

Official Transcript: Hassan Jallow (Full Interview)



Role:	Chief Prosecutor
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Interviewers:	Lisa P. Nathan Donald J Horowitz Batya Friedman
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Interpreter:	None

Interview Summary

Hassan Jallow emphasizes the need for extra-legal responses to post-conflict reconciliation and calls for the involvement of local communities in the justice process. He discusses the challenges of prosecuting gender violence and its role as an act of genocide. Jallow refutes the notion that the Court has delivered 'victor's justice', drawing attention to an investigation into war crimes committed by RPF forces. He suggests that the process of holding leaders accountable is feasible at the international level.

The transcript of the interview begins on the following page.

Part 1

- 00:00** Lisa P. Nathan: My name is Lisa Nathan and I am from the Information School at the University of Washington and I would like to thank you for your time this morning. And to begin, I would like you to state your name, your home country and your title, your job title here at the ICTR.
- 00:14 Good. Well, you're welcome. My name is Hassan Jallow. I'm the Chief Prosecutor at the International Criminal Tribunal for Rwanda and I come from The Gambia in West Africa.
- 00:25** LPN: Thank you. And I would like you to walk me through your timeline here at the ICTR – when you began and your roles here with the ICTR.
- 00:39 My own personal, yeah.
- 00:39** LPN: Yes.
- 00:40 I joined the ICTR in September of 2003 following the election by the Security Council to the position and I came in here. I've been here since then. I've had a first term of four years, which was renewed last year by the Security Council up to 2011, unless we sooner finished the work. So that's, that's the current situation.
- 01:04 Before that I was with the Special Court in Sierra Leone as an appeals court judge, and prior to that a judge back home and prosecutor as well before.
- 01:15** LPN: So I would like, for just a minute, for you to think back to where you were in the spring of 1994 and during the events that were occurring in Rwanda at that time. Can you describe to me what you were doing at that point in time?
- 01:31 At that time I was the Attorney General of The Gambia and Minister of Justice, so I, I was in government then as a prosecutor but also as a p-, policy, legal policy maker. And I was involved in, in work on human rights trying to get the African Commission on Human Rights to, to function.
- 01:52 We had just adopted the African Charter about a decade earlier, set up the commission in late 80s and the, the African Union ha-, or the (____), or the OAU as it was at that time had agreed to locate the African Commission in Banjul, The Gambia.
- 02:09 So we were trying to get it going at that time when this terrible tragedy actually unfolded on, on the continent. But I left government soon after. Within the next three months, I had left government. But I was in government at that time.
- 02:24** LPN: Do you remember actually learning about the events during that period of time?
- 02:29 I did, I did learn about them, in two ways. The media was there. I mean, t-, the media publicized it quite a lot. I, I did learn of it also through my work on human rights, particularly at the level of the African Commission on, on Human Rights which, which was very, very concerned about what was then going on.

- 02:50 LPN: So how about how you first learned about the ICTR and the story of how you came to work here in your role as Prosecutor?**
- 02:59 I, I got involved in international criminal justice when I was appointed by the Secretary-General of the UN in 1999 to carry out an evaluation of the functioning, judicial evaluation of the functioning of the ICTR and the ICTY, as part of a committee.
- 03:16 There was a committee of five he had set up headed by Jerome Ackerman, an American who was, who had been president of the UN Administrative Tribunal for many years. So we, that, that really got me involved in international criminal justice at very close quarters.
- 03:32 I came here with some of the team members and also at The Hague. And over a period of six months we examined the functioning of both tribunals because there had been a lot of complaints about slow progress, about, you know, how things could be made to, to move much faster.
- 03:50 So we spent a lot of time closely scrutinizing the functioning of both tribunals and as a result we made a number of recommendations to improve their operations. Most of them have been implemented, and then, within a short time after that about four years I was back here again now as, as Chief Prosecutor instead of as a consultant.
- 04:11 LPN: Can you describe to me some of the responsibilities that you have as the Prosecutor?**
- 04:17 The, the Prosecutor at the tribunal essentially has two responsibilities. One is to, to initiate investigations into, into the tragedy which occurred in Rwanda, investigate the, the involvement of specific individuals and then to decide also whether they ought to be prosecuted or not.
- 04:38 Secondly, if he does decide to go ahead with prosecution after confirmation of the indictment by the judges, then to organize the, the, the actual prosecution. So my role f-, essentially is to investigate and to prosecute those persons who bear the greatest responsibility for what happened in, in Rwanda in 1994.

Part 2

- 00:00 LPN: Can you speak to some of the challenges of that role? You came into the role knowing quite a bit because of your previous work investigating and learning about the ICTR and the ICTY, knowing the criticisms that have faced the court and the challenges here. So it's, in a very, in a way unusual because it is an international court, there's a lot of politics involved.**
- 00:26 LPN: Can you speak to some of those challenges that you have faced in your role as Prosecutor?**

- 00:33 It, it's a difficult function. I mean investigating and prosecuting these crimes. When you are a national prosecutor, you, you, you have the advantage of having a lot of institutional support within the state structure.
- 00:48 You have the police there to whom you can give the instructions. You have the prison services. You have the state machinery to rely on. So you, you don't have difficulties with tracing the accused person to start with in the country. You may not have th-, if there are difficulties, you have institutional support to look after that.
- 01:05 You may not have difficulties with wi-, tracing witnesses, running your case and if the person gets convicted, you have a prison readily available to put them in. If they are acquitted there is no difficulty as well.
- 01:18 The, some of the challenges which we face at the ICTR are, are sort of inherent in the nature of the system itself and some because of the nature of the offenses which we have been, have been, have been dealing with. These tribunals, I mean especially the ICTR, sort of are, they are not embedded within any national structure. They are international tribunals.
- 01:43 They essentially have to rely on international cooperation from states to be able to function in, in respect of all their activities – from searching for the accused persons, from locating witnesses, making sure they are available, from, from getting counsel, defense counsel, employing defense counsel, relocating witnesses and protecting them where, where their, the-, the-, the-, their safety is an issue.
- 02:11 And even sort of finding places of imprisonment for people who have been convicted. In the case of Rwanda, for instance, particularly, the, the people we are supposed to prosecute almost – I think all of them, not almost, actually all of them had left the country.
- 02:29 They had fled and, and so the biggest challenge was actually looking for them, trying to locate them and making sure they, they, they are brought back here for trial. We depend on that; we depend on state cooperation for, for that process and it has been forthcoming generally.
- 02:48 The fact that most of them are now here, either having been tried or on trial, I think is an ample testimony to, to the level of support we've had. But there are still quite a number of them outstanding out there.
- 02:59 We have 13 fugitives whom we are still looking for, so that, that has been a, a big challenge. Investigating the offenses also, because, because of their magnitude, it has not been an easy thing. Putting together teams actually which can investigate these offenses is, is a challenge because it is an international tribunal.
- 03:21 The staff are mostly, overwhelmingly non-Rwandan. So there is a difficulty in them understanding and actually communicating very well even with, with victims and witnesses on the, on the ground. And them becoming familiar with Rwandan language

- and culture to start with, in order to be able to reach out to the people you want to talk to.
- 03:45 You have difficulties. We've had difficulties in dealing with, for instance, investigation of sexual violence offenses. Tho-, those, those are very sensitive and, and difficult area. And beyond that, of course, there was, of course, the first challenge – that this sort of thing had not been done for a very long time, not since, not since Nuremberg.
- 04:05 The ICTY had just started, but really h-, it hadn't been well established enough for us to be able to learn anything from them in terms of practical operations. So the novelty of, of the whole venture itself wa-, was, was also a, a major challenge.
- 04:23 Nuremberg had taken place some 50 years earlier but Nuremberg was useful as a precedent in terms of setting down the, the, the notion of accountability, that people have to be held responsible and accountable for these offenses.
- 04:41 But it didn't provide much guidance to us in, in the nuts and bolts of, "How do you investigate these things, these crimes. How do you prosecute? How do you put together trial teams? How do you manage your, your, your trial chambers and the courts, et cetera? How do you manage witnesses?" So on. So there are a lot of, lot of challenges at the beginning.
- 05:03 LPN: I have a specific challenge that I would like to have you speak to and that is you, you talked about working with different nations?**
- 05:11 Mm-hmm.
- 05:12 LPN: And the challenges that that brings, but there are also specific challenges for you in working with the country of Rwanda and the ICTR has been critiqued a-, as delivering victor's justice because it has on its, the, the prosecutions, the indictments that have been . . .**
- 05:30 LPN: That have gone out have been all towards a, a certain group of people and there are accusations that the Rwandan Patriotic Front also has some atrocities that soldiers within that army committed, and yet the ICTR has not gone after those particular people and there's a long history of this challenge and I would like to give you the opportunity to speak to that.**
- 05:56 Well, this court does not administer, has not been administering victor's justice. I mean our mandate is to prosecute the persons responsible for serious violations and wi-, within that context I think we have to, to, to bear in mind that the genocide in Rwanda is the major crime base.
- 06:17 The genocide in which al-, about 1,000,000 people were killed is a major crime base and for that reason the tribunal has for much of its lifetime concentrated on investigating and prosecuting that crime.

