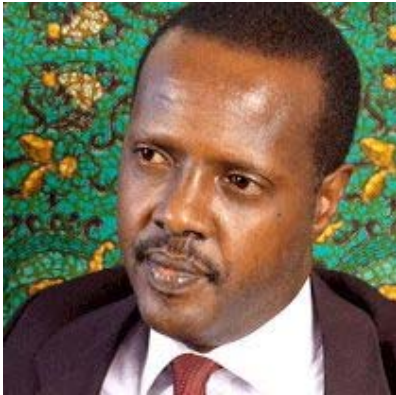


Official Transcript: Richard Karegyesa (Full Interview)



Role:	Acting Chief of Prosecutions
Country of Origin:	Uganda
Interview Date:	29 October 2008
Location:	Arusha, Tanzania
Interviewer:	Batya Friedman Ronald Slye
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Richard Karegyesa reflects on the relationship between the ICTR and domestic justice systems, discussing transfer of cases and the capacity of Rwanda's judiciary. Karegyesa discusses best practices for the prosecution, the protection of witnesses and prosecuting rape as a crime of genocide. He draws attention to the differences between prosecuting rape as an international crime and a domestic crime and comments on the importance of creating a historical record to protect against revisionist histories.

The transcript of the interview begins on the following page.

Part 1

- 00:00** Batya Friedman: So I'm Batya Freedman. I'm a Professor at the University of Washington. And I'm here with Ron Slye who's a Professor at the law school at Seattle University. He's another interviewer. And our cameraperson is Nell Carden Grey and we are here with Richard who's going to introduce himself. I'd like to ask you to say your name, your role here at the ICTR and your nationality. And today is October 29th . . .
- 00:29 Yeah.
- 00:29** BF: . . . 2008. Okay, please Richard.
- 00:31 Thank you. It's a pleasure meeting you. I'm Richard Karegyesa. I'm the Acting Chief of Prosecution in the Office of the Prosecutor and I'm Ugandan by nationality.
- 00:41** BF: Great, can you tell us a little bit – when you say that you're the Acting Chief of Prosecution, what is involved in your role here, what kinds of things do you do?
- 00:51 Well, the Office of the Prosecutor initially comprised the Prosecution Division and the Investigations Division, but now also has the Appeals and Legal Advisory Division. So I head the Prosecution Division that has about 100 attorneys in teams – in, in trial teams and, you know, I coordinate prosecution of cases at first instance, up to judgment, you know, before matters go to appeal.
- 01:31 The Investigations Division was downgraded as part of our downsizing and completion strategy, so it's now a section. So the Kigali office, you know, our investigations office is also under my division and we have maybe about 40 strong staff there, so, you know, I run that as well.
- 01:58** BF: So when a case is, a decision is made to pursue a case and a prosecution team is assembled for that, do you play a role in assembling that team?
- 02:11 Well, yes, I do. I mean all the trial staff, trial attorneys report to me and, you know, I'm, I'm responsible for assigning work, executing, you know, policy, and generally, you know, coordinating every aspect of commencement of investigation through prosecution.
- 02:35** BF: So what, what process would you go through to create a team, a prosecution team for a case?
- 02:48 The, the teams have actually already been assigned work. You know, in the formative years teams were created – put together as, you know, indictments were confirmed. But the, the, the profile of our cases is either regional or thematic, so you've got a team that is responsible for cases from specific regions.
- 03:22 If it's thematic it's like we've got the military cases, the government cases, the media, the clergy. So you have teams basically structured around those nodes and being responsible for the docket f-, falling under the theme, you know, or the region.

