

Official Transcript: Adama Dieng (Full Interview)



Role:	Registrar
Country of Origin:	Senegal
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Location:	Arusha, Tanzania
Interviewers:	Batya Friedman Donald J Horowitz
Videographer:	Max Andrews Nell Carden Grey
Interpreter:	None

Interview Summary

Adama Dieng discusses the challenges of establishing the 'rape as genocide' jurisprudence, the importance of training defense counsel, and the need to strengthen Africa's national courts. In his reflections on the important role played by Gacaca in Rwanda's healing, he emphasizes the serious challenges that domestic justice has posed to witness protection, as well as the need to avoid 'victor's justice'. He stresses the importance of the presumption of innocence at the international level while advocating for compassion for detainees.

The transcript of the interview begins on the following page.

Part 1

- 00:00** **Batya Friedman: Good, I'm Batya Friedman, I'm a professor at the University of Washington, and I'm here with Judge Don Horowitz and Max Andrews is our cameraperson. It is October . . .**
- 00:13 28.
- 00:14** **BF: 28, 2008 and we are here interviewing the Registrar of the ICTR. So I'm going to ask you to say your name please, and your title, and the country you come from.**
- 00:26 Adama Dieng is my name. I was born in Dakar, the capital of Senegal, which is a French speaking country. And I have been appointed in this position as United Nations Assistant Secretary General and Registrar of the International Criminal Tribunal for Rwanda since February 2001.
- 00:52** **BF: Great. Maybe c-, just say a little bit about what, as the registrar, what are your responsibilities for the tribunal?**
- 01:00 The Registrar is one of the three organs of the tribunal, the two others being the Chambers and the Office of the Prosecutor. His main role is to provide support to the Chambers and to the Office of the Prosecutor, by recruiting staff, giving admin assistance, recruiting also the lawyers for the defense of the accused. And also supervising the detention facility, providing also support to witnesses who are travelling from all around the world to, to Arusha for the sake of justice.
- 01:50 I may say that by the end of 2008, for instance, we have brought to Arusha about 2,000 witnesses from more than 36 countries. And this is a huge service, but it is worth. Because unless you provide the accused with the support they need you cannot talk about a fair trial and this has been of course been a very, I would say, difficult issue but we did manage.
- 02:34 I believe that whenever you bring a witness from a refugee camp, for instance, you would have to send someone down to that country to negotiate with the government, to get travel document for that witness, then you will return, escort that witness to Arusha, take him back to Arusha, to, to, to the place he or she came from.
- 03:02 That, for security reason, because most of these witnesses they are either people with illegal status in their cou-, the country where they are, or they are ref-, they have refugee status. But it is much easier when it comes to witnesses coming from within Rwanda, because there the government helps a lot.
- 03:27 Although, at some stage we faced problem with the Government of Rwanda, problems of cooperation, and this was as a result of some claims made by Ibuka, which is one of the survivors group. That's something we will elaborate further.

Part 2

00:00 **BF: So you also have vision for the tribunal, of what the tribunal could be, what kind of impact it could have long term. Could you just talk a little bit about that vision and what you would hope for, for the Tribunal?**

00:16 When I was sworn in as Registrar on the first March, 2001, immediately after that very same day, I convene a general staff meeting in the Simba Hall, which is the main hall located in Arusha, within the Arusha International Conference Center, which is a hall which has witnessed many events, including the negotiation which ended with what was, what is known in history as the Arusha Peace Accord.

00:53 Another important venue, another importance of that venue, was that it hosted also the famous conference on popular participation during the time of Mwalimu Nyerere. Mwalimu Nyerere was the first President of the United Republic of Tanzania, and that Charter was extremely important because it brought an important dimension of human rights.

01:21 And therefore, when I convened that general staff meeting, I did say to the whole staff, to the judges, to everybody, "We are privileged. We are privileged people for having been called to participate in the administration of international justice. We are privileged people for having been offered a position to fight against impunity. We are privileged people for having been invited to be part of a large team which is aim to render justice to the victims of the genocide committed in 1994 in Rwanda.

02:06 And therefore, from the judges down to the cleaners, each of us is only an element of a chain. Each of us has an important role to play and therefore, we have to do every effort so that we will complete our work as soon as possible."

02:28 Unfortunately, 2001, we are now end of 2008, and I hope that we will be able to complete the first instance trial cases by 2009 and the appeal cases hopefully, by 2010, 2011. I say so because in a recent town hall meeting I convene, I did remind to the staff, that they should never lose sight of the primary reason for which they are here in Arusha, which is to do justice to the victims of the genocide. And I did found that it has been too long.

03:12 This tribunal was established in November 1994. It took time, of course, first of all to find an adequate place where to establish the tribunal. The, of course, the ideal should, would have been Kigali, or somewhere in Rwanda, where the crimes were committed. But certainly, people will agree, that in a post-conflict situation, it would have been certainly difficult to render justice with serenity.

03:47 It would have been also difficult to bring witnesses, who are refugees all around the world, to return back to Rwanda. Because according to the 1951 Convention relating to Refugees, once you return to your country, automatically your status drops. And, th-, that was one reason.

