

Official Transcript: Suzanne Chenault (Full Interview)



Role:	Legal Officer and Juris-Linguist
Country of Origin:	United States
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Interviewers:	Lisa P. Nathan Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Suzanne Chenault discusses the importance of establishing jurisprudence that will pave the way for future international tribunals, and offers some reflections on the Akayesu case which was the first case to address rape as genocide. Chenault stresses the need for investigators to have deep contextual and linguistic knowledge of the communities they are working with, especially when collecting evidence around sensitive topics such as rape. She stresses the lack of communication among different trial chambers within ICTR as a core challenge.

The transcript of the interview begins on the following page.

Part 1

00:00 Lisa P. Nathan: Okay. My name is Lisa Nathan. I'm with the Information School at the University of Washington and I'd like to thank you so much for your participation today. And to begin, I would like you to say your name, your country of origin and your title here at the ICTR.

00:16 I am Suzanne Chenault. I am from the United States and I am a legal officer and jurist-linguist.

00:26 LPN: Thank you. Could you walk me through your timeline here, the year you first came and if you have had different roles, what the titles, what those different jobs have been and, and the time frame that up until today.

00:40 I arrived here in August, August 8th, 1999 as a jurist-linguist in Chambers and my position, the title has remained the same. And my functions have expanded and they've become (___), they've be-, they've varied quite extensively over this period of time because we're talking actually nine years, a little bit more than nine years. It'll be ten years in August, 2009.

01:14 LPN: Thank you. So I'd like to go back in time a little bit to the spring of 1994 and do you remember where you were? Can you describe to me what you were doing at that point in time when the events in Rwanda were going on?

01:29 I was a Fulbright Scholar in Romania and I was aware of what happened he-, what was happening in Rwanda because I had first been aware of what was happening so very close to Romania in the former Yugoslavia. And my first thought was this is very fearful. (___) this is a, a frightening situation and I was initially concerned for the security of the students that I was working with in, in, in Romania.

02:02 I was in Transylvania. I was in Cluj and I was also in a c-, city called Arad, which is if you take the train through, down into Bucharest and then you go into – you're, you're very, very close. And so that was my immediate concern.

02:22 And then what was happening in Rwanda seemed to be, if you will, kind of like the long arm of, or the ripple effect of countries that were feeling attention that unfortunately I didn't understand entirely although I had understood that it was ethnic in, in origin.

02:47 LPN: Thank you. Can you – fr-, so from that time in 1994 when you were a Fulbright scholar somehow you progressed and a few years later, you found yourself here in Arusha. Can you tell me how you began to work here? What was that story?

03:05 I was at an international law conference. And it was in Washington D.C. and I met someone who had been a jurist-linguist here. It was just by chance I met this person. I think it was, it was at a function and I, I introduced him to a colleague who had come with me – somebody with whom I practiced law. I was practicing law and I was also teaching simultaneously.

- 03:37 And she was most interested and she understood that there were a number of Rwan-, representatives of the present Rwandan government and as is her wont, she, the next day after understanding who was there and that there was th-, what was happening in the tribunal she convened all of these different representatives.
- 04:07 And I remember that she, there was a penthouse place to have breakfast and she's just very good at orchestrating all of these events and she was meeting with them, and she was conducting the meetings. And it wasn't long after this – this must have been September – I think it was in April, early April, that she was appointed Deputy Registrar. And I, I was, I was shocked.
- 04:35 And then she said, "You know there's this position as jurist-linguist. You'd be perfect for it." And I nodded my head and I said, well all right, I'll, I'll, I'll submit an application because I had been since I was 20, desirous to work for the UN and as an American that is usually no easy task.
- 04:59 There has been, I've understood, I haven't actually studied the statistics but there is a quota system and as I do understand it's not easy to be employed as an American. And then to be employed as an American and a lawyer and to work in a situation like this was an absolute excellent opportunity that I had never before envisioned. But then I began to work after being named to this position in August – it was 1999.

Part 2

- 00:00 **LPN: What had – what was your understanding of the ICTR? I'm sure, knowing you from the few interactions, that you did some research before you came here, were well-aware of various aspects of this tribunal. Do you remember what your impression of the tribunal was at that time before you started working here?**
- 00:20 I thought of it as an international organization that would have all sorts of influence in the future. I had, when I'd taken international law with Stefan Riesenfeld when I was a student at Boalt Hall, been very desirous to work, to work in The Hague and that was long before the, before the ITCY was established.
- 00:55 But just the whole thought of being able to, on an international level, to be able to confront and attempt to understand and solve some of the international issues that were affecting not only the United States but, but other countries in the world for me was, was such an opportunity to contribute.
- 01:17 And I thought of this as a selfless act but an act that would use some of my talents. What did I really know about the e-, the, the establishment of the tribunal? I knew that there were at that time three, nine judges, nine permanent judges. The last three had just been appointed. I understood that the proceedings were going rather slowly and that I was to understand – I was to assist all of the judges.
- 01:44 So that was already just e-, exciting. And I have found myself doing that, pivoting between one trial chamber, the next trial chamber, the third trial chamber, which

sometimes can be a bit unfocused because I don't have just a mentor or a team behind me. I float as a, a lone entity.

