



Voices from the Rwanda Tribunal

Official Transcript: Hassan Jallow (Full Interview)



Role:	Chief Prosecutor
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Interviewers:	Lisa P. Nathan Donald J Horowitz Batya Friedman
Videographer:	Nell Carden Grey
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.

1 **Part 1**

- 2 **00:00** Lisa P. Nathan: My name is Lisa Nathan and I am from the Information School at the
3 University of Washington and I would like to thank you for your time this morning. And
4 to begin, I would like you to state your name, your home country and your title, your
5 job title here at the ICTR.
- 6 00:14 Good. Well, you're welcome. My name is Hassan Jallow. I'm the Chief Prosecutor at the
7 International Criminal Tribunal for Rwanda and I come from The Gambia in West Africa.
- 8 **00:25** LPN: Thank you. And I would like you to walk me through your timeline here at the
9 ICTR – when you began and your roles here with the ICTR.
- 10 00:39 My own personal, yeah.
- 11 **00:39** LPN: Yes.
- 12 00:40 I joined the ICTR in September of 2003 following the election by the Security Council to
13 the position and I came in here. I've been here since then. I've had a first term of four
14 years, which was renewed last year by the Security Council up to 2011, unless we sooner
15 finish the work. So that's, that's the current situation.
- 16 01:04 Before that I was with the Special Court in Sierra Leone as an appeals court judge, and
17 prior to that a judge back home and prosecutor as well before.
- 18 **01:15** LPN: So I would like, for just a minute, for you to think back to where you were in the
19 spring of 1994 and during the events that were occurring in Rwanda at that time. Can
20 you describe to me what you were doing at that point in time?
- 21 01:31 At that time I was the Attorney General of The Gambia and Minister of Justice, so I, I was
22 in government then as a prosecutor but also as a p-, policy, legal policy maker. And I was
23 involved in, in work on human rights trying to get the African Commission on Human
24 Rights to, to function.
- 25 01:52 We had just adopted the African Charter about a decade earlier, set up the commission
26 in late '80s and the, the African Union ha-, or the (____), or the OAU as it was at that
27 time had agreed to locate the African Commission in Banjul, The Gambia.
- 28 02:09 So we were trying to get it going at that time when this terrible tragedy actually unfolded
29 on, on the continent. But I left government soon after. Within the next three months, I
30 had left government. But I was in government at that time.
- 31 **02:24** LPN: Do you remember actually learning about the events during that period of time?
- 32 02:29 I did, I did learn about them, in two ways. The media was there. I mean, t-, the media
33 publicized it quite a lot. I, I did learn of it also through my work on human rights,
34 particularly at the level of the African Commission on, on Human Rights which, which was
35 very, very concerned about what was then going on.

- 36 **02:50** **LPN: So how about how you first learned about the ICTR and the story of how you**
37 **came to work here in your role as Prosecutor?**
- 38 02:59 I, I got involved in international criminal justice when I was appointed by the Secretary-
39 General of the UN in 1999 to carry out an evaluation of the functioning, judicial
40 evaluation of the functioning of the ICTR and the ICTY, as part of a committee.
- 41 03:16 There was a committee of five he had set up headed by Jerome Ackerman, an American
42 who was, who had been president of the UN Administrative Tribunal for many years. So
43 we, that, that really got me involved in international criminal justice at very close
44 quarters.
- 45 03:32 I came here with some of the team members and also at The Hague. And over a period of
46 six months we examined the functioning of both tribunals because there had been a lot
47 of complaints about slow progress, about, you know, how things could be made to, to
48 move much faster.
- 49 03:50 So we spent a lot of time closely scrutinizing the functioning of both tribunals and as a
50 result we made a number of recommendations to improve their operations. Most of
51 them have been implemented, and then, within a short time after that about four years I
52 was back here again now as, as Chief Prosecutor instead of as a consultant.
- 53 **04:11** **LPN: Can you describe to me some of the responsibilities that you have as . . .**
- 54 04:16 As Prosecutor?
- 55 **04:16** **LPN: . . . the Prosecutor?**
- 56 04:17 The, the Prosecutor at the tribunal essentially has two responsibilities. One is to, to
57 initiate investigations into, into the tragedy which occurred in Rwanda, investigate the,
58 the involvement of specific individuals and then to decide also whether they ought to be
59 prosecuted or not.
- 60 04:38 Secondly, if he does decide to go ahead with prosecution after confirmation of the
61 indictment by the judges, then to organize the, the, the actual prosecution. So my role f-,
62 essentially is to investigate and to prosecute those persons who bear the greatest
63 responsibility for what happened in, in Rwanda in 1994.

64 **Part 2**

- 65 **00:00** **LPN: Can you speak to some of the challenges of that role? You came into the role**
66 **knowing quite a bit because of your previous work investigating and learning about the**
67 **ICTR and the ICTY, knowing the criticisms that have faced the court and the challenges**
68 **here. So it's, in a very, in a way unusual because it is an international court, there's a**
69 **lot of politics involved.**
- 70 **00:26** **LPN: Can you speak to some of those challenges that you have faced in your role as**
71 **Prosecutor?**

72 00:33 It, it's a difficult function. I mean investigating and prosecuting these crimes. When you
73 are a national prosecutor, you, you, you have the advantage of having a lot of
74 institutional support within the state structure.

75 00:48 You have the police there to whom you can give the instructions. You have the prison
76 services. You have the state machinery to rely on. So you, you don't have difficulties with
77 tracing the accused person to start with in the country. You may not have th-, if there are
78 difficulties, you have institutional support to look after that.

79 01:05 You may not have difficulties with wi-, tracing witnesses, running your case and if the
80 person gets convicted, you have a prison readily available to put them in. If they are
81 acquitted there is no difficulty as well.

82 01:18 The, some of the challenges which we face at the ICTR are, are sort of inherent in the
83 nature of the system itself and some because of the nature of the offenses which we
84 have been, have been, have been dealing with. These tribunals, I mean especially the
85 ICTR, sort of are, they are not embedded within any national structure. They are
86 international tribunals.

87 01:43 They essentially have to rely on international cooperation from states to be able to
88 function in, in respect of all their activities – from searching for the accused persons,
89 from locating witnesses, making sure they are available, from, from getting counsel,
90 defense counsel, employing defense counsel, relocating witnesses and protecting them
91 where, where their, the-, the-, the-, their safety is an issue.

92 02:11 And even sort of finding places of imprisonment for people who have been convicted. In
93 the case of Rwanda, for instance, particularly, the, the people we are supposed to
94 prosecute almost – I think all of them, not almost, actually all of them had left the
95 country.

96 02:29 They had fled and, and so the biggest challenge was actually looking for them, trying to
97 locate them and making sure they, they, they are brought back here for trial. We depend
98 on that; we depend on state cooperation for, for that process and it has been
99 forthcoming generally.

100 02:48 The fact that most of them are now here, either having been tried or on trial, I think is an
101 ample testimony to, to the level of support we've had. But there are still quite a number
102 of them outstanding out there.

103 02:59 We have 13 fugitives whom we are still looking for, so that, that has been a, a big
104 challenge. Investigating the offenses also, because, because of their magnitude, it has not
105 been an easy thing. Putting together teams actually which can investigate these offenses
106 is, is a challenge because it is an international tribunal.

107 03:21 The staff are mostly, overwhelmingly non-Rwandan. So there is a difficulty in them
108 understanding and actually communicating very well even with, with victims and
109 witnesses on the, on the ground. And them becoming familiar with Rwandan language

110 and culture to start with, in order to be able to reach out to the people you want to talk
111 to.

112 03:45 You have difficulties, we've had difficulties in dealing with, for instance, investigation of
113 sexual violence offenses. Tho-, those, those are very sensitive and, and difficult area. And
114 beyond that, of course, there was, of course, the first challenge – that this sort of thing
115 had not been done for a very long time, not since, not since Nuremberg.

116 04:05 The ICTY had just started, but really h-, it hadn't been well established enough for us to
117 be able to learn anything from them in terms of practical operations. So the novelty of, of
118 the whole venture itself wa-, was, was also a, a major challenge.

119 04:23 Nuremberg had taken place some 50 years earlier but Nuremberg was useful as a
120 precedent in terms of setting down the, the, the notion of accountability, that people
121 have to be held responsible and accountable for these offenses.

122 04:41 But it didn't provide much guidance to us in, in the nuts and bolts of, "How do you
123 investigate these things, these crimes. How do you prosecute? How do you put together
124 trial teams? How do you manage your, your, your trial chambers and the courts, et
125 cetera? How do you manage witnesses?" So on. So there are a lot of, lot of challenges at
126 the beginning.

127 **05:03 LPN: I have a specific challenge that I would like to have you speak to and that is you,
128 you talked about working with different nations?**

129 05:11 Mm-hmm.