- 04:13 But fortunately, when Kenya which was approached did not accept to host this tribunal, Ralph Zacklin, the then Assistant Secretary General and Deputy Legal Counsel of the organization in New York, travelled to Arusha, the Tanzanian offered to host the tribunal.
- 04:37 There were facilities, that is the Arusha International Conference Center, which was almost empty, because this building was there to host conferences, but also with the hope, that the East African Community, the East African Community is a community which was composed of Kenya, Uganda, and Tanzania. But, that organization, Secretary General organization, did not bear the fruits for which it was established.
- 05:14 And my own view is that it is sometimes difficult to mix people who do not share the same vision. You cannot have someone like Nyerere, who was a great champion of peace, human rights, being with someone like the former dictator of Uganda who passed away. I'm referring to, d-, Idi Amin Dada, well known, even there is a film which has been done about Idi Amin Dada. So, so, so therefore it could not work.
- 05:54 But fortunately these recent years, the East African Community is coming up again, and even being enlarged, because Rwanda and Burundi, two countries which are part of the Great Lake region, have been also admitted as part of this East African Community.
- 06:14 And reason why I was, I'm mentioning it is to show how important is Arusha in the geography regarding Rwanda. It's about two thousand miles far from, it's far, it's close. Compared if we were to be located at The Hague, for instance. And it was extremely important, because we managed to rent, annually, a Beechcraft, which facilitated movement between Kigali and Arusha.
- 06:52 Why? Because Kigali, though not hosting the headquarters of the Tribunal, became the main Office of the Prosecutor regarding investigation. So which means that the Division of Investigation of the Office of the Prosecutor is based in Kigali, because that's where the investigators had to travel around the country also, to try to collect evidences. And that is where, also, of course, as part of the investigation, members of the tracking team who are travelling around the world were based.
- 07:31 And, as a Registrar, I had also, of course, to provide support to the Office of the Prosecutor, to those investigators, because the Registrar, by virtue of the rules, is also the person in charge with the cooperation with member states, he is in charge with, he's the channel of communication between the tribunal and the outside world.
- 07:59 Note: Remainder of Interview Sealed Length: 00:35:19;16 Word Count: 4530

Part 3

- 00:00 **BF: So, we're continuing our interview with the registrar, Mr. Adama Dieng. I'm Batya Friedman, a professor at the University of Washington, and here conducting the interview with me is Judge Don Horowitz, and our cameraperson is Nell Carden Grey. And it is November 5th, 2008.**

- 00:18 **BF: So, Mr. Dieng, we spoke of many, you spoke of many wonderful things in the first part of our interview, and one thing, a theme that has come up again is, has to do with, what's the meaning of truth, and the traditional courts, the role of the traditional courts, and the possibility for the traditional courts.**
- 00:41 **BF: Perhaps in a way, to think of this, is there are many tools for achieving justice; so there's the international tribunal, there are national courts, there are traditional courts, and I'm wondering what – when you think of those tools and you think of the kinds of justice that you're interested in achieving, what is your vision or view for how those could work together? If you could design something, how would you start that process, what would it be like, what would you seek to achieve?**
- 01:14 Well, talking about truth, to start with, is not an easy task. Because, when we talk about truth we have to first determine which truth are we talking about. You have the judicial truth; that is one thing. You have the historical truth, which is another thing. You have all, I would say, many forms of truth, and each of us, has his or her truth. And that is why when we refer to justice, even in a judicial process, where we have two parties – what is aimed through that process is, in fact, to search for the truth.
- 02:17 And at the end of the process, when a judgment is rendered, the outcome of that judgment, is it really the truth? It, definitely, it is the judicial, maybe, truth, which has been discovered at the end of that process, a process which have involve the parties through a transparent and a fair process, but still you will have one party who may think that the outcome of that process was not the truth.
- 03:01 And this brings me to quote the first Chief Justice of my native country Senegal, who used to be a judge at the International Court of Justice, in the year 1964. He was saying, at a time he was being sworn in as the first Prosecutor General, of the West African countries. (___), that was at a time of the, before independence. That day precisely, that was 9 November, 1959.
- 03:40 He said, "I'm thinking about my young fellow countrymen who have their Master degree in law and who are already thinking to be occupy the highest position in the judiciary. It took me 30 years before I got this job as Prosecutor General. And, if there is something I will have to tell them, that is this: never forget that whatever judgment you are rendering here on earth will be reviewed in appeal by the almighty God. In other words, the truth is God."
- 04:30 You will know in my country, also, they say that death is truth, because nobody will, really, once you are dead, you are dead. There is no complication at all. But the ultimate, I would say, definition for me is just to consider that truth is another name of God. And God is also the light, and light is also assimilated to truth.
- 05:09 And that is why it is extremely important in the situation of a post-conflict that we be in a position to determine what are we looking for? If I take the example of Rwanda, where you have had between 800,000 and 1,000,000 people who were killed in about

100 days, which mean an average of about 10,000 being killed per day. This is something one could not really imagine.

