TEN YEARS AND COUNTING: THE DEVELOPMENT OF INTERNATIONAL LAW AT THE ICTR

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INTRODUCTION

This article will discuss some of the important contributions of the International Criminal Tribunal for Rwanda [ICTR] to the development of international law. It will not discuss the contribution of the ICTR to the reconciliation process in Rwanda, nor will it compare and contrast the ICTR to the domestic trials or Gacaca trials ongoing in Rwanda. As interesting as I find these subjects, each one merits an entire article of its own, and I am not sure that I am the appropriate person to author them. Instead I have decided to focus on three areas in which the case law has been particularly notable: 1) genocide, 2) rape, and 3) the role of civilian superiors.

I. GENOCIDE

One of the main contributions of the ICTR has been the development of the law on Genocide. The ICTR Statute adopted the definition of Genocide from the 1948 Convention against Genocide, and its first application in an international criminal law context was at the ICTR.[1] Jean Paul Akayesu, the first person to be convicted of Genocide was a *bourgmestre*—more or less the equivalent of a mayor.[2] This was the first Genocide conviction before an international tribunal. Another notable

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1. *See* Prosecutor v. Akayesu. Case No. ICTR 96-4-T, Judgment, ¶ 494 (Sept. 2, 1998).
2. *Akayesu*, ICTR 96-4-T, Judgment at ¶ 48.

conviction was that of Jean Kambanda,[3] the Prime Minister of the Interim Government at the time of the events in 1994. Kambanda's conviction represents the first conviction of a former head of government before an international tribunal.

The ICTR has convicted a total of twenty-one people of Genocide.[4] The ICTR has only acquitted three people of all of the charges against them.[5] In contrast, the International Criminal Tribunal for the former Yugoslavia [ICTY] has only convicted two persons of Genocide-related crimes.[6] In addition to members of militias,[7] the ICTR has also convicted

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3. Prosecutor v. Kambanda, Case No. ICTR 97-23-T, Judgment & Sentence (Sept. 4, 1998).

4. *See Akayesu*, ICTR 96-4-T, Judgment (conviction of Jean Paul Akayesu); *Kambanda*, ICTR 97-23, Judgment & Sentence (conviction of Jean Kambanda, who pleaded guilty); Prosecutor v. Serushago, Case No. ICTR 98-39-S, Sentence (Feb. 5, 1999) (conviction of Omar Serushago, who pleaded guilty); Prosecutor v. Kayishema, Case No. ICTR 95-1-T, Judgment & Sentence (May 21, 1999) (convictions of Clément Kayishema & Obed Ruzindana); Prosecutor v. Rutaganda, Case No. ICTR 96-3-T, Judgment & Sentence (Dec. 6, 1999) (conviction of Georges Anderson Nderubumwe Rutaganda); Prosecutor v. Musema, Case No. ICTR 96-13-A, Judgment & Sentence (Jan. 27, 2000) (conviction of Alfred Musema); Prosecutor v. Ntakirutimana, Case No. ICTR 96-10-T & 96-17-T, Judgment & Sentence (Feb. 21, 2003) (convictions of Gérard & Élizaphan Ntakirutimana); Prosecutor v. Niyitegeka, Case No. ICTR 96-14-T, Judgment & Sentence (May 16, 2003), (conviction of Eliézer Niyitegeka); Prosecutor v. Kajelijeli, Case No. ICTR 98-44A-T, Judgment & Sentence (Dec. 1, 2003) (conviction of Juvénal Kajelijeli); Prosecutor v. Nahimana, Case No. ICTR 99-52-T, Judgment & Sentence (Dec. 3, 2003) (convictions of Ferdinand Nahimana, Jean-Bosco Barayagwiza, & Hassan Ngeze); Prosecutor v. Kamuhanda, Case No. ICTR 99-54A-T, Judgment (Jan. 22, 2004) (conviction of Jean de Dieu Kamuhanda); Prosecutor v. Ntagerura. Case No. ICTR 99-46-T, Judgment & Sentence (Feb. 25, 2004) (conviction of Samuel Imanishimwe); Prosecutor v. Gacumbitsi, Case No. ICTR 2001-64-T, Judgment (June 17, 2004) (conviction of Sylvestre Gacumbitsi); Prosecutor v. Ndindabahizi, Case No. ICTR 01-71-T, Judgment & Sentence (July 15, 2004) (conviction of Emmanuel Ndindabahizi); Prosecutor v. Semanza, Case No. ICTR 97-20-A, Judgment & Sentence (May 20, 2005) (conviction of Laurent Semanza, who was found guilty of genocide on appeal); Prosecutor v. Muhimana, Case No. ICTR 95-1-I, Judgment (Apr. 28, 2005) (conviction of Mikaeli Muhimana); Prosecutor v. Simba, Case No. ICTR-01-76, Judgment (Dec. 13, 2005) (conviction of Aloys Simba).

