

Q. And the other, you described him as an ordinary soldier; isn't that so?

A. That is so.

Q. Now, my question to you is: Had you known these two soldiers before they had attacked your house and if so, how did you know them, and for how long had you known them?

A. I had known them for a long time about two years. I saw them move around and we met each other on the way with the exception of the person who was referred to as JP, presidential guard. He was not living in our area and I did not see him often.

Q. Let's take them one at a time, shall we, Madam Witness, and let's deal with the one you have described as the presidential guard from the presidential guard first. Are you with me?

A. Yes, I am.

Q. I talking about that person how many times had you seen him before he was involved at the attack at your residence?

A. I did not see him often. He came with other people who were with him at the roadblock where he was killing people. It was the others rather that I knew.

Q. Had you seen him at least once, twice, thrice before the attack at your house? Can you help us with that?

A. I saw him when he was with Katabirora at a roadblock.

Q. Was that the same roadblock near your house at the time?

A. Yes, below.

Q. Now, let's talk about the other man, the other ordinary soldier, Katabirora. How often had you seen him before you saw him during the attack at your residence, Madam Witness?

A. I told you that I saw him often, year after year. We walked past each other. I saw him.

Q. Did you know his parents?

A. No, I did not know them.

Commenté [BG89]: "I told you"

Appendix 11 – Coded Extract of the judgment of the Muvunyi Case (September 12, 2006)

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-00-55A-T THE PROSECUTOR
CHAMBER II OF THE TRIBUNAL
v.
THARCISSE MUVUNYI

TUESDAY, 12 SEPTEMBER 2006
1400H
JUDGEMENT

Before the Judges:

Joseph Asoka de Silva, Presiding
Flavia Lattanzi
Florence Rita Arrey

For the Registry:

Mr. Nouhou Diallo
Mr. Ibrahim Mwamasangula

For the Prosecution:

Mr. Hassan Bubacar Jallow
Mr. Charles Adeogun-Phillips
Ms. Adesola Adeboyejo
Ms. Renifa Madenga
Ms. Memory Maposa

For the Accused Tharcisse Muvunyi :

Mr. William E. Taylor

Court Reporters:

Ms. Sherri Knox
Ms. Eleanor Bastian

(...)

Furthermore, the Chamber believes that the Prosecution has proved beyond reasonable doubt that in May 1994, Muvunyi addressed a public meeting in Gikore trade centre attended by about 1,000 mainly Hutu people from Nyaruhengeri, Kegembe, Muganza *communes*. During his speech, the Accused called for the killing of Tutsis, the destruction of Tutsi property, associated Tutsi with the enemy, and denigrated Tutsi people by referring to

them as snakes. He also told the audience that Tutsi women were poisonous agents who could kill their husbands and asked that they should be sent away. The Chamber is satisfied that Muvunyi's audience understood his words as a call to kill members of the Tutsi ethnic group and that the attack -- the Accused knew this would be the effect of the words on those listening to him.

In Count 4 of the indictment, it is alleged that during several attacks on civilians in Butare *préfecture*, many women and girls were raped and sexually assaulted by *Interahamwe* and soldiers from the Ngoma camp. The Chamber notes that both in its pre-trial brief and during its opening statement, the Prosecution indicated that it intended to prove the rape -- that the rapes alleged in the indictment were committed by soldiers from ESO and Ngoma camps, as well as by members of the *Interahamwe* militia.

To support the charge of rape the Prosecution brought three witnesses, two of whom testified that they were raped by ESO soldiers, while the third, she was -- while the third said she was raped by a soldier in Gikongoro. The Chamber notes that the evidence of these Prosecution witnesses does not support the -- support the very clear and specific allegation in the indictment that soldiers from Ngoma camp and *Interahamwe* were responsible for the said rapes. In the Chamber's view, the allegation that ESO soldiers committed rape in Butare in 1994 is a material fact that should have been pleaded in the indictment, not a mere evidential detail that could be introduced at a later stage.

The Chamber recalls that pursuant to Article 20(4)(a) of the statute, an accused has the right to be informed of the nature of the -- nature and cause of the charges against him. According to the

Appeals Chamber, when considered in light of Rule 47(C) of the Rules of Procedure and Evidence, this provision translates into a prosecutorial obligation to state the material facts underpinning the charges in the indictment but not the evidence by which such material facts are to be proven.

While the Chamber recognises that a defective indictment could, in certain limited circumstances, be cured by timely, clear, and consistent communications from the Prosecution after the indictment has been filed, it is the Chamber's view that the present situation raises a very different problem. With respect to the rape charge, the Chamber is of the view that the indictment is not vague. On the contrary, the indictment clearly states that soldiers from Ngoma camp committed rape. This is a clear and straightforward charge. There is no ambiguity in it. It follows that if the Prosecution wanted to rely on evidence of rape committed by soldiers from ESO or any camp other than Ngoma, the -- the appropriate thing to do would have been to amend the indictment pursuant to Rule 50 so as to include a specific pleading to that effect.

Commenté [BG90]: Proced. Flaw

The Prosecution, having failed to do so, the Chamber considers it would be prejudicial to the Accused to consider the evidence of rape adduced in this trial. It is the Chamber's considered view that where the evidence adduced at trial does not support the allegations in the indictment, it is in the interest of justice and a fair trial to acquit the Accused in respect of the unproven allegation.

Under Count 5, the Prosecution charged the Accused with other inhumane acts as a crime against humanity. In respect of this count, the Prosecutor alleged that soldiers from ESO camp meted out cruel treatment to Tutsi civilians by beating them up with sticks, tree

saplings, and rifle butts. In its closing brief, the Prosecution argued that such mistreatment of Tutsi civilians took place at various places throughout Butare *préfecture*, including Butare cathedral, ESO camp, Beneberika convent, *groupe scolaire*, and at various roadblocks manned by ESO soldiers.