- 05:53 Bombs were not used like in Nagasaki, like in Hiroshima, but these people were killed with machete, with all type of instruments. To the extent that I always remember the fate of this Rwandan lady who was begging her killers to take a gun and kill her because she was suffering so much, being killed with those machetes. And she wanted to die quickly, to suffer less.
- 06:41 After such horrendous crimes being perpetrated in that country, what can be done to reconcile the people of that country? Justice is and can be an instrument for reconciliation, but that is not enough, because even when you consider an ordinary case before a court, you will always have one party who might not be satisfied at the end of the trial, who might think that justice was not done to him – even the party who was wrong. But it happened, the party who was right, not being also happy because of the outcome of that trial.
- 07:38 And that is why in the judicial process you have various degrees, because if you have one judge who render his or her judgment, if any of the party is not satisfied, that party has a recourse to appeal that judgment. And that illustrate, once again, the weakness, the weakness of human being. You are a judge, but you are, before all, a human being, that means you can make mistake, because only God is perfect. Not a single human being is perfect, only God is perfect. He is the perfecti-, the perfection.
- 08:23 But still, it is important that we continue that search for justice and to make sure that at the end of the process the parties will accept that justice was done. And that is why when we talk about justice, we should always also bear in mind the two dimension – the retributive justice and the restorative justice.
- 08:55 The retributive justice is the one which, for instance, we are applying here in the International Criminal Tribunal for Rwanda, in which we are searching for the truth and which correspond definitely to the modern way of delivering justice, focusing on the criminal offender. Because here, unfortunately, and I said unfortunately because that has been my position, we have not been able to focus on the victims. We only focus on the criminal offender.
- 09:35 It would have been fair to also paid attention to the victims and I will say thanks to the (____) made by this tribunal during the time of the drafting of the Rome treaty, establishing the International Criminal Court, a provision was adopted offering a role and a place to the victims of these types of crimes – genocide, or the crimes against humanity, torture, et cetera. While the restorative justice is the one which is really aim, like in the traditional way of delivering justice, to focus on the victim. Focus on the victims and his (__) healing and rehabilitation.

Part 4

- 00:00 And that is that restorative form of justice that the Rwandan authorities decided to introduce in Rwanda. It is known as the Gacaca system of justice. It was not invented by the Rwandan government. The Gacaca system was there long time ago, it belonged to their tradition. And one may ask a question, that Gacaca system when the ancestors of these people today in Rwanda invented that system, it was not to address massive violations of human rights. It was not established to address these large number of crimes committed at that scale. No.
- 01:02 It was to deal with, I would say, very reasonable. We're talking about cases which are of a very limited number of killings and also it relates to interpersonal conflict as well. So the question is, was that system prepared to confront this large number? Because at the time the Gacaca system, which we generically call a traditional system of justice, was introduced in Rwanda, there was, at that time, more than 100,000 people in prisons.
- 01:49 And with those people being tried according to the modern fashion of trying people, according to the basic principles, namely Article 14 of the Covenant of Civil and Political Rights, which guaranteed the right to everybody for a fair trial, et cetera, which guaranteed right of the accused, then it would have taken more than two centuries to try those people.
- 02:26 And that is why I personally back it, that initiative. A) It helped to provoke some kind of a healing process. However, one should note, like in every system the Gacaca also had its some part of weaknesses. For instance, some people were in the hills and they were living with people who they know were among the killers. But still, they accepted to continue to live in those hills with those people until the day they were called to testify before the Gacaca. They get really traumatized because of that happening. So that is to say there also nothing is perfect.
- 03:28 And the other element, which was also extremely important, is that some of the judges who were elected to serve for the Gacaca system, and we are talking about more than 250,000 people who were elected as judges, the result is, in many cases, it was discovered that some of them were corrupt. But this is also something which is not new; even in the modern judicial system you will find corruption in the judiciary.
- 04:01 And – but what is really important, at the end, is when you face this situation like the one in Rwanda, like the one we are facing in Darfur today, when you are facing situation like the one we witnessed in South Africa during the apartheid days, you need to be creative and find a way. Because at the end of the day, not everybody can be tried.
- 04:40 And that is why the International Criminal Tribunal for Rwanda decided only to try what the Prosecutor considered, those the Prosecutor considered as the ringleaders, the men responsible of the genocide. Not everybody, because, in, if you search the data

bank of the Prosecution Office, there were more than 3,000 people but the Prosecutor decided to focus on the ringleaders.

05:12 And that is why, if you go through the cases which have been tried, and which are being tried still in Arusha, you have cases dealing with the military. There has been cases dealing with members of the media. You have cases dealing with government people, ministers. You have cases dealing with bourgmestre. You have cases which were referred geographically, what is called the Butare case, the Cyangugu case.

05:48 And one should just understand that these cases, the way they were separated, was to have some kind of a sample of what happened in Rwanda. Where it did happen, who were involved, so that this will serve as the symbol for the justice which were rendered on behalf of the international community, on behalf of humanity. Because what happened there, although it happened in Rwanda, committed by Rwandan, against Rwandan, still those crimes remain crimes against humanity, and crimes which concern each of us.

06:33 And that is why when today we refer to universal jurisdiction, some people wonder why a Belgium court is going to try a Congolese. Well, simply because what that Congolese did, the crimes he committed, every single human being would have felt that it's like if those crimes were committed on him.

07:02 And that is the same with torture. If someone is today tortured in an African country, it's like if you in United States were tortured. And what we have to learn from all this is that justice is a long process. It's a long process. It's not something which is simple.

07:30 And I cannot but encourage wherever it is possible to use the traditional method of settlement of dispute. Many years ago, when I was a young African human rights activist, I did invite African leaders to introduce what we call in French la mediation penale, which is kind of an amicable settlement of criminal action. When I made a proposal, I did not receive the favorable answer I was expecting from those leaders.