- 03:41** **BF: So if teams, say, involve the clergy in a certain region, would members of both come together or you would find one as primary and assign that or . . .**
- 03:53 If, if, if it's clergy it's clergy but, you know, regardless of which region the clergymen came from.
- 03:59** **BF: Mm-hmm.**
- 03:59 But because it, it is in a region . . .
- 04:02** **BF: Mm-hmm.**
- 04:02 . . . you know, my involvement is to coordinate and make sure, you know, that they're not at cross-purposes. You know, we hold weekly meetings just, you know, to compare notes and make sure that we're all singing from the same hymn sheet as it were.

Part 2

- 00:00** **BF: So I'd like to take you back now to the spring of 1994. And thinking back then, what, where were you in 1994 and, and what were you doing then?**
- 00:16 I was a practicing attorney in Uganda. I'd actually just returned from a three-year stint with the United Nations in, in Mombasa, Kenya, where I'd been a legal advisor on a regional project covering Kenya, Tanzania, Uganda, Rwanda, Burundi and Eastern Zaire. It had to do with international trade, transport freight and customs. So I'd gone back to my law firm in Kampala when the plane went down, as it were, on 6th of April 1994.
- 00:58** **BF: So were, were you in Uganda at that point?**
- 01:00 I was in Uganda.
- 01:01** **BF: And how, had you settled back in to this firm and life in Uganda and Kampala?**
- 01:04 Yeah, yeah, yeah, yeah.
- 01:07** **BF: So what was your life like at that point?**
- 01:11 Well I'd just settled back home. I, I, I'd returned, I believe, end of January and, you know, I was back at the law firm in a commercial corporate practice, yeah, yeah, yeah, yeah.
- 01:22** **BF: Mm-hmm. And what were you thinking, at that point, what were you thinking your career trajectory was going to be?**
- 01:28 Well I'd, prior to that I'd been a prosecutor for eight years, up to the time I left the government service in 1990. And my trajectory then was, you know, mainstream legal practice, commercial corporate and consulting. And what I'd been doing with the UN was part of my consulting practice, yeah. And I did continue consulting for international agencies, UN agencies, the European Union, British ODA, you know, before the creation of the DFID . . .

- 02:14** BF: Mm-hmm.
- 02:15 . . . yeah, i-, in, in Sub Saharan Africa.
- 02:17** BF: Mm-hmm. So you were mostly thinking about commercial law business . . .
- 02:22 Yeah, yeah, yeah.
- 02:22** BF: . . . yeah, in one way or another. Then when did you hear about the genocide in Rwanda?
- 02:28 Well I watched it unfold, you know, on CNN. You know, in about a couple of weeks, you know, bodies were floating down the Kagera into, into, into Lake Victoria and, you know, the price of fish collapsed. Nobody wanted to eat fish because, you know, it was just horrendous. Yeah, yeah, yeah. And, and we watched it unfold over the next three months. Yeah, yeah, yeah.
- 03:02** BF: What did you think at the time?
- 03:06 I mean, I mean no memory evokes such horror as – I guess it was the first time we were getting, you know, live coverage from, from an area of conflict. We’d probably had satellite TV for about a year or so, so you know we were getting real time broadcasts and it was just, you know, unbelievable. And then, you know, bodies started washing up on our shores.
- 03:35 You know, and I, I, I continued receiving these images. Even I traveled to, to West Africa in, in July round about the time that the U.S., I think it was the Defense Secretary at the time, flew into Kampala because of the humanitarian catastrophe unfolding then in, in Goma – not so much, you know, what had just happened in Rwanda.
- 04:11 You know so, so we, we actually got more footage from the refugee camps around Goma. And all the humanitarian effort you know was going to Goma, you know, to the refugees and rather than survivors of this mass murder.
- 04:33** BF: And what are some of your, your memories from that time? How did you react, what, what did you – I mean, was it just something happening around you or something, did you became engaged in some way with what was going on?
- 04:49 Not directly. I do remember going to, to Kigali most probably later or early September and I just couldn’t believe what I saw. I mean the, the smell of death hung in the air and, and, you know, walls were blood stained, you know, buildings were burnt out or pockmarked and y-, you’ve been to our Kigali office.
- 05:19 You know refugees were still in the stadium, you know, the Amahoro Stadium, you know, barbed wire and sand bags around it. And I remember the time the government was trying to clear the streets and drains, you know, you know, of rotting corpses and

they had to shoot all the dogs in town because the dogs had gotten used to eating corpses.