The Chamber has considered the totality of the evidence adduced in support of Count 5 and is satisfied beyond reasonable doubt that on or about 17th May 1994, Prosecution Witness YAO and YAN were arrested by ESO soldiers under the leadership of Lieutenant Gakwerere and severely beaten with rifle butts and other implements. As a result, Witness YAN sustained severe injuries to his head and abdomen. The soldiers ask witnesses -- Witness YAO, a woman, to roll in mud, beat her and called her *Inyenzi*.

Similarly, the Chamber is satisfied that the Prosecution has proved beyond reasonable doubt that on 30th April 1994, soldiers, under the leadership of Lieutenant Modeste Gatsinzi of ESO, launched a large-scale attack on Tutsi refugees, including orphans, at *groupe scolaire*. The soldiers separated the Tutsi refugees, including at least 18 orphans, from the other refugees, forced them to lie down on the floor of a volleyball court and proceeded to severely beat them and subsequently shoot them to death.

In addition to the above incidents, the Chamber has heard evidence which it believes that ESO soldiers stopped, searched and beat many Tutsi civilians at various roadblocks throughout Butare from April to June 1994.

Prosecution Witness AFV and QY were among the victims of such attacks. Witness QY was stopped and undressed by ESO soldiers at a roadblock in the Arab neighbourhood of Butare. They proceeded to mock various parts of her anatomy. At the university roadblock, ESO soldiers stopped, searched, and beat up Witness AFV. The soldiers openly expressed their wish to look at this Tutsi's sexual organs, dragged her into the bush, hit her head against the ground. She lost consciousness. When she woke up, her assailants had disappeared, but she realised that she had been raped. Witness AFV, who was a nun at the time of this incident, told the Chamber that as a result of what happened to her, she would not -- she could no longer be a nun.

Commenté [BG91]: Conseq. Rape

The Chamber finds that the ESO soldiers were responsible for the mistreatment of Tutsi civilians. Taking all necessary factors into consideration, the Chamber is satisfied beyond reasonable doubt that the Accused had reason to know about these attacks and mistreatment of Tutsi civilians by his subordinates and that he failed to take the necessary and reasonable measures to prevent or punish their conduct.

Will the Accused please stand up.

This is the verdict of this Court. For the reasons set out, having considered all the evidence and the arguments of the parties, the Trial Chamber unanimously finds Tharcisse Muvunyi: Count 1, genocide, guilty. Count 2, complicity in genocide, dismissed. Count 3, direct and public incitement to commit genocide, guilty. Count 4, crime against humanity, rape, not guilty. Count 5, crimes against humanity, other inhumane acts, guilty.

Sentencing: Having found Tharcisse Muvunyi guilty on Count 1, 3 and 5, the Chamber must now determine the appropriate sentence. The Prosecution urges the Chamber to impose the maximum sentence of life imprisonment. The Defence did not make any submissions on sentence but instead called for the acquittal of the Accused on all the accounts.

Having examined the sentencing practice of this Tribunal and of Rwanda, the Chamber notes that the maximum penalty of life imprisonment is usually reserved for those who held positions of authority and planned or ordered atrocities, as well as for those who committed crimes with particular zeal or sadism.

While Tharcisse Muvunyi occupied the senior military position in Rwanda in 1994, the Chamber did not find any evidence that he planned, ordered, or directly committed any of the crimes for which he has been found guilty.

His responsibility for most of the killings in Butare arose from his failure to control the actions of his subordinates in circumstances where he knew or had reason to know that they were involved in the systematic targeting and killing of Tutsi civilians.

(Pages 1 to 10 by Sherri Knox)

Appendix 12 – Testimony of Josephine Murebwayire

- Josephine : Those who misled us in excavating all those bodies on the different hills are the ones who participated in killing the not only my people but all the people on that hill. Now in gacaca whenever they go to defend themselves that's when they say it and those who saw them accuse them. They even accuse themselves and each other; they displayed a lot of hate and torture that was just imaginable. But gacaca is exposing them all, they are turning on each other, those who are in jail denounce those who were not put in jail and those who are in jail also denounce those who are being released. That's how things are in our region.
- Martin : Lets talk again about the other children who were killed from Ndera and were later burnt, we can tell that...
- Josephine : Where they buried them, I don't if it's because I was still very traumatized in 1997 is when we first said prayers for them. I am the one who showed where they were thrown there is a bush even pictures of the place. And the way I watered the place but when they said to excavate the bodies I said no, I don't want you to excavate them; they weren't many other people that survived from there. It was me and the one boy who is now in Switzerland, he is a member of ibuka there, his name is cesar. We asked them not to excavate them since they had also burnt them. We asked if they could make the place look good and the priests promised us they were going to build a beautiful memorial, its there and every 11th of april we go there to commemorate. And we have mass and pray, the memorial is just in front of the praying room.
- Martin : If you estimate on the few people who survived from there it's you and that boy, it seems like you are very few compared to all the people that were killed from there.
- Josephine : They were in hundreds around four hundred because all the classrooms were full, there was even a hall that was full, the hutus later went out but they were few. The majority were the Tutsis seeking refuge.
- Martin : So you mean that in the four hundred seeking refuge the survivors are not more than ten?
- Josephine : At the seminary it's just me and cesar, they are some kids who also ran away, but the ones we are sure of and count are me and cesar. We are the only ones who came out of the corpses.
- Martin : If we talk about your children that died in Masoro did you get to know who killed them or how they were killed except the fact that they were thrown in the pit latrine?
- Josephine : In gacaca they talk about the people who died but even the ones who are there played a major role in it but what is clear is that whoever is involved were arrested because of gacaca.
- Martin : They normally first hacked people before throwing them in the pits, did you get to know if your children were thrown in the pit alive or after being hacked.