02:08 LPN: So I would – that was my next question was to describe to me your role, your responsibilities and as you said before, they have changed over time even though you have the same title – jurist-linguist – the, what that means has changed. Can you describe to me what it is today that you consider your responsibilities?

02:27 Oh, my. They are multifaceted. Do you want me to talk to you a little bit about what they were initially and how they've expanded?

02:38 LPN: It is – please, you have the floor so however you think it would make the most sense or . . .

02:46 As is often a situation in the UN, what one finds in coming here is not quite perhaps what one had expected. And upon coming, I've understood that I needed to know the jurisprudence and I (___), needed to know how that would be articulated in the judgments that were being issued.

03:09 Now there weren't, there wasn't much jurisprudence at that point. I was here for the third, third case. That is, third, third case where the accused had not pled guilty. So I was here. Let me think. Ruteg-, Akayesu was issued in '90, '9-, '98. Ruteda-, Rute-, Kayishema-Ruzindana had been issued just before in 1999.

03:48 And they had wanted me to come for that because I was to know the legal concepts and to be able to – this is the, this is back to your, to answer your question. My role really was to be able to understand the legal concepts and to be able articulate them in both French and English because at that time the hope was to issue judgments in both languages on the date that the actual judgment was rendered.

04:14 This happened in Akayesu. It did not happen with Kayishema-Ruzindana and I already felt a little bit of guilt. If I had been here, I think the understanding was, that would have been possible. What a gulp. That was asking so very, very much.

04:34 So as we were already attempting to expedite the rendering of the iss-, of the, the judgments, little by little a judgment was issued in one language only and as most of the legal officers and the judges had as a first or second language, English, the judgments then were issued primarily in English.

04:59 So, then my job became to know the legal concepts and to go through and attempt to make the documents as closely as possi-, make the documents sound like one voice, because from the outset there have been many, many authors of the, of the judgments.

05:22 And this makes sense if you have three judgments and each judge has a legal officer. So already there is not just one judge who is drafting or one legal officer who is drafting.

- 05:35 So that means that there are different styles, there are different ways of ar-, articulating an idea and then to conciliate all of this and to make it into a document with one voice assuming that one meets the deadlines. So that then became my primary focus.
- 05:57 What do you do then when you're not issuing a judgment? Then you have all of the decisions. You have all the preliminary work. And if you have judges on a bench many of whom do not speak English as a first language and you have many of the parties who do not speak English as a first language then what you have is you have all of the translation issues.
- 06:19 Well, I can assure you, the last thing I wanted to do was find myself just dealing with translations. Oh, my goodness. I am a lawyer first and foremost so I needed to find my way into the legal realm. And I also saw a great need for attempting to assist everyone coming in. Mind you, we have new legal officers coming in all the time. We have interns floating in all the time.
- 06:56 Some with a great deal of experience and some with a sense of being quite erudite. But, what that means is you have no one who has authority to tell you, "This is the format that we need to use. This is the expression we need to use. This is the grammatical preference. Are we going to use English? That is British English. Are we going to use Australian English?
- 07:30 Are we going to use American English? What is our punctuation going to be?" So, immediately I enlisted a couple of bright interns to assist me with a style manual. Not that I wanted to do this but somebody had to do it. So we came up with a style manual. But that is fine.
- 07:54 But how then do you have an adoption of this style manual? You can propose but what authority have you to then have the style manual adopted? The President of the tribunal who is an elected judge can endorse it and ask the other judges, "Please use this."
- 08:16 But if they don't want to, there is no way of actually insisting. Interestingly, little by little they have come to the, almost everyone has come to an acceptance of the great value of the style manual which has been adapted and readapted and updated. So that was one little project.

Part 3

- 00:00 But then we have more, don't we? How do we get us on the same page? And how many of the judges had actually even sat down to read the earlier judgments? So at this point, if we're in 2000, how many judgments have we issued at that point? We have, we have Akayesu, we have Musema. No. We have Akayesu, Kayishema-Ruzindana. Then we have Serushago. We have Kambanda.