130 **05:12 LPN: And the challenges that that brings, but there are also specific challenges for you
131 in working with the country of Rwanda and the ICTR has been critiqued a-, as delivering
132 victor's justice because it has on its, the, the prosecutions, the indictments that have
133 been . . .**

134 **05:30 LPN: . . . that have gone out have been all towards a, a certain group of people and
135 there are accusations that the Rwandan Patriotic Front also has some atrocities that
136 soldiers within that army committed, and yet the ICTR has not gone after those
137 particular people and there's a long history of this challenge and I would like to give
138 you the opportunity to speak to that.**

139 05:56 Well, this court does not administer, has not been administering victor's justice. I mean
140 our mandate is to prosecute the persons responsible for serious violations and wi-, within
141 that context I think we have to, to, to bear in mind that the genocide in Rwanda is the
142 major crime base.

143 06:17 The genocide in which al-, about a million people were killed is a major crime base and
144 for that reason the tribunal has for much of its lifetime concentrated on investigating and
145 prosecuting that crime.

146 06:30 Of course, we have evidence, or we, we have, we've had evidence of, of, of violations of
147 international criminal law also by members of the Rwandan Patriotic Front. There has
148 been no decision not to investigate those.

149 06:46 We have been investigating them. It has been a matter of prior-, prioritizing. We have
150 been investigating those offenses. As a matter of fact, my office has a special unit
151 devoted entirely to that and as a result of those investigations, for instance, we, we were
152 able to identify one particular case which we wish to prosecute this year.

153 07:09 The Rwandans acknowledged that that incident had occurred. This was the Kabgayi
154 incident in which some members of the clergy had been killed and they wished to be
155 given the opportunity to, to do the prosecution and we agreed to that.

156
157 07:23 We agreed to that, subject to them recognizing the primacy of the tribunal, meaning that
158 if the prosecution was not properly done, effectively and fairly, then notwithstanding the
159 process in Kigali, the Prosecutor here would be entitled to file fresh indictments for the
160 trials to take place here.

161 07:42 They've just fi-, concluded the trial. Four, four persons were indicted before the military
162 court, two generals and two other junior officers for murder as crimes a-, as war crimes.
163 And the result has been that two were acquitted and two were convicted.

164 08:00 I've asked for a copy of the judgment, which is Kin-, in Kinyarwanda. I have yet to, I have
165 yet to receive that. But it's an example of the fact that there has been some work going
166 on in, in, in respect of allegations against the, against the RPF.

167 Part 3

168 00:00 **LPN: Before I go any further, I would like to provide you with the opportunity to reflect**
169 **on your time here not only in your role as Prosecutor, but as your role as a human**
170 **being and think about anything that you would like to share with us, to share with the**
171 **future about the time that you have spent here, about the ICTR or even a, a specific**
172 **story or whatever comes to mind for you that you might like to share ten, 20, 30 years**
173 **down the road.**

174 00:29 Down the road. Well, before I came here I mean I hadn't seen any of these sorts of
175 crimes on this mag-, magnitude. I visited Rwanda. In fact, I make sure each time I go to
176 Rwanda I visit a different province and go, I've, I've visited all the major massacre sites
177 now in Rwanda and seen at firsthand the result of, of this, of this genocide.

178 00:53 And, you know, it, it's, it's, it's a big, it's a terrible tragedy which took place. You have
179 people turning against each other, neighbors turning against each other, even family
180 members turning against each other. A very terrible story, but again, within that you
181 have stories of, of courage, of good people, of people behaving very, very, very well.

182 01:21 You have stories of people who have a lot of faith in the law. There are countless
183 Rwandans who've also worked very hard to save victims. They're even amongst my staff
184 here. They, they are Rwandans.

- 185 **01:39** **LPN: Could you share one of those stories, that perhaps comes to mind for you?**
- 186 01:41 Yes. They, they are Rwandans who have suffered very much from, from what happened. I
187 had a member of staff, a Rwandan, who I'd learned later had actually lost his entire
188 family in the genocide. And here he was working with me. He was actually my driver in
189 Kigali.
- 190 02:01 And I, I looked at him and I couldn't trace any sort of bitterness or anger or anything like
191 that and it, things looked normal with him. And so one day, I, I sort of plucked up the
192 courage myself to ask him, "How, how do you cope with this, the fact that you've lost
193 your, your entire family?"
- 194 02:20 And his answer was simply this, that, "Well I know those who people, those people who
195 did it. I know that they are in detention awaiting trial. If the law is going to take its
196 course, it will not bring back my family but it gives me satisfaction and peace of mind and
197 I, I have no then, no desire then for revenge at all."
- 198 02:41 And I thought well, he was casting a big burden on our shoulders then as the lawyers, a
199 big responsibility – that, that people were looking up to the law to find a solution, to find
200 justice instead of turning to retribution and to revenge. Which itself I think is, is, is an
201 extremely good thing.
- 202 03:01 It, it means for instance, that for the people of Rwanda, the operation of the tribunal has
203 at least one result, of demonstrating to them that there's an option, there's an
204 alternative to this. The use of the law is a viable alternative as a solution rather than
205 conflict.
- 206 03:19 If people are willing to, to hold themselves back and let the law, you know, law, law, law
207 take its course. There, there's staff members also I said who have suffered in, in many
208 other ways but I just want to single out this particular driver. I, I thought, you know, he
209 was a very courageous person.
- 210 03:39 I didn't know how I would have coped with it and that's why I asked him, "How, how are
211 you managing to live actually with this thing hanging over your head?" He said it was
212 okay so long as the law did something, the law did something about it.
- 213 **03:53** **LPN: So . . .**
- 214 03:53 Well I, I think, you know, one of the things I, I, that, that, that come out of my experience
215 with this, with these trials is, I think, is the need for people to go back really to basic
216 values. I, many of these things don't happen without government connivance and
217 government encouragement, government, government involvement.
- 218 04:20 In Rwanda, for instance, I could not understand why the basic principle of loving your
219 neighbor just seemed to have been thrown out the window. But if, if you stick to that
220 simple principle you can't expect this kind of tragedy to take place.

221 04:38 And, and maybe governments are, are not the, the, the best institutions to try and teach
222 people to love their neighbors. But I think families, religious leaders, you know, non-
223 governmental organizations have a, have a responsibility and potentially a very, a very
224 strong role in trying to promote those values.

225 05:00 And if we do maybe it would help us avoid these sorts of, th-, these sorts of tragedies. If
226 we all went back to loving our neighbors, respecting each other and, and desiring for
227 your neighbor what you desire for yourself, it becomes prob-, probably difficult to do
228 some of the things that people did in, in, in Rwanda in 1994.

229 **Part 4**

230 **00:00 LPN: So in your, during your experiences here, you brought with you a, a history and an**
231 **awareness, an incr-, you know, an education all built around this concept of justice.**

232 00:15 Mm-hmm.

233 **00:16 LPN: And then you've been working here for a number of years and the different trials**
234 **have gone in, in, in favor of various people and, and not in favor of others. I'm**
235 **wondering how the outcome of those trials in the, what you have seen gone on in, in**
236 **the courtroom has influenced, changed your concept of justice?**

237 00:43 Well, it's, it's . . . here we are concerned with legal justice. We, we are concerned with
238 legal justice. We, we, we are hoping that as a result of legal justice, maybe we will have
239 an impact on reconciliation and peace in, in, in Rwanda.

240 01:02 W-, I think one of the, one of the lessons we may have to learn from this sort of
241 intervention in, in post-conflict societies is that legal justice is not sufficient, it is
242 absolutely necessary but it's not sufficient. You need to hold to account the people who,
243 who, who got in, who, who were involved in the atrocities.

244 01:23 But beyond that you also need to look at, for instance, the plight of the victims. We are,
245 we are absolutely helpless in this court here, in dealing with the plight of victims except
246 insofar as they are witnesses.

247 01:36 If they are witnesses we provide a little bit of welfare for them, you know, and they go
248 back. If it's a victim of sexual violence who is now HIV positive as a result of it, what do
249 we do? We provide some medication for them and then we let them go back.

250 01:51 When we close down, what will happen to them? I mean, if, if the international
251 community is going to intervene in these post-conflict situations, they, they have to then
252 move on a broad front I think. You, you need to, to have a, a legal justice program. You
253 need to have a program for dealing with the welfare of the victims.

254 02:11 You also then need to, to, to intervene in the society to try and create an environment
255 where you could then have good governance and respect for human rights as a way of
256 sort of preventing, as a preventive, potential present-, preventive measure for, for a
257 recurrence of this sort of tragedy.

258 02:33 So I, I think it would be wrong for us to just do legal justice and go away. It's not enough.
259 It is absolutely necessary, as I said, but it's not enough.

260 **02:44 LPN: Okay, thank you.**

261 **Part 5**

262 **00:00 Donald J Horowitz: I am Jus-, Judge Don Horowitz from the state of Washington in the**
263 **United States and I'm appreciative of your giving us your time and your th-, and your**
264 **thinking.**

265 00:10 You're welcome, welcome.