- Josephine : The boy who told us said that they were hacked, my second son, the one they called dede his name was jean bosco. He was a very good friend of the boy who said it his name is gashirabake, he said that when they were about to kill them he said to him, gashiraba We've been very good friends and we are going to die; where we are going they don't wear shoes, take my shoes and remember me whenever you look at them. And please tell the story. And then they told those who were about to kill them to wait so that they can first pray, and when they had finished praying they threw them in the pit. He is the one who told us all that. But personally I think that if that boy was given shoes by your son it means that he even saw the ones who killed them. He knows them but he says that he ran away, they don't agree to say everything clearly. They don't want to state facts I think of fear that the remaining ones will hurt them. He says that he ran away and says the one who chased him away and hit him with a stick on the shoulders. So he says that he doesn't know who killed them but others say that he was killed by a man called habari, he is dead. They also say that they were hacked by a man called sebahire who is also dead, there is no one who killed them who I alive but its clear that the people who are alive know who killed them. No one stands on his/her word, the boy says that after he was beaten he ran away, he can't really say that he saw someone kill, may be if he says him and he is there, he would also hunt him down, I don't know. He hasn't even come back to court because he was imprisoned when he was still young but may be he will. Gacaca will deal with it, I personally don't know.
- Martin : I understand that your whole family died but no one forgets her family, can you please tell us about your husband, what kind of man was he? How did he relate with other people and what is the one thing that you remember about him that you cannot forget?
- Josephine : There is no way I can forget him, I don't know how I can describe him I think that picture describes a lot, he was a very calm man. He was a very humble man who easily related with everyone but especially he loved children, I think that's why he went with our children. He was very easy to relate to and was very merciful; he could easily ignore himself or others. That was his nature, he was a man that really loved his family, I think if he had been greedy when he was released from jail he would have abandoned us. But he didn't, he loved everyone, he didn't hate anyone, he loved the poor and humble. Our car is the one that always took all the women at the hospital, he was always careful to take the poor pregnant women at the hospital. And he would also remember to take something to revive them after they had given birth; nobody else remembered he was a really nice man. My children were also like that, they loved other kids and were always warm and happy, I can't forget them, instead I try to imitate them and fail.

Topics: Testing;

- Martin: I don't know how to say it, but here they killed all your family and finished it, if they came and confessed their fault, would you forgive them?
- Josephine: To forgive, they are words that people are quick to use but it doesn't even make sense. The person who asks it and you who says that you have forgiven him it's not something easy. Because personally the way I see this country it belongs to all Rwandans, its not just mine it's not even for only the genocide survivor, it's impossible. Evil is not repaid by evil; personally I told God that I can't do anything on my own. I can't manage anything on my own. I don't think I would even be alive, I think I would have gone mad. I surrender everything to God because to be able to get out of all the corpses of my children. My husband, relatives and neighbors that

were lying there dead, I didn't think I was going to live. I told God that He is the one in control and knows why everything happened. I asked God for something and he gave it to me, I told God that those who died and those who are alive, I asked that He may give me the power to love without focusing on anything else. To love His love because personally I can't, so which means that if someone comes and tells that they did me wrong, an example is the boy who said where my children were thrown. I am not lying to you but my heart has accepted him in such a way that when I look at him I see the child I once saw before. So instead of being burdened I asked God to give me a big heart so that I can offer mercy to everyone who needs it. Even if it's a Hutu who killed my family and he comes when he is broken down, I would forgive him because he is a human being, I can't do the same atrocities like he did. It's really not by my strength that I can do this, I won't lie to you. Because on my own I am nothing and I would be nothing but the fact that God saw that my children and body were dead. I was disgusting and he revived me and people want to be with me when before they use to run away from me, people who saw me immediately after the genocide would avoid me. I was hideous and disgusting and there's no one who really took care of me to say they did it. Except my cousin-brother but even for him it wouldn't have been possible without God's power. I would have gone mad, but God kept and made me who I am today, so even me in His love I must do what He asks me to do and whoever asks me for forgiveness in truth, I would forgive them. But not forgiveness out of hypocrisy like they do in Gacaca, someone coming and saying that I am asking forgiveness from every Rwandan, I don't have that forgiveness. I don't forgive those ones because I see that they are just saying it, it's like a slogan they use I don't have forgiveness for those ones. But if someone comes and kneels before me and says it from the depth of his heart. And when someone is saying something from the depth of their heart you can tell and I can forgive them, but they don't ask for forgiveness because someone asks for forgiveness is someone with a human heart. [Someone with humanity in them comes close to you because] he sees that you are human, when he doesn't it's because he thinks that you are still the thing that he called you before. They dehumanized us by calling us cockroaches and other horrible names so I think they still see that in us, so whoever comes close to me, I would forgive them.

- Martin: After hearing the difficult things that you went through, surviving among all those people and your family being dead. Nowadays how can I describe Murebwayire Josephine, what kind of person is she even though her whole family died, is she someone with hope even though her whole family died in the genocide? Please tell us, how do you feel deep inside because I don't understand?
- Josephine: It doesn't make sense humanly speaking, it's beyond our human nature and when they say beyond our human nature, it means it's not human. Everything that happened in my life since I was a child up to now is beyond human nature but there is someone who created human nature. He enables me, you asked me if I have hope. My hope is that I am alive; I was not supposed to be alive. I wouldn't even be of any use but because I see that I am living for some people who reap from me I must live and live like someone who is responsible, work like someone with responsibilities. I didn't think I would have those responsibilities, it means that I had died and resurrected. In resurrecting I resurrected a new being not the same person. So I have to accept the way I always tell people "Josephine died and Auntie lived." Because now I am called Auntie of all the children, any child who comes to me with a problem that I can fix, I fix it. To comfort and convince that that child

must live and encourage him/her, so I think I was left behind so that I may be an Auntie to all the children. A child who comes to me with a problem that I can fix, I fix it and comfort them and convince him that they must live. So I think I was left behind so that I can be a mother to all children without mothers. It's not a must that I take care of them in my house but they are some I advise on certain issues and they move forward. They are some that I have here in my house. I have six children, two girls and four boys. There are some who I don't know their origin and their relatives, some are family including my mother I never knew her because I got lost when I was a little child. And only see her after the genocide when they returned from exile, all those are my responsibility to do all I can. The other thing is that God who kept me has a plan for my life that He helps to fulfill it, he didn't put me to shame, I would have gone crazy, and it was possible. They hacked me in the head but I didn't lose my mind I can think, it means I must live my life thanking God and doing what I can. It's something that can help others.