- 00:37 Those are guilty pleas and then we have Musema. Then we have, my goodness, the, the, the Interahamwe. His name starts with an R. He's . . .
- 01:02 LPN: (____) . . .**
- 01:03 R-, I'll think of it in a moment. But that's our fifth. And then we have Ruggiu. So by 2000, we have seven judgments. That's all we have – seven judgments.
- 01:13 But, we still needed to start talking about the jurisprudence and where we were going to go with the jurisprudence and how the jurisprudence from the ICTY was influencing us. We still did not have at that point any appeals chamber judgment issued on any of the trial chamber judgments at the ICTR.
- 01:38 So then I organized the chambers' continuing legal education committee and I submitted a grant and we received \$84,000. Oh, what a wild amount of money. And that money lasted until last year. Oh, I was so parsimonious. Oh, I wish I could do the same with my own budget.
- 02:02 But, we've had probably 12 different seminars where we've brought in legal experts, scholars and practitioners and, and judges who have spoken of our jurisprudence and we have at that point had a forum to also talk about our evolving jurisprudence. So the, the focus has been the different, the different crimes over which we have jurisprudence, so genocide.
- 02:34 And William Schabas has come twice. He's considered the father of, of some of the original, the, the original writings on genocide. He has the Irish Center for Human Rights in Galway, Ireland and of course, crimes against humanity and the various, the (____), the various crimes within crimes against humanity, and then war crimes.
- 03:06 Rutaganda. I was thinking of it and Rutaganda is interesting because on appeal, when finally the appeal came down we did then have, we did have a judgment that where it was determined by the appeals chamber that in fact there was a commission of four crimes. So, that was really the attempt of this, of this committee, to foster an understanding of our own evolving jurisprudence and to promote discussion and communication among the judges of the different trial chambers.
- 03:46 Because there is a tendency here to remain quite closed within one's own chamber and to not see that there's a great overlap and that some of the issues that we're dealing with perhaps in Trial Chamber One are also issues that are being addressed not only in the judgment phase but in the deficient – but in the pre-trial phase or in the ongoing trials with the – that the challenge is by the, by the parties.
- 04:17 LPN: However, you see that because you float between, I mean you are someone who is in a unique position where you see quite clearly what the different chambers are working on.**

- 04:27 I usually keep abreast although when I find myself just involved in the judgment coordinating for example, which I can be judgment in a case. Then for a bit of time I too am in solitary confinement. Unfortunately, but I tend to keep abreast. I think that I shall be more abreast.
- 04:53 Having organized a, a legacy symposium with the help of many, many bright, talented, generous, idealistic people last year, I think I'm significantly abreast but will, after this next two and a half months when we have three more judgments issued, need to be even more abreast because my goodness, oh, we're going to have – we're going to have three more judgments within the next two, within the next two months. That's very exciting.
- 05:32 But it does then require that one sit down and looks at, at the issues that were grappled with and the holdings by the trial chamber and then to make bets on what will be appealed and what just might be refined on appeal.

Part 4

- 00:00 **LPN: So, before we go any further, because of the wealth of knowledge and experience that you have from your time here, is there anything that as, as you reflect on that time that you would like to share with us that I or Don may not bring out with our questions? So please take your time and, and think. There may be a few things that you would like to share with us before we go any further and we will return to this question at the end as well.**
- 00:29 You know, when I first came here, the first judgment which was the Akayesu judgment in which I had no role was disparaged a bit. I remember there were a number of whispers down the corridor about it was, it was too long, it wasn't, didn't address issues directly, as, as, as it could have, but it has in so many ways stood, withstood the test of time.
- 01:08 And sometimes I refer, when I'm coordinating a judgment or when I'm advising a judge, I will go back and refer to the Akayesu judgment and its articulation of, of, of genocide because it was the first case in any international tribunal that, that held, that made a holding on genocide.
- 01:39 And it was the first case that charged rape as an act, as an act of genocide and the first conviction for rape as a tool of genocide and as a crime against humanity. So it was – and also the definition of rape was just so incredible as you think about it.
- 02:04 And I, oh my goodness, I fought so hard as we were moving away from that definition and the Muhimana judgment to conciliate what was then perceived as a divergence and to, and to work for the judges to show that it really wasn't a divergence, that in fact, we still were adhering to the Akayesu defin-, conceptual definition of rape and that the elements of rape which were mechanical, mechanical that is they were specific

- in terms of the penetration of what, of, of, of what part of the body by, what part of the body.
- 02:48 (), You know, it . . . so, () I can get very, very specific about this. It's, it's really quite graphic and Ake-, and this was, this mechanical definition had been articulated by the appeals chamber of the ICTY in Furundzija and in, my goodness, my goodness, it'll come back to me in just a second. My goodness, but I'll come back to that.
- 03:22 And there was the argument that there was a rejection of Akayesu and I was reading what number of scholars were saying, particularly somebody whom I admire greatly by the name, an American by the name of Kelly Askin and she had made the argument that no, no, the Akayesu definition which is a conceptual one which is – if I can read it to you – a physical invasion of a sexual nature committed on a person under circumstances which are coercive.
- 04:06 General, there is no element of consent – it was rejected because this was a situation of genocide. How could you even envision consent in a situation like this of such violence? However, in a, the ICTY Appeals Chamber, in the appeals, there was again () consent right in there and we're back to "You have to have the invasion of () part of the body."
- 04:59 Would it be the mouth? Would it be the anus? By the penis or by an object? I mean here you were. You were using all of this, the-, these, these graphic mechanical specific elements and so how do you reconcile going with these specific elements and this conceptual definition?
- 05:23 I think and I do hope this is adhered to by future judgments that that conciliation was achieved in Muhimana. And this was a, a judgment issue in 2005. We have had a paucity of judgments that have addressed rape. Out of the 29 cases, only to date and I'm talking about to date as of today's date.
- 06:00 We're not talking about any of the judgments that may be issued in the coming months before January, 2009. We have had only eight cases charging rape – only eight. And of those, only four have been upheld on appeal.
- 06:21 Now, you probably need to talk to the Prosecutor as to why there were no great, more, more, more cases charging rape. There are certainly reasons for this. It's more difficult perhaps to prove rape because you need to have the witness, the victims or the, or the witnesses be survivors.
- 06:52 How many of those who were raped survived? And how many of those who survived given the cultural taboo in the Rwandan society are willing to testify? What do they get from testifying? In fact, there's a wonderful, () wonderful, horrific story of a witness in Akayesu who after testifying of course like many, when I say of course, it's not obvious but like many, she was a victim, she is, she's still alive, a victim of AIDS.