05:48 And, you know, when those were cleaned out of town, you know, they actually wanted, you know, to, to eat people. You know, they'd gotten used to eating human flesh. Yeah. And, you know, I-, I've never quite managed to erase that memory from my mind, yeah.

Part 3

00:00 BF: So at what point did you think about working for the ICTR?

00:07 It must have been – I actually thought of it much earlier but didn't join until much later, 'cause initially it was said at the time that they weren't recruiting people from within the region, you know, neighboring Rwanda. But I did subsequently in 19-, I believe 1996 or '97 respond to a vacancy announcement in one of our regional papers and didn't hear from them until about a year later.

00:50 Yes, but I did have a keen interest and, you know, I kept my feelers out there. But what blew me most was actually visiting Arusha. I was, I'd just concluded an assignment for the European Union in Zambia and got an offer from the Commonwealth Secretariat to come and work in Arusha at the East African Community. I was legal advisor trying to set up the regional trading block.

01:28 I hadn't been to Arusha in about ten years and I, I, I wanted to check it out so, you know, I came to Arusha to meet, you know, with officials of the East African Community and they were in the same building, this very same building, just on the 6th floor. And you know I, I, I had the opportunity for two days to sit in and watch two trials.

01:56 And I said, "This is what I want to do." You know, to hell with, with consulting and commercial practice. I said, "This is what I want to do." That was March of '98 and I got an offer I believe in August of '98, yeah, yeah.

02:16 BF: What, what was that feeling when you said, "This is what I want to do," what . . . ?

02:19 Well, I, I, I watched, you know, two prosecutions going on. They had only two courtrooms and it was a trial of Georges Rutaganda, the head of the Interahamwe. And on the stand was Professor Bill Haglund, a forensic anthropologist, and he was being led in evidence by James Stewart, Senior Counsel then. You know and I sat; I sat in the public gallery and watched.

02:49 And my prosecutorial instincts just came (___), I said, "This is what I want to do. I want to prosecute these people. You know, I can do it." There was also the trial of Kayishema and Ruzindana. Kayishema was Préfet of Kibuye, and Ruzindana was a businessman. And that trial too was going on. And I watched as Brenda Sue Thornton, she's in the DOJ back in Washington D.C., the Counter Terrorism (____) right now.

03:26 She was leading the evidence of another forensic expert, a handwriting expert. And you know I had been doing, you know, criminal prosecution for eight years and I said, "Hey, I'm, I want to take it to an international level." You know I quit the national level, but this is where I want to be. Yeah, and yeah I, I, I got an offer I believe it was August of '98.

03:54 BF: And then you've been a prosecutor here since or has your role changed during that time?

04:01 Well, work is largely the same.

04:03 BF: Mm-hmm.

04:04 I, I started off as a Legal Advisor for about two years and then was promoted to Senior Trial Attorney and since the beginning of this year I've been the Acting Chief of Prosecution Division.

Part 4

00:00 BF: So one question maybe you could speak a little bit about is the nature of evidence. You know, when you have so many people who've been massacred and a situation in a country where pretty much everyone you encounter is either been, you know, has a family member who's been victimi-, a victim or was themselves a perpetrator or has a relative who's a perpetrator.

00:31 BF: It's very different than a situation where there's been a murder and maybe there are several people acting, maybe several people killed but it's, it's a much smaller group of people. From your time here, what's different about the nature of evidence when you are trying to establish something like genocide?

00:57 First, it's just the sheer intensity in scale. I mean where do you start? A million people, anywhere up to a million people killed in a 100 days, you know, works out to any-, you know, anywhere up to 10,000 people a day, you know.