- Martin: How do you relate to the neighbors that you had before all this, how is your relationship? After the genocide which affected your life and the life of many Rwandans, do you think that there can be normal trustworthy relationships? Between the killers and victims?
- Josephine: About trust I don't know if it's Kadafi who said that, "protect me from my friends because I already know my enemies." God gave us the wisdom to think, when you live with someone there is no reason to disturb someone who is going through hard times, if I am able I can help him/her as a Rwandan and if they are celebrating I can celebrate with him/her. But I have to be careful because there is no way a cobra can turn into a chicken and you eat it. It means that if you know that there is an animal or beast in the forest you must walk when you're ready to run away from it. But I live well with my neighbours I don't how to segregate people saying one is Hutu so I won't greet them, or insulting someone that they are Interahamwe. When I see someone I see a human being and I only see evil when that person commits it, but I don't push anybody away. My heart welcomes everyone who comes to me with good intentions, if you don't then I don't give you my time.
- Martin: In the genocide especially women went through a lot of difficulties, besides killing them and finishing off their children, many were raped and infected with diseases. Besides being raped they went through a lot of difficulties and problems that personally I think that widows have a lot of problems. As a result of the genocide, it is very difficult because you find that someone has a sickness that will kill her at some point. If she is not burdened by disease, the genocide ended and she is probably in a lot of poverty, I would like you as a woman who went through the same and lost your whole family which is a very difficult thing to endure, I would like you to paint a picture for us of the genocide widows who are suffering the hard consequences. For example disease, what would you say to them? I don't know how to say it. How is their life today? How are they doing, please give us an image of their life?
- Josephine: You have just asked me a very difficult question. I am part of a widows' association called Avega Agahozo. I am the second vice-president on the national level, it's an association that we set up because among widows there are many categories. There are some who were raped and infected with HIV & AIDS. There are some girls who gave birth to children they didn't want, there are some who were hacked and do not have some limbs, some don't have hands. Some don't have eyes.

They are different handicaps and then there are those who are emotionally handicapped. And physically they don't have a home, without a house to live in, many times they are next door to the ones who killed their families and injured them. You understand that it's adding more sorrow to an already broken heart, so our association's goal is to stand by them and comfort them telling them not to lose heart. Telling them that the fact that they are still alive, that they will continue to live. We are lucky that we got a project that helps them with anti-retro viral medication for HIV & AIDS. There are many who died because the medication just started coming in recently, they are many who passed away. The medicine helps those who are still alive, the CDP project that supports us and the first lady through PACFA. I am very grateful, so a widow can get the medicine and sometimes not have anything to eat. And it can really affect her because the medication is strong, to get food everyday is not easy because you can see that we are widows like them. We don't have work and those who do sometimes have other responsibilities in their home, but we try to help and comfort each other. What we mainly do is speak out because most people live in despair, so Avega advises, comforts and brings us together. That is our main objective of our association, to bring us together, comfort each other, convincing someone that if they are in pain tomorrow they might be comforted, if they are sick tomorrow they can get better. HIV ; AIDS is bad disease in the body but it's clear now that it does not even kill when one gets those medication. So what we do is tell them the fact that they are in pain doesn't mean that they die, and we speak up for them to the government. Our desire is that these people are not given up on or forgotten. These people who are sent home and forgiven really traumatizes us because it seems as though they are the ones who are cared for. But with us it seems as though those who advocate for us do not have strength or there is no emphasis so that the problems are solved, of course nobody can bring back the people who died. But things can be got back, a house, food, clothes, medicine. So among the few that are alive I think if they get the widows or survivors in general, they are not so many so that they can't do something for them. If they help us it can be over.

- Martin: But it has been thirteen years after the genocide, can we say that people are still the same way they were when the genocide had just ended? Thirteen years later, if you compare the way things are now and the way they were immediately after the genocide. Do you think that at least people are moving from the state of turmoil and life is being restored?
- Josephine: It's just that no one can solve all the problems at once, or if we see a hundred people go on to say that everyone died but things have really changed, a good example is the orphans that went to school and now have completed their studies it is evidence. And now they are in university and some have finished, is there a child who came out of a pit thinking that he was going to study. The widows didn't have a place to stay, can that person say that nothing was done. It's not enough maybe because of limited means but I can't say that they didn't help us. Things have changed, for example if a child survived the genocide when he was in secondary and now he is in university, he'll also help others. And we will continue to stand together and talk, I don't want us to forget those who are behind us. Generally Rwandans are not doing great now imagine those who were taken out of their own. But slowly I think something has changed but there's still a long way to go. They problem is that there are some people who are doing very badly and it huts me when I hear that they support FARG. They say that in three months there

are people who do not even it ten thousands francs, I am hurt whenever I hear this, sometimes I think that it's mocking us. They should look for a way that a person should be supported continually so that they don't keep going to ask for help.