266 **00:10 DJH: And I've heard the first part and thank you so much. Your, your observations are**
267 **very apt and, and helpful.**

268 00:18 You're welcome.

269 **00:19 DJH: I, I am going to ask a few more, at various points, general questions but I also**
270 **want to, as two lawyers together, ask a few I-, legal ones and a lot of this is, I will**
271 **inquire about, that is for the purpose of, again, seeing where things can be made better**
272 **in the future.**

273 **00:40 DJH: It's constructively approached but I will have to address some criticisms of the**
274 **Prosecutor's office . . .**

275 00:45 Yeah.

276 **00:46 DJH: . . . which of course, you know about, some of which preceded your being here.**
277 **The – I want to talk first of all about recruitment of lawyers and prosecutors. And how**
278 **is that done? And what standards are there now and perhaps earlier?**

279 01:07 Earlier.

280 **01:08 DJH: Yeah. So take us through that if you will.**

281 01:13 Well, we, th-, this is a UN institution.

282 **01:16 DJH: Yes.**

283 01:17 So when we recruit, we advertise internationally and applications are accepted from,
284 from all individuals across the world. But of course we have qualifications, which have to
285 be, to be met. We are quite rigorous now with recruitment.

286 01:38 When we advertise a post, we, we, we set out certain minimum qualific-, qualifications
287 which are required. And we receive the applications and there are many; many come.
288 Sometimes they run into hundreds in respect of a single position.

289 **01:54 DJH: Wow. Okay.**

290 01:55 And, and worldwide. Then we draw up a short list based, trying to identify the people we
291 think are the most suitable in terms of their qualifications and experience. Then they are
292 subjected to an oral interview – sometimes in here or sometimes it's by telephone,
293 because it, it may be difficult to bring in everybody, fly them into Arusha for, for an inter-,
294 oral interview.

295 02:24 If it's a very senior position, we insist on an oral interview with the candidates present
296 here because you need to see the person also and, and, and, you know, get to know
297 more about them. So it's, it's a very rigorous process.

298 02:38 The, the – under the statute all appointments are made by the Secretary-General of the
299 UN. He has delegated that responsibility to the Registrar. But the Re-, the, the Secretary-
300 General makes appointments on the recommendation of the Prosecutor.

301 02:53 So my role is to make recommendations then to the Registrar and he will then make,
302 make the appointment. My, my pri-, primary consideration when making a
303 recommendation is to select the best-qualified candidates academically and, and
304 experience-wise.

305 03:09 And what we look for now are people who have had a lot of experience in working as
306 attorneys, working as attorneys, trial attorneys and appeals attorneys, et cetera. The
307 Regist-, for the Registrar, of course, he has an additional consideration, which is the issue
308 of gender and geographic representation.

309 03:27 So he is the one who takes those considerations into account. When I send in the number
310 of, recommend a number of persons, he will take that into account in, in appointing any
311 of them.

312 **03:40 DJH: This sounds like a, a nicely rig-, rigorous and thorough process. Has it always been**
313 **the case since the tribunal began to have the process, or is this something that you've**
314 **improved upon or, or your predecessors have improved it, improved upon (___)?**

315 03:55 It's, it's improved over the years. Even before I came it has started improving. But the
316 early years were difficult because the, the system had really not been set in place in, in
317 the early years and so, let's say, a few, few less than qualified people did slip in through
318 the net.

319 04:14 I mean th-, there were difficulties in organizing interviews and people got, got into, in, on
320 the basis of their paperwork for instance and then it turns out at the end of the day that
321 they may not be what, what you were hoping, hoping for.

322 Part 6

323 **00:00 DJH: Is there an in-, is there or has there been a program of training or orientation for**
324 **the, for the prosecutors? Obviously you want the best prosecutions and, and, and**
325 **having the best prosecutions and frankly the best defense makes whatever judgment**
326 **there is much more credible.**

327 00:19 Much, yes, and much, much easier too, much easier.

328 **00:21 DJH: Yes, yes.**

329 00:22 There has to be a process of adjustment for anybody who comes into the tribunal. The
330 UN is a very unique creature.

331 **00:30 DJH: Of course.**

332 00:31 And not very easy to, to understand internally. It takes you time once you get recruited
333 into it.

334 **00:35 DJH: Sure.**

335 00:37 And apart from that, of course the-, these courts are also unique. So if you come in as a
336 lawyer you find you may have to – there, there is first a tendency that when people come
337 in, you come in with what you know from your national system.

338 **00:49 DJH: Of course.**

339 00:50 And you come in thinking that that is the best. It's better than anything else. So you have
340 to change that attitude once you come in here and be prepared to, to take, to change
341 that attitude and taking other things from other, other systems.

342 01:03 For instance, if you come from a common law country and, and, and you're familiar with
343 the rule against hearsay, and you come into this court here and you find hearsay
344 evidence is just admitted readily, it – you, you get shocked.

345 01:17 But the principle here is, is that there is – we don't have strict rules of admissibility of
346 evidence like the common law does. The basic principle is that everything that is relevant
347 is admitted and it is a matter now for the judges the way it's, it's, given its, its weight so
348 they take in, take in an hearsay evidence.

349 01:39 Or if you are from the civil law system, you come in here and you've, then you're asked,
350 you are thrown into court and asked to cross-examine a witness. That's absolutely
351 strange to them and so, so you find many of them at the beginning may not actually be
352 familiar with the principles and the methods of cross-examining witness and so they have
353 to adjust to lea-, to learn, to learn those things.

354 02:01 In the OTP, the Office of the Prosecutor, we run an induction program for all new staff as
355 soon as they come in. We try to, we, we have a manual actually and we organize
356 induction courses to, to teach them about the organization of the court, where you can
357 get what done. On the legal side, we have a database, which is developed by the appeals
358 section on the jurisprudence of the court, which they're free, free to access as well.

359 02:31 We send them to Rwanda to, to visit some of the massacre sites because basically, I, I say
360 to myself, I, we don't want prosecutors who will simply sit in Arusha and look at files and
361 go to court on the basis of files. We want you to go to Rwanda, to go and see the
362 massacre sites.

363 02:54 Then when you prosecute, you prosecute with your heart and with your head. I, I want
364 them to be angry enough to see the massacre sites and be angry enough to wish to use
365 their heads very well in order to promote the cause of justice. So we, we, we make sure
366 that all of them go to Rwanda and visit some of these sites as well.

367 **03:14 DJH: To understand the context.**

368 03:15 Exactly.

369 **03:16 DJH: And internalize that. Yes.**

370 03:17 Internalize it and then be able to do the, do the job well.

371 **Part 7**

372 **00:00 DJH: Is there some sort of c-, you come from a, you have a personally, a significant**
373 **background in the law in your own country and internationally before you came here,**
374 **and you of course know about continuing legal or judicial education.**

375 **00:15 DJH: Is there some sort of continuing education or training periodically for your staff?**
376 **Do they for example, both formally and informally – I’m thinking after a trial perhaps –**
377 **get together and critique their performances? Do your different trial teams interrelate**
378 **and learn from each other?**

379 00:39 We try to run a continuing legal education program. It’s not been maybe as effective as
380 we would wish. We have what we call the legal forum in the OTP, which is supposed to
381 be organized monthly to discuss particular legal issues or sometimes to review the
382 outcome in a particular case and try and draw le-, lessons from it.

383 **01:00 DJH: Or tactics or strategies (____)?**

384 01:02 Ye-, exactly, strategies, et cetera.

385 **01:03 DJH: Right.**

386 01:04 We, we do that, try to do that every month. I-, it’s not been that, that regular though. But
387 in addition, I have a weekly meeting of all the senior trial attorneys at which we, we, we
388 disc-, we consider progress reports from each trial attorney on the cases under their
389 responsibility.

390 01:24 Any legal issues that are pending or that may come up, we exchange ideas on how to
391 deal with them, et cetera. What has been a major challenge, of course, in the OTP is
392 ensuring that trial attorneys, senior trial attorneys who are in charge of trial teams
393 coordinate their actions and they share information. That continues to be a major
394 challenge.

395 01:44 When you have a prosecutions at the national level, you have 50 cases. They are all
396 separate. There is no connection between them and so you, you, you hardly need to sit

397 together to discuss strategy except in a general sense. Well, here you have 50 cases, 50
398 accused persons but essentially it's one case.

399 02:05 It's one case of genocide and all the in-, cases are interconnected. What one, what one
400 witness says in one case may be relevant and potentially exculpatory in another case.
401 And so it becomes so important to share information, to share information – because we
402 have a duty of disclosure, for instance.

403 02:27 If one trial team is in possession of information which, which is inculpatory of its accused,
404 but exculpatory of another accused being handled by a different team, he has an
405 obligation to disclose. But unless he, they, they coordinate their actions and share
406 information we run the risk of failing in our disclosure obligations. (____) . . .