01:15 And then, you know, you had the war, and parallel to that you have the genocide, in a country whose population then was about 8,000,000, you know. A million people is a lot of people.

01:31 But remember too that, you know, entire communities were uprooted and displaced; you know, about 3,000,000 in the refugee camps, either in the Congo, in northern Burundi or northern Tanzania.

01:49 So from a pre-war, pre-genocide population of 8,000,000, you know, you've got about 4,000,000 people in Rwanda. All severely traumatized whether they're perpetrators or, you know, or victim survivors. Y-, and in a highly polarized society.

02:13 So yes, I mean investigating such crimes is a big challenge, you know. Where do you start and, and, and how do you, how do you prioritize? Because it was country-wide, you know. You know, so yeah there, there, there were challenges.

- 02:31 We had investigators and prosecutors. Nobody had ever, you know, prosecuted or investigated genocide, you know, since Nuremburg. And even in Nuremburg it was crimes against humanity and war crimes rather than genocide.
- 02:48 So yes it, it, it was very difficult; there were challenges. There's linguistic, cultural – because we didn't have Rwandan investigators. You know, the judiciary, members of the judiciary, i.e., the judges, prosecutors and judicial police were either dead or in flight, you know. So, you know, we basically started from scratch.
- 03:16 Some areas were no-go because of, you know, rebel in-, incursions from the Congo – you know the Western, the Western part of Rwanda, you know, all the way from Goma, the northern tip of Lake Kivu down to Cyangugu the southernmost tip. There were rebel incursions from the Congo and it was sealed off.
- 03:48 You know, UN staff couldn't travel there. Able subsequently to travel there in '97 and about two or three got killed and then it was sealed off again. You know, investigators didn't know the elements of the crimes they were investigating.
- 04:12 You had to operate through interpreters with no system to check, you know, to have quality assurance of whether, you know, you're actually getting the right version. You, you had witnesses who would cringe at the sight of certain interpreters because of the ethnic polarization.
- 04:39 Yeah, I mean there were very many difficulties involved in investigating and putting a case together.

Part 5

- 00:00 **BF: So from where you sit now, if there was another genocide somewhere else . . .**
- 00:06 Mm.
- 00:07 **BF: . . . and a tribunal being created, and they were trying to establish the prosecution there, what kinds of things would you want the person who is taking the lead there to know or think about so that they could, you know, more readily get an effective prosecution up and running?**
- 00:26 Well, fortunately that's one of the legacies well bequeathed to the international criminal justice system. Starting late 2004, we embarked on documenting best practices in conjunction with other international prosecutors. We, we held a prosecutors' colloquium here in November of 2004. It was the first international prosecutors' colloquium.
- 00:59 You know, and, and one of the recommendations was, you know, to develop best practices in light of our completion strategy. So we ha-, we, we, we still are in the process and hope to have finalized a best practices manual by early next year.
- 01:21 **BF: So what would, what would some of those best practices be?**