5. *See* Prosecutor v. Bagilishema, Case No. ICTR 95-1A-A, Judgment (July 3, 2002) (Ignace Bagilishema released); Prosecutor v. Ntagurera, Case No. ICTR 99-46-T, Judgment (Feb. 25, 2004) (André Ntagurera & Emmanuel Bagambiki acquitted at trial).

6. *See* Prosecutor v. Krstić, Case No. IT-98-33-A, Judgment (Apr. 19, 2004) (Radislav Krstic found guilty for aiding and abetting genocide); Prosecutor v. Blagojević, Case No. IT-02-60-T, Judgment (Jan. 17, 2005) (Vidoje Blagojevic found guilty for Complicity in Genocide).

mayors,[8] a doctor who was also a hospital director,[9] a priest,[10] the Minister of Information,[11] the director of a tea factory,[12] and members of the media.[13]

Two interesting questions arose in *Akayesu*, the first Genocide case. The first was whether Tutsis constituted a separate ethnic group,[14] and the second was how to prove the intent requirement of genocide.[15]

A. Tutsis: A separate ethnic group?

On the question of ethnicity, the Trial Chamber found that the Hutu majority and the Tutsi minority shared a nationality, race and religion, and a common language and culture. Thus, technically, the Hutus and the Tutsis did not constitute separate ethnic groups. Nevertheless, the Trial Chamber found that decades of discrimination (between both groups, as well as by Belgium, the colonizing power) had led the Tutsis to be regarded as a distinct, stable, and permanent group.[16] For instance, national identity cards identified persons as Hutu or Tutsi, and all the witnesses in the case had identified themselves as belonging to one group or another.[17] Most importantly, the Trial Chamber found that victims were not selected as individuals; rather they were selected because of their perceived ethnic differences.[18] In other words, Akayesu regarded the Tutsi as a separate ethnic group and chose his victims with the belief that harming them would

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7. *See* Prosecutor v. Serushago, Case No. ICTR 98-39-A, Reasons for Judgment, ¶ 17 (Apr. 6, 2000); Prosecutor v. Kajelijeli, Case No. ICTR-98-44A, Judgment, ¶ 2 (May 23, 2005).
8. *E.g., Akayesu,* ICTR 96-4-T, Judgment at ¶¶ 3-4; *Semanza,* ICTR 97-20-T, Judgment & Sentence at ¶ 15.
9. *Ntakirutimana*, ICTR 96-10-T & ICTR 96-17-T, Judgment & Sentence at ¶ 36.
10. *Id.* at ¶¶ 37-38.
11. Prosecutor v. Niyitegeka, Case No. ICTR 96-14-T, Judgment & Sentence, ¶ 5 (May 16, 2003).
12. Prosecutor v. Musema, Case No. ICTR 96-13-A, Judgment & Sentence, ¶ 12 (Jan. 27, 2000).
13. Prosecutor v. Nahimana, Case No. ICTR 99-52-T, Judgment & Sentence, ¶¶ 5-7 (Dec. 3, 2003).
14. *See, e.g.,* Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶¶ 122 n. 56, 510-16, 701-02 (Sept. 2, 1998).
15. *See, e.g., id.* at ¶¶ 726-34.
16. *Akayesu*, ICTR 96-4-T, Judgment at ¶ 702.
17. *Id.*
18. *Id.* at ¶¶ 124, 730, 734.

help destroy their group.[19] Later cases confirmed what Akayesu presumes: that ethnicity could be a subjective issue and not merely an objective one.[20]

B. Specific intent

The crime of genocide is unique because of its specific intent element, which requires the accused to commit the crime with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group.[21]

In the absence of a confession, specific genocidal intent is a mental factor that is difficult to prove directly. Therefore inquiries into the matter must often rely on circumstantial evidence. Thus, the Chambers have determined that in practice, genocidal intent can be inferred on a case by case basis from the general context and from evidence demonstrating a consistent pattern of conduct. The Chamber may look at evidence of the physical targeting of a group or their property; the use of derogatory language towards members of the targeted group or about them; the weapons employed and the extent of bodily injury; the methodical way of planning and the systematic manner of killing victims; and the number of victims from the group, both in terms of total numbers and proportion.[22] For example, the Tribunal found the following:

