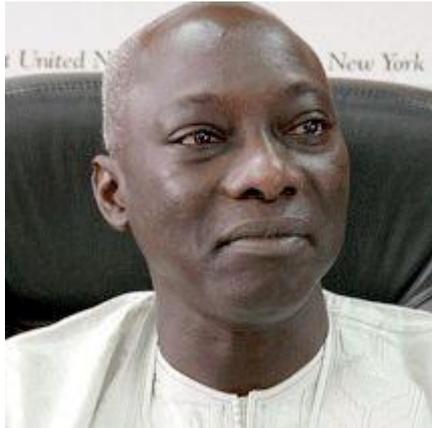




Voices from the Rwanda Tribunal

Official Transcript: Adama Dieng (Part 8 of 10)



Role:	Registrar
Country of Origin:	Senegal
Interview Date:	28 October 2008, 5 November 2008
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 Part 8 begins on the following page.

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 Ramadhani 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 Salaam 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.