- 07:35 And also, somebody living in great poverty and there was a program here also through the trust fund that provided housing to many of the victims who survived of the Rwandan genocide.
- 07:56 And this one witness in Akayesu – I think it's witness JJ, I'm almost positive – was living as far as here to that pillar from this new development of homes built by trust fund moneys for survivors. She, three years after her testimony, was living still with no wall in her little dwelling, of course, no electricity, of course, no running water.
- 08:48 And she pointed to that building and she said, "You know, that was built for the survivors but there's one person who owns three of those little houses and rents them. So in fact, those people who most need them are not necessarily receiving them."
- 09:30 Now there was a bit of publicity about this and a church group subsequently helped her to restore that wall that had been opened. She had courage to testify. There are many survivors because of all of the issues involved with making known your story do not testify.
- 09:58 Are you going to have a husband, if you're young enough still to have a husband? You're a tarnished woman. Oftentimes at least you're thought of being a tarnished woman. And consequently it is difficult to find the witnesses testifying to sexual violence.

Part 5

- 00:02 **LPN: Because of your awareness of the issues around rape and proving rape is genocide and the, the cultural barriers, the legal challenges there, what would you like to see in the future for future tribunals – whether they be ad hoc or like the ICC a standing tribunal – to handle this issue of rape which is not going away as we know of the events in the Congo now and other places in the world?**
- 00:35 Well, given the acknowledgment that rape has been used as a tool of, of genocide, is perpetrated against women because they belong to a particular tribe or a particular religion and also just as, just a, a, a general means that is used or a fruit of the, of the, of the perpetration of the, of, of, of coming in and, and decimating a community.
- 01:16 What we, what we, given that acknowledgment, what we, I think, need, is to understand the vulnerability of the survivors and what that would mean I believe if you're going to prosecute this crime in the hopes then that you're going to deter is continued commission of the crime, you're going to need much greater sensitivity and that would mean that the investigators not be these hulking policemen who don't speak either English or French, as even a second language.
- 02:09 Because if you're going to get a testimony, you need to talk to the victim and usually you need to, to, to have somebody who can speak in the language of the victim. What we had initially as I understand, we had people who were brought in as investigators and very often they weren't hired necessarily by the UN.

- 02:30 They might have been a gift from one of the nations that wanted to help and so there was no way of, of monitoring, if you will, or giving a program to or giving information to those who went out and investigated.
- 02:48 And I'm not saying a great deal of harm was done but I would say a great deal of evidence that could have been preserved was not because of the way the investigations were conducted. You need to, the – so great deal of sensitivity to, of the investigators, language skills of the investigators.
- 03:16 Under-, when I say awareness and sensitivity it wouldn't be only what it is to be raped or of the problems that potentially the victim would, would encounter in having the community at large know, but also knowledge, greater, greater knowledge of the, of the dimensions, the anthropological dimensions of, of this community.
- 03:46 And I think that we've gone in almost like bears in a china closet without understanding Rwanda extremely well and that would be very, very important particularly in regard to rape but also in regard to other, other ways of, of, of approaching those who have survived and those people who witness the, the events.
- 04:18 **LPN: Thank you.**

Part 6

- 00:00 **LPN: For the last question before we take a break, I would like you to take a, a bit of time or as much as you need to think about your understanding of the term justice and has that changed in your time here?**
- 00:34 My first word is Insha'Allah and I should not have thought of that before coming here but my interpretation of Insha'Allah is not if it's 'God's will' but ultimately 'God's will will prevail.' What I'm thinking is that we have only a slice of the picture and a slice of the evidence and only a very few of the alleged perpetrators.
- 01:23 Consequently it's extremely limited justice if we think that justice is that those who have perpetrated crimes are going to be brought to retribu-, pay for in a retribution type fashion or going to set an example for society at large or for the particular community where the crimes were committed.
- 02:02 I think that unfortunately, the jurisprudence and what the jurisprudence can help us do in the future will be more important than whether or not there was justice, because there are so many who may have committed even more heinous crimes than those who are being tried before the tribunal.
- 02:43 I'm thinking of, of the response of the Rwandan community in respect of the first acquitted person, who was Bagilishema. He was the mayor of a commune and after he was acquitted there was a, an, an outreach group that was sponsored actually by someone, or whole group from Arcadia, California and this outreach group which is called Justice in Rwanda exists now but on a much, much more limited budget.