- Martin: I wanted to ask you something in line with remembering our loved ones that were degraded and humiliated in the genocide. They were thrown in different places after the genocide, someone has to go searching... and then they are buried, so I wanted to ask you how do you think our people should be buried?
- Josephine: The first and best way to honor our people is to know where they were thrown and we bury them taking them out of the holes. To take them out of pit latrines, to be able to say that the people in this district are going to be honored and buried and all of us get ready and go there remember and honor them. But to remember well is to remember the ones that remained behind. Don't go to remember a man when his widow stays in the house of those who killed him, when she is wearing rugs when her husband would have dressed up well, we can't say that we are going to remember that man. Without remembering those he left behind, for the kids to be crying and no one visits them to comfort them and teach them that tomorrow they will be men and women. We teach them good manners just like their parents would have done and then go the memorial sites and remember all the people who passed away.
- Martin: Personally there is a way I feel that we should remember our people and bury them in such a way that we would always remember them. But both things work together just like you have said, about the survivors. There is no way that someone can remain in that kind of trouble without knowing where to live and starving. So that we may always remember them, I want that you will make your comment and say what you think. I think that after thirteen years that the genocide has ended, it's not a lot of years, but when you look at the way the memorial sites are maintained. It is evident that they are not well taken care of and nothing is done about it, clearly if nothing is changed about the way they are managed then after twenty years they will be in a visibly bad condition. So here I want to ask, remembering is for who? Is it for the survivors, is it for our government? Is it for the survivors, is it for our neighboring countries? Because many times people remember in April, there is no initiative so that memorial sites are always maintained and in good condition. So that there are always taken care of no matter what, I don't know what you would comment about it?
- Josephine: It's true that we only remember in April, you would think that at other times we forget where they went and only remember them in April. You would think that we forget where they went and say, I will go visit my people in April. But your loved one is always on your mind and heart and you always want to know where they spent the day and where they are but those memorials in the provinces and even the strong ones here. You said twenty years but I think twenty is a lot of time
- MISSING: Josephine You said twenty years but I think twenty is a lot of time because they are some that are already getting spoiled. Some places are crumbling, in other places there are bushes where animals are taken to eat grass, remembering is not for the genocide survivors only, its not even just for the government, because the government is people. It's for all rwandans to remember, I don't see how some one who is neighbours with a memorial, I always take an example of Kanombe. At the main road they had put there a metallic fence but they stole them and finished them off, I don't understand how some one steals from a memorial site, what do

you do with those thinks? It is the home of those people, they may not be here on earth but it is there home. I personally think that people should make it their purpose and we are also lucky that now we have lower levels of government the umudugudu/village. It can watch over the memorial sites in their village and see if there's any work needed to be done, if grass needs to be cut they make sure its cut and if there's anything else they plan for it and follow it up. The government is the citizens, its not a ministry or the district, it is me, you and anybody else who is available and we all work together, that's my opinion.

- Martin : As we are winding up, even though the genocide took place, we can't forget about it. And we don't wish for it to happen again, so I would like to ask you, according to the hard times we went through and saw we don't want it to happen again. What heritage would you like to give to the rwandan children who didn't go through these things? What kind of rwanda would you like to give to them as a heritage compared to the one you lived in?
- Josephine : I think that the new heritage has started already, there are still problems but I am really glad that no child is asked to stand up in class because of their ethnicity. The way it's not being done in schools it should also be the same in people's homes because all the ad influence takes place at home behind closed dooors. On the cooking stove that's how they always say, we parents are the ones that offer as a heritage good or bad things to our children. The teacher is given responsibilities and a syllabus to follow but no one controls someone's home. So I believe that we parents should teach our children to love each other, the youth needs to fellowship and be together. Our government's policy is good; the peace government wants us all to live at peace with each other but our homes. Are the ones with a problem and nobody will control and know what is being taught. The genocide was slowly taught for forty years but we have just spent thirteen years teaching to live at peace. If we continue to live in peace, our children would live together in peaceful Rwanda with no turmoil and ethnicity. But it starts with us the old and mature ones, we need to uproot it, I would like the government to emphasize refusing and condemning any word that leads to the genocide. And whoever uses it should be punished publically even more than the one that actually used a machete, because a machete is used by someone who first talked about it. Personally I would like our children without differentiating to all have a heritage of peace.
- Martin : I don't know if there's anything you would like to add on as we are concluding our talk?
- Josephine : There's nothing except to thank you because you thought of me and came to interview me, and for these things to happen, you can also tell me if you think that the things I said make sense. If they make sense then you can keep them and if they don't then you remove them. They can be somebody else's opinion, thank you.

Appendix 13 – Testimony of Mathilde Uwanyirigira

- Martin: Today February 16, 2007, We are at Uwanyirigira Mathilde's house at Gacuriro. She is going to tell us her story about her life during and after the genocide. I would like you, Uwanyirigira Mathilde, to start with introducing yourself.
- Mathilde: My name is Uwanyirigira Mathilde, I am 41 and I have two children. I think... before the war [genocide] I lived at Mumena, in Nyamirambo.
- Martin: Mathilde, how many people were in your family before the war [genocide]?
- Mathilde: My family was composed of my husband and my two children.
- Martin: Can you tell us briefly how life was like in your family before the war [genocide] of 1994?
- Mathilde: We lived well in our family. Coexistence with our neighbors was good.
- Martin: So the genocide began... We would like you tell us briefly, and how you saw it.
- Mathilde: We learnt about the death of Habyarimana on 6th [April 1994] at night. We tried to flee but we were told it was not possible at all because all roads and paths were blocked off. On 7th early morning, we were told that none was allowed to leave his home.
- Mathilde: Around 11 am, one of our neighbors, a native of Ruhengeri came and told us: If you have somewhere to hide, you can go on now. You are at risk to be killed." I suggested my husband to flee and he said: "That is not worth it. It may be rumors. We might not be risking anything in staying here." I told him: " am scared, let me go away."
- Mathilde: I took my children and went to St Andre parish. We left my husband at home. On the same 7th day, as our neighbor had said, our home was attacked but fortunately I and my children had already fled away. My husband glanced out through the window to see who was ringing at the gate. He saw soldiers surrounded by Interahamwe. He ran immediately behind the house and jumped over the fence, militiamen ran after him and shot him on his arm, he did not fortunately die. He fled away and came to join us at St Andre.
- Mathilde: We were so many in the hideout that I couldn't see him, not even talk to him. We spent a night there. On the following day, militiamen came to kill everybody there. I managed to escape the massacres as I had gone home to look for something to drink for my husband and when I returned to the place, militiamen were already killing people. I ran around looking for my children and I found them alive. People were running here and there, everybody who tried to get out of the parish got killed. I ran away and hid in the bush round about.
- Martin: I want you to be more specific about that attack of 8th [April 1994], you say it was on which day?
- Mathilde: On the 8th [April 1994]