08:25 And that is only many years later, when the issue was put in the agenda of the Francophone Ministers of Justice meeting in Paris, when they notice that in France, they introduce it, la mediation penale, they open what they call Maison du Droit et la Justice, which are some kind of house of law and justice. That is only after that that some African countries, including my own Senegal, decided to introduce that system.

09:07 It is to say, I mean, I'm mentioning it not because I was frustrated, not being heard at the time, but I just mention it to say that the African continent has so many hidden resources, which we just have to embark upon a journey for their discovery. It is for us and for the future generation to continue that journey and try to find all these hidden, you know, tools which can help to improve the life of the African people.

Part 5

- 00:00 While we are talking about justice we can also talk about democracy. Because this discussion is taking place during a great day, that is the day of the announce of the election of Obama. And a day which has been celebrated all over the world.
- 00:22 And it is very surprising how come that, all of a sudden, the entire world mobilized around one man, knowing that they are not going to vote because they don't have that right, they are not American citizens but still, because this man just offered a hope. He offered a hope to the American voters but he was also perceived as a hope by the rest of the world.
- 00:48 Because in 2008, at a time we were all continuing to say "never again" what happened in Rwanda, no, never again impunity, we're still seeing crimes being committed in this continent. The very same day after a ceasefire, which was observed in the Democratic Republic of Congo, the very same day Obama was elected democratically.
- 01:20 And his challenger, McCain, even before the final result, accepted his defeat. What a lesson for Africa, what a lesson for the world. Which mean, if we accept those values, the democratic values, if we practice them, things may change for better.
- 01:46 And that is why it is extremely important that the gen-, the current generation and the future generation be trained from the grassroot, from the primary school, they have to be acclimated with democratic values, like it happened in the United States, because that is not something which can be invented or imposed on people. It has to come from the grassroot, from when we are very young boys and girls. If we get acclimated with those democratic values, there will be hope.
- 02:25 And the same apply to justice. We have to believe in the value of the rule of law. And th-, that is why I could not complete what I was saying about justice without making that digression about what is happening, because the world in the future should know and let's remain optimistic that things will change for better.

Part 6

- 00:01 **BF: So, it's hard to follow that with a question, but I do want to ask a question, something we spoke about at the beginning of our meeting, not recorded on the video. And that has to do with the notion of an even-handed prosecution. So, in the case of Rwanda and the genocide it's quite a complicated cycle of violence that you spoke about, and quite a complicated political situation in which the tribunal sits and participates.**
- 00:40 **BF: And so I'm speaking here of the Rwandan Patriotic Front and what kinds of crimes against humanity might have been committed there. And a question that the tribunal to date has not prosecuted there. So I think perhaps you might speak to that, what, what your thoughts are and perhaps help people understand why the prosecution**

has unfolded in the way that it has here, and perhaps what your hopes might be, or thoughts might be.

- 01:15 Well, we know that Rwanda is composed of a population at that time, before the genocide, the percentage was about 85 percent Hutus, 14 percent Tutsi, and one percent Twa. Twa is the smaller ethnic group in Rwanda. Sometimes people even ignore that there is a third group and the same composition we find it in Burundi.
- 01:51 And during the genocide, of course, the Tutsi were the ones targeted by the genocidaires. Otherwise there would not be genocide, if these crimes were just simply perpetrated against everybody, but these were perpetrated against the Tutsi, because they are Tutsi; because they are Tutsi, that's why they were killed. Because the idea was to exterminate those people and that is how th-, this tribunal did recognize that genocide occurred in Rwanda.
- 02:27 But beside the genocide crime, there are other crimes which were committed, war crimes, for instance. And some of the people who have been indicted here for genocide some of them also were indicted for war crimes. But the war crimes were also committed by Tutsi people against Hutu people.
- 02:51 And that is why the mandate of the tribunal was to try not only genocide, but to try all other breaches of international humanitarian law rules. And that is why there has been many criticism about this tribunal not having indicted RPF soldiers to be tried here in Arusha.
- 03:26 My personal opinion on this is that it would have certainly contributed a lot towards the reconciliation process would those RPF soldiers being investigated by the ICTR Prosecutor were indicted and tried here in Arusha. Hopefully, the Prosecutor was able to find a solution which was to hand over cases he was investigating of RPF soldiers' crime, the same cases were apparently being investigated by the Prosecutor General of Rwanda.
- 04:17 So the agreement was, therefore, to let those case being tried in Kigali. The first of those cases was called last June and the trial was completed in October 24, 2008. Among the four people who were brought before that tribunal in Kigali, two were acquitted, one General and one Major, and two were convicted and sentenced to eight years prison each of them.
- 04:50 Is that satisfactory? Would that really help to strengthen the reconciliation process in Rwanda? I'm not sure; I think there is a need for more, to make sure, really, that the Hutus will also feel that justice has been done for them. And this is only to enable the justice process to be complete. Because if they see that only one side was tried and the other side was left out, there'll be still some bitterness, and which would not help to really cauterize the wound easily.