> Alfred Musema, the director of a tea factory, publicly exclaimed "let's exterminate them" when leading an attack on refugees.[23]
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> Tens of thousands of persons were killed within the area controlled by local government official Clement Kayishema. He referred to Tutsis as "Tutsi dogs."[24]
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> Obed Ruzindana urged the population not to spare Tutsi children because the rebels now attacking Rwanda had initially left the country as children.[25]
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> In several cases, the accused referred to Tutsi as "cockroaches"

19. *Id.* at ¶¶ 730, 734.
20. *E.g.*, Prosecutor v. Rutaganda, Case No. ICTR 96-3-T, Judgment & Sentence, ¶ 56 (Dec. 6, 1999); Prosecutor v. Musema, Case No. ICTR 96-13-A, Judgment & Sentence, ¶ 161 (Jan. 27, 2000). Note: The composition of the Bench was the same for *Akayesu*, *Rutaganda* and *Musema.*
21. Statute of the International Criminal Tribunal for Rwanda, 1994, art. 2, ¶ 2 [hereinafter ICTR Statute].
22. *See, e.g.*, *Akayesu,* ICTR 96-4-T, Judgment at ¶¶ 726-34.
23. *Musema*, ICTR 96-13-T, Judgment & Sentence at ¶ 382.
24. Prosecutor v. Kayishema, Case No. ICTR 95-1-T, Judgment & Sentence, ¶ 364 (May 21, 1999).
25. *Id.* at ¶ 423.

> and called on the local population to "go to work" or "start cleaning." These expressions were found to be euphemisms for exterminating the Tutsi population. In addition to these obvious indications of intent, Chambers have also noted the repetitive character of the planned and programmed massacres and the constant focus on the Tutsi members of the population.

II. RAPE

The prosecution of rape before international courts is new and the ICTR has been at the forefront. In addition to the contributions to the law noted above, the *Akayesu* case demonstrated the obstacles blocking progress on gender-based violence and the significant developments in the prosecution of rape.

The original 1996 indictment in the *Akayesu* case did not include charges of sexual violence. It was only a year later, when several female witnesses spontaneously during the trial proceedings testified about incidents of rape, that the Trial Chamber invited the prosecution to consider investigating gender crimes in Akayesu's commune.[26]

The trial adjourned while the prosecution investigated the reports of rape and forced nudity. The Prosecution filed an amended indictment one year later charging Akayesu with three counts of rape and other inhumane acts as crimes against humanity.[27] In addition, the genocide count in the indictment was amended to refer to sexual violence.[28] When the trial recommenced, witnesses testified that women and girls were raped in and around the grounds of Akayesu's communal office where they had sought refuge. The rapes often occurred in Akayesu's presence, in situations he encouraged or acquiesced to.[29]

The Trial Chamber concluded that sexual violence was widespread and systematic in the Taba commune and that it was committed with the intent to humiliate, harm, and ultimately destroy the Tutsi group physically or mentally.[30] Moreover, the Trial Chamber found "overwhelming evidence" that Akayesu had witnessed much of the sexual violence[31] and that he "ordered, instigated and otherwise aided and abetted sexual violence."[32] The Trial Chamber also stressed the linkage between

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26. *See* Kelly D. Askin, *A Decade of the Developments of Gender Crimes in International Courts and Tribunals: 1993-2003*, 11 HUM. RTS. BRIEF 3 (2004).
27. *Id.*
28. *Id.*
29. *Id.*
30. Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶¶ 731-34 (Sept. 2, 1998).
31. *Id.* at ¶ 460.
32. *Id.* at ¶ 452.