- 03:45 In those days, this must have been 2001, 2002. Maybe I'm o-, I might be off date-wise; it might be 2003. Took the, the film of the closing arguments and the acquittal and went out to the commune and then also taped the response of the community to the acquittal. There was outrage.
- 04:29 There was no – from what I recollect and for what was recorded by this NGO – no perceived justice. Which then leads us to another question, which is always raised here. It's justice and the perception of justice and that is not an easy issue. There is that tension.
- 05:01 And I would say in that one particular ins-, instance, in that one particular community at that one particular time when the, the an-, the acquittal of Bagilishema was announced there was little perception of justice. I, I think we have to look at all of the dimensions of what we think justice is to have, to have a, an intelligent sensitive direction for the future.
- 05:45 I must qualify my stumbling because I have stumbled in my answer. I think that a tribunal serves an important, an important function but I do believe that we need to be, be a little clearer as to what kind of justice and how we can issue or render justice if we are not able to bring into the court a larger group of people.
- 06:28 And we have been very, very hampered simply because, () for so many reasons – I, I realize I'm going off on a tangent but maybe eventually we can take all of these elements and pull them together.
- 06:46 There has been the perception of victor's justice because no member of the RPF or of the present government in Rwanda has been brought before the tribunal or been charged, indicted.
- 07:03 And one of the reasons, of course, is that our evidence for the most part is testimonial evidence and we must bring our witnesses for the prosecution in from Rwanda and we're not going to have access to those witnesses if we're going to be accusing the same gus-, the same government that allows us to bring the witnesses from Rwanda.
- 07:31 The tribunal has nearly been shut down on a number of occasions. Most notably as I recall in the case of the laughing judges in Butare when it was perceived that, again, in regard to a testimony about rape, the judges were perceived to have laughed. And the judges later or one of them said, "Of course, we weren't laughing at the witness and her testimony about being ga-, gang raped on eight different occasions."
- 08:06 "We were laughing at the way that the defense attorney representing Shalom Nta-, Ntahobali who was one of the, the accused or who is one of the accused in the six accused Butare case, how his attorney was phrasing the questions as he was cross-examining this witness TA.
- 08:37 But as a consequence of this coverage of the rippling laughter or the laughing judges there were no witnesses coming from, from, from Rwanda for six weeks. When there

was, prior to this, when the appeals chamber had determined that Barayagwiza had been held in detention far too long and his rights were violated and he was freed but he w-, remained in custody until the appeals chamber again reviewed its own appeal.

09:26 During this period, again, there were no, there were no witnesses forthcoming from Rwanda. Now what do you do in a situation like this? How can you possibly, possibly have a situation where you think there is justice because you are, your, your, your jurisdiction is limited to be certain that you're not going to indict those same people who are going to allow you to conduct the trials.

10:03 And this is a situation presently in Cambodia as well and maybe a situation in other tribunals that are set up. So I think it's, it's a situation where in some ways we are, we are symbolic. We are rendering partial justice and is partial justice justice? Because who in allowing a tribunals to go forward are then being, being sheltered and are they every bit as guilty as those who are brought before the tribunal?

10:38 These are questions I raise so I, I can't, I can't ask that you, I can't answer that I think there is justice in a, in a fair manner because justice in a fair manner would mean that everybody who has any guilt at all would be held accountable. And ultimately maybe that is only some higher deity and at some later () later time will be able to make that reckoning. I don't know.

11:16 **LPN: Thank you. Thank you so much.**

Part 7

00:00 **Donald J Horowitz: Hello. I'm Judge Donald Horowitz from Seattle, Washington and I'm going to do the second part of this interview which will likely be not as long as the first part but we're going to focus on a few, on few things – one of which is you've used the word, and quite properly as far as I'm concerned, the word "jurisprudence" a number of times, many times throughout the first part of your interview.**

00:27 **DJH: And since this conversation is going to be seen and listened to and used perhaps by, by people who are not lawyers, perhaps and I know it's not an easy one but perhaps you could give us at least a running definition or a useful definition of the word "jurisprudence."**

00:48 I come from a common law tradition and my understanding from my tradition of jurisprudence and I believe now is the understanding of most people here in this tribunal. Remember it's a hybrid system . . .

01:02 **DJH: Yes.**

01:02 . . . that we had the civil law and common law. But we now are depending upon our jurisprudence that was established in the 29 prior cases for the cases that are going to be issued and that as background I would simply explain my understanding of jurisprudence as the articulation of the law as applied to the facts in all of the cases

that have been brought before this tribunal and all of the facts have been related to three crimes.

01:46 They are crime of genocide, which is articulated in our statute, and that is a crime that is perpetu-, that is perpetrated on the basis of one's ethnicity or race or a religious affiliation and you have to prove that the crime was committed because a, a person was a Tutsi. And how do we do that?

02:16 Very often it's just someone recalling that one of the accused who might be charged with incitement to genocide. He's asking the Interahamwe, "Come on. Go after 'em. Get the Tutsi. Exterminate them. Exterminate the cockroaches, the Inyenzi."

02:38 So that's the law that's been established about, about genocide and it's all of the facts that relate to how the court came to a determination that genocide was committed in that case.