- 05:39 It's a very, I know, controversial issue because the authorities in Rwanda, they don't want to equate at all, and rightly, genocide, with other crimes, but still I think it is their duty, also, to accept that crimes committed by their own people should be prosecuted, tried and punished.
- 06:09 **BF: So I don't know if you can speak to this or not, but I'm thinking, you know, ten, 20, 100 years from now, I think people will want to understand what happened here such that the tribunal didn't engage in those prosecutions and if there's anything about that, the process, the discussions, the reflections here that led to the particular solution that you feel you can share.**
- 06:39 **BF: I think that could be very useful for people, i-, in the spirit of transparency. So sometimes things happen and it's not quite the way you would want to go, but when you have access to the thinking and the care and thoughtfulness, at least you feel you understand why, so.**
- 06:59 Well, I, I, I should say that one cannot really cast the blame on the tribunal, but on the other hand, one cannot also be silent. Because who could initiate, that is the Prosecutor, and if the Prosecutor doesn't, nobody can force him. Because the Prosecutor is independent, and autonomous – he can do, he can decide, like even in national countries, sometime a crime may be committed somewhere and the Prosecutor in that country may decide that, well, this case has no merit to be pursued.
- 07:49 And if I refer for instance to the civil law system whereby the Prosecutor, he is (_____) speaking under the Minister of Justice, the Minister of Justice can ask the Prosecutor to start a case, and the Minister of Justice can say, o-, ok, "classement sans suite," no follow up on this case.
- 08:09 To the extent that at some stage, some of the prosecutors in France were of the view that their independence was in danger. And the then President Mitterrand, who is a lawyer himself, was of the view that, well, there should be an umbilical link between the Prosecution and the Ministry of Justice and the Executive power.
- 08:32 And his reasoning was, let's suppose that there is a situation in Lyon, which is one of the France province, and if ever, the person who has committed that offense, if he or she is arrested it will lead to such public order problems in that city, so that you, you are going to create such an upsurge of violence by the sole fact that you want to prosecute that person, that might be then a reason to not move and imprison that person.
- 09:20 So I think the same situation when it comes to the Rwandan Tribunal. If the Prosecutor – the first Prosecutor, as I did mention I think earlier, when we discussed, did not even dare to open the file of the RPF, that was Justice Goldstone; Louise Arbour who succeeded started and then closed it. Only Carla del Ponte after a while decided to make it open, but even then, Carla (___), at some stage, Carla del Ponte, was about to agree to make a deal with the Rwandan authorities on how to go about these cases.

- 10:05 And for what I know, she was ready to accept that the trials be conducted in Kigali, but that the Prosecutors' Office be there. Which is more or less what today the current Prosecutor who succeeded to Carla, has accepted. Maybe with a slight difference because at some stage the idea was to have a hybrid jurisdiction sitting in Kigali.
- 10:35 But, returning to the rationale, would any of them at that time, decided to indict and arrest the RPF soldiers and bring them to Arusha, that could have hampered the functioning of this Tribunal. And one may remember even a time witnesses who were member of the survivors' group association, name Ibuka.
- 11:08 Ibuka is a Kinyarwandan name but it is in other words the survivors association. They asked their members to boycott the trial here. And it was felt that any time del Ponte raised this issue, it would create tension among the victims. So, that was one thing, that was one thing to, to paid, paid attention.
- 11:43 That is to say that my own preference would have been that some of those RPF be brought here to Arusha. But, in my tradition we say that, "If you don't have your mother to take the milk from the breast, you will use your grandmother." So, in front of the situation we faced, I think, the decision which has been taken by the Prosecutor to hand over some of those cases is, to my view, normal.
- 12:20 But, there are other cases still. And I cannot say if the Prosecutor is going still to bring them to be tried here, but in light of the near closing down of this tribunal, I doubt that it will happen.

Part 7

- 00:00 **BF: Thank you. Let me change topics now for, for a little bit. So one of the really innovative pieces of jurisprudence to come out of the court is th-, this notion of rape as genocide. And I'm wondering if you can speak to that.**
- 00:23 **BF: So again, from an outsider looking at the court, what you might see is that in an early case there was this very important piece of jurisprudence, and then, if you look at subsequent cases, maybe it was used in Yugoslavia, but it appears almost to disappear, or to be left alone in some way. And that might be difficult to understand from an outsider's point of view.**
- 00:53 **BF: So I'm wondering if you can help us understand how that piece of jurisprudence evolved and then how it is, it's been viewed and treated within the prosecution and the defense, such that it has played out in that way.**
- 01:11 To, to, to start I would say that I really regret that this tribunal, the successive prosecutors, did not pay much attention, did not deploy much efforts to bring really the sexual crimes committed during the genocide. Sexual violence is today such a thing in the conflict that one could have do much more certainly, by introducing that count of sexual crime in the various, in, in much of the indictment.