- Martin: The militia was led by an Interahamwe called Kigingi who lived in Nyamirambo. How were they killing people? Try to tell us a bit more in detail.
- Mathilde: The militia was led by an Interahamwe called Kigingi who lived in Nyamirambo. They were with soldiers. They came and ordered us to get out, we got out all. They ordered us to separate, Hutus on one side and Tutsis the other side. I told them: "I am a Hutu." They looked at me and said: "Is this really a Hutu?" I said: "My mother is a Tutsi but my father is a Hutu."
- Mathilde: They let me free... Tutsis were put aside and everybody who appeared to be like a Tutsi was put aside as well and those who didn't look like Tutsis were put on their side. Whoever was put on the side of Tutsis was straightaway shot. Interahamwe came afterwards and hacked people with machetes and hit them with clubs. People on the Hutu side were left alive... from Mumena for example, people [Tutsis] mingled together with some scared Hutus. I went along with Hutus.
- Martin: So you went on the side of Hutus. What happened after? Where did you go afterwards?
- Mathilde: I had found my young child, the oldest had run away. I went looking for my young child... I mean the older. I looked for her in vain; I turned around and missed her. I was not really caring as I was seeing people lying down dead and my child missing... I felt it was no longer a matter to die but the fact of loving life led me to a gully that was round about. By chance I found my elder child hiding there too. She was only five, however she could hide well. I joined her and we stayed there for about five days along. After that, we went to the priests' convent of Karoli Rwanga parish.
- Martin: So you went to Karoli Rwanga parish, that's where you could go, that's where you could get a hideaway. Since that time, did any other militia attacks come to run after you?
- Mathilde: There were many attacks directed to us but the priests of Nyamirambo were so good people and protected us. There were children who had fled from Nyacyonga, they were grouped together aside and when militiamen came, the priests showed those children saying: "These are the only people we have, they are orphans from Nyacyonga." The priests always showed those children, they never delivered us. One day a huge militia attack came, it was probably on the 9th June.
- Mathilde: We used to ask the priests to get our children away because we knew that at the end of the day we were going to die. The priests brought white men and told us that they were Red Cross agents but I finally knew they were journalists.
- Mathilde: Thereafter, Interahamwe came to shoot people. Soldiers also came and saw that there were some old people. On 10th or 11th a huge attack came to exterminate all the people who were there.
- Martin: Still talking about that, I want you tell us more details about that attack, how was exactly the situation. Because you see, someone who was not there can hardly understand what was really happening. As one who witnessed the facts, we want you to explain clearly. How the attacking troop came? How did they kill people? How many people were in the hideaway? How many survived? Stuff like that.
- Mathilde: I cannot just give the exact number of people who were there, however I can guess they were about two hundred or a hundred and tens. A while before, on 9th, came a troop of soldiers, I happened to recognize one called MUNYAKAZI. He came and searched for us in different rooms we were hidden in. We talked to him praying to save our children, we knew it was not possible to save us all but at

least our children. He said: "On va voir." Which means: "we will see." he replied in French.

- Martin: The Munyakazi we know?
- Mathilde: The famous General of the army. On 10th, they came saying there were to save us. They had a car and told the priest: "Open the door, we just came to save women." Men were always hidden in the ceiling, they had never been seen
- Mathilde: The priest refused to open the door. The soldiers were angry and threw teargas grenades to us, young children died immediately. They told us not to be scared, that we were going to be safe. We rushed into the car but looking at how we were piled up like stones, though we were frightened, it seemed somehow doubtful about our fate. How could they save people crammed so?
- Mathilde: We were packed into the car and many were left down, I was in the car too. I immediately noticed that my elder daughter was not in. I pleaded to the soldiers: Please, I beg you, let me go and bring my child. They refused first but at the end they let me go. My young child was still a baby, I was keeping her on my back. I got off the car and went looking for my child. I found her and when I came back to the car people were being hit with gun butts and sticks, they were also shot.
- Mathilde: Then I said to myself: "These soldiers are not saving us, they want to kill us." I stayed there staring at how people were being piled up. The car left... They did not go far, they were all killed at Rafiki. You know that it is a few minutes from St Andre to Rafiki. The car came back and packed in other people.
- Mathilde: There was a young girl with us; she went and told an Interahamwe, I assume they knew each other. She told him: "I am a Hutu." The militiaman replied: "If you are a Hutu, what are you doing here? Go there aside." I also did the same and said: "I am a Hutu too." He said: "Go there too." I went aside but after a while I wanted to leave.
- Mathilde: I first of all went to the car of Munyakazi, he was back. I told his driver: "Can you take me to Saint Paul?" He did not tell me anything. Munyakazi came, his car was a double-cabin. He asked me: "Where are you going?" I said: "I want you take me to Saint Paul." He opened the door and said: "get out."
- Mathilde: I got out the car and stood where I was before. I looked at what was happening and I returned back in the house. I went to the ladies toilet and I remained at the entrance. All the remaining people were brought away and killed. I don't think ten of them survived.
- Martin: You mean from 200 people, you do not estimate even ten survivors?
- Mathilde: Not ten people survived.
- Martin: So everything was over or the survivors remained there?
- Mathilde: No, we did not remain there. We scattered here and there, each one looking for a hideaway. I went back to the gully I was in before. The priests we were together came and joined me in the gully, they were maybe looking for hideaway too. Half an hour after, one of them said: "Let me go and find soldiers at St Andre to help us get out of here."
- Mathilde: He climbed out of the gully and fell into gunfire from Rebero targeting Nyamirambo. The other priest got out of the gully to rescue his co-priest, they left us alone there. I was alone with my children, there was a young girl in the bush nearby there. She saw me and came to join us. She told me: "I saw you, we were together." Her mother had been killed and her five siblings likewise.
- Mathilde: She told me: "I saw you and believed you are my mother." I told her: "Come with us, henceforth I am your mother." We stayed in the gully for two days

and on the third day, maybe because of hunger and mosquito bites, my children started crying. Soldiers from St Andre came and took us out of the gully. I wished they would kill us, I had gone off living.