Akayesu's crimes and the pattern throughout the conflict in regards to rape and other forms of sexual violence when it stated that:

> [Rape and sexual violence] 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 . . . one of the worst ways of inflict [sic] harm on the victim as he or she suffers both bodily and mental harm. . .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.. . .Sexual violence was a step in the process of destruction of the tutsi [sic] group - destruction of the spirit, of the will to live, and of life itself.[33]

The *Akayesu* Judgment was the first decision of an international criminal tribunal to define rape. Referring to the definition of rape in various national jurisdictions, the Trial Chamber's definition was guided by a conceptual framework, rather than a "mechanical description of objects and body parts."[34] The Trial Chamber noted the cultural sensitivities involved in public discussions of intimate matters and recalled the painful reluctance and inability of witnesses to go into details about the alleged behavior. [35] Consequently, the definition for rape given by the *Akayesu* Trial Chamber was: "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."[36] A Trial Chamber of the ICTY also adopted this definition in *Prosecutor v. Delalić* [the *Čelebići* case] two months later.[37]

On September 2, 1998, the Trial Chamber found Jean-Paul Akayesu guilty of nine counts of war crimes, crimes against humanity, and genocide.[38] These included crimes against humanity for rape, other forms of sexual violence charged as rape, and other inhumane acts; in addition to rape as constituting genocide.[39] The verdict was a single sentence of life imprisonment.[40] It was the first finding of sexual violence as an international crime, as well as the first time that rape was considered an act of genocide.

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33. *Id.* at ¶¶ 731-32.
34. *Id.* at ¶ 687.
35. *Id.*
36. Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶ 598 (Sept. 2, 1998).
37. Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶¶ 478-79 (Nov. 16, 1998).
38. *Akayesu*, ICTR 96-4-T, Judgment at § 8.
39. *Id.* at ¶ 731.
40. Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Sentence (Oct. 2, 1998).

The Appeals Chamber in *Prosecutor v. Kunarac*,[41] an ICTY case, adopted the more restrictive definition of rape favored in *Prosecutor v. Furundžija*,[42] another ICTY case, thereby setting aside the *Akayesu* definition. The *Furundžija* definition, which is now the standard, is as follows:

> [T]he *actus reus* of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[43]

Practically speaking, however, crimes that fail to meet a precise definition of rape may in some cases still be prosecuted as "other inhumane acts", a crime against humanity,[44] or "inhumane treatment" - a grave breach of the Geneva Conventions.[45]

In *Kunarac,* the Appeals Chamber also found that rape is torture:

> [S]ome acts establish *per se* the suffering of those upon whom they were inflicted. Rape is . . . such an act . . . Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.
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> Severe pain or suffering, as required by the definition of the crime of torture, [sic] can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering.[46]

Kunarac also affirmed that the issue of force must be considered in the context of conflict and that unlike in domestic cases of rape, international criminal chambers have to consider the coercive

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41. Prosecutor v. Kunarac, Case No. IT-96-23 & IT-96-23/1-A, Judgment (June 12, 2002).

42. Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment (Dec. 10, 1998).

43. *Kunarac*, IT-96-23 & IT-96-23/1-A, Judgment at ¶ 127.

44. ICTR Statute, *supra* note 23, at art. 3(i).

45. Amended Statute of the International Criminal Tribunal for the Former Yugoslavia, 2004, art. 2(b) [hereinafter ICTY Statute].

46. *Kunarac*, IT-96-23 & IT-96-23/1-A, Judgment, ¶¶ 150-51.

circumstances prevailing in most cases and vitiating the possibility of real consent.[47]

Thanks in large part to the ICTR, the attention given to the prosecution of rape at international courts has grown considerably. Nevertheless, continued vigilance to ensure that this issue is not forgotten will be necessary if the successful prosecution of rape is to be made a reality for the countless victims still awaiting justice.

III. CIVILIAN SUPERIORS

The jurisprudence of the ICTY and ICTR recognize that both civilian and military leaders can be held responsible as superiors. Due to the different natures of the conflicts in the former Yugoslavia and Rwanda, the ICTY has dealt primarily with military commanders, while the ICTR has dealt primarily with civilian superiors.

A. Superior Responsibility – The Law

Two ICTY cases established the main elements of the law on superior responsibility: *Prosecutor v. Aleksovski,*[48] a case involving a Bosnian Croat who was a prison commander in Central Bosnia during the Bosnian war; and the *Čelebići* case,[49] involving Bosnian Muslims and Croats accused of crimes at another prison camp in Central Bosnia. In these cases, the ICTY Appeals Chamber affirmed that both de jure and de facto superiors could be held liable for the crimes perpetrated by their subordinates. The issue is whether the superior had effective control over the subordinate - that is, the material ability to prevent or punish the subordinate.