407 **02:48 DJH: Well, it's very interesting because you led right into another question I was going
408 to ask, because in fact we've already interviewed a number of prosecutors and they
409 stated, and I believe them, that they know the duty of disclosing exculpatory evidence
410 and they, they adhere to it as best they can.**

411 03:06 We've had lapses.

412 **03:07 DJH: But, but you've had, but you've ha-, of course, there's been some, some . . .**

413 03:09 Serious lapses.

414 **03:10 DJH: . . . some serious cri-, criticisms.**

415 03:11 Yes. Yes.

416 **03:12 DJH: Serious lapses. And, and I-, I'm glad to hear you acknowledge that and, and one of
417 the reasons you've just des-, described is, is the lack of communication. Yeah.**

418 03:23 Communication between, between this, the, the teams themselves. We, we try to, to get
419 them and that's one of the reasons why every Friday I, I arrange this meeting. It's usually
420 two, three hours with all the senior trial attorneys and each of them talks about the case,
421 their case.

422 03:36 What did they do last week? What do they plan to do next week? Who are the witnesses
423 they are calling? So that something might be of interest to somebody else, another trial,
424 senior trial attorney who's attending the meeting and then they can coordinate.

425 **03:48 DJH: Okay.**

426 03:49 But you also need to coordinate positions, you know, positions on issues like case
427 theories. I mean, it's no use one team putting forward a theory for instance, that its
428 accused people were the ones responsible for organizing the genocide and the other
429 team also takes a view that no, it's their accused who, who, who were responsible, who
430 were the top culprits – because there's a temptation for the, every team to make its case
431 appear to be the, the most important.

- 432 **04:16** **DJH: Of course.**
- 433 04:17 So, so you, you have to, to monitor those, those issues to, to try and make sure that the
434 theory is the same – that our, our, our explanation of the genocide is consistent from,
435 from case to case.
- 436 04:30 I have a Chief of Prosecutions who, who monitors that sort of thing and, and tries to
437 make sure that we have a kind of uniformity and consistency in approach, we have a
438 coordination in our, in our efforts and trials and we have a sharing of information, that
439 we live up to our disclosure obligations. But it's, it's the biggest challenge we face in the
440 OTP.
- 441 **04:50** **DJH: Okay. I want to go to one other legal – we were talking about the civil and, and**
442 **the common law.**
- 443 **04:56** **DJH: Some of the people we've interviewed have said it might be better if the ci-, civil**
444 **law, the civil law were used in terms of the ability of an inv-, having an investigating**
445 **judge versus the prosecutors being in charge, without any criticisms of any of the**
446 **specifics.**
- 447 **05:17** **DJH: They're used to that system and some of them feel that it, it might be better in or**
448 **at least some aspect of that might be better included in the total . . .**
- 449 05:26 The total . . .
- 450 **05:26** **. . . package of the, of the tribunal. And I, I'd be interested in, in your thoughts on that**
451 **subject.**
- 452 05:36 I, I, I mean I only think that it, it may lead to a duplication of, of the work and instead of
453 saving time, it may extend the time for, for trial because the role of the investigating
454 judge will still not exclude the process in court where the trial court judges sit to hear the
455 evidence.
- 456 **05:59** **DJH: Of course.**
- 457 06:00 You know, the, so, so you, you may not be saving time by having an investigating judge
458 and I think the current system we have is probably, probably, probably good enough. In
459 Cambodia, in the Cambodia tribunal for instance, they have the investigating judge.
- 460 06:17 But, but y-, you have an investigation first by the prosecutor who then goes to ask for a,
461 an indictment, then you have an investigation by the investigating judge and then you
462 have a trial. I think that process is too, too much drawn out, too long and maybe the,
463 what we are operating now, I don't know, may, may be much better.
- 464 **06:37** **DJH: Well, of course, I think earlier we talked about the fact that international criminal**
465 **justice particularly in these areas is developing, and people are trying different**
466 **experiments and . . .**
- 467 06:47 That's right.

468 **06:47** DJH: . . . perhaps at some point we'll figure on the best system or . . .

469 06:50 Best system, yeah.

470 **06:51** DJH: . . . et cetera.

471 **Part 8**

472 **00:00** DJH: **Is there anything that has happened here that has really surprised you in your**
473 **experience here? Both either – either personally or professionally.**

474 00:09 Oh, well, I . . . it's difficult to think of something that has surprised me. Unfortunately I, I
475 well, I mean you may have sort of, for instance, decisions which may have been made by
476 the judges which have surprised me sometimes.

477 00:30 I mean . . . we, we've had a situation last week for instance where, where a witness
478 comes in to court – a witness who had testified before in 2004 for the prosecution after
479 giving a statement in 1996 to the Prosecutor – comes back in 2008 to recant that
480 statement and the testimony.

481 01:01 So he had given a statement in nin-, 1996, he'd come in in 2004 and sworn under oath
482 and testified in line with that statement, then in 2004 he comes in and, and on oath again
483 recants his statement and then he's allowed to walk away. He's perjured himself.

484 01:20 And when you try to get the, the court to, to, to order his detention pending a, his
485 indictment investigation, they seem to take the view they don't have the authority to do
486 that.

487 01:33 And, and I think the court has an inherent authority to protect its integrity and to deal
488 with people who commit these offenses in the face of the court itself, in the face of the
489 court itself; to deal with them in order to make sure that, that the process is, is
490 respected, so that's, that's been a recent surprise but it, it may well not recur, I hope.

491 **01:55** DJH: **Well, yeah, and, and what, what we're seeing is there's a development of the**
492 **jurisprudence of the court and this court has developed with, with the help of, of, of**
493 **the lawyers a significant amount of jurisprudence that can be used in future. This is**
494 **another one of those areas perhaps. Whether it's jurisprudence or what, something to**
495 **look at for future tribunals.**

496 02:17 Sometimes I, I, I – of course, I think the, the trials we have to make sure they are al-,
497 always fair.

498 **02:25** DJH: **Of course.**

499 02:26 There has to be a fair trial for each accused. But there's a tendency sometimes for over-
500 caution on, on the part of judges. And, and an incident like this is something we can, we,
501 we could hold the court up to ridicule that somebody can come in to the (___) of the
502 court, commit an offense in the face of the court and go away.

503 02:50 You know, i-, i-, if it does continue to happen, then it, it could cause difficulties and set
504 really bad precedence as well.

505 **02:59 DJH: Is there anything that you've done or been part of doing here that you're**
506 **particularly proud of?**

507 03:08 I, I, let's say, I'm happy to have been here and, and to contribute in a little way to, to
508 what's going on now. It's, it's – we have a good team here in the OTP and, and it's a team
509 which has remained very stable over the years. We haven't lost many people, who've
510 been going away.

511 03:27 Many of the people who are here are here not for any material gain as such, or less for
512 material gain but because they're committed very much to, to, to ensuring that justice is
513 done and so they've tended to stay through, through many difficulties, so I'm happy to
514 be proud, part of that team and to lead the team.

515 **03:45 DJH: Anything that you're disappointed that you have not been able to do or, or not**
516 **done as well as you would've liked? I don't mean just you personally but your office.**

517 03:52 Yeah, yeah, yeah. The, there are two areas I think one would like to, to look at. One is in
518 terms of number of indictees. It would have been good if we could have really indicted a
519 lot more people and prosecuted a lot more people than we actually have.

520 04:11 There are many, many persons, suspects walking around in outside Rwanda here who
521 have serious allegations hanging against them, whom we are not able to prosecute
522 because of the completion strategy, because of the fact that we have to close down as an
523 ad hoc tribunal.

524 04:29 And for them, a way has to be found to deal with them. A way has to be found to deal
525 with them, and this is connected with second issue, which is the transfer of cases to
526 Rwanda. A, an important part of the completion strategy was and is that we should try
527 and transfer some of our cases to national jurisdictions for, for, for trial, including
528 Rwanda.

529 04:54 So far, we have not been able to do that. We have not been able to obtain a court order
530 because the judges' assessment is that fair trial may not be possible in Rwanda at the
531 moment in resp-, for those accused persons.

532 05:08 They are concerned about witness protection issues, about, generally about the ability of
533 the defense to, to operate effectively in Rwanda. But Rwanda, it has agreed to still review
534 its laws and its practices and try and improve on them in order for us to, to succeed with
535 the, possibly with a, with a second round of applications for, for referral.

536 05:30 The, the, the referral regime is important for us. It's important for Rwanda, it's important
537 for other countries.

538 05:38 If it succeeds, it will take a big burden off the tribunal and enable us to complete well;
539 complete well in the sense that then we can actually even transfer the fugitives' cases to

540 Rwanda and then a mechanism can be set up to continue to search for them and send
541 them to Rwanda.

542 05:58 If there are no transfers made to Rwanda and we want to close down, that issue will be
543 left hanging. The, the issue of how to deal with the fugitives will be left hanging and it is,
544 it is being considered that maybe then they could be dealt with by the residual
545 mechanism which will come in after, after we close, but that's not a very neat way, I
546 think, of ending.