- Mathilde: The man who took us out of the gully was very kind to us, he took us to St Andre and we spent our night there. He came back to see us in the morning and asked: "Where do you want to go?" I feared to say Mumena because it was said that Inkotanyi were there. I said: "I want to go to Nyakabanda." He asked then: "At who's house?" I did not know anyone from Nyakabanda and I said: "Listen, I knew someone living at Mumena, if you can come with me there, I may find him."
- Mathilde: He called on an Interahamwe to help me and the one who came was someone I knew. Militiamen were people we knew, there were people we used to send to market for us, there were porters. He saw me and came to greet me, he said: "Are you still alive?" I answered: "Yes I am." Seeing a porter holding a gun!! He might not even know how to use it. He saw me off back to Mumena.
- Mathilde: I arrived to Mumena and noticed that the slaughter was not as high as elsewhere but I was still scared however I had no choice, I had to go for death or life. I told the Interahamwe: "My husband told me that you and him were friends, I came to you as a friend of my husband. You can save me, if you also want to kill me, go ahead, there is no problem."
- Mathilde: I had a cheque book on me and I told him: "I have some money on my account, I can sign you a cheque and when the crisis is over you can go and get the money at the bank, you can even go there right now." I signed three million on the cheque but I knew there was no such amount on my account. I was just tricking him to save my life. He brought me in a house where he had already hidden two young girls. We spent two days there and Inkotanyi troops took control of the region. It was the time of conquering Kigali.
- Martin: So if I come a little back in your testimony, you have been talking about your husband when he was shot and escaped the killers. Can you now try to tell us how he died? Where was he when he died?
- Mathilde: I never knew about his death, I saw him for the last time then.
- Martin: You never knew?
- Mathilde: No.
- Martin: I would like to ask you a tough question, I am very sorry for that; What is the most important Personality of your husband you will never forget?
- Mathilde: It is not very easy to talk about that... however I know that he was a very calm man and kind to even strangers. He was sociable to everyone. Even those who were hunting him lived in the same neighborhood with us; he used to help them getting to the hospital when they were sick.
- Martin: I beg your excuses again; I would like you tell us briefly; we have been talking about your father's family. You said there were all exterminated, have you ever learnt about how they died and maybe who killed them?
- Mathilde: I never knew about that.
- Martin: Haven't you even known where they might have died?
- Mathilde: I just know that they died at Kibuye because they lived there, but I know nothing about how they died, where they were thrown, nothing. This is not an easy issue, I am very sorry.
- Martin: You have talked about a young girl who joined you in the gully where you were hiding, the one whose mother and siblings were all killed. Can you remember her name?

- Mathilde: Her name is Uwanyirigira.
- Martin: She is also called Uwanyirigira. What happened after, did you continue being with her along?
- Mathilde: We walked together during the war [genocide] and when it was over, we stayed together. A good while after, she found her father who took her with him. However, she is a child in my family as my own children. Very often, she is with us when on holidays. She is grown up, she must be in senior 5.
- Martin: You lived at Mumena, it is close to St Andre. We can say that most of the people who hide in St Andre were from round about. I think there may also be some from the neighborhood who came to kill people apart from soldiers themselves. Haven't you recognized some of your neighbours from Mumena in the killing troops at St Andre and around?
- Mathilde: I only happened to recognize an Interahamwe called Kigingi. He is the one I knew living at Mumena. However I learnt that some people who stayed in quarter may have been indicated by their neighbors to be killed. There were many intellectuals, they just indicated who to kill here and there. We publicly knew very few but of course there are.
- Martin: I may probably have forgotten to ask you something about what happened where you were hidden. May you have anything I did not ask about in what concerns the killings of St Andre's parish Karoli Rwanga? You probably have some clarifications to make about that before we continue.
- Mathilde: Do you think it is easy to talk about those killings? The slaughter was too grave and unimaginable. I sometimes think about what I saw and I say: "It must be a nightmare, I cannot have seen such atrocities with my own eyes." I told you I stayed in the gully for about five days; however I saw too bad things during that while. I do not know how to say it.
- Martin: I want you make an effort to tell more in detail what atrocities you really witnessed, if you don't mind. I mean that you would better tell us exactly how were people killed, were they shot, clubbed or whatever. I want you describe the slaughter of that time. Can you try?
- Mathilde: I remember a man, he was a teacher, he was a professor of high school at St Andre, and his name was Bonaparte. Interahamwe hurled stones at him. He was very tall and sturdy but seeing little devils who stoned him to death, beating him with sticks and bludgeoning him and I cannot find words to mean it.
- Mathilde: There is another scene I won't ever forget, it is of a young boy, he was about thirteen. Some men came and started kicking him. I was in a gully and a bush was over me. They kicked him to death, they left him there breathless some seconds before his death.
- Mathilde: He had seen me in my hideaway, he was looking at me and he desperately crawled towards me. He made signs revealing that he was in need of water, he was thirsty. I could not do anything for him, I kept on hiding my eyes for not to continue seeing him. There happened regrettable killings in that area, it is unimaginable.
- Martin: During those times of sorrow, people endured many unfortunate matters and they were hopeless. There are even some who came to deny the existence of God. Considering sorrows you lived, do you still believe in God?
- Mathilde: I strongly believe in God, he did great things to me. He saved me and proved me his existence. See for example On 7th, I hid under a car and I had lost my child. The car was Tasiyana's, she had been shot, his grandchild on her back,

under my eyes. I hid under her car, it was a Suzuki, and I was seeing all the people dying.