- 06:30 Of course, we have evidence, or we, we have, we've had evidence of, of, of violations of international criminal law also by members of the Rwandan Patriotic Front. There has been no (_____) not to investigate those.
- 06:46 We have been investigating them. It has been a matter of prior-, prioritizing. We have been investigating those offenses. As a matter of fact, my office has a special unit devoted entirely to that and as a result of those investigations, for instance, we, we were able to identify one particular case which we wish to prosecute this year.
- 07:09 The Rwandans acknowledged that that incident had occurred. This was the Kabgayi incident in which some members of the clergy had been killed and they wished to be given the opportunity to, to do the prosecution and we agreed to that.
- 07:23 We agreed to that, subject to them recognizing the primacy of the tribunal, meaning that if the prosecution was not properly done, effectively and fairly, then notwithstanding the process in Kigali, the Prosecutor here would be entitled to file fresh indictments for the trials to take place here.
- 07:42 They've just fi-, concluded the trial. Four, four persons were indicted before the military court, two generals and two other junior officers for murder as crimes a-, as war crimes. And the result has been that two were acquitted and two were convicted.
- 08:00 I've asked for a copy of the judgment, which is Kin-, in Kinyarwanda. I have yet to, I have yet to receive that. But it's an example of the fact that there has been some work going on in, in, in respect of allegations against the, against the RPF.

Part 3

- 00:00 **LPN: Before I go any further, I would like to provide you with the opportunity to reflect on your time here not only in your role as Prosecutor, but as your role as a human being and think about anything that you would like to share with us, to share with the future about the time that you have spent here, about the ICTR or even a, a specific story or whatever comes to mind for you that you might like to share ten, 20, 30 years down the road.**
- 00:29 Down the road. Well, before I came here I mean I hadn't seen any of these sorts of crimes on this mag-, magnitude. I visited Rwanda. In fact, I make sure each time I go to Rwanda I visit a different province and go, I've, I've visited all the major massacre sites now in Rwanda and seen at firsthand the result of, of this, of this genocide.
- 00:53 And, you know, it, it's, it's, it's a big, it's a terrible tragedy which took place. You have people turning against each other, neighbors turning against each other, even family members turning against each other. A very terrible story, but again, within that you have stories of, of courage, of good people, of people behaving very, very, very well.
- 01:21 You have stories of people who have a lot of faith in the law. There are countless Rwandans who've also worked very hard to save victims. They're even amongst my staff here. They, they are Rwandans.

- 01:39 LPN: Could you share one of those stories, that perhaps comes to mind for you?**
- 01:41 Yes. They, they are Rwandans who have suffered very much from, from what happened. I had a member of staff, a Rwandan, who I'd learned later had actually lost his entire family in the genocide. And here he was working with me. He was actually my driver in Kigali.
- 02:01 And I, I looked at him and I couldn't trace any sort of bitterness or anger or anything like that and it, things looked normal with him. And so one day, I, I sort of plucked up the courage myself to ask him, "How, how do you cope with this, the fact that you've lost your, your entire family?"
- 02:20 And his answer was simply this, that, "Well I know those who people, those people who did it. I know that they are in detention awaiting trial. If the law is going to take its course, it will not bring back my family but it gives me satisfaction and peace of mind and I, I have no then, no desire then for revenge at all."
- 02:41 And I thought well, he was casting a big burden on our shoulders then as the lawyers, a big responsibility – that, that people were looking up to the law to find a solution, to find justice instead of turning to retribution and to revenge. Which itself I think is, is, is an extremely a good thing.
- 03:01 It, it means for instance, that for the people of Rwanda, the operation of the tribunal has at least one result, of demonstrating to them that there's an option, there's an alternative to this. The use of the law is a viable alternative as a solution rather than conflict.
- 03:19 If people are willing to, to hold themselves back and let the law, you know, law, law, law take its course. There, there's staff members also as I said who have suffered in, in many other ways but I just want to single out this particular driver. I, I thought, you know, he was a very courageous person.
- 03:39 I didn't know how I would have coped with it and that's why I asked him, "How, how are you managing to live actually with this thing hanging over your head?" He said it was okay so long as the law did something, the law did something about it.
- 03:53 LPN: So . . .**
- 03:53 Well I, I think, you know, one of the things I, I, that, that, that come out of my experience with this, with these trials is, I think, is the need for people to go back really to basic values. I, many of these things don't happen without government connivance and government encouragement, government, government involvement.
- 04:20 In Rwanda, for instance, I could not understand why the basic principle of loving your neighbor just seemed to have been thrown out the window. But if, if you stick to that simple principle you can't expect this kind of tragedy to take place.

04:38 And, and maybe governments are, are not the, the, the best institutions to try and teach people to love their neighbors. But I think families, religious leaders, you know, non-governmental organizations have a, have a responsibility and potentially a very, a very strong role in trying to promote those values.

05:00 And if we do maybe it would help us avoid these sorts of, th-, these sorts of tragedies. If we all went back to loving our neighbors, respecting each other and, and desiring for your neighbor what you desire for yourself, it becomes prob-, probably difficult to do some of the things that people did in, in, in Rwanda in 1994.

Part 4

00:00 **LPN: So in your, during your experiences here, you brought with you a, a history and an awareness, an incr-, you know, an education all built around this concept of justice.**

00:15 Mm-hmm.

00:16 **LPN: And then you've been working here for a number of years and the different trials have gone in, in, in favor of various people and, and not in favor of others. I'm wondering how the outcome of those trials in the, what you have seen gone on in, in the courtroom has influenced, changed your concept of justice?**

00:43 Well, it's, it's . . . here we are concerned with legal justice. We, we are concerned with legal justice. We, we, we are hoping that as a result of legal justice, maybe we will have an impact on reconciliation and peace in, in, in Rwanda.

01:02 W-, I think one of the, one of the lessons we may have to learn from this sort of intervention in, in post-conflict societies is that legal justice is not sufficient, it is absolutely necessary but it's not sufficient. You need to hold to account the people who, who, who got in, who, who were involved in the atrocities.

01:23 But beyond that you also need to look at, for instance, the plight of the victims. We are, we are absolutely helpless in this court here, in dealing with the plight of victims except insofar as they are witnesses.

01:36 If they are witnesses we provide a little bit of welfare for them, you know, and they go back. If it's a victim of sexual violence who is now HIV positive as a result of it, what do we do? We provide some medication for them and then we let them go back.

01:51 When we close down, what will happen to them? I mean, if, if the international community is going to intervene in these post-conflict situations, they, they have to then move on a broad front I think. You, you need to, to have a, a legal justice program. You need to have a program for dealing with the welfare of the victims.

02:11 You also then need to, to, to intervene in the society to try and create an environment where you could then have good governance and respect for human rights as a way of sort of preventing, as a preventive, potential present-, preventive measure for, for a recurrence of this sort of tragedy.