547 06:20 It's best if we ended with those cases being referred to Rwanda. The referral is also
548 important for Rwanda because it's a stamp of approval but beyond the stamp of approval
549 I think it's also, it's also a, a, an acknowledgment that Rwanda needs to be involved in
550 the process as the country where this tragedy occurs.

551 06:43 The referral is also important for other countries and for dealing with those other people
552 whom we have not indicted and we, we whom we have not indicted because we are
553 closing down. If we manage to get a referral to Rwanda, other countries where some of
554 these suspects may be located can extradite them to Rwanda and, and have them tried
555 there.

556 07:06 If the, if the referral doesn't succeed what you'll have probably then is, in c-, in, in, for
557 instance, in the UK and, and other countries, you'll have genocide suspects residing there
558 who cannot be prosecuted for jurisdictional reasons in those countries and who cannot
559 be extradited to Rwanda because of the perception that there is no fair trial.

560 07:29 And then you have this gap in impunity, a gap in accountability rather. You know, th-, and
561 they'll, they'll, they'll just be walking around. So it's, it's, it's those two areas I hope, I, I
562 wish that we could see some, some progress being made.

563 **07:45 DJH: Is there a, a mechanism by which your office and the chambers and the defense**
564 **can work together? Is that a possibility to try to figure things out together? Collaborate**
565 **if you will . . .**

566 07:58 The defense . . .

567 **07:59 DJH: Yeah, I, I understand. Yeah.**

568 08:00 The, the, the defense – no, probably. They'll oppose any transfer to Rwanda. The judges,
569 we can't involve them because they are the ones who decide.

570 **08:08 DJH: Sure.**

571 08:08 But the OTP and Rwanda work together on this and what we do is the judges will
572 communicate in their decisions what their concerns are. And then we sit with Rwanda
573 and, and figure out how do we address, how do we overcome these concerns which have
574 been identified by, by, by the judges?

575 Part 9

576 **00:00** **DJH: I have two more questions only. You have had – I’m repeating – an extensive**
577 **career before this and seen a lot of things. But these last years you’ve been here and**
578 **you’ve been, you’ve had to work with very difficult sets of facts, the genocide itself,**
579 **become familiar with the context as you have wanted your staff . . .**

580 00:25 Staff to do . . .

581 **00:25** **DJH: . . . to become familiar and, and dealt with very difficult problems, some of which**
582 **you’ve i-, many of which you’ve identified today.**

583 **00:33** **DJH: How has this changed you? How has this affected you?**

584 00:40 I, I don’t know. I, I think probably somebody else might know. But, but I’m, I mean
585 working here on, on genocide as I, as I indicated earlier, has made me believe a lot in
586 extra-legal measures, also the importance of extra-legal, extra-judicial measures which
587 need to be taken to, to deal with injustices.

588 01:07 I believe very much in, in sort of trying to work at the community level to bring
589 communities together, bring ethnic (), groups together, to get people to, to, to respect
590 basic values, basic values of, of love and friendship and good neighborliness, et cetera. I
591 think those are so important. You know, I, I – and, and secondly, also, I’ve come here
592 from Sierra Leone, the ad, the ad hoc tribunal in Sierra Leone which is different from this
593 one.

594 **01:40** **DJH: Yes.**

595 01:41 And . . . I, I now believe more and more that the future lies in that kind of tribunal.

596 **01:49** **DJH: Give us a – what, what you mean a little bit by, by that.**

597 01:52 I, I think . . .

598 **01:53** **DJH: We are running out of time but I, it’s important to . . .**

599 01:55 I, I, I suspect that next time around we have a, a genocide it may be difficult for the
600 international community to set up a tribunal such as this one or the ICTY, a huge
601 international venture to deal with these cases.

602 02:08 I think it’s important that we recognize the need for the involvement of the national
603 systems of the people, where these offenses occurred, their involvement in any process
604 of justice and, and the Sierra Leone model provides that.

605 02:24 If possible, if it’s, it, you locate it in the country where the offenses took place, you, you
606 engage the local population in the justice process, recruit them into it, you have local
607 judges, local prosecutors working with international judges, international prosecutors.

608 02:39 I, I think the, the, the future may lie in that way. You, you need to engage the people in it
609 and it, it will operate probably a lot more quickly also and it will create better
610 understanding on the part of the local population of what you are trying to do.

611 02:55 One of our problems we have here is that we're not in Rwanda. We are far from Rwanda
612 and so we have to consciously find ways always of trying to get them to understand and
613 be involved in what we are trying to do through, through outreach. We are a little bit too
614 separate from them.

615 **03:14 DJH: Well, we're hopeful this project for which I am involved in, with which I am**
616 **involved and which Lisa is involved, will be able to assist in that, in that possibility.**

617 03:24 That's good. You're welcome, will be helpful.

618 **03:26 DJH: And finally, the last question is the same question Lisa asked you, I don't know,**
619 **maybe 40 minutes ago.**

620 03:34 Okay.

621 **03:34 DJH: Now that we've had further conversation, is there anything more that you would**
622 **like to say to your grandchildren in the future or to the people who follow you, about**
623 **what you as a person have learned or want to express and what you as a professional**
624 **would like to express?**

625 03:54 To, to, to my family and to ordinary people who are not, not to the, to the lawyers, I
626 would just say, make sure you respect everybody. Every person needs to be respected,
627 every person needs to have their rights recognized and respected.

628 04:10 You need to live together with peace with, with everybody. Everybody is your neighbor,
629 as well. To the lawyers, I'd say the law is absolutely necessary but it's not enough. It's not
630 the end of everything. You need to go beyond the law to, to, to find a solution to many of
631 these, these, these crises as well.

632 **04:29 DJH: Thank you very much.**

633 04:30 Okay. Thank you so much. Thank you.

634 **Part 10**

635 **00:00 Batya Friedman: So I'm Batya Friedman, professor at the University of Washington and**
636 **I am here with Mr. Jallow, the Prosecutor at the ICTR. It's November 6th, 2008 and we**
637 **are continuing our interview with Mr. Jallow.**

638 00:14 You're welcome back again.

639 **00:16 BF: Thank you so much.**

640 00:17 Okay.

641 **00:19 BF: So, I know that as the Prosecutor, the overall Prosecutor, you have a, a very unique**
642 **role that, different from the other prose-, different from the lead prosecutors of each**
643 **of the cases and that I'm wondering if you can help us understand that a little bit**
644 **better.**

- 645 **00:39** **BF: Things that I'm wondering about are how do you set the overall strategy for the**
646 **prosecution as a whole? And also, you've come to this about four years ago so you've**
647 **inherited, you know, from prior prosecutors overall strategies.**
- 648 **00:59** **BF: So what, what did you inherit and how did you appropriate that and, and what is**
649 **your vision for how the prosecution as a whole should go forward?**
- 650 01:10 You're right. I, I came in well after the institution had been set up almost a decade after it
651 had been set up, so I, I came in midstream also at the time when the Security Council had
652 passed a resolution the same year requiring us to close down, finish our work and close
653 down by end of 2010 in, in various phases.
- 654 01:32 Such as the closure of the conclusion of investigations by 2004, the conclusion of trials at
655 first instance by 2008 and then the conclusion of the appeals by the end of 2010. Here
656 we, within the OTP, the Office of the Prosecutor, we organized essentially in, in, in a
657 number of sections. You have the immediate Office of the Prosecutor responsible for
658 policy issues. You have the Investigations Division in Kigali.
- 659 02:02 You have the Prosecution Division here in Arusha and you also have the trial, the
660 Appeals, sorry, Appeals Division also based here in, in, in Arusha. And they are supported
661 by the IESS, Information Evidence Section, which is responsible for holding and managing
662 our evidence database.
- 663 02:21 Now the, the trial section is split into trial teams, each of them headed by a senior trial
664 attorney and comprising other members of staff and they report immediately to the
665 Chief of Prosecutions who then reports to, to, to the Prosecutor.
- 666 02:38 It's the Prosecutor's responsibility to decide on who to indict and with what crime, based
667 on the recommendations which come up from the senior trial attorneys (___) to the Chief
668 of Prosecution and on to him.
- 669 02:53 And it's for him, the Prosecutor, also to decide whether we should ask for an amendment
670 to an indictment and then also other policy issues. Senior trial attorneys of course are
671 supposed to, to run their cases in, in the routine way – decide who their witnesses should
672 be and how, how they will deal with them in court and so on and so forth.
- 673 03:16 The, so the, the Prosecutor, Prosecutor's role in the actual conduct of cases is usually –
674 I've, I've confined it to being there at the beginning like doing an opening statement,
675 going in for the judgment, also working with the coordinating counsel and particularly
676 the President of the tribunal in scheduling cases for trial, in, in deciding which, which, in
677 helping him decide which cases should be scheduled for trial when and so on.
- 678 03:47 Now, the, the, the Prosecutor also presides over trial readiness meetings. You know, for
679 each case we have, we, we, we hold a review of all the senior staff, by all the senior staff
680 in the OTP, first, to, to look at the draft indictment which is presented by the trial team
681 and approve it or suggest changes before the Prosecutor considers it.