- Mathilde: They stopped killing people when it rained a lot. I was forced to go and hide in the gully because of that rain. I could not imagine what protected me against getting caught, it is probably God who protected me. Something else that made me believe in God is that my lost child was only 5 and I found her in the gully, it is God who led me there. We were hunted by dogs and they often found us and smelled us but they did not bark at all. I believe in God and I believe that it is him who saved me.
- Martin: What you say is really true, it truly happened as you say and some of the agitators are still free. You probably meet some of them and others are in jail. So, you as a genocide survivor, do you think those people who did genocide can be excused?
- Mathilde: It is a very tough problem. Forgiving those people is not an easy matter and it does not even seem very worth it. On my side, I would like those people get punished, they deserve to be severely punished. It is difficult to see a killer saying his mea culpa that he killed five or ten people and he gets freed.
- Mathilde: None of them can come and tell you: "I killed your mother, I killed your brother, I killed your child and I beg your pardon". I am afraid my excuses are far to be granted, I am really afraid. I don't know how to say it. To grant them pardon is not easy at all, we cannot do them any harm but to pardon someone who does not really apologize is hard.
- Martin: Of course, the genocide set many people lamentably miserable and took away many other families. As you said, God helped some to survive and life is still going on though hardly. I now want you to tell us about your life after genocide.
- Mathilde: I thank God for everything he did for me after genocide. I did not have any serious problem. I survived of course and I tried to rehabilitate my house, it had been a bit demolished. I came to take care of my two daughters. The elder is now in university. I also happened to adopt some four children whom I now bring up in my family.
- Mathilde: However, apart from me, life is very hard for many of genocide survivors. I sometimes look at widows living with about five children added to other family orphans. Life is hard though there is a fund to support them but sometimes for example; children who go to school are obliged to get some level of success to get FARG's schooling support. In some cases they are not helped.
- Mathilde: When you are in such conditions, you wonder how you will live with all those children without what to feed them. Life after genocide is not easy at all. Maybe 20% of the survivors live decently but the left 80% live in destitution. Many of them do not have houses where to live, others do not even have what to put on and others are wandering in the streets. Generally, life of after genocide is very difficult.
- Martin: In general, as a 1994 genocide survivor, what may be your message to other genocide survivors?
- Mathilde: The main message I can send to genocide survivors is to walk straight. Life still goes on, we were killed but we did not die. We lost a lot of ourselves. It is not easy for other people to understand our pain, survivors shouldn't give up and let life go on. They have to stand strong, widows have to know their responsibility to bring up their children, to take care of them [and make sure they get educated. They have then to take care of their own lives]

- Mathilde: That is the message I can give them. It is not easy at all for genocide survivors to live with people who killed our families. There are still hatching plots to take our lives. I just call upon survivors to be strong and war [genocide]n authorities in case of insecurity. The chance we have is that our authorities handle and understand our problems, so we have to live, this cannot be the end of our lives.
- Martin: There is one question I would like to come back on. You saw that people were horribly killed and thrown everywhere, it is something that never happened before in our culture. When someone died of sickness or other matter, he had to be honorably buried. I want to come up asking you whether you buried your husband or not.
- Mathilde: I did not bury my husband. I never knew how he died, where he was killed, nothing. I last saw him at St Andre, people were running here and there. If he died there or somewhere else, I do not know. I could not have buried him. I did not even know how he died.
- Martin: We can assume that he may have been buried around in the country with lots of others who died everywhere.
- Mathilde: I also hope so.
- Martin: I think we can also say that one day the killers of your husband may be caught and reveal where he was thrown so that he can be honorably buried. We always see people who find bodies of their dead family members and bury them. I would like to ask you; you know that when bodies of our people get found, they are buried in different memorial sites in the country. Especially as a genocide survivor, how would you like we keep memory of them?
- Mathilde: On my side, I always remember them, we do not have to forget them at all. We have had chance to survive and we have to try our best to make sure that each and every genocide victim gets buried in honor. That is what I really wish.
- Mathilde: If we could only have chance that killers reveal where they put people they killed so that they get buried. For the rest, I do not think anyone should forget them, it is something we have always to make sure it is not forgotten. I think everybody think about them every day. Myself, I never spend a day without thinking about them. We should remember them day and night, it may help us stop from genocide to happen again.
- Martin: Approaching the end, when you think about your descendants, I mean grandchildren and great grandchildren. Normally children born and when they do not see their grandparents they ask why; what means that they will experience some genocide consequences. Generally in our culture children born and see their grandfather or grandmother but because of genocide children will miss them. I want you now give an advice to the youth, I mean, what you may like to hand on your descendants, though you experienced hard life, you may certainly have a wish to the youth of tomorrow.
- Mathilde: My very first thing I wish to the youth of tomorrow is not to live what we lived. I would not nevertheless wish they ignore our history. Of course I cannot hide them the truth as, for example, my older daughter knew her father, she had started calling: Dad... Not to tell the truth to a child who never said such a word is not good at all. By my own means I will tell them what happened.
- Mathilde: I may insist on calling them to fight for that such a misfortune do not happen again. We cannot afford hiding them the truth of our history. Our children have to know why they did not see their grandfathers, grandmothers and fathers.

There are even some who did not know any of their parents. I think it cannot be a good thing not to teach them our history. We can tell them to make their future better and live in solidarity and unity, however they have to know whatever happened.

- Martin: Thank you.
- Mathilde: Thank you too.