02:33 So I, I think it would be wrong for us to just do legal justice and go away. It's not enough. It is absolutely necessary, as I said, but it's not enough.

02:44 **LPN: Okay, thank you.**

Part 5

00:00 **Donald J Horowitz: I am Jus-, Judge Don Horowitz from the state of Washington in the United States and I'm appreciative of your giving us your time and your th-, and your thinking.**

00:10 You're welcome, welcome.

00:10 **DJH: And I've heard the first part and thank you so much. Your, your observations are very apt and, and helpful.**

00:18 You're welcome.

00:19 **DJH: I, I am going to ask a few more, at various points, general questions but I also want to, as two lawyers together, ask a few I-, legal ones and a lot of this is, I will inquire about, that is for the purpose of, again, seeing where things can be made better in the future.**

00:40 **DJH: It's constructively approached but I will have to address some criticisms of the Prosecutor's office . . .**

00:45 Yeah.

00:46 **DJH: . . . which of course, you know about, some of which preceded your being here. The – I want to talk first of all about recruitment of lawyers and prosecutors. And how is that done? And what standards are there now and perhaps earlier?**

01:07 Earlier.

01:08 **DJH: Yeah. So take us through that if you will.**

01:13 Well, we, th-, this is a UN institution.

01:16 **DJH: Yes.**

01:17 So when we recruit, we advertise internationally and applications are accepted from, from all individuals across the world. But of course we have qualifications, which have to be, to be met. We are quite rigorous now with recruitment.

01:38 When we advertise a post, we, we, we set out certain minimum qualific-, qualifications which are required. And we receive the applications and there are many; many come. Sometimes they run into hundreds in respect of a single position.

01:54 **DJH: Wow. Okay.**

- 01:55 And, and worldwide. Then we draw up a short list based, trying to identify the people we think are the most suitable in terms of their qualifications and experience. Then they are subjected to an oral interview – sometimes in here or sometimes it's by telephone, because it, it may be difficult to bring in everybody, fly them into Arusha for, for an inter-, oral interview.
- 02:24 If it's a very senior position, we insist on an oral interview with the candidates present here because you need to see the person also and, and, and, you know, get to know more about them. So it's, it's a very rigorous process.
- 02:38 The, the – under the statute all appointments are made by the Secretary-General of the UN. He has delegated that responsibility to the Registrar. But the Re-, the, the Secretary-General makes appointments on the recommendation of the Prosecutor.
- 02:53 So my role is to make recommendations then to the Registrar and he will then make, make the appointment. My, my pri-, primary consideration when making a recommendation is to select the best-qualified candidates academically and, and experience-wise.
- 03:09 And what we look for now are people who have had a lot of experience in working as attorneys, working as attorneys, trial attorneys and appeals attorneys, et cetera. The Regist-, for the Registrar, of course, he has an additional consideration, which is the issue of gender and geographic representation.
- 03:27 So he is the one who takes those considerations into account. When I send in the number of, recommend a number of persons, he will take that into account in, in appointing any of them.
- 03:40 **DJH:** This sounds like a, a nicely rig-, rigorous and thorough process. Has it always been the case since the tribunal began to have the process, or is this something that you've improved upon or, or your predecessors have improved it, improved upon (___)?
- 03:55 It's, it's improved over the years. Even before I came it has started improving. But the early years were difficult because the, the system had really not been set in place in, in the early years and so, let's say, a few, few less than qualified people did slip in through the net.
- 04:14 I mean th-, there were difficulties in organizing interviews and people got, got into, in, on the basis of their paperwork for instance and then it turns out at the end of the day that they may not be what, what you were hoping, hoping for.

Part 6

- 00:00 **DJH:** Is there an in-, is there or has there been a program of training or orientation for the, for the prosecutors? Obviously you want the best prosecutions and, and, and having the best prosecutions and frankly the best defense makes whatever judgment there is much more credible.

- 00:19 Much, yes, and much, much easier too, much easier.
- 00:21 DJH: Yes, yes.**
- 00:22 There has to be a process of adjustment for anybody who comes into the tribunal. The UN is a very unique creature.
- 00:30 DJH: Of course.**
- 00:31 And not very easy to, to understand internally. It takes you time once you get recruited into it.
- 00:35 DJH: Sure.**
- 00:37 And apart from that, of course the-, these courts are also unique. So if you come in as a lawyer you find you may have to – there, there is first a tendency that when people come in, you come in with what you know from your national system.
- 00:49 DJH: Of course.**
- 00:50 And you come in thinking that that is the best. It's better than anything else. So you have to change that attitude once you come in here and be prepared to, to take, to change that attitude and taking other things from other, other systems.
- 01:03 For instance, if you come from a common law country and, and, and you're familiar with the rule against hearsay, and you come into this court here and you find hearsay evidence is just admitted readily, it – you, you get shocked.
- 01:17 But the principle here is, is that there is – we don't have strict rules of admissibility of evidence like the common law does. The basic principle is that everything that is relevant is admitted and it is a matter now for the judges the way it's, it's, given its, its weight so they take in, take in an hearsay evidence.
- 01:39 Or if you are from the civil law system, you come in here and you've, then you're asked, you are thrown into court and asked to cross-examine a witness. That's absolutely strange to them and so, so you find many of them at the beginning may not actually be familiar with the principles and the methods of cross-examining witness and so they have to adjust to lea-, to learn, to learn those things.
- 02:01 In the OTP, the Office of the Prosecutor, we run an induction program for all new staff as soon as they come in. We try to, we, we have a manual actually and we organize induction courses to, to teach them about the organization of the court, where you can get what done. On the legal side, we have a database, which is developed by the appeals section on the jurisprudence of the court, which they're free, free to access as well.
- 02:31 We send them to Rwanda to, to visit some of the massacre sites because basically, I, I say to myself, I, we don't want prosecutors who will simply sit in Arusha and look at files and go to court on the basis of files. We want you to go to Rwanda, to go and see the massacre sites.

02:54 Then when you prosecute, you prosecute with your heart and with your head. I, I want them to be angry enough to see the massacre sites and be angry enough to wish to use their heads very well in order to promote the cause of justice. So we, we, we make sure that all of them go to Rwanda and visit some of these sites as well.

03:14 DJH: To understand the context.

03:15 Exactly.

03:16 DJH: And internalize that. Yes.

03:17 Internalize it and then be able to do the, do the job well.

Part 7

00:00 DJH: Is there some sort of c-, you come from a, you have a personally, a significant background in the law in your own country and internationally before you came here, and you of course know about continuing legal or judicial education.

00:15 DJH: Is there some sort of continuing education or training periodically for your staff? Do they for example, both formally and informally – I'm thinking after a trial perhaps – get together and critique their performances? Do your different trial teams interrelate and learn from each other?

00:39 We try to run a continuing legal education program. It's not been maybe as effective as we would wish. We have what we call the legal forum in the OTP, which is supposed to be organized monthly to discuss particular legal issues or sometimes to review the outcome in a particular case and try and draw le-, lessons from it.

01:00 DJH: Or tactics or strategies (____)?

01:02 Ye-, exactly, strategies, et cetera.

01:03 DJH: Right.

01:04 We, we do that, try to do that every month. It has not been that, that regular though. But in addition, I have a weekly meeting of all the senior trial attorneys at which we, we, we disc-, we consider progress reports from each trial attorney on the cases under their responsibility.

01:24 Any legal issues that are pending or that may come up, we exchange ideas on how to deal with them, et cetera. What has been a major challenge, of course, in the OTP is ensuring that trial attorneys, senior trial attorneys who are in charge of trial teams coordinate their actions and they share information. That continues to be a major challenge.