682 04:12 And thereafter, we also convene what we call, the first one is called indictment review.
683 The second meet-, the second meeting is called the trial readiness review and that is then
684 meant to, to evaluate the level of preparedness by the trial team for, for conducting the
685 case, whether they've done all the things they are supposed to have done like dealing
686 with the disclosures, whether they have any witness issues, and so on and so forth.

687 04:36 Now, I, I came in as I said almost midstream and my task immediately when I arrived was
688 then to dis-, to determine what was the level of work that we could accomplish within
689 this timeframe which the Security Council had given us. We had quite a lot of targets, a
690 lot of cases on hand at that time.

691 04:58 So it was for me to decide and advise the Security Council what were the cases we
692 thought we could complete. That of course required us to decide the criteria by which we
693 would select the cases which we thought we would finish.

694 05:12 So we, we organized a forum within the office and for some time, we devoted some time
695 to deciding the criteria and in a nutshell what we, what we decided was that we'd look at
696 the status of the offender, if he was a government person, who was involved in the
697 genocide.

698 05:28 We, we'd looked at the nature of the offense that was committed by the person. We
699 would also look at the, the extent of the crime. You could have a person who was not,
700 who's, who was of a low level, a low level perpetrator in terms of status, an ordinary
701 citizen but one whose participation was so notorious that you had to prosecute him.

702 05:52 We looked at the nature of the crime as I said and here we, we thought wherever we had
703 evidence of sexual violence, strong evidence of s-, sexual violence we would try to
704 proceed to, to, to a prosecution.

705 06:03 And then the fourth criteria we decided on was the need for geographic distribution.
706 Given that the genocide had been a widespread phenomenon in Rwanda, we did not
707 want to let any of the administrative areas not be represented in the, in the number of
708 indictees who had been prosecuted.

709 06:25 And because this, this we thought could have an impact on national reconciliation, so we
710 were careful also then therefore in, in making sure that every area was represented in
711 our list. So then wha-, then we reviewed the cases we had on the basis of that criteria
712 and settled now for the cases we now have in hand.

713 06:45 Then with the second stage was to evaluate the strategies for prosecution that, that, that
714 were in place at that time, and we felt it was necessary to change strategy if we were
715 going to finish our trials on, on schedule.

716 07:01 And you'll find for instance, we, we decided that the indictments themselves had to be
717 much more focused, much shorter, much leaner because the old indictments we had
718 here were quite big, I mean very lengthy documents and we thought we should try and
719 have what we call "lean and mean" indictments rather than big ones.

720 07:24 Try and focus on less crimes in respect of an accused, focus on the offenses with which,
721 with which, for which we thought we had enough evidence and which could easily be
722 established, rather than charging a dozen counts. If you had, if you could proceed on
723 three counts you, you, you did that.

724 07:44 We thought we needed to reduce the number of witnesses as well because they were
725 running into hundreds, close to 100 in some cases. Pick the best witnesses, proof them,
726 prepare, I mean confirm them, make sure they, they are ready for court even before we
727 filed our indictments, rather than the reverse which, which had seemed to be going on
728 before.

729 08:08 And, and one of the major strategies also we, we decided upon was to move away from
730 multiple accused cases. We'd had a lot of multiple accused cases and these had been
731 going on and are still going on for a long time. The, the Butare trial, for instance, has
732 been going on close to seven years now and is not yet closed.

733 08:27 And it's not likely to finish in terms of having judgment delivered before the end of next
734 year or up to end of next year. So we, we decided that we had the, the evidence and the,
735 and the witnesses permitted to avoid duplication, for instance. We should have single
736 accused trials.

737 08:44 So you'll find since 2003 we've only filed indictments in respect of single accused and
738 what, what this – and it has worked. It has worked. We've had more – we finished more
739 single accused cases in the same period, in fact almost double than the number of cases
740 concluded in the, in the previous years, and I think this is because of that, that change of
741 strategy.

742 09:09 So that, those are sort of things we had to do you know, as soon as, soon as I came in
743 midstream we had to sort of change, change tack in, in, in that direction.

744 Part 11

745 00:00 **BF: So I have many questions to follow up on here in different pieces. From the**
746 **perspective of prosecuting for genocide, which is as we've talked about really quite**
747 **different than if there's a single murder or even if multiple people are murdered by a**
748 **small group of people.**

749 00:19 **BF: And if you think about how those prosecutions unfold over time and you're**
750 **thinking – and, and thinking about tribunals in the future – how should I phrase this?**
751 **One thing you could conclude is the kind of strategy that you've articulated is really the**
752 **strategy that ought to have been applied from the beginning.**

753 00:40 The beginning, yeah.

754 00:41 **BF: Or another thing you could conclude is that in the beginning, when one is first**
755 **starting to understand the territory of the genocide, there is something about needing**
756 **a different kind of prosecution in the beginning that evolves.**

- 757 **00:56** **BF: And I'm just wondering from your perspective and your experience, if you were to**
758 **be mentoring another prosecutor of a tribunal somewhere else at some other time and**
759 **taking the, the longer term perspective of how prosecutions would unfold, what**
760 **recommendations about strategy would you give based on your experience?**
- 761 01:19 Well, we, we thought actually one of the lessons which, which need to be learned from
762 our own experience is that when you do set up a tribunal and you, right from the
763 beginning, you need to develop your completion strategy at that point.
- 764 01:34 In other words, you need to decide right from the beginning what are you trying to do,
765 how many people do you want to prosecute, how long do you want to go on, who do you
766 want to prosecute and when do you want to close down? The, the, the ad hoc tribunals
767 did not do that.
- 768 01:50 Even though they had been set up as ad hoc with a, with a definite lifespan you know, a
769 sort of a (____) lifespan, not much thought had gone into these questions and so the
770 work was just going on. But I think one of the lessons, the first lesson is to, to, that we
771 need to learn, right from the beginning that we need to establish a completion strategy.
- 772 02:10 And I think even for the ICC which is a permanent court you, you need to establish a
773 completion strategy in respect of a particular situation. If it is Congo or DRC or Sudan, if
774 you are going in you need to determine what do I want to do here? Who is my target?
775 When do I want to finish the job? And at the end of the day, what do I want to have
776 accomplished?
- 777 02:34 The other lessons relate to strategy and we've, we've discussed some of these issues. I
778 think you need to, to be concerned about ensuring that the trials move on speedily and
779 conclude speedily and, and that can be affected by the size and the nature of your
780 indictment.
- 781 02:50 You need to have smaller focused indictments. You, you need to probably move away
782 from multiple accused to single accused cases. Sometimes it's an advantage to have
783 multiple accused. If the witnesses are common, the evidence is the same and the
784 incidents are the same, it doesn't make sense to separate the accused. You, you put
785 them together. You'll save time.
- 786 03:14 But there are dangers also in putting accused together. I mean if anything happens to any
787 of them, the whole case gets held back. I mean I mentioned I think yesterday the, the
788 Karemera trial.
- 789 03:25 We are now faced with the, with the, with the issue before the trial chamber as to when
790 or whether one of the accused should be severed from the case because he's not, he
791 won't be able to appear in court for the next six months.
- 792 **03:38** **BF: Mm-hmm.**
- 793 03:39 Should we sever him from the case and continue with the other two or should the (____),
794 whole case be adjourned? That's one of the difficulties with, with multiple accused trials.

795 Anything that happens to one accused or defense counsel or a judge or, you know, it
796 impacts on, on the whole case itself.

797 03:56 And another lesson I, I, I believe is, we, we have also recognized is particularly in relation
798 to sexual violence offenses. We have not been as successful as we would have wished;
799 we have not had a very good record of convictions for, for sexual violence.

800 04:14 Even though right from the beginning this tribunal broke fresh ground in the Akayesu
801 case by holding that sexual violence can const-, can constitute genocide. But we haven't
802 gone, gone much beyond that.

803 04:29 And the lesson we've learned in respect of sexual violence is that it is important and
804 necessary to prosecute it but you have to fast track it. You, you have to give it priority in
805 terms of prosecution.

806 04:43 If the cases don't get to court within a number of years, you, you'll find that by time you
807 are ready to go to court, your victim is not interested in justice, is, is (___) not interested
808 in justice. You want to pursue the justice line. The victim has resettled, is remarried, has
809 family.

810 05:05 They don't want to reopen those issues anymore and, and that's one of the problems
811 we've had. They don't want to reopen. You want to push the justice angle but they say,
812 "No. Look, I don't want to reopen that chapter again," and you end up therefore not
813 being able to prosecute.