- 01:26 Well, yeah, you've got best practices in investigations, best practices of pre-trial preparation, best practice trial, best practice in appeal, evidence collection, storage, retrieval systems, management systems.
- 01:43 But the primary thing if you're starting up you really need competent staff who know what they're doing. I mean w-, we started from scratch but now there's a, you know, not only is there a large part of jurisprudence, you know, but even expertise.
- 01:57 BF: Mm-hmm.**
- 02:01 And just to give you an example, the prosecutor of the special court for Sierra Leone . . .
- 02:07 BF: Mm-hmm.**
- 02:09 . . . is ex-ICTR, he was Chief of Prosecution here, Prosecutor of the Cambodian Extraordinary Chamber was one of our colleagues here. The deputy prosecutor of the ICC, you know, is a former colleague here so, you know, our expertise has been exported in, in, in the establishment of these new tribunals.
- 02:37 And, you know, even in the Harare Commission, the L-, Lebanon tribunal, Chief of Investigation was an investigator here. And actually before we seconded him there, he was involved in the Darfur investigation by the United Nations High Commission for Human Rights. You know, and they all take with them best practice because they've been there done that, yeah.
- 03:10 BF: Right. One of the things you mentioned, which actually affected you early on was that initially it sounds like there was some decision not to hire from the region and clearly a decision not to hire Rwandan prosecutors. What, what are your views on that?**
- 03:29 BF: You know, clearly those decisions were made then and, and probably well thought out given the situation but now in hindsight as you look back, for tribunals going forward, if, if you could set the policy what, what do you think is, would be a good way to go?**
- 03:46 No, I think you have to consider it on a case-by-case basis. You know, Rwanda was peculiar, you know, extremely polarized. You know, so, if, if, you know, to, to, to give it a semblance of justice, you know, I think it was, in the initial stages an imperative that, you know, Rwandans be excluded from the decision making process.
- 04:21 I mean we had all the local staff were Rwandans, but none of the prosecutorial st-, staff were Rwandans. You know, you had support staff being Rwandans. Interpreters, you know, were a must. But you know, 14 years on, you know, it's opened up.
- 04:46 BF: Mm-hmm.**
- 04:48 We have several Rwandan co-, colleagues as prosecutors, you know. We're even trying to get these cases transferred to Rwanda because we believe they've, you know, sort of stabilized in the last four-, 14 years.

05:01 At the establishment of the tribunal I mean R-, Rwanda was still relatively unstable and had no infrastructure nor human resources, you know, you know, to, to host and run the, the tribunal in, in Kigali. And that's why, you know, the tribunal was situated in, in, in Arusha. It works differently. There's a tug of war however, I believe, or I've heard, in, in the Cambodia hybrid sort of setup, the extraordinary chambers . . .

05:48 BF: Mm-hmm.

05:52 . . . I-, largely again because of the internal dynamic of, of that country. I do know that in the special court for Sierra Leone, which isn't an international tribunal in the sense of the ICTR, ICTY, y-, you've got both foreign and local judges, and foreign and local prosecutors.

06:21 BF: Mm-hmm.

06:22 Yeah, yeah, yeah. So I think, yeah, it's, it's got to be approached on a case-by-case basis, yeah.

06:28 BF: Mm-hmm.

Part 6

00:00 BF: Well, you've been working at the ICTR, right, gathering experiences here for quite a long time. So is there just something from your reflections of that time that you'd like to share with us before I ask other kinds of questions, the conversation goes another direction?

00:16 It's, it's, there, there's just so much over the last ten years you know. I-, nothing comes to mind. I actually personally haven't even had time to reflect and I intend to take a year off next year when I, you know, leave the tribunal to sit back and reflect, you know, over the ten years. So, you know, unless you ask something specific, it's been – I've been constantly in motion . . .

00:44 BF: Mm-hmm.

00:45 . . . hardly any time to reflect, you know. Because there's, you know, things always happening and you know I, I can't finger anything unless you, you target the question.

01:00 BF: Okay, well then I, I'll ask you about a few, few other things that I've been wondering about. Talking about prosecuting for rape as genocide, I think maybe from the outside when people look at the record, they see that there was the establishment of rape as genocide and its use in one case, and then sort of the appearance of it no longer being used as a tool by the tribunal.

01:31 BF: And I wonder if from the perspective of a prosecutor, how do, how do you both see that tool and how do you – what thoughts do you have on, you know, why it might look that way from the outside looking in?