01:44 When you have a prosecutions at the national level, you have 50 cases. They are all separate. There is no connection between them and so you, you, you hardly need to sit

- together to discuss strategy except in a general sense. Well, here you have 50 cases, 50 accused persons but essentially it's one case.
- 02:05 It's one case of genocide and all the in-, cases are interconnected. What one, what one witness says in one case may be relevant and potentially exculpatory in another case. And so it becomes so important to share information, to share information – because we have a duty of disclosure, for instance.
- 02:27 If one trial team is in possession of information which, which is inculpatory of its accused, but exculpatory of another accused being handled by a different team, he has an obligation to disclose. But unless he, they, they coordinate their actions and share information we run the risk of failing in our disclosure obligations. (____) . . .
- 02:48 DJH: Well, it's very interesting because you led right into another question I was going to ask, because in fact we've already interviewed a number of prosecutors and they stated, and I believe them, that they know the duty of disclosing exculpatory evidence and they, they adhere to it as best they can.**
- 03:06 We've had lapses.
- 03:07 DJH: But, but you've had, but you've ha-, of course, there's been some, some . . .**
- 03:09 Serious lapses.
- 03:10 DJH: . . . some serious cri-, criticisms.**
- 03:11 Yes. Yes.
- 03:12 DJH: Serious lapses. And, and I-, I'm glad to hear you acknowledge that and, and one of the reasons you've just des-, described is, is the lack of communication. Yeah.**
- 03:23 Communication between, between this, the, the teams themselves. We, we try to, to get them and that's one of the reasons why every Friday I, I arrange this meeting. It's usually two, three hours with all the senior trial attorneys and each of them talks about the case, their case.
- 03:36 What did they do last week? What do they plan to do next week? Who are the witnesses they are calling? So that something might be of interest to somebody else, another trial, senior trial attorney who's attending the meeting and then they can coordinate.
- 03:48 DJH: Okay.**
- 03:49 But you also need to coordinate positions, you know, positions on issues like case theories. I mean, it's no use one team putting forward a theory for instance, that its accused people were the ones responsible for organizing the genocide and the other team also takes a view that no, it's their accused who, who, who were responsible, who were the top culprits – because there's a temptation for the, every team to make its case appear to be the, the most important.

- 04:16 DJH: Of course.**
- 04:17 So, so you, you have to, to monitor those, those issues to, to try and make sure that the theory is the same – that our, our, our explanation of the genocide is consistent from, from case to case.
- 04:30 I have a Chief of Prosecutions who, who monitors that sort of thing and, and tries to make sure that we have a kind of uniformity and consistency in approach, we have a coordination in our, in our efforts and trials and we have a sharing of information, that we live up to our disclosure obligations. But it's, it's the biggest challenge we face in the OTP.
- 04:50 DJH: Okay. I want to go to one other legal – we were talking about the civil and, and the common law.**
- 04:56 DJH: Some of the people we've interviewed have said it might be better if the ci-, civil law, the civil law were used in terms of the ability of an inv-, having an investigating judge versus the prosecutors being in charge, without any criticisms of any of the specifics.**
- 05:17 DJH: They're used to that system and some of them feel that it, it might be better in or at least some aspect of that might be better included in the total package of the, of the tribunal. And I, I'd be interested in, in your thoughts on that subject.**
- 05:36 I, I, I mean I only think that it, it may lead to a duplication of, of the work and instead of saving time, it may extend the time for, for trial because the role of the investigating judge will still not exclude the process in court where the trial court judges sit to hear the evidence.
- 05:59 DJH: Of course.**
- 06:00 You know, the, so, so you, you may not be saving time by having an investigating judge and I think the current system we have is probably, probably, probably good enough. In Cambodia, in the Cambodia tribunal for instance, they have the investigating judge.
- 06:17 But, but y-, you have an investigation first by the prosecutor who then goes to ask for a, an indictment, then you have an investigation by the investigating judge and then you have a trial. I think that process is too, too much drawn out, too long and maybe the, what we are operating now, I don't know, may, may be much better.
- 06:37 DJH: Well, of course, I think earlier we talked about the fact that international criminal justice particularly in these areas is developing, and people are trying different experiments and . . .**
- 06:47 That's right.
- 06:47 DJH: . . . perhaps at some point we'll figure on the best system or . . .**
- 06:50 Best system, yeah.

06:51 DJH: . . . et cetera.

Part 8

00:00 DJH: **Is there anything that has happened here that has really surprised you in your experience here? Both either – either personally or professionally.**

00:09 Oh, well, I . . . it's difficult to think of something that has surprised me. Unfortunately I, I well, I mean you may have sort of, for instance, decisions which may have been made by the judges which have surprised me sometimes.

00:30 I mean . . . we, we've had a situation last week for instance where, where a witness comes in to court – a witness who had testified before in 2004 for the prosecution after giving a statement in 1996 to the Prosecutor – comes back in 2008 to recant that statement and the testimony.

01:01 So he had given a statement in nin-, 1996, he'd come in in 2004 and sworn under oath and testified in line with that statement, then in 2004 he comes in and, and on oath again recants his statement and then he's allowed to walk away. He's perjured himself.

01:20 And when you try to get the, the court to, to, to order his detention pending a, his indictment investigation, they seem to take the view they don't have the authority to do that.

01:33 And, and I think the court has an inherent authority to protect its integrity and to deal with people who commit these offenses in the face of the court itself, in the face of the court itself; to deal with them in order to make sure that, that the process is, is respected, so that's, that's been a recent surprise but it, it well may not recur, I hope.

01:55 DJH: **Well, yeah, and, and what, what we're seeing is there's a development of the jurisprudence of the court and this court has developed with, with the help of, of, of the lawyers a significant amount of jurisprudence that can be used in the future. This is another one of those areas perhaps. Whether it's jurisprudence or what, something to look at for future tribunals.**

02:17 Sometimes I, I, I – of course, I think the, the trials we have to make sure they are al-, always fair.

02:25 DJH: **Of course.**

02:26 There has to be a fair trial for each accused. But there's a tendency sometimes for over-caution on, on the part of judges. And, and an incident like this is something we can, we, we could hold the court up to ridicule that somebody can come in to the (___) of the court, commit an offense in the face of the court and go away.

02:50 You know, i-, i-, if it does continue to happen, then it, it could cause difficulties and set really bad precedence as well.

- 02:59 DJH: Is there anything that you've done or been part of doing here that you're particularly proud of?**
- 03:08 I, I, let's say, I'm happy to have been here and, and to contribute in a little way to, to what's going on now. It's, it's – we have a good team here in the OTP and, and it's a team which has remained very stable over the years. We haven't lost many people, who've been going away.
- 03:27 Many of the people who are here are here not for any material gain as such, or less for material gain but because they're committed very much to, to, to ensuring that justice is done and so they've tended to stay through, through many difficulties, so I'm happy to be proud, part of that team and to lead the team.
- 03:45 DJH: Anything that you're disappointed that you have not been able to do or, or not done as well as you've would like? I don't mean just you personally but your office.**
- 03:52 Yeah, yeah, yeah. The, there are two areas I think one would like to, to look at. One is in terms of number of indictees. It would have been good if we could have really indicted a lot more people and prosecuted a lot more people than we actually have.
- 04:11 There are many, many persons, suspects walking around in outside Rwanda here who have serious allegations hanging against them, whom we are not able to prosecute because of the completion strategy, because of the fact that we have to close down as an ad hoc tribunal.
- 04:29 And for them, a way has to be found to deal with them. A way has to be found to deal with them, and this is connected with second issue, which is the transfer of cases to Rwanda. A, an important part of the completion strategy was and is that we should try and transfer some of our cases to national jurisdictions for, for, for trial, including Rwanda.
- 04:54 So far, we have not been able to do that. We have not been able to obtain a court order because the judges' assessment is that fair trial may not be possible in Rwanda at the moment in resp-, for those accused persons.
- 05:08 They are concerned about witness protection issues, about, generally about the ability of the defense to, to operate effectively in Rwanda. But Rwanda, it has agreed to still review its laws and its practices and try and improve on them in order for us to, to succeed with the, possibly with a, with a second round of applications for, for referral.
- 05:30 The, the, the referral regime is important for us. It's important for Rwanda, it's important for other countries.
- 05:38 If it succeeds, it will take a big burden off the tribunal and enable us to complete well; complete well in the sense that then we can actually even transfer the fugitives' cases to Rwanda and then a mechanism can be set up to continue to search for them and send them to Rwanda.