For example, in Rwanda *bourgmestres* were found to have de jure control over the communal police. They were legally responsible for hiring and firing these policemen. However, in *Akayesu* the Chamber found that the de facto powers of a *bourgmestre* went far beyond the communal police. An expert witness testified that the *bourgmestre* was the most important authority for the ordinary citizens of a commune, who in some sense exercised the powers of a chief in pre-colonial times.[50] Witnesses also testified that the *bourgmestre* was considered the "parent" of all the population, whose every order would be respected and followed, even if they were illegal or wrongful.[51]

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47. *Id.* at ¶¶ 129-30.

48. Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, (June 25, 1999), *aff'd by* Case No. IT-95-14/1-A, Judgment (Mar. 24, 2000).

49. Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment (Nov. 16, 1998), *aff'd by* Case No. IT-96-21-A, Judgment (Feb. 20, 2001).

50. Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment at ¶ 73.

51. *Id.* at ¶¶ 55, 74.

Thus, the test in determining liability is one of "effective control" - meaning whether a superior had the material ability to prevent subordinates from committing offenses, or to punish them afterwards. A superior found to have effective control will be held liable for the crimes perpetrated by his or her subordinates if he or she knew or had reason to know that the subordinates were going to commit, or committed, violations and failed to prevent or punish these subordinates. It is worth noting that the Chambers have specifically found that proving that an accused had "substantial influence" in a community is not enough to prove that he or she had effective control.[52]

B. Cases

1. Prosecutor v. Akayesu[53]

As noted above, *Akayesu* was the first case before an ICTR trial chamber to discuss the issue of superior responsibility. The *Akayesu* Trial Chamber examined the de jure powers of a *bourgmestre*, as well as evidence of Akayesu's de facto power in his community. It found that in Rwanda, the de facto authority of a *bourgmestre* was significantly greater than the power conferred on him de jure.[54] However, the Trial Chamber acquitted Akayesu of superior responsibility on procedural grounds because the indictment did not specify that the local Rwandan militias responsible for perpetrating many of the crimes in Akayesu's region were subordinates of the accused. In other words, there could be no conviction because the indictment did not put the accused on notice that the allegations against him included responsibility for crimes committed by *Interahamwe*, Rwanda's localized militia groups.[55]

2. Prosecutor v. Kambanda[56]

Technically, the first superior convicted at the ICTR was former Prime Minister Kambanda. He was indicted for both individual and superior responsibility and pled guilty to both.

52. *Delalić*, IT-96-21-A, Judgment at ¶ 266.

53. *Akayesu*, ICTR 96-4-T, Judgment.

54. *Id.* at ¶ 77.

55. *Id.* at ¶ 691.

56. Prosecutor v. Kambanda, Case No. ICTR 97-23-T, Judgment & Sentence (Sept. 4, 1998), aff'd by Case No. ICTR 97-23-A, Judgment (Oct. 19, 2000).

3. Prosecutor v. Musema[57]

The first conviction under article 6(3) superior responsibility following a plea of not guilty at the ICTR was that of Alfred Musema, the director of a tea factory at the time of the conflict. Obviously, his position in and of itself did not make him an obvious target for war crimes liability.

The Trial Chamber made an in depth inquiry into the influence Musema wielded not only over his workers at the tea factory but in his community in general.[58] In finding that Musema had an influence above and beyond his job title, the Trial Chamber opined that his power stemmed from his control of socio-economic resources.[59] It considered evidence from expert witness that the government ensured that positions controlling the distribution of resources, including export earnings, remained in the hands of party faithfuls.[60] The Trial Chamber also considered evidence that tea factories often provided social services in communities where local governments could not.[61] It heard evidence that Musema's influence as tea factory director included communal authorities because his employees were paying taxes that allowed communal authorities to pay their employees.[62]

In the end, however, the Trial Chamber concluded that Musema exercised legal and financial control only over the employees of the tea factory.[63] Despite its finding that the population in his region perceived Musema as a figure of authority and someone who wielded considerable power in the region, the Trial Chamber did not find sufficient evidence that he had the necessary de facto or de jure control over these other members of the Kibuye population to be held liable for crimes perpetrated by them.[64] The Trial Chamber found Musema guilty of both individual and superior responsibility for a number of massacres in which tea factory employees participated, or in which tea factory vehicles drove perpetrators to the scene, and where Musema himself was present.[65]

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57. Prosecutor v. Musema, Case No. ICTR 96-13-T, Judgment & Sentence (Jan. 27, 2000).

58. *See id.* at ¶¶ 863-83.

59. *Id.* at ¶ 869.

60. *Id.* at ¶¶ 872-74.

61. *Id.* at ¶ 870.