- 01:55 Of course, one need also to have the evidence which is not always easy, but I'm also proud to say that the bench which sat in the Akayesu case, composed of Judge Laity Kama, who was the first President of this tribunal, Senegalese, and Judge Møse, from Norway, who become the third President, and between there was Judge Navi Pillay, from South Africa, the only lady.
- 02:36 I was not privy of their deliberation, but I can see that the fact that those three judges were, at the same time, human rights "activists," I may say so. Judge Kama was a member of the UN Committee on Arbitrary Detention, he was a human rights activist; Judge Møse was also involved on human rights activities at the Council of Europe. Judge Pillay, from South Africa, was also a human rights activist, and more important, Judge Pillay was involved in the work of many women's group, including in the United States. And today, she is the High Commissioner for Human Rights.
- 03:23 When they decided on that issue it was a premiere, it was a premiere in the history of international criminal justice. And many people wonder, how come that rape be consider as genocide, as a crime against humanity. Well, it was the case because it was found by the Trial Chamber in dealing with that case, that when committing rape it was done under a circumstance during which that act was also aim to exterminate the Tutsi communi-, group.
- 04:20 It was not simply that the fact that there was a rape, it was not a simple rape, but it was a rape as part of the intent to exterminate the Tutsi group, so they came to that conclusion in that bench and that is why they convicted Akayesu also for that crime. And this was taken later on by the International Criminal Tribunal for the former Yugoslavia, which has also a case of rape in which they used the jurisprudence of the ICTR.
- 05:00 And I do know an American state which also has passed a legislation following the delivery of this judgment on rape, and it is my sincere hope that African countries will also incorporate into their legislation what I consider as an advancement in the definition of rape.
- 05:29 And to give you another example talking about rape, although this case is still pending, that is the Butare case. In the Butare case we have the only female, the only woman, who has been indicted by this tribunal for genocide, but also for rape. And one may wonder why, how come, that a lady, a woman, be accused of rape?
- 06:00 And she might not have been the person who directly, but who directed the, the soldiers to commit that crime. But I cannot say more at this stage about it, I can just refer to the indictment of this lady, who is the only female, Nyiramasuhuko – her case is pending and I will let you know and I'm sure you will follow it up, what was the final decision.

06:32 **BF: Can you help us understand some of the challenges in prosecuting for rape as genocide, and some of the ways in which the courts here have tried to address those challenges?**

06:43 Well, one of the difficulties, is, even until today, people who have been victims of rape they tend to not speak out. Sometimes it's very difficult to get the victim of a rape, even in our national jurisdiction, to come out and say that she has been raped. That is one first element.

07:10 The second element is also the, the crime of rape is not always easy to establish, because you need to really come with the element, which, of the crimes. And to just give you an example which was, which happened in the Butare case, that was the cross examination by one of the defense lawyer of a witness. That witness was victim of a rape, she claimed, being victim of a rape.

07:54 And during the process of cross examining, that defense lawyer went to the extent of asking her, "Well, you say that you were raped, can you tell us the skirt you were wearing when you took it out, then, the slip, the under – how did," and question which were very aggressive, to the extent that, at some stage, one of the judges, you know, look onto this defense counsel, and say, "Hey, calm down."

08:30 That is how came this whole story known today, as the laughing of the judges, which created a scandal. People were very much scandalized, because they did not understand what happened really. They only kept what they thought was the reading of the judges, while the judges did not laugh.

08:53 Although, I should say, having watched the, the, the tape, one of them had just had a smile, you know, smiling not on the victim but the stupidity of that defense counsel, the lack of sensitivity, the lack of sensitivity, of that legal counsel.

09:13 But still, we are in a common law system, whereby, each of the parties has to come and try to convince, you know, and that was, that lawyer was just doing his job but he should have done it with much more sensitive sensibility. And that is just to illustrate how sometime difficult it is for the victims of rape to accept to come out forcefully.

09:46 And that is why we managed to organize series of training with some of the women's group so that if they have to come to testify here they know what they will be facing, so that they are ready, psychologically, because otherwise it will look like that you are raped twice, the sole fact that you are, again, reviving the event.

10:15 And we will continue, we'll continue, and next January, from 15 to 17 of January, I am going to organize in fact a meeting on gender and justice to focus on the experience of this tribunal on addressing sexual violence during the genocide.

10:36 So that the lesson learned from this place could serve tomorrow, Senegal, could serve all the countries, because even in Senegal, my home town, if I take – there is one region called Kaolack. I was reading the other days that there were about 400 cases of sexual

violence during the year 2007, but that is a lot, that is a lot, sexual, sexual violence, but, the thing is that, people, how many other cases were not reported because people would feel shame?

11:10 And the other thing is, we need also to sensitize judges; judges need also to be educated on gender sensitivity, because some time they have also to get rid of their cliché. And this is a long battle to continue with, to make sure that the judges, when they are facing a case of rape, will detach themselves from their own prejudice. And to achieve that they need to also to be educated.

11:43 **BF: Okay, thank you. Well, I think I'll turn things over to my colleague, Judge Horowitz, at this point.**

Part 8

00:00 **Donald Horowitz: I, I will introduce myself again. I'm Judge Donald Horowitz of the Washington State courts, and it's interesting how you ended the part with Professor Friedman because one of the areas I wanted to talk about was training. And in fact, judicial training is one of the aspects to that for a variety of reasons.**

00:26 **DJH: One I think we've talked a little bit about earlier, there's a hybrid system here, and some of civil and criminal, of, of civil and common law – and also people come from very different countries, with very different backgrounds, and they come from national jurisdictions, and to be judges or to be prosecutors, or to be defense counsel.**

00:51 **DJH: And they come with their own cultural and ju-, legal system experiences and biases, I suppose we could say. And it strikes me that one of the things I would like to explore with you is, as you, y-, your j-, one of your responsibilities is in the area of defense counsel.**

01:18 **DJH: You, your, the job of the registrar, is to solicit, hopefully, quality defense counsel and make sure they, to the extent – they must be independent, but likewise you have the duty to see that they do a, a reasonably good job. Is there some training that is provided when somebody is selected to be a defense counsel?**

01:50 No. No. I should say that the criteria we put for the admission of any lawyer in the list of counsel eligible to . . .