- 05:58 If there are no transfers made to Rwanda and we want to close down, that issue will be left hanging. The, the issue of how to deal with the fugitives will be left hanging and it is, it is being considered that maybe then they could be dealt with by the residual mechanism which will come in after, after we close, but that's not a very neat way, I think, of ending.
- 06:20 It's best if we ended with those cases being referred to Rwanda. The referral is also important for Rwanda because it's a stamp of approval but beyond the stamp of approval I think it's also, it, it's also a, a, an acknowledgment that Rwanda needs to be involved in the process as the country where this tragedy occurs.
- 06:43 The referral is also important for other countries and for dealing with those other people whom we have not indicted and we, we whom we have not indicted because we are closing down. If we manage to get a referral to Rwanda, other countries where some of these suspects may be located can extradite them to Rwanda and, and have them tried there.
- 07:06 If the, if the referral doesn't succeed what you'll have probably then is, in c-, in, in, for instance, in the UK and, and other countries, you'll have genocide suspects residing there who cannot be prosecuted for jurisdictional reasons in those countries and who cannot be extradited to Rwanda because of the perception that there is no fair trial.
- 07:29 And then you have this gap in impunity, a gap in accountability rather. You know, th-, and they'll, they'll, they'll just be walking around. So it's, it's, it's those two areas I hope, I, I wish that we could see some, some progress being made.
- 07:45 DJH: Is there a, a mechanism by which your office and the chambers and the defense can work together? Is that a possibility to try to figure things out together? Collaborate if you will . . .**
- 07:58 The defense . . .
- 07:59 DJH: Yeah, I, I understand. Yeah.**
- 08:00 The, the, the defense – no, probably. They'll oppose any transfer to Rwanda. The judges, we can't involve them because they are the ones who decide.
- 08:08 DJH: Sure.**
- 08:08 But the OTP and Rwanda work together on this and what we do is the judges will communicate in their decisions what their concerns are. And then we sit with Rwanda and, and figure out how do we address, how do we overcome these concerns which have been identified by, by, by the judges?

Part 9

- 00:00 DJH: I have two more questions only. You have had – I'm repeating – an extensive career before this and seen a lot of things. But these last years you've been here and**

you've been, you've had to work with very difficult sets of facts, the genocide itself, become familiar with the context as you have wanted your staff . . .

00:25 Staff to do . . .

00:25 DJH: . . . to become familiar and, and dealt with very difficult problems, some of which you've i-, many of which you've identified today.

00:33 DJH: How has this changed you? How has this affected you?

00:40 I, I don't know. I, I think probably somebody else might know. But, but I'm, I mean working here on, on genocide as I, as I indicated earlier, has made me believe a lot in extra-legal measures, also the importance of extra-legal, extra-judicial measures which need to be taken to, to deal with injustices.

01:07 I believe very much in, in sort of trying to work at the community level to bring communities together, bring ethnic (), groups together to get people to, to, to respect basic values, basic values of, of love and friendship and good neighborliness, et cetera. I think those are so important. You know, I, I – and, and secondly, also, I've come here from Sierra Leone, the ad, the ad hoc tribunal in Sierra Leone which is different from this one.

01:40 DJH: Yes.

01:41 And . . . I, I now believe more and more that the future lies in that kind of tribunal.

01:49 DJH: Give us a – what ,what you mean a little bit by, by that.

01:52 I, I think . . .

01:53 DJH: We are running out of time but I, it's important to . . .

01:55 I, I, I suspect that next time around we have a, a genocide it may be difficult for the international community to set up a tribunal such as this one or the ICTY, a huge international venture to deal with these cases.

02:08 I think it's important that we recognize the need for the involvement of the national systems of the people, where these offenses occurred, their involvement in any process of justice and, and the Sierra Leone model provides that.

02:24 If possible, if it's, it, you locate it the country where the offenses took place, you, you engage the local population in the justice process, recruit them into it, you have local judges, local prosecutors working with international judges, international prosecutors.

02:39 I, I think the, the, the future may lie in that way. You, you need to engage the people in it and it, it will operate probably a lot more quickly also and it will create better understanding on the part of the local population of what you are trying to do.

02:55 One of our problems we have here is that we're not in Rwanda. We are far from Rwanda and so we have to consciously find ways always of trying to get them to understand and

be involved in what we are trying to do through, through outreach. We are a little bit too separate from them.

03:14 DJH: Well, we're hopeful this project for which I am involved in, with which I am involved and which Lisa is involved, will be able to assist in that, in that possibility.

03:24 That's good. You're welcome, will be helpful.

03:26 DJH: And finally, the last question is the same question Lisa asked you, I don't know, maybe 40 minutes ago.

03:34 Okay.

03:34 DJH: Now that we've had further conversation, is there anything more that you would like to say to your grandchildren in the future or to the people who follow you, about what you as a person have learned or want to express and what you as a professional would like to express?

03:54 To, to, to my family and to ordinary people who are not, not to the, to the lawyers, I would just say, make sure you respect everybody. Every person needs to be respected, every person needs to have their rights recognized and respected.

04:10 You need to live together with peace with everybody. Everybody is your neighbor, as well. To the lawyers, I'd say the law is absolutely necessary but it's not enough. It's not the end of everything. You need to go beyond the law to, to, to find a solution to many of these, these, these crises as well.

04:29 DJH: Thank you very much.

04:30 Okay. Thank you so much. Thank you.

Part 10

00:00 Batya Friedman: So I'm Batya Friedman, professor at the University of Washington and I am here with Mr. Jallow, the Prosecutor at the ICTR. It's November 6th, 2008 and we are continuing our interview with Mr. Jallow.

00:14 You're welcome back again.

00:16 BF: Thank you so much.

00:17 Okay.

00:19 BF: So, I know that as the Prosecutor, the overall Prosecutor, you have a, a very unique role that, different from the other prose-, different from the lead prosecutors of each of the cases and that I'm wondering if you can help us understand that a little bit better.

- 00:39 **BF: Things that I'm wondering about are how do you set the overall strategy for the prosecution as a whole? And also, you've come to this about four years ago so you've inherited, you know, from prior prosecutors overall strategies.**
- 00:59 **BF: So what, what did you inherit and how did you appropriate that and, and what is your vision for how the prosecution as a whole should go forward?**
- 01:10 You're right. I, I came in well after the institution had been set up almost a decade after it had been set up, so I, I came in midstream also at the time when the Security Council had passed a resolution the same year requiring us to close down, finish our work and close down by end of 2010 in, in various phases.
- 01:32 Such as the closure of the conclusion of investigations by 2004, the conclusion of trials at first instance by 2008 and then the conclusion of the appeals by the end of 2010. Here we, within the OTP, the Office of the Prosecutor, we organized essentially in, in, in a number of sections. You have the immediate Office of the Prosecutor responsible for policy issues. You have the Investigations Division in Kigali.
- 02:02 You have the Prosecution Division here in Arusha and you also have the trial, the Appeals, sorry, Appeals Division also based here in, in, in Arusha. And they are supported by the IESS, Information Evidence Section, which is responsible for holding and managing our evidence database.
- 02:21 Now the, the trial section is split into trial teams, each of them headed by a senior trial attorney and comprising other members of staff and they report immediately to the Chief of Prosecutions who then reports to, to, to the Prosecutor.
- 02:38 It's the Prosecutor's responsibility to decide on who to indict and with what crime, based on the recommendations which come up from the senior trial attorneys () to the Chief of Prosecution and on to him.
- 02:53 And it's for him, the Prosecutor, also to decide whether we should ask for an amendment to an indictment and then also other policy issues. Senior trial attorneys of course are supposed to, to run their cases in, in the routine way – decide who their witnesses should be and how, how they will deal with them in court and so on and so forth.
- 03:16 The, so the, the Prosecutor, Prosecutor's role in the actual conduct of cases is usually – I've, I've confined it to being there at the beginning like doing an opening statement, going in for the judgment, also working with the coordinating counsel and particularly the President of the tribunal in scheduling cases for trial, in, in deciding which, which, in helping him decide which cases should be scheduled for trial when and so on.
- 03:47 Now, the, the, the Prosecutor also presides over trial readiness meetings. You know, for each case we have, we, we, we hold a review of all the senior staff, by all the senior staff in the OTP, first, to, to look at the draft indictment which is presented by the trial team and approve it or suggest changes before the Prosecutor considers it.