02:54 And then the second crime, crimes against humanity. The crimes against humanity means that there is a systematic attack against a group of people and there are different kinds of crimes. There, it can be torture. There can be murder, there can be extermination, there can be slavery, there can be what else? Let me think. Crimes against humanity.

03:23 DJH: In Akayesu . . .

03:24 Yes?

03:25 DJH: Didn't they define rape as a, a crime against humanity?

03:28 Of course, of course, rape is one, of course.

03:30 DJH: Yes. Okay, okay. And that was the first holding I guess in history, if I'm correct, that held that rape could under certain circumstances be also a crime against humanity as well the crime of rape?

03:44 Well, yes, but it was, that's interesting. It was, it was charged, it was charged in the st-, in, in the indictment as both genocide. It was part of the whole genoci-, the . . .

04:04 DJH: Right.

04:04 . . . all the, part of the acts that constituted genocide and it was also specifically charged as rape as a crime against humanity. So there was a conviction on both. Crime a-, rape a-, conviction on both crime against humanity and . . .

04:19 DJH: Okay.

04:19 . . . and genocide. And then the third crime is a war crime. Now, what's interesting about a war crime, whoa, is () – there, there, there are a whole number of elements you have to prove.

04:31 And you need to show that it is a, that it is a conflict that is limited to the country in which the crime takes place. So it is a non-international conflict and it has to be a crime that is committed, could be rape for example, but is committed in, as an act of war.

05:00 So you have to show that it, that you've got, you've got a war going on and it's not just two, it's not just two civilians who are, one who is raping the other. So that is, that is an important, that, that's a, a distinction. But you see that's the jurisprudence that's involving.

05:23 DJH: Okay.

05:24 It's the case law. It's the law that has been articulated in one case as applied to the facts and then articulated again in regard again to those three crimes – genocide, crimes against humanity and war crimes and then refined. And then, what also will come into this will be the modes of commission.

05:47 How do you commit this crime? And that's one other part of our statute. So the case law r-, c-, really deals with three crime-, three, three crimes over which we have jurisdiction and those are articulated in Article 2, Article 3 and Article 4. Article 2 is genocide, Article 3 crimes against humanity and Article 4 war crimes.

06:12 And then, we have Article 6 and that is responsibility. What is your responsibility as an accused person here? Have you, are you just the commander and how can you be – now that's interesting too.

06:26 We, and the third case that was actually litigated, where there was no pleading of guilty which was the Musema case. There was manager of a tea factory and he was charged with being, with superior responsibility. Let me go back because I know I've jumped ahead.

06:47 Two kinds of responsibility – one is individual responsibility, the other is superior responsibility. So these are the kinds of responsibility you can, you have to, that has to be proven in the case law for you to be guilty of genocide, crimes against humanity or war crimes.

07:11 So, if it's individual responsibility, there are five modes of commission and those five modes are – you actually committed. You actually took the gun and you shot him. Or, you incited. It's not incited, excuse me. It's instigation. You could instigate.

07:32 And instigation, how is it interpreted according to the facts of the case? That's case law too. That's jurisprudence or in addition to instigating, commission, instigating, the catch all is aiding and abetting. You . . .

07:50 DJH: And conspiracy is another one, yes?

07:52 No.

07:52 DJH: No?

- 07:53 No, no.
- 07:54 DJH: Okay.**
- 07:54 Conspiracy is part of genocide.
- 07:55 DJH: Okay.**
- 07:56 No, no, no.
- 07:56 DJH: Okay.**
- 07:57 Modes of commissions are different. So it's commission, it's aiding and abetting, it's instigation, ordering. You can actually order and the fifth is, there's a fifth mode of commission. Anyway . . .
- 08:11 DJH: If you were, if were in charged and you didn't stop them from doing it.**
- 08:15 That is superior responsibility.
- 08:19 DJH: Okay.**
- 08:20 So two cri-, forms of responsibility – individual responsibility and superior responsibility.
- 08:23 DJH: Okay.**
- 08:26 Now, back to where I was when I put my foot in. I said third case, Musema. That was interesting because that was the first case we ever had where we had a non – well, that was the first case where there was a non-military person who was charged with superior responsibility.
- 08:47 He was the ow-, he was the manager of a tea factory and he led all of the factory workers up a hill, down a ravine to kill the Tutsi who had fled. And the court held he was responsible not only because he actually (___) shot and ordered, but he was responsible also because he was in charge of them and being in charge of them he then was their superior. He could have, he could have prevented their killing.
- 09:31 And knowing that they killed he could have punished them. He didn't prevent and he didn't punish. And why was he a superior? And when was he a superior? He was s-, a superior only during working hours because he was in charge of them only from the time they came to the tea factory to work, eight o'clock in the morning, till the end of the working period.
- 09:58 But any other time that he may have been with them when they were attacking the Tutsi whom they were purs-, pursuing, he could not be, according to the court, charged with superior responsibility which is under Article 63. So I, I just want to resume for anybody who might be confused.

10:18 There, there are really four important ar-, I mean there are many articles that are important but this is the statute. This is the statute that was articulated by the Security Council that gives us the basis for our case law.