814 05:17 So you need to, I think, to, to deal with sexual violence very early, at a very early stage
815 when people still, when victims still want justice and they can still, you know, pursue the,
816 the, the justice line.

817 05:31 I think these are some of the lessons. Organizationally, I think even within the OTP the
818 number of issues also or lessons – how do you organize your trial teams? I found here,
819 for instance, a distinction drawn between trial attorneys and appeals attorneys, whereas
820 at the national system there is no such distinction. All attorneys are supposed to be
821 capable trial lawyers and capable appeals lawyers.

822 06:01 It's, it's, it's been very difficult if not impossible to change that, that separation here. But I
823 think when, when for the future, when one is setting up an OTP you need to just have
824 trial attorneys who can do both, both, both aspects of, of the work.

825 06:19 Sometimes I think the, the trial teams themselves could be, you know, reduced to more
826 manageable sizes, more, more manageable sizes and, and these are some of the lessons I
827 think we've, we've learned and which can be taken into account by and for the future.

828 Part 12

829 00:00 **BF: So in returning for a moment to the sexual assault cases, I'm inferring from what**
830 **you've said that you think it's actually very important to prosecute for sexual assault . .**
831 **.**

832 00:12 Very important, I think so, yeah.

833 **00:14 BF: . . . even though it may have it, its challenges, so I'm wondering if you can articulate**
834 **a little bit more about why is that really important. So what if it would be possible to**
835 **convict the people that, you know, most rose to the top of your list based on say**
836 **massacres, on killings, and not touch the sexual assault at all?**

837 00:35 Just (__) violence.

838 **00:36 BF: Right. What, what would be at stake? Why would it, why is it important to pursue**
839 **that?**

840 00:43 To pursue that.

841 **00:44 BF: And then also, given that view and thinking back from the beginning, okay, there's**
842 **doing it sooner, but are there other lessons that you think other prosecutors, other**
843 **tribunals should be aware of in order to be effective in doing that kind of prosecution?**

844 01:04 I mean sexual violence needs to be prosecuted. Because it's, first, it's se-, serious crime.
845 It's a very serious crime. And its, its seriousness is reflected in the fact that when we
846 negotiate guilty plea agreements here, an accused would rather plead guilty to genocide
847 than to sexual violence.

848 01:23 It, it – the conviction for sexual violence carries with it, in their view, a greater stigma
849 because of the seriousness of the offense itself. So, so we, we, we have not even been
850 able to get anybody to plead guilty to, to sexual violence.

851 01:38 And I think secondly, also in the context of Rwanda itself, the violence is linked to
852 genocide because the sexual violence was a tool of the genocide.

853 01:48 I mean rape, sexual assaults, ripping up wombs, you know, killing infants and so on, so it
854 was a deliberate strategy to resort to sexual violence, to humiliate and to destroy that,
855 that part of the population. And I think we should not ignore that fact just simply by
856 prosecuting people for generally the offense of genocide.

857 02:09 It's also targeted at, at a weak-, weaker section of the, of the community and, and I think
858 it's important that their plight is recognized specifically by addressing the, the offenses
859 committed in, in relation to them. Then there is the, the possible deterrence value.

860 02:27 Look at the DRC now. DRC, the sexual, level of sexual violence there is, is just, you know,
861 it's terrible at the moment. There're lots of things going on there but it continues and if,
862 unless we, we make some, you know, significant impact in, in prosecuting people, getting
863 convictions for sexual violence and it is publicized, that sort of practice will continue to
864 be part of these conflict situations – the DRC, Sudan, and so on and so forth.

865 02:55 So there are many reasons why we should. We, we've taken the trouble here to evaluate
866 our record. It's a self-evaluation. It may not be all that objective. It's a self-evaluation. We
867 evaluate our record of prosecution in sexual violence.

868 03:12 And as I said, we, we, even we ourselves have said we could have done better and we
869 have now developed a, a manual on what we think are the best practices, the best
870 methods to follow in dealing with this, this offense. It's in the stages of finalization and
871 we hope to share it with all the other tribunals and practitioners who are, who are
872 interested.

873 Part 13

874 00:00 **BF: Something else that you have talked about a little bit and I think some others, is**
875 **talking a little bit about what goes on here at the tribunal as being symbolic in terms of**
876 **addressing the genocide. It's an interesting word to use. I'm wondering when you use**
877 **that word, in what way is, is the work of the tribunal symbolic?**

878 00:28 It's symbolic well, it's . . . I think it's, it's important for the, for the people of Rwanda out
879 there. I mean it, it's, to them it shows that the international community is, is interested in
880 what happened to them, is interested in, in their welfare.

881 00:48 It's symbolic in another sense that, the, the international system because of its nature
882 can't really prosecute everybody, so you have to concentrate on a few symbols of those
883 offenses, the senior people who, who, who committed these offenses. Pick them out,
884 make sure they are prosecuted.

885 01:08 And in that way, you can then send the message to people like them, to people of the
886 same status who are in other jurisdictions, a message of deterrence that accountability
887 even at that level is, is, is possible. I think in, in those two senses it (_____).

888 01:28 **BF: And then in the mandate there's also this notion of reconciliation along with**
889 **justice. And I'm wondering – just from your own personal experiences as the**
890 **Prosecutor, and as you've made decisions – are there ways in which having**
891 **reconciliation also as, as part of the mandate has influenced some of your decision-**
892 **making or thoughts or feelings?**

893 01:57 Well, as, as I said the – when we are prosecuting our immediate concern is legal justice,
894 not reconciliation. That's the objective. Secure a conviction of the accused person and on
895 the other side is secure an acquittal. But we, we hope that through the way we work we
896 can have an effect, a reconciliatory effect on Rwanda.

897 02:17 And, and one of the ways we've tried to do this is, for instance, through the guilty plea
898 negotiation process. One of the strategies, by the way, we, we, we put in place, also
899 midterm, was to sort of give emphasis to the guilty plea process. The tribunal had heard
900 a guilty plea from the former Prime Minister Jean Kambanda several years ago.

901 02:42 But, even though he was convicted on his guilty plea he continued to claim that he had
902 been misled. I don't think there is any merit in his claim but the, the, the effect of it was
903 to deter other persons from entering into guilty plea negotiations until about 2004.

904 03:01 So, we, we, our policy then became that we should encourage accused persons to plead
905 guilty so that we can finish our cases, and in consideration of their pleas they could have

- 906 reduced sentences and, and location to, let's say, less harsh, harsh prison conditions in,
907 in, in other countries.
- 908 03:23 But one of the ways in which a guilty plea has worked, for instance, in relation to
909 reconciliation has been for instance, in two cases.
- 910 03:33 We've had two cases where the accused pleads guilty and we encourage them to make a
911 statement from the dock – which, which one of them did and it went down very well –
912 statement acknowledging that a genocide had occurred in Rwanda, apologizing to the
913 people of Rwanda and offering to help in any way towards reconciliation.
- 914 03:54 There was another accused also who stood in the dock. He, he did not deny – he, he
915 denied his culpability but he admitted that a genocide had taken place in Rwanda and he
916 apologized to the, to the country and to the people for that sort of thing.
- 917 04:10 Those, those, those actions can, can assist with, with the reconciliation process.
918 Unfortunately, most of the accused just continue to deny that a genocide ever took place
919 and, and that doesn't help. That doesn't help.
- 920 04:24 I think it is better if a position was taken, as the appeals chamber has now decided, that
921 the occurrence of the genocide is beyond dispute. It would be more helpful if the defense
922 teams took the same position but even if they continued to deny the culpability of their
923 clients, can say, "Of course, a genocide did took place. For which we are sorry, but I had
924 nothing to do with it."
- 925 04:49 It's a different, different tack from saying, "There was no genocide. If there was one, I
926 was not part of it. If I was part of it, I was forced." You know, it, it doesn't help
927 reconciliation. The victims, the survivors, survivors and the people in Rwanda feel much
928 more offended naturally by that sort of strategy.
- 929 **05:12 BF: Then . . .**
- 930 05:13 I mean the, the appeals chamber has said, "The occurrence of genocide is indisputable as
931 is, 'tis indisputable that the sun rises in the east and sets in the west." So, what can they
932 gain from continue, continue to deny the genocide except to offend the, the (), the
933 people of Rwanda and to offend the survivors.

934 Part 14

- 935 **00:00 BF: One other issue that we've become aware of are the, that there can be a lot of**
936 **cultural differences that show up in the courts. The, the courts are largely a western**
937 **kind of law or justice and many of the witnesses coming, they may be coming from**
938 **villages.**
- 939 **00:20 BF: They may have experience in sort of let's say African concepts about place and time**
940 **and notions of justice that might be quite different than the way in which the court**
941 **operates. Have you seen that play out with the prosecution and are there lessons to be**
942 **learned with respect to you know, how those different systems can be addressed?**

943 00:51 Yeah, it, it's – these offenses took place in Rwanda. Rwanda is a, speaks Kinyarwanda.
944 Let's take the language issue, for instance, speaking Ki-, Kinyarwanda. We have a team of
945 international staff here. Even if many of them are from Africa, they don't speak
946 Kinyarwanda.