- 04:12 And thereafter, we also convene what we call, the first one is called indictment review. The second meet-, the second meeting is called the trial readiness review and that is then meant to, to evaluate the level of preparedness by the trial team for, for conducting the case, whether they've done all the things they are supposed to have done like dealing with the disclosures, whether they have any witness issues, and so on and so forth.
- 04:36 Now, I, I came in as I said almost midstream and my task immediately when I arrived was then to dis-, to determine what was the level of work that we could accomplish within this timeframe which the Security Council had given us. We had quite a lot of targets, a lot of cases on hand at that time.
- 04:58 So it was for me to decide and advise the Security Council what were the cases we thought we could complete. That of course required us to decide the criteria by which we would select the cases which we thought we would finish.
- 05:12 So we, we organized a forum within the office and for some time, we devoted some time to deciding the criteria and in a nutshell what we, what we decided was that we'd look at the status of the offender, if he was a government person, who was involved in the genocide.
- 05:28 We, we'd looked at the nature of the offense that was committed by the person. We would also look at the, the extent of the crime. You could have a person who was not, who's, who was of a low level, a low level perpetrator in terms of status, an ordinary citizen but one whose participation was so notorious that you had to prosecute him.
- 05:52 We looked at the nature of the crime as I said and here we, we thought wherever we had evidence of sexual violence, strong evidence of s-, sexual violence we would try to proceed to, to a prosecution.
- 06:03 And then the fourth criteria we decided on was the need for geographic distribution. Given that the genocide had been a widespread phenomenon in Rwanda, we did not want to let any of the administrative areas not be represented in the, in the number of indictees who had been prosecuted.
- 06:25 And because this, this we thought could have an impact on national reconciliation, so we were careful also then therefore in, in making sure that every area was represented in our list. So then wha-, then we reviewed the cases we had on the basis of that criteria and settled now for the cases we now have in hand.
- 06:45 Then with the second stage was to evaluate the strategies for prosecution that, that, that were in place at that time, and we felt it was necessary to change strategy if we were going to finish our trials on, on schedule.
- 07:01 And you'll find for instance, we, we decided that the indictments themselves had to be much more focused, much shorter, much leaner because the old indictments we had here were quite big, I mean very lengthy documents and we thought we should try and have what we call "lean and mean" indictments rather than big ones.

- 07:24 Try and focus on less crimes in respect of an accused, focus on the offenses with which, with which, for which we thought we had enough evidence and which could easily be established, rather than charging a dozen counts. If you had, if you could proceed on three counts you, you did that.
- 07:44 We thought we needed to reduce the number of witnesses as well because they were running into hundreds, close to 100 in some cases. Pick the best witnesses, proof them, prepare, I mean confirm them, make sure they, they are ready for court even before we filed our indictments, rather than the reverse which, which had seemed to be going on before.
- 08:08 And, and one of the major strategies also we, we decided upon was to move away from multiple accused cases. We'd had a lot of multiple accused cases and these had been going on and are still going on for a long time. The, the Butare trial, for instance, has been going on close to seven years now and is not yet closed.
- 08:27 And it's not likely to finish in terms of having judgment delivered before the end of next year or up to end of next year. So we, we decided that we had the, the evidence and the, and the witnesses permitted to avoid duplication, for instance. We should have single accused trials.
- 08:44 So you'll find since 2003 we've only filed indictments in respect of single accused and what, what this – and it has worked. It has worked. We've had more – we finished more single accused cases in the same period, in fact almost double than the number of cases concluded in the, in the previous years, and I think this is because of that, that change of strategy.
- 09:09 So that, those are sort of things we had to do you know, as soon as, soon as I came in midstream we had to sort of change, change tack in, in, in that direction.

Part 11

- 00:00 **BF: So I have many questions to follow up on here in different pieces. From the perspective of prosecuting for genocide, which is as we've talked about really quite different than if there's a single murder or even if multiple people are murdered by a small group of people.**
- 00:19 **BF: And if you think about how those prosecutions unfold over time and you're thinking – and, and thinking about tribunals in the future – how should I phrase this? One thing you could conclude is the kind of strategy that you've articulated is really the strategy that ought to have been applied from the beginning.**
- 00:40 The beginning, yeah.
- 00:41 **BF: Or another thing you could conclude is that in the beginning, when one is first starting to understand the territory of the genocide, there is something about needing a different kind of prosecution in the beginning that evolves.**

- 00:56** **BF: And I'm just wondering from your perspective and your experience, if you were to be mentoring another prosecutor of a tribunal somewhere else at some other time and taking the, the longer term perspective of how prosecutions would unfold, what recommendations about strategy would you give based on your experience?**
- 01:19 Well, we, we thought actually one of the lessons which, which need to be learned from our own experience is that when you do set up a tribunal and you, right from the beginning, you need to develop your completion strategy at that point.
- 01:34 In other words, you need to decide right from the beginning what are you trying to do, how many people do you want to prosecute, how long do you want to go on, who do you want to prosecute and when do you want to close down? The, the, the ad hoc tribunals did not do that.
- 01:50 Even though they had been set up as ad hoc with a, with a definite lifespan you know, a sort of a (____) lifespan, not much thought had gone into these questions and so the work was just going on. But I think one of the lessons, the first lesson is to, to, that we need to learn, learn from the beginning that we need to establish a completion strategy.
- 02:10 And I think even for the ICC which is a permanent court you, you need to establish a completion strategy in respect of a particular situation. If it is Congo or DRC or Sudan, if you are going in you need to determine what do I want to do here? Who is my target? When do I want to finish the job? And at the end of the day, what do I want to have accomplished?
- 02:34 The other lessons relate to strategy and we've, we've discussed some of these issues. I think you need to, to be concerned about ensuring that the trials move on speedily and conclude speedily and, and that can be affected by the size and the nature of your indictment.
- 02:50 You need to have smaller focused indictments. You, you need to probably move away from multiple accused to single accused cases. Sometimes it's an advantage to have multiple accused. If the witnesses are common, the evidence is the same and the incidents are the same, it doesn't make sense to separate the accused. You, you put them together. You'll save time.
- 03:14 But there are dangers also in putting accused together. I mean if anything happens to any of them, the whole case gets held back. I mean I mentioned I think yesterday the, the Karemera trial.
- 03:25 We are now faced with the, with the, with the issue before the trial chamber as to when or whether one of the accused should be severed from the case because he's not, he won't be able to appear in court for the next six months.
- 03:38** **BF: Mm-hmm.**
- 03:39 Should we sever him from the case and continue with the other two or should the (____), whole case be adjourned? That's one of the difficulties with, with multiple accused trials.

- Anything that happens to one accused or defense counsel or a judge or, you know, it impacts on, on the whole case itself.
- 03:56 And another lesson I, I, I believe is, we, we have also recognized is particularly in relation to sexual violence offenses. We have not been as successful as we would have wished; we have not had a very good record of convictions for, for sexual violence.
- 04:14 Even though right from the beginning this tribunal broke fresh ground in the Akayesu case by holding that sexual violence can const-, can constitute genocide. But we haven't gone, gone much beyond that.
- 04:29 And the lesson we've learned in respect of sexual violence is that it is important and necessary to prosecute it but you have to fast track it. You, you have to give it priority in terms of prosecution.
- 04:43 If the cases don't get to court within a number of years, you, you'll find that by the time you are ready to go to court, your victim is not interested in justice, is, is (___) not interested in justice. You want to pursue the justice line. The victim has resettled, is remarried, has family.
- 05:05 They don't want to reopen those issues anymore and, and that's one of the problems we've had. They don't want to reopen. You want to push the justice angle but they say, "No. Look, I don't want to reopen that chapter again," and you end up therefore not being able to prosecute.
- 05:17 So you need to, I think, to, to deal with sexual violence very early, at a very early stage when people still, when victims still want justice and they can still, you know, pursue the, the, the justice line.
- 05:31 I think these are some of the lessons. Organizationally, I think even within the OTP the number of issues also or lessons – how do you organize your trial teams? I found here, for instance, a distinction drawn between trial attorneys and appeals attorneys, whereas at the national system there is no such distinction. All attorneys are supposed to be capable trial lawyers and capable appeals lawyers.
- 06:01 It's, it's, it's been very difficult if not impossible to change that, that separation here. But I think when, when for the future, when one is setting up an OTP you need to just have trial attorneys who can do both, both, both aspects of, of the work.
- 06:19 Sometimes I think the trial teams themselves could be, you know, reduced to more manageable sizes, more, more manageable sizes and, and these are some of the lessons I think we've, we've learned and which can be taken into account by and for the future.