10:33 DJH: And (___).

10:34 And our jurisprudence. So it's Articles 2 which is genocide, 3 which is crimes against humanity, 4 war crimes and then Article 6 which would be the modes of responsibility, individual responsibility and there are five modes of commission and I could only remember four, and then superior responsibility.

10:53 DJH: Okay. And that's been a wonderful lesson for us and I'm (___) . . .

10:57 Sorry.

10:58 DJH: No. And that's good. And let me see if I can, at least very briefly take what you've said and, and define jurisprudence briefly which is it's the rules, the principles and the philosophy established by the court in particular fact patterns which enables further cases and th-, and, and, and informs others cases in their decision-making as they go forward. Would that be a fair way of putting it?

11:30 Oh, how eloquent you are.

11:33 DJH: Is that a fair way of putting it?

11:34 Oh, you've put it so eloquently. I'd like to have that definition. Please write it for me so that I (____) . . .

11:39 DJH: A lit-, a little, a little later.

11:41 Please.

11:41 DJH: But I want to be su-, I want to be sure that y-, I mean you're not just complimenting me that that's, that's accurate in, in your view.

11:47 No, I'm not complimenting you.

11:48 DJH: Okay.

11:49 I'm telling you you have been extremely eloquent and you have listened well to my floundering attempt.

11:57 DJH: No. Well, the, the flounder is swimming well. Don't worry about it.

Part 8

00:00 DJH: Okay. You know and you've talked about the, the different kinds of justice and, and, and how we, our, our own views as you put Insha'Allah, it's, it's what, what, what will ultimately, what God may det- determine.

- 00:22 **DJH:** But, but we, but we're, we're a little limited sometimes particularly on, on, on confusing and, and difficult facts in defining what ultimately justice will be.
- 00:33 **DJH:** Would you agree however that justice in one culture may be different from justice in another culture simply because of the way the cultures themselves define justice? Let me give you an example and you know this yourself better than I.
- 00:49 **DJH:** In Rwanda, the whole idea of compensating people who have had offenses committed against them I am told is as important part of, of, of justice. It's not the only part by any means but it's part of it. And it might not be that much in another culture where perhaps revenge or punishment has a higher, has a higher place. What's your . . .
- 01:19 I don't think it's that different.
- 01:21 **DJH:** Okay.
- 01:21 I think compensation plays a role because for the most part those who suffered were, and are, extremely poor.
- 01:29 **DJH:** Okay.
- 01:30 And what they lost represented their entire livelihood.
- 01:34 **DJH:** Okay.
- 01:37 I, I think that until recently – and the penal code in Rwanda was altered – there was a death penalty.
- 01:49 **DJH:** Yes.
- 01:50 And there was a sense of retribution.
- 01:52 **DJH:** Mm-hmm
- 01:52 You've killed me, I'm going after you.
- 01:55 **DJH:** Right.
- 01:55 And if you look at the transcripts, (___), much of the testimony there is a great sense of get back, getting back at people for past wrongs.
- 02:05 **DJH:** Mm-hmm.
- 02:06 The sense of justice is, in, in terms of compensation I don't think is so different than what we have, in tort law in the United States, attempt to render when we give significant monetary rewards for the loss . . .
- 02:27 **DJH:** Okay.

- 02:27 . . . that we think has been caused by somebody else.
- 02:29 DJH: Okay. I'm going to talk (), with you just a little bit about the institution you've been working for for many years, the ITCR. And ask you, other than what you've already said, what would you say some of the important changes have been as it has matured and developed – both for the good and perhaps not for, for the ill? It's a big question, and I don't mean . . .**
- 03:02 Of course it is.
- 03:02 DJH: No, just, just summarize if you can.**
- 03:07 Well . . .
- 03:08 DJH: Clearly it's developed the jurisprudence and that's important.**
- 03:11 Oh, yes. It's, it's most important.
- 03:12 DJH: Yes.**
- 03:13 And I think the jurisprudence is, is, is being, is being refined with quite a bit of, of sensitivity. I think that that body of law will influence any, any international tribunal.
- 03:38 DJH: Mm-hmm.**
- 03:38 I know that the tribunal in Sierra Leone, the Special Court for Sierra Leone has depended very significantly on our jurisprudence.
- 03:50 In addition to the jurisprudence I think that we have a sense of court management that is quite, quite well-developed. There are, there needs to be greater monitoring but I think that it's been quite an accomplishment to be able to schedule the cases, to manage the translations from Kinyarwanda to French to English, and then to manage the preservation of the evidence in the transcript form. It's not perfect but at least there is, there is an archive . . .
- 04:27 DJH: Mm-hmm.**
- 04:28 . . . and that, that's quite, quite an accomplishment. We have a, a significant library that has been established as well, a witness protection system imperfect particularly in a country where there's so many, so many people who know so many people. There is at least a, a system in place.
- 04:57 Selection of defense attorneys – again, we've learned from mistakes. I think that we are finding better defense attorneys and that they are, but that's only an impression. I, I know that as we have to expedite our proceedings we-, my impression is where, where our attorneys are cl-, are again more attuned to our jurisprudence and to the rules which was not so much the case initially.