947 01:07 They don't understand Kinyarwanda and there are maybe different, cultural differences
948 also between where they come from and what happens in, in Rwanda. And, and we
949 found that it's absolutely essential to integrate Rwandan staff into the process, especially
950 at the level of the Office of the Prosecutor.

951 01:27 And so as a result, what we've done, we've had the Rwandan associate investigators
952 working with the international staff in Kigali. We have language assistants, Rwandan
953 language assistants who help us with the documentation.

954 01:41 We have Rwandan trial attorneys and appeals counsel, all of them working here. And,
955 and that helps us not just to be able to overcome the language issue but also to
956 understand, to understand the witnesses much more. You, you need that. It's absolutely
957 essential. (___).

958 **01:58 BF: Can you think of a particular story or, or a situation that . . .**

959 02:04 Not, not off, not off head as such, but it, it's we find it's absolutely essential to work
960 alongside the Rwandans. They do translations for us. They, they act as intermediaries
961 with the Rwandans. They, they, you know, they explain things to us.

962 02:19 For, for instance, I mean, in, in – I'll give you an example. In, in many African societies,
963 when you're talking of sexual violence, I mean explicit reference to the sexual act is
964 something that is not done. It's not done at all, it's, it's, it's considered unacceptable.
965 Instead the language used to refer to the act is something if you are a foreigner or if you
966 don't come from part, that tradition you will not understand.

967 02:54 It's, it's, it's the kind of, the . . . the vocabulary used does not – to an outsider may not
968 mean that at all, so you need the Rwandan to be able to explain to you that when the
969 witness says this, what she actually meant is that the act of sexual violence occurred. So,
970 so, so it's important to, to, to be aware of that sort of thing.

971 **03:16 BF: Mm-hmm.**

972 03:16 Of course, she will not be able, she will not refer to the act explicitly.

973 **03:20 BF: What, what . . .**

974 03:20 But she'll use a kind of language . . .

975 **03:22 BF: . . . what . . .**

976 03:22 . . . like, for instance that, "He lifted the hem of my dress," and that's all. But what she
977 actually means is that, "He engaged in sexual intercourse with me." So you need that sort

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

980 **03:40 BF: And within the courts then, can, i-, is it possible that the way in which the Rwandan**
981 **woman expresses that can serve to represent that act?**

982 03:51 Th-, that, that is one of the issues we've been considering in our, in our best practices,
983 because we say to ourselves i-, if that is the witness's explanation or description of the
984 act, why, why should the judicial process insist on the witness coming there and, and
985 talking explicitly in the language of the court rather in his, in her language about the act?

986 04:14 But the defense counsel take the position, you know, they will cross-examine the
987 witness. They want an explicit reference and that embarrasses the witness. It puts off
988 witnesses from coming forward to talk about it.

989 04:26 So, so there's a need for the courts to accept that sort of language, to understand that
990 when, when that phrase is used this is actually what is meant, and this is one of the
991 things we, we're trying to, to, to push through.

992 **04:38 BF: So, if something like that is to be pushed through, how does that process happen**
993 **within the court?**

994 04:43 Within the court, I think what you could do is you, you bring in an expert on, on
995 Kinyarwanda language and culture. Who, who will, who will testify as an expert that the
996 vocabulary relating to sexual violence is this and this and this and this. When this phrase
997 is used, this is what it means, and so on and so forth.

998 05:02 I think if you do that first and the court accepts that expert's testimony, then when the
999 witness comes you don't need to go into, into any details. She can use her own language,
1000 and the court can understand from, from the, from the expert that this is actually what
1001 she meant.

1002 05:17 It may not stop the defense from trying to be, be, be terrible in their cross-examination,
1003 and I think that's, that's one thing that, that puts off the witnesses. But I think that's one
1004 of the ways in which we could, we, we, we could deal with that problem and we may do
1005 so in the, in the next cases.

1006 **Part 15**

1007 **00:00 BF: Then, another thing that you've spoken about is that even though these are**
1008 **separate trials, you've said it was one genocide. It happened in one country . . .**

1009 00:10 One country.

1010 **00:11 BF: . . . right? These things like language, the language in this case goes across the**
1011 **country. Does every case need to establish the same kinds of things with respect to**
1012 **these cultural means of expression, or are there ways – I mean this is a way in which a**
1013 **tribunal prosecuting for a genocide is, is perhaps different from if there were many**
1014 **separate different, say, murder trials.**

1015 **00:39** **BF: Are, are there ways in which certain understandings about cultural expression can**
1016 **be established once . . .**

1017 00:48 (_____).

1018 **00:49** **BF: . . . and then used across?**

1019 00:50 Across, yeah.

1020 **00:51** **BF: Are, and, and are there other aspects, because it is a single genocide, that it makes**
1021 **sense to establish once, say in a future tribunal as a, as a, as a way to think about how**
1022 **one lays out a common sense of what the discourse will be? Does that even make**
1023 **sense? (___).**

1024 01:12 No, you're, you're right. It is possible to do that. Let me give you an example, the relation
1025 to, to the genocide, for instance. Until, until two years ago, (___), yeah, until 2006, every,
1026 every single case we prosecuted, in every case we prosecuted we had to, to lead
1027 evidence to prove that a genocide had occurred in Rwanda.

1028 01:37 The judges would accept it happened. But it didn't stop us from proving it again in the
1029 next case (___) before the same judges. And so, and so we said, "No, th-, this can't go
1030 on like that." You are trying to, you are having to lead evidence on the same issue and
1031 each time you succeed in establishing it.

1032 01:53 So we, we resorted to the mechanics of judicial notice, the judicial notice process. The
1033 judicial notice process empowers the court to take notice of a fact and say that, "This is
1034 so notorious and well-known that you don't need to prove it anymore."

1035 02:10 So we went to the appeals chamber and asked the appeals chamber of the tribunal to, to
1036 find that the occurrence of the genocide is such a well-established and notorious fact
1037 that it does not require proof.

1038 02:24 And the appeals chamber agreed with us. So immediately then it, it lifted the burden
1039 from us of having to lead any more evidence before the tribunal, and before any trial
1040 chamber of the tribunal, that the genocide had occurred.

1041 02:36 And so what we now concentrate on is to lead evidence about the involvement of the
1042 individual accused in what had happened. You can do the same with regard to, to
1043 these other issues.

1044 02:48 I mean, the cultural issues, the language issues, et cetera and so on, try and establish –
1045 but it, it must be established a number of times by evidence before the appeals chamber
1046 will say, "Yes, that is enough. This is so well-established that you don't need now to go on
1047 proving it each time." That's what the system of judicial notice can, can do for us.

1048 **03:10** **BF: So, well, we've had quite a while to talk. I wonder is there anything else that's on**
1049 **your mind, that you would like – not just people in the next three to five years to know**
1050 **– but to be a part of your voice and your record about, especially from your position**
1051 **well, both as the Prosecutor and, and as a human being in this experience?**

1052 03:36 Well, it's, it's been a difficult and long process here over a decade now, and a lot of time
1053 and a lot of money also has gone into it. But it's been worth, it's been worth the effort.
1054 People have been held to account whom it would have been difficult to, if not impossible
1055 in earlier times to, to, to bring before a court of law. A lot of law has been created or
1056 clarified by the judges, substantive law to procedural law.

1057 04:09 We've had a lot of experience too in investigations and trial management, management
1058 of witnesses, et cetera and organizational issues, et cetera. And all of this could be,
1059 would be beneficial I think for the, for the future if such a similar exercise was to be
1060 engaged in.

1061 04:27 There are many lessons also to, to learn from this but I think the, the greatest lesson is
1062 that the, the process of accountability is feasible. It can be done despite the challenges,
1063 despite the difficulties.

1064 04:42 The process of accountability at the international level is, is feasible and that it al-, it's
1065 also necessary to do it. It's also necessary to do it in order to, to ensure that you have
1066 justice and also to ensure that you have peace in, in these communities.

1067 **04:58 BF: And for yourself personally, as you think about your experiences here, is there**
1068 **anything about that you would like to share?**

1069 05:07 I think it just, it's, it strengthens my faith in the law, but also beyond the law it
1070 strengthens my faith, you know, in, in, as I said, in the need for going back and
1071 strengthening those basic values of peace, of love, of good neighborliness, of justice
1072 between people, of respect for, for the rights of others.

1073 05:28 If you have those things, if everybody works towards those it's probably inconceivable
1074 than you could have a tragedy such as happened in Rwanda. If we all worked hard at
1075 making sure that we are good neighbors, that, that we tried to like each other but at
1076 least we respected each other's rights and tried not to violate them. It's quite possible
1077 we may not have these kinds of tragedies.

1078 **05:54 BF: Thank you.**

1079 05:55 Thank you very much. Thank you.