Part 12

- 00:00 **BF: So in returning for a moment to the sexual assault cases, I'm inferring from what you've said that you think it's actually very important to prosecute for sexual assault . .**

- 00:12 Very important, I think so, yeah.
- 00:14 BF: . . . even though it may have it, its challenges, so I'm wondering if you can articulate a little bit more about why is that really important. So what if it would be possible to convict the people that, you know, most rose to the top of your list based on say massacres, on killings, and not touch the sexual assault at all?**
- 00:35 Just (__) violence.
- 00:36 BF: Right. What, what would be at stake? Why would it, why is it important to pursue that?**
- 00:43 To pursue that.
- 00:44 BF: And then also, given that view and thinking back from the beginning, okay, there's doing it sooner, but are there other lessons that you think other prosecutors, other tribunals should be aware of in order to be effective in doing that kind of prosecution?**
- 01:04 I mean sexual violence needs to be prosecuted. Because it's, first, it's se-, serious crime. It's a very serious crime. And its, its seriousness is reflected in the fact that when we negotiate guilty plea agreements here, an accused would rather plead guilty to genocide than to sexual violence.
- 01:23 It, it – the conviction for sexual violence carries with it, in their view, a greater stigma because of the seriousness of the offense itself. So, so we, we, we have not even been able to get anybody to plead guilty to, to sexual violence.
- 01:38 And I think secondly, also in the context of Rwanda itself, the violence is linked to genocide because the sexual violence was a tool of the genocide.
- 01:48 I mean rape, sexual assaults, ripping up wombs, you know, killing infants and so on, so it was a deliberate strategy to resort to sexual violence, to humiliate and to destroy that, that part of the population. And I think we should not ignore that fact just simply by prosecuting people for generally the offense of genocide.
- 02:09 It's also targeted at, at a weak-, weaker section of the, of the community and, and I think it's important that their plight is recognized specifically by addressing the, the offenses committed in, in relation to them. Then there is the, the possible deterrence value.
- 02:27 Look at the DRC now. DRC, the sexual, level of sexual violence there is, is just, you know, it's terrible at the moment. There're lots of things going on there but it continues and if, unless we, we make some, you know, significant impact in, in prosecuting people, getting convictions for sexual violence and it is publicized, that sort of practice will continue to be part of these conflict situations – the DRC, Sudan, and so on and so forth.
- 02:55 So there are many reasons why we should. We, we've taken the trouble here to evaluate our record. It's a self-evaluation. It may not be all that objective. It's a self-evaluation. We evaluate our record of prosecution in sexual violence.

03:12 And as I said, we, we, even we ourselves have said we could have done better and we have now developed a, a manual on what we think are the best practices, the best methods to follow in dealing with this, this offense. It's in the stages of finalization and we hope to share it with all the other tribunals and practitioners who are, who are interested.

Part 13

00:00 BF: Something else that you have talked about a little bit and I think some others, is talking a little bit about what goes on here at the tribunal as being symbolic in terms of addressing the genocide. It's an interesting word to use. I'm wondering when you use that word, in what way is, is the work of the tribunal symbolic?

00:28 It's symbolic well, it's . . . I think it's, it's important for the, for the people of Rwanda out there. I mean it, it's, to them it shows that the international community is, is interested in what happened to them, is interested in, in their welfare.

00:48 It's symbolic in another sense that, the, the international system because of its nature can't really prosecute everybody, so you have to concentrate on a few symbols of those offenses, the senior people who, who, who committed these offenses. Pick them out, make sure they are prosecuted.

01:08 And in that way, you can then send the message to people like them, to people of the same status who are in other jurisdictions, a message of deterrence that accountability even at that level is, is, is possible. I think in, in those two senses it (_____).

01:28 BF: And then in the mandate there's also this notion of reconciliation along with justice. And I'm wondering – just from your own personal experiences as the Prosecutor, and as you've made decisions – are there ways in which having reconciliation also as, as part of the mandate has influenced some of your decision-making or thoughts or feelings?

01:57 Well, as, as I said the – when we are prosecuting our immediate concern is legal justice, not reconciliation. That's the objective. Secure a conviction of the accused person and on the other side is to secure an acquittal. But we, we hope that through the way we work we can have an effect, a reconciliatory effect on Rwanda.

02:17 And, and one of the ways we've tried to do this is, for instance, through the guilty plea negotiation process. One of the strategies, by the way, we, we, we put in place, also midterm, was to sort of give emphasis to the guilty plea process. The tribunal had heard a guilty plea from the former Prime Minister Jean Kambanda several years ago.

02:42 But, even though he was convicted on his guilty plea he continued to claim that he had been misled. I don't think there is any merit in his claim but the, the effect of it was to deter other persons from entering into guilty plea negotiations until about 2004.

03:01 So, we, we, our policy then became that we should encourage accused persons to plead guilty so that we can finish our cases, and in consideration of their pleas they could have

reduced sentences and, and location to, let's say, less harsh, harsh prison conditions in, in, in other countries.

- 03:23 But one of the ways in which a guilty plea has worked, for instance, in relation to reconciliation has been for instance, in two cases.
- 03:33 We've had two cases where the accused pleads guilty and we encourage them to make a statement from the dock – which, which one of them did and it went down very well – statement acknowledging that a genocide had occurred in Rwanda, apologizing to the people of Rwanda and offering to help in any way towards reconciliation.
- 03:54 There was another accused also who stood in the dock. He, he did not deny – he, he denied his culpability but he admitted that a genocide had taken place in Rwanda and he apologized to the, to the country and to the people for that sort of thing.
- 04:10 Those, those, those actions can, can assist with, with the reconciliation process. Unfortunately, most of the accused just continue to deny that a genocide ever took place and, and that doesn't help. That doesn't help.
- 04:24 I think it is better if a position was taken, as the appeals chamber has now decided, that the occurrence of the genocide is beyond dispute. It would be more helpful if the defense teams took the same position but even if they continued to deny the culpability of their clients, can say, "Of course, a genocide did take place. For which we are sorry, but I had nothing to do with it."
- 04:49 It's a different, different tack from saying, "There was no genocide. If there was one, I was not part of it. If I was part of it, I was forced." You know, it, it doesn't help reconciliation. The victims and the survivors, survivors and the people in Rwanda feel much more offended naturally by that sort of strategy.
- 05:12 **BF: Then . . .**
- 05:13 I mean the, the appeals chamber has said, "The occurrence of genocide is indisputable as is, 'tis indisputable that the sun rises in the east and sets in the west." So, what can they gain from continue, continue to deny the genocide except to offend the, the (), the people of Rwanda and to offend the survivors.

