

ICTR (Trial Chamber), *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Judgment of 21 May 1999

6.2.1 The Components of Specific Intent

521. In order to prove the commission of the crime of genocide the Prosecution must prove beyond a reasonable doubt, that the criminal acts were committed with the intent to destroy in whole or in part a national, ethnical, racial or religious group, as such.

The Targeted Group

522. [...] The evidence proves, beyond a reasonable doubt, that the victims of the acts for which Kayishema and Ruzindana are charged were Tutsis.

523. The Chamber further accepts that the Tutsis were an ethnic group. In support of this contention the Prosecution provided evidence that since 1931, Rwandans were required to carry identification cards which indicated the ethnicity of the bearer as Hutu, Tutsi or Twa.²⁶⁷ The government-issued identification cards specified the individual bearer's ethnicity. It should be noted that, in accordance with Rwandan custom, the ethnicity of a Rwandan child is derived from that of her or his father.

Context of the Massacres

527. In the [previous part of the judgment] the Trial Chamber acknowledges the difficulty in finding explicit manifestations of a perpetrator's intent. The Trial Chamber states that the specific intent can be inferred from words and deeds and may be demonstrated by a pattern of purposeful action. The evidence, in the present case, is considered in light of this reality.

Genocide in Rwanda and Kibuye Generally

528. The Chamber examines the tragic events in Rwanda and in Kibuye in 1994 in Part V [of the judgment]. The examination is useful here as it gives context to the crimes at the four crimes sites. The analysis shows that there indeed was a genocidal plan in place prior to the downing of the President's airplane in April 1994. This national plan to commit genocide was implemented at prefecture levels. For instance, Kayishema as the Prefect, disseminated information to the local officials above and below him using the established hierarchical lines of communications.

529. The Prosecution submitted that the killings were planned and organised with a clear strategy, which was implemented by Kayishema and Ruzindana in Kibuye. The plan was executed efficiently and successfully in this Prefecture. Those who escaped the April massacres in and around Kibuye Town fled to Bisesero where they were relentlessly pursued and attacked. [...]

Kayishema's Intent to Destroy in Whole or in Part the Tutsi Group, As Such

The Number of Victims

531. The number of Tutsis killed in the massacres, for which Kayishema is responsible, either individually or as a superior, provides evidence of Kayishema's intent. The Trial Chamber finds that enormous number of Tutsis were killed in each of the four crime sites. In the Complex, the number of Tutsis killed was estimated to be about 8,000; there were between 8,000 and 27,000

Tutsis massacred at the Stadium; and, at Mubuga Church between 4,000 and 5,500 Tutsi were massacred. The number killed in Bisesero is more difficult to estimate, however, evidence suggests that the number of those who perished was well into the tens of thousands.

532. Not only were Tutsis killed in tremendous numbers, but they were also killed regardless of gender or age. Men and women, old and young, were killed without mercy. Children were massacred before their parents' eyes, women raped in front of their families. No Tutsi was spared, neither the weak nor the pregnant.

533. The number of the Tutsi victims is clear evidence of intent to destroy this ethnic group in whole or in part. The killers had the common intent to exterminate the ethnic group and Kayishema was instrumental in the realisation of that intent.

Methodology – Persistent Pattern of Conduct

534. The Trial Chamber finds compelling evidence that the attacks were carried out in a methodical manner. The Prosecution submitted that evidence of specific intent (*dolus specialis*) arises from the repetitive character of the planned and programmed massacres and the constant focus on the Tutsi members of the population. The perpetrators did not commit just one massacre but continually killed the Tutsi from April to June 1994.

535. This consistent and methodical pattern of killing is further evidence of the specific intent. Kayishema was instrumental in executing this pattern of killing. Tutsi refugees gathered in places which had served historically as safe havens including the Complex, the Stadium and Mubuga Church. These places were surrounded by Hutu assailants, those inside the structure were not allowed to leave, and were denied food, medicine or sanitary facilities. Eventually, the refugees were massacred. If there were too many Tutsis to kill in one day the killers would return to finish off their 'work' the next morning. This Chamber finds that Kayishema instigated the attacks at the Complex and the Stadium.

536. In the area of Bisesero the attacks continued for several months; April, May and June of 1994. At Bisesero, evidence proves that Kayishema was leading and directing the attacks. The attackers were transported by government buses and other vehicles. This Chamber finds that Ruzindana brought the Hutu attackers in his personal vehicles and that Kayishema did the same in the trucks belonging to the *Prefecture*. The assailants included the local officials such as the *bourgmestres*, *counseillers*, communal police, the *gendarmerie nationale*, members of the *Interahamwe*, other soldiers as well as the accused themselves.

537. The weapons used and the methods by which the Tutsis were killed are also consistent throughout the four crime sites. Generally, the witnesses testified that Kayishema and the gendarmes were armed with guns and grenades while other attackers used traditional farming instruments such as machetes and crude weapons such as bamboo spears. Grenades and guns were used at the crime sites where the Tutsis were taking refuge in enclosed spaces to start the attack, and thereafter victims were hacked to death by machetes. Kayishema and Ruzindana both were seen carrying firearms at the crime sites.