02:05 **DJH: Mm-hmm.**

02:06 . . . plead before this tribunal are such that we assume that these people are already excellent criminal lawyers or excellent professors of criminal law. But that is not enough.

02:20 And I think it was a mistake for this tribunal not to embark from day one on training the judges – no, sorry, training the defense counsel. Because, would that have been done,

I'm sure – many problems we have faced with defense counsel would have been certainly reduced.

- 02:45 Why I'm saying so is that because these defense counsel come from different legal traditions – you have lawyers coming from United States, from Canada, from France, from Cameroon, from Senegal, so from all over the world. With their different system; these are civil law, others are common law and even the judges here themselves were coming also from different legal tradition and that made, in the early years, the life of this tribunal not easy.
- 03:27 Because sometimes a civil lawyer will use a concept which sound totally foreign to that common law lawyer. So they had, finally, to work on the spot to get understanding each other but this should've been avoided from the beginning.
- 03:52 But, on the-, the other important aspect also is one should not favor one legal tradition out of the other one. But the reality on the ground was that there was domination of the common law. Not only here but also at The Hague tribunal. And that is only when President Jorda from France, who was then President of the ICTY, and President Kama from Senegal, two civil lawyers, they together were able to inject in the rules of procedure some civil law dimension, some civil law dimension.
- 04:34 And if today you look into the Rules of Procedure and Evidence of the International Criminal Court you will see that they have included much more civil law dimension in their rules than with the two tribunals and this was no surprise, because one of the drafters is nobody else except Judge Jorda, who from the ICTY – and the, both appeal chamber ICTY, ICTR – was elected as Judge at the International Criminal Court, which is the permanent tribunal created under the Rome Treaty and which entered into force in 2001.
- 05:20 So, in, this – to illustrate the importance of training, the importance of training, because, my good friend the late Judge Kama, one day he was explaining to me that one of the, this m-, this man was not in fact a defense counsel but an attorney in the OTP, used to say "Objection!" and Judge Kama saying to that gentleman, "You are not in a U.S. Court! I don't know what mean objection!" So just to say, even this anecdote, th-, even the concept being used.
- 06:10 And what I did, finally, was at least to introduce some kind of induction program for the defense counsel, induction program, to make sure that when you arrive you will know exactly, we'll give you some, some basic guidance, some basic guidance, but that is not, of course, the ideal.
- 06:33 And there also the lesson learned from the ICTR, now is being used in the ICC. Because in the ICC, they organize on a yearly basis training for the defense counsel and I think that interaction between the registry and the defense counsel is extremely important. But all in all, what we really have to acknowledge is that the international criminal justice is still, from my view, at the, I would say, the infancy process, you know.

- 07:20 And it will take time before they become adult, to, and they will have to go through this processes. And that is why I remain confident that the world will be better and the international justice system will be much better, because it will learn from the current ex-, ongoing experiences – The Hague Tribunal, the Arusha Tribunal, the Freetown Court, the Phnom Penh Special Tribunal in Cambodia. They will learn.
- 08:01 I mean, Sierra Leone has learned a lot from Arusha, even their first Rules of Procedure and Evidence was just a copy of the Arusha Rules of Procedure. And the same, when Arusha was established we took The Hague Tribunal and we start working from it. So this means that the more we will go, the more the system will become improved.
- 08:30 But we have also to bear in mind that the world is moving so fast, particularly in light of the new technology, so the technology that we are using for instance today in our court management is excellent. I addressed a group of judges from the SADC and East African community yesterday, 3rd November, and they were very much impressed with what we are doing and I'm hoping to lend support to the judges of those courts.
- 09:08 Like, as a Registrar, I am doing nowadays for the Tanzanian judiciary. I'm working hand-in-hand with Chief Justice Augustino Ramdhani who is the current Chief Justice of Tanzania, who was the first Chief Justice of this country to visit this tribunal, you know, and I made a tour with him and I offered to support him and we are going after having early this year attended the opening of the judicial year of Tanzania in the presence of President Kikwete.
- 09:45 I had a discussion yesterday with the Canadian ambassador Janet, the new Canadian Ambassador, to see how Canada also can help to fund the judiciary because through the system we are going to put in the judiciary starting with the high court of Dar es Salam aiming to spread it in the wh-, entire Tanzania.
- 10:05 It will help A) to speed the pace of the trials; B) it will reduce the level of corruption in the judiciary because it is in everywhere, even in the Tanzanian judiciary there is corruption. So this dedication and this determination of the Chief Justices will help. And I think the same will have to be done for other countries. And that might be maybe one of my benevolent work, which I may give in two, three years time when I retire.

Part 9

- 00:00 **DJH: Well, you, your, it's, it's interesting how you addressed the next questions as you, as we go along because the, the tribunal will be ending at some point in the next few years. And therefore, the, one of the strategies, or planni-, planning that must be done is how to use the national courts for any, for anything that's left over, that c-, must continue to be monitored, et cetera, et cetera.**
- 00:30 **DJH: And I was going to ask you about perhaps the responsibility of the UN, not just necessarily this court, to aid in the, increasing the capability and the capacity of national courts, not ju-, in Rwanda would be wonderful because then in this instance**

some of the cases and, and responsibilities could be moved to where the events occurred, but also other courts in, in Africa and elsewhere.