Part 14

- 00:00 **BF: One other issue that we've become aware of are the, that there can be a lot of cultural differences that show up in the courts. The, the courts are largely a western kind of law or justice and many of the witnesses coming, they may be coming from villages.**
- 00:20 **BF: They may have experience in sort of let's say African concepts about place and time and notions of justice that might be quite different than the way in which the court operates. Have you seen that play out with the prosecution and are there lessons to be learned with respect to you know, how those different systems can be addressed?**

- 00:51 Yeah, it, it's – these offenses took place in Rwanda. Rwanda is a, speaks Kinyarwanda. Let's take the language issue, for instance, speaking Ki-, Kinyarwanda. We have a team of international staff here. Even if many of them are from Africa, they don't speak Kinyarwanda.
- 01:07 They don't understand Kinyarwanda and there are maybe different, cultural differences also between where they come from and what happens in, in Rwanda. And, and we found that it's absolutely essential to integrate Rwandan staff into the process, especially at the level of the Office of the Prosecutor.
- 01:27 And so as a result, what we've done, we've had the Rwandan associate investigators working with the international staff in Kigali. We have language assistants, Rwandan language assistants who help us with the documentation.
- 01:41 We have Rwandan trial attorneys and appeals counsel, all of them working here. And, and that helps us not just to be able to overcome the language issue but also to understand, to understand the witnesses much more. You, you need that. It's absolutely essential. (___).
- 01:58 BF: Can you think of a particular story or, or a situation that . . .**
- 02:04 Not, not off, not off head as such, but it, it's we find it's absolutely essential to work alongside the Rwandans. They do translations for us. They, they act as intermediaries with the Rwandans. They, they, you know, they explain things to us.
- 02:19 For, for instance, I mean, in, in – I'll give you an example. In, in many African societies, when you're talking of sexual violence, I mean explicit reference to the sexual act is something that is not done. It's not done at all, it's, it's, it's considered unacceptable. Instead the language used to refer to the act is something if you are a foreigner or if you don't come from part, that tradition you will not understand.
- 02:54 It's, it's, it's the kind of, the . . . the vocabulary used does not – to an outsider may not mean that at all, so you need the Rwandan to be able to explain to you that when the witness says this, what she actually meant is that the act of sexual violence occurred. So, so, so it's important to, to, to be aware of that sort of thing.
- 03:16 BF: Mm-hmm.**
- 03:16 Of course, she will not be able, she will not refer to the act explicitly.
- 03:20 BF: What, what . . .**
- 03:20 But she'll use a kind of language . . .
- 03:22 BF: . . . what . . .**
- 03:22 . . . like, for instance that, "He lifted the hem of my dress," and that's all. But what she actually means is that, "He engaged in sexual intercourse with me." So you need that sort

of understanding and it only comes from working with the, the Rwandan staff in, in the team.

03:40 BF: And within the courts then, can, i-, is it possible that the way in which the Rwandan woman expresses that can serve to represent that act?

03:51 Th-, that, that is one of the issues we've been considering in our, in our best practices, because we say to ourselves i-, if that is the witness's explanation or description of the act, why, why should the judicial process insist on the witness coming there and, and talking explicitly in the language of the court rather in his, in her language about the act?

04:14 But the defense counsel takes the position, you know, they will cross-examine the witness. They want an explicit reference and that embarrasses the witness. It puts off witnesses from coming forward to talk about it.

04:26 So, so there's a need for the courts to accept that sort of language, to understand that when, when that phrase is used this is actually what is meant, and this is one of the things we, we're trying to, to, to push through.

04:38 BF: So, if something like that is to be pushed through, how does that process happen within the court?

04:43 Within the court, I think what you could do is you, you bring in an expert on, on Kinyarwanda language and culture. Who, who will, who will testify as an expert that the vocabulary relating to sexual violence is this and this and this and this. When this phrase is used, this is what it means, and so on and so forth.

05:02 I think if you do that first and the court accepts that expert's testimony, then when the witness comes you don't need to go into, into any details. She can use her own language, and the court can understand from, from the, from the expert that this is actually what she meant.

05:17 It may not stop the defense from trying to be, be, be terrible in their cross-examination, and I think that's, that's one thing that, that puts off the witnesses. But I think that's one of the ways in which we could, we, we, we could deal with that problem and we may do so in the, in the next cases.

Part 15

00:00 BF: Then, another thing that you've spoken about is that even though these are separate trials, you've said it was one genocide. It happened in one country . . .

00:10 One country.

00:11 BF: . . . right? These things like language, the language in this case goes across the country. Does every case need to establish the same kinds of things with respect to these cultural means of expression, or there are ways – I mean this is a way in which a tribunal prosecuting for a genocide is, is perhaps different from if there were many separate different, say, murder trials.

- 00:39 **BF: Are, are there ways in which certain understandings about cultural expression can be established once . . .**
- 00:48 (_____).
- 00:49 **BF: . . . and then used across?**
- 00:50 Across, yeah.
- 00:51 **BF: Are, and, and are there other aspects, because it is a single genocide, that it makes sense to establish once, say in a future tribunal as a, as a, as a way to think about how one lays out a common sense of what the discourse will be? Does that even make sense? (___).**
- 01:12 No, you're, you're right. It is possible to do that. Let me give you an example, the relation to, to the genocide, for instance. Until, until two years ago, (___), yeah, until 2006, every, every single case we prosecuted, in every case we prosecuted we had to, to lead evidence to prove that a genocide had occurred in Rwanda.
- 01:37 The judges would accept it happened. But didn't stop us from proving it again in the next case (___) before the same judges. And so, and so we said, "No, th-, this can't go on like that." You are trying to, you are having to lead evidence on the same issue and each time you succeed in establishing it.
- 01:53 So we, we resorted to the mechanics of judicial notice, the judicial notice process. The judicial notice process empowers the court to take notice of a fact and say that, "This is so notorious and well-known that you don't need to prove it anymore."
- 02:10 So we went to the appeals chamber and asked the appeals chamber of the tribunal to, to find that the occurrence of the genocide is such a well-established and notorious fact that it does not require proof.
- 02:24 And the appeals chamber agreed with us. So immediately then it, it lifted the burden from us for having to lead any more evidence before the tribunal, and before any trial chamber of the tribunal, that the genocide had occurred.
- 02:36 And so what we now concentrate on is to lead evidence about the involvement of the individual accused in what had happened. You can do the same with regard to, to, to these other issues.
- 02:48 I mean, the cultural issues, the language issues, et cetera and so on, try and establish – but it, it must be established a number of times by evidence before the appeals chamber will say, "Yes, that is enough. This is so well-established that you don't need now to go on proving it each time." That's what the system of judicial notice can, can do for us.
- 03:10 **BF: So, well, we've had quite a while to talk. I wonder is there anything else that's on your mind, that you would like – not just people in the next three to five years to know – but to be a part of your voice and your record about, especially from your position well, both as the Prosecutor and, and as a human being in this experience?**

- 03:36 Well, it's, it's been a difficult and long process here over a decade now, and a lot of time and a lot of money also has gone into it. But it's been worth, it's been worth the effort. People have been held to account whom it would have been difficult to, if not impossible in earlier times to, to, to bring before a court of law. A lot of law has been created or clarified by the judges, substantive law to procedural law.
- 04:09 We've had a lot of experience too in, in investigations and trial management, management of witnesses, et cetera and organizational issues, et cetera. And all of this could be, would be beneficial I think for the, for the future if such a similar exercise was to be engaged in.
- 04:27 There are many lessons also to, to learn from this but I think the, the greatest lesson is that the process of accountability is feasible. It can be done despite the challenges, despite the difficulties.
- 04:42 The process of accountability at the international level is, is feasible and that it al-, it's also necessary to do it. It's also necessary to do it in order to, to ensure that you have justice and also to ensure that you have peace in these communities.
- 04:58 BF: And for yourself personally, as you think about your experiences here, is there anything about that you would like to share?**
- 05:07 I think it just, it's, it strengthens my faith in the law, but also beyond the law it strengthens my faith. You know, in, in, as I said, in the need for going back and strengthening those basic values of peace, of love, of good neighborliness, of justice between people, of respect for, for the rights of others.
- 05:28 If you have those things, if everybody works towards those it's probably inconceivable than you could have a tragedy such as happened in Rwanda. If we all worked hard at making sure that we are good neighbors, that, that we tried to like each other but at least we respected each other's rights and tried not to violate them. It's quite possible we may not have these kinds of tragedies.
- 05:54 BF: Thank you.**
- 05:55 Thank you very much. Thank you.