- 05:31 What would, what is something that's not as wonderful? Sense of community is not as wonderful. When the tribunal was smaller I think that there was more direct communication. Now that might be a direct result of the use of emails. The people aren't talking to each other in the same way that they did before to communicate about cases, to communicate about scheduling, to communicate about meetings. To c-, that may be something to, to work on.
- 06:09 **DJH: You've used a word I didn't understand, it was a result of the . . . and then you went into the examples. (_____)?**
- 06:16 I s-, it's a consequence perhaps of our just growing so very fast.
- 06:20 **DJH: Oh, okay. Okay.**
- 06:21 Because when I arrived here there were I believe 400 in the tribunal . . .
- 06:25 **DJH: Ah. Okay.**
- 06:27 . . . and then, and now there are a good – oh, my, how many are there? 800?
- 06:32 **DJH: Okay.**
- 06:32 And we, and we also have a great turnover . . .
- 06:37 **DJH: Mm-hmm.**
- 06:37 . . . which then creates many new faces and we don't have any way of introducing one to the other. The sense of commitment now may be different as well because there are very few who want to be here when the tribunal closes. So, large size, a, a difference in commitment, the use of technology which then is sometimes substituted for interpersonal relations can be, can be a problem.
- 07:11 I think the learning curve has been, has been high but not high enough. For the last two or three years, general attitude has been we're going to close down anyway. It's too late to take things in hand. Let's just keep going on as we've been going on. And I have eschewed, I have been disappointed with that attitude.
- 07:37 Because I think we would be far more efficient if we had much greater management of cases which would mean that defense, prosecution and, and chambers – the judges as well as the legal staff – had a, an opportunity to study our, our jurisprudence, that is our case law, as it has been developed to date to understand courtroom procedures.
- 08:08 So that somebody who has newly arrived, a defense attorney from one jurisdiction where it's quite easy to stand up and object, would understand that here that might not be, there might be moments when one can do it and when one should not do it.
- 08:23 All of this then slows the trial proceedings down. As a consequence then we don't get to the point. The transcripts are, are, are not clear. The analysis of evidence is not clear. All of this needs to be better managed and I really think, I think, that if we had

something like what we have in the United States whenever one is appointed as a federal judge you go back to school. You have to go to baby judges school and that's four weeks.

08:54 And I think if every legal officer coming in here whether it be a legal officer for the defense, whether it be for chambers, whether it be as a judge, whether it be for the prosecution. That would make us into a much more efficient and not just – I don't want to use just the word efficient but efficient and, and sensitive. And . . .

09:24 DJH: Effect-, effective?

09:25 Well, effective is different. It's, it's too broad as well.

09:28 DJH: Mm-hmm.

09:29 I just think that we would underst-, our understanding would be greater and our, we wou- (___), we would promote our communication and we would all not sometimes fake that we know the legal principle. We, we would have to, it's not so we'd have to have a test.

09:43 But we would know it because we would have the opportunity to have it articulated. We would apply it and we would talk it. We, we don't talk enough right now. That's one of the things that, that, that has, I think, been a shortcoming. We just don't talk the law enough.

Part 9

00:00 DJH: Okay. I have two more questions.

00:02 Yes.

00:03 DJH: One is what would you like to see come out of this information heritage project? What, what would you like, what would you hope?

00:12 I would hope that we dispelled some of the cynicism that has permeated this, this institution and also has affected the way, the way member states have responded to, to the, to the tribunal. There has been a great deal of poor press in, in Europe and in the United States.

00:35 In fact, how many people in the United States even know about this tribunal and know what it's doing? I would hope there'd be a greater awareness and that there'd be an appreciation of the, of the, of the attempted endeavors.

00:50 DJH: 'kay. And lastly, there's no structure to this question, it's – you are now speaking to the future. You could, people could be looking at you two years from now. Five, 25, 50. What would you like, what would you, what would you Suzanne Chenault, like to say to the future? Personal, professional as you wish.

- 01:23 I would like to see an international system of, of courts existing similar to the federal system in the United States where we have 11 districts. I don't say we need 11 districts. I would think that if we had a tribunal, a permanent tribunal that could be part of the ICC, the International Criminal Court, which has its headquarters in, in The Hague, in different continents throughout the world.
- 01:59 And that our jurisprudence be acknowledged as an international jurisprudence that is known by national jurisdictions, so that we have not only an interaction but an awareness and so that the crimes and the jurisprudence that addresses these crimes will ultimately affect the, the, the activities, the, in, in the world.
- 02:33 We are now finding that terrorism is anything but subdued. To the contrary, most people are quite frightened. We see that when we take an airplane we have so many v-, precautions.
- 02:46 We know that our civil liberties are also being, being challenged. And if the jurispru-, if courts were aware and were, were, were effective enough perhaps that we, we would actually have a hold. We would have, we would, we would influence the violence and the fear of the violence that is now permeating our world.
- 03:18 DJH: And I want you to know that you've contributed to that dream in your own way. Thank you very much.**
- 03:24 You're most welcome.