- 00:58 DJH: And it sounds to me like one of the things you're already contemplating, not just for ICTR, but more generally, is aiding in the c-, in building the capacity and capability of national courts so that the j-, the international job can be left to ICC and so forth and those other things can be left to the courts. Do you want to comment on that?**
- 01:20 Well, the strengthening of the capacity of the judiciary in African countries is extremely important and starting with Rwanda I may say that from the early days I came here, one of the project I devised with the Rwandan was how to strengthen the judicial capacity in Rwanda so I was able, with the limited resources we had, to assist the Rwandan in that process including even the drafting of their laws.
- 01:56 My special assistant, I lend him to the USAID, helping in the ju-, judicial reform in Rwanda. I mentioned earlier the support being given to Tanzania. But it is very, very important from now onward to invest in the judiciary, to invest in the rule of law. I was saying that we have to make it possible for the rule of law as a notion to be known like the notion of human rights worldwide.
- 02:35 Ever-, where you go, people will talk about human rights. But the rule of law tend to remain only within the circle of the lawyers, judges, academics, et cetera. But we want the rule of law to become part of everything in the life of everybody.
- 02:55 From the peasantry through the fishermen to the judges. Because the rule of law to me is the backbone, is the backbone to the, to democracy. It's the backbone to the independence of the judiciary. Without the rule of law nothing is possible.
- 03:11 And that is why in the preamble of the Universal Declaration of Human Rights, it has been stated clearly that to avoid men to be compelled to rebellion because of tyranny and oppression it is important that human rights be protected by the rule of law.
- 03:36 The human rights, therefore, at the beginning, have to be protected by the rule of law; in other words, you need to have a rule of law regime. And you cannot have a rule of law regime unless you have a strong judiciary and independent, and the strong judiciary – strong in terms of size and quality – and how to make it possible.
- 03:58 The UN today has included in its program the rule of law. There is, in fact, a unit which has just been established recently in the Office of the Secretary General. The rule of law is also part of the program in the Office of the High Commissioner for Human Rights. It is also part of the program of the UNDP.
- 04:20 So therefore, what n-, is needed today, as a UN, is how to harmonize all this. How to develop a program in the medium term to make sure that one will assess the various judiciary around this continent.

- 04:37 Two: What are the requirements? To me there is a need to make a real judicial revolution in this continent. And how an organization like the African Union can help – I think there are so many challenges. But what I may just say, in regard to this question, is that efforts are ongoing. The US administration is helping, Canada is helping, even the Climate Fund is very much also interested in these issues of rule of law, and strengthening the judiciary.
- 05:18 Investors are also very much interested because unless you have an independent, efficient judiciary, you are running a risk to invest in this country. And that is why the, the judicial environment needs to be secure.
- 05:38 And that is one of the objectives we have to reach if we want some of these African countries to emerge, to become what they call now emergent countries, and you can do it, not only by investing in companies, but you have to invest also in how to ensure the security of your investment. Some countries have already accepted, they are on board, and we will continue to fight for it, and I hope that we will achieve it.

Part 10

- 00:00 **DJH: When you talked a few minutes ago about the need for training the judges here – excuse me . . .**
- 00:05 **Nell Carden Grey: () five minutes.**
- 00:05 **DJH: Five minutes. Okay, so . . .**
- 00:09 It's one o'clock already . . .
- 00:10 **DJH: . . . and, and, and for the reasons stated I'll, I'll be brief. And, and now you're expanding it to the other areas and I, I think that's all that needs to be said about that.**
- 00:20 **DJH: Let me conclude by, by doing some – asking a few questions that are personal, ok. Has being in this job for this long, dealing with the problems we've touched on, and particularly in the context of the horrible crimes which you've had to become familiar with daily – has that changed you? Personally, as well as professionally? And if so, how?**
- 00:52 Well, I think professionally it has changed me a lot. I may say that I have learned a lot on common law procedures, definitely. I have learned a lot also in terms of managing a multicultural institution, because here is, after New York, the second United Nations office with the largest nationalities. We have about 90 nationalities in this Tribunal.
- 01:30 But as a human being, I think I came to learn a lot. When you deal with even the accused, when you deal with staff members, everybody has his own, her own problem, you have to face with. And I will just give you an example. When the detainees requested to be allowed to have a room for them to receive their girlfriends or wives to

have sex, I oppose. I oppose on the grounds that in Tanzania it is not applied, it's not a part of their culture for prisoners to be having that access.

02:28 But many years later, almost seven years after, I had some kind of a, cas de conscience. I said you are living in Arusha, you have a chance for your wife to come, maybe, once a month to visit you. These people, of course, you are different because these people have committed serious crimes, but isn't that really too much, depriving them of that possibility? Because they are still presumed innocent until they are found guilty. And that is how I finally decided to allow them now to receive their wives.

03:13 Of course, this measure was not welcome by the Kigali authorities. They felt it was a favor. And I do believe that even if it was a favor, I assume having taken that decision, because I think they still human being, even if they are the worst criminal, even if they are found guilty of genocide, they remain human.

03:40 And my hope is that these people, those who were convicted, have remorse, because I think remorse is extremely important. The sole fact of being in a prison cell to me is not the end of justice, but if they express a remorse then I think I'll be even ready to grant pardon, because to me, at the end of the day, what was important was to show to the world that the international community is committed to bring an end impunity and to replace it by accountability.