62. *Id.* at ¶ 873.

63. *Musema*, ICTR 96-13-T, Judgment at ¶¶ 880-82.

64. *Id.* at ¶ 882.

65. *Id.* at ¶¶ 884-975.

4. Prosecutor v. Kayishema[66]

In contrast, the Appeals Chamber in the *Kayishema* case upheld a finding of the Trial Chamber that Clement Kayishema, a Rwandan *Prefet* (a regional political authority one level above that of a *bourgmestre*),[67] was liable for crimes committed by subordinates beyond his de jure chain of command.[68] In considering the issue of de facto control, the Trial Chamber took into account the following testimony from Kayishema himself. In 1992, soon after taking office, the *bourgmestre* of Gishyita Commune telephoned him to report that houses were being burnt down in his commune, that people were fleeing, and that the situation was chaotic. Kayishema told the Trial Chamber that the *bourgmestre* had asked him to come to the scene saying, "I just want your presence on the spot."[69]

The Trial Chamber interpreted this evidence to show the following: 1) that the *Prefet*'s mere presence at a scene of chaos could have an effect on the population; 2) that in times of crisis, a call to the *Prefet* was ultimately expected to resolve problems; and 3) that the call for help reflected Kayishema's de facto authority at the time.[70] Additionally, it considered evidence that Kayishema was often seen transporting or leading assailants to massacre sites in the company of *Interahamwe* (local militia over whom he had no de jure authority). He was "transporting them, instructing them, rewarding them, as well as directing and leading their attacks."[71] Considering these elements together, the Trial Chamber found that Kayishema did have effective control and it held him liable as a superior (article 6(3) of the ICTR Statute) for crimes committed by these subordinates.[72]

5. Prosecutor v. Ntakirutimana[73]

Another interesting case involved Gérard Ntakirutimana, a medical doctor who assumed directorship of a hospital in Rwanda days after the killing of the President of the Republic.[74] Gérard was tried and convicted

66. Prosecutor v. Kayishema, Case No. ICTR-95-1-T, Judgment & Sentence (May 21, 1999), aff'd by Case No. ICTR-95-1-A, Judgment (June 1, 2001).

67. *Id.* at ¶ 481.

68. *Id.* at ¶ 506.

69. *Id.* at ¶ 499.

70. *Id.* at ¶ 500.

71. *Id.* at ¶ 501.

72. *See Kayishema*, ICTR-95-1-T, Judgment & Sentence at ¶¶ 501-16.

73. Prosecutor v. Ntakirutimana, Case No. ICTR 96-10 & ICTR 96-17-T, Judgment & Sentence (Feb. 21, 2003).

74. *See id.* at ¶ 435.

of genocide along with his father, Elizaphan, a local priest.[75] In Gérard Ntakirutimana's case, the Court examined whether he was responsible for crimes committed by the hospital's Chief of Personnel. The Trial Chamber found that the two men had been seen together armed at at least one crime scene.[76] However, the Chamber concluded that there was insufficient evidence about the relationship between the two men to establish beyond a reasonable doubt that Gérard Ntakirutimana had effective control over the hospital's Chief of Personnel.[77] Thus, he was acquitted of responsibility for the crimes allegedly committed by the Chief of Personnel.[78] The prosecution did not appeal this finding.

C. Conclusion - Superior Responsibility

Thus, on this issue I would conclude that ICTR Chambers have not hesitated to apply the doctrine of superior responsibility to civilian leaders. The ICTR has been consistent in its definition of the law; specifically the requirement of effective control. However, Trial Chambers have not always been convinced that effective control had been established in a particular case.

CONCLUSION

Overall, I believe the contribution of the ICTR to the development of international law has been an important one and I believe there is more to come. For example, ongoing cases at the moment include: 1) the first woman accused of rape before an international tribunal;[79] 2) a trial in which the accused was a popular Rwandan singer;[80] and 3) the *Media* case, where three leaders of the Rwandan media were convicted for genocide, which is currently on appeal.[81] In addition, I have no doubt that lower profile cases will also contribute substantially to the further development of the law.

75. *See generally id.*
76. *Id.* at ¶ 437.
77. *Id.* at ¶¶ 437-38.
78. *Id.*
79. Prosecutor v. Nyiramasuhuko, Case No. ICTR-97-21.
80. Prosecutor v. Bikindi, Case No. ICTR-01-72-I.
81. Prosecutor v. Nahimana, Case No. ICTR-99-52-A.