Kayishema's Utterances

538. Kayishema's utterances, as well as utterances by other individuals under his direction before, during and after the massacres, also demonstrate the existence of his specific intent. Tutsis were called *Inkotanyi* meaning an RPF fighter or an enemy of Rwanda, *Inyenzi* meaning

cockroach. They also were referred to as filth or dirt. Witness WW testified how she heard the Tutsi were being referred to as “dirt” when Kayishema told *Bourgmestre* Bagilishema that “all the dirt has to be removed,” referring to the Tutsis who had sought shelter in the communal office. During the attacks at the Stadium, Kayishema called the Tutsi: “Tutsi dogs” and “Tutsi sons of bitches,” when instigating the attackers to kill the Tutsis gathered there.

539. The Chamber also finds that Kayishema used a megaphone to relay a message from Kigali encouraging the extermination of the Tutsis during the attack at the Complex. Several witnesses who survived the massacres at the Complex heard Kayishema say “go to work” or “get down to work” which, as many witnesses affirmed, meant to begin killing the Tutsis. Other witnesses testified to having heard the attackers, including members of the *Interahamwe*, who were *de facto* under Kayishema’s control, sing songs about exterminating the Tutsi. [...] Essentially, the song urges attackers not to spare the elderly and even the babies because Kagame (the then RPF leader) left Rwanda as a child. Again, the Chamber notes the common intention of the attackers with that of Kayishema.

540. In sum for all the reasons stated above the Chamber finds beyond a reasonable doubt that Kayishema had the intent to destroy the Tutsi group in whole or in part and, in pursuit of that intent, carried out the acts detailed below.

[...]

The Genocidal Acts of Kayishema and Ruzindana

546. The Prosecution alleges that the accused persons committed acts pursuant to [Article II of the Genocide Convention]. Although [Article II] includes a variety of acts, the Prosecution, during closing arguments, only addressed the Trial Chamber on killings [Article II(a)], causing serious bodily or mental harm [Article II(b)] to Tutsis, and deliberately inflicting on Tutsis conditions of life calculated to bring about their physical destruction [Article II (c)] in whole or in part.

547. As a preliminary matter, the Chamber finds that in implementing the policy of genocide, the intent of Kayishema, those under his control and Ruzindana, was to kill members of the Tutsi group at the four crime sites. Inherent in the act of mass killing is the infliction of serious bodily and mental harm. For example, the Trial Chamber was presented with the opportunity to view numerous healing bullet and machete wounds. Furthermore, the Chamber heard the testimony of many witnesses who recounted having watched their loved ones mutilated, raped or killed in a heinous manner. The evidence established that the genocidal act of the accused persons was killing. The Trial Chamber holds Kayishema and Ruzindana responsible for the results of the killings and serious bodily and mental harm to the Tutsi population in Kibuye.

548. No evidence was proffered to show that the accused persons, or Kayishema’s *de facto* and *de jure* subordinates, deliberately inflicted, on the Tutsi group in Kibuye, conditions of life to bring about their physical destruction in whole or in part. The Chamber acknowledges the Prosecution argument that Tutsis seeking refuge at the four crime sites were deprived of food, water and adequate sanitary and medical facilities. These deprivations, however, were a result of the persecution of the Tutsis, with the intent to exterminate them within a short period of time thereafter. These deprivations were not the deliberate creation of conditions of life [...] intended to bring about their destruction. Additionally, the Chamber finds that the time periods during which these deprivation occurred were not of sufficient length or scale to bring about the destruction of the group. Therefore, the Trial Chamber only examines killings.

ICTR (Trial Chamber), *Prosecutor v. Jean-Paul Akayesu*, Judgment of 2 September 1998

706. [T]he Prosecutor has shown beyond a reasonable doubt that between 7 April and the end of June 1994, numerous Tutsi who sought refuge at the Taba Bureau communal were frequently beaten by members of the Interahamwe on or near the premises of the Bureau communal. Some of them were killed. Numerous Tutsi women were forced to endure acts of sexual violence, mutilations and rape, often repeatedly, often publicly and often by more than one assailant. Tutsi women were systematically raped, as one female victim testified to by saying that “each time that you met assailants, they raped you”. Numerous incidents of such rape and sexual violence against Tutsi women occurred inside or near the Bureau communal. It has been proven that some communal policemen armed with guns and the accused himself were present while some of these rapes and sexual violence were being committed. Furthermore, it is proven that on several occasions, by his presence, his attitude and his utterances, Akayesu encouraged such acts, one particular witness testifying that Akayesu, addressed the Interahamwe who were committing the rapes and said that “never ask me again what a Tutsi woman tastes like”. In the opinion of the Chamber, this constitutes tacit encouragement to the rapes that were being committed.

[...]

731. With regard, particularly, to the acts [of] rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.

732. The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them. A Tutsi woman, married to a Hutu, testified before the Chamber that she was not raped because her ethnic background was unknown. As part of the propaganda campaign geared to mobilizing the Hutu against the Tutsi, the Tutsi women were presented as sexual objects. [...] Sexual violence was a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live, and of life itself.

Otázky:

1. Uved'te hlavní důvody, na jejichž základě ICTR shledal existenci genocidního *dolus specialis* u obviněného *Kayishemi*?

2. Přečtete si uvedenou část rozsudku *Akayesu* a porovnejte ji s odst. 548 rozsudku *Kayishema*? Kdy lze považovat popsané jednání (odpírání jídla/vody, znásilnění aj.) považovat za genocidní akt a kdy nikoliv? Co je pro posouzení rozhodné?