- 01:46 I think we must acknowledge that we haven't been that successful. You know since Akayesu in, in successfully prosecuting rape either as genocide or as a crime against humanity, I, I think most probably only about four, four convictions after Akayesu.
- 02:11 You know, and given that we've, we've had now 36 convictions, you know, you know five convictions doesn't sound a big number. Yes there were problems, problems with pleading, but also problems with investigation.
- 02:34 BF: Mm-hmm. How so?**
- 02:43 You know, c-, culturally, and I think this is across the board anywhere you know, you know ra-, rape in, in, in some societies is, is a taboo. I mean, you know so there's silence. There's silence and you initially didn't get, you know, victims coming forward to talk about it.
- 03:17 You probably had other survivors who'd watched it or knew about it coming forward, but we had difficulty even when we had statements, you know, convincing victims to come and testify.
- 03:33 You know I, I have a few instances where I, I, I recall during the prosecution of Gacumbitsi way back in 2003 I believe, yeah. We got a conviction for, for genocide and, you know, rape as a, both as genocide and rape as a crime against humanity. And it was largely on the basis of one victim who was believed and two or three survivors who had witnessed rape.
- 04:13 T-, two of the witnesses I believe had lost, lost their wives in the genocide but had seen them gang raped before they were brutally killed. A-, and we, we've been trying to encourage other teams, you know, to, to use that approach.
- 04:41 You don't need a rape victim to prove rape, like you don't need a murder victim to prove, you know, murder. I mean, the victim is dead. But if there's a body and, and, and you know people witnessed the, the killing, they can testify to the fact.
- 05:10 Likewise, you don't actually have to drag these heavily traumatized rape victims to court, you know, if you've got men, women, you know, who witnessed these rapes taking place, because they were actually taking place in broad daylight.
- 05:28 The other difficulty has been establishing a nexus between the acts of an accused and the rapes that were committed. But we do have, I believe, there about 20, 20 or 21 cases at different stages of defense. Nin-, nine of them have judgments pending where rape was charged, so we'll see how successful we are in that regard.
- 06:12 But starting round about 2004, we undertook a review of our indictments and, you know, the available evidence of rape to see if we could, for the indictments that hadn't gone to trial, to see if we could actually amend them, if it was supported by evidence, to include charges of rape.

- 06:42 But yes I, I, I, you know, must acknowledge that we haven't been to date very successful in securing rape convictions.
- 06:52 **BF: Do the – have the prosecutors been talking among themselves about – I mean this is a brand new thing, right? To try for rape as genocide, so probably a lot of learning needs to go on as to how to do so, how to collect evidence, how to present it.**
- 07:14 **BF: And as you've already talked about, doing so in a way that is, well, as un-traumatizing as possible to the women and their, and their families involved. So, and going back to this notion of better practices or things that you've learned . . .**
- 07:34 We, we've specifically got a protocol in our, in our best practices manual on investigating and prosecuting sexual offenses. W-, we had EU funding and held, held a workshop here in the spring of 2005 . . .
- 07:52 **BF: Mm-hmm.**
- 07:55 . . . and we developed protocol on best practices. And it actually came in handy in the Darfur investigation because we lent them our, you know, expertise as our sexual assault team w-, went to Darfur and, you know, headed the, the investigations relating to, you know, sexual violence, you know, i-, in Darfur.
- 08:22 **BF: Mm-hmm.**

Part 7

- 00:00 **BF: So what are some of the things that you think were learned in this tribunal about how to collect evidence here, how to argue with that evidence or make compelling arguments for the prosecution around rape as genocide, you know, that, that would really be important for others in the future to know about, and, and also perhaps things that were tried that you know really others don't need to try those things.**
- 00:30 Well, you see there's a tendency in, you know, where you have mass murder, mass killings or there was a tendency to sort of, you know, ignore rape and go, you know, for the less complicated, you know, extermination, murder, genocide.
- 00:52 But because we're all aware that, you know, rape is as old as war, you know, there can't be, you know, murder at such scale, you know, without corresponding rapes because, you know, you're talking of conflict situations.
- 01:15 Talking of belligerence and, and where there's genocidal intent, you know. You know, sexual violence and rape are, are, are a tool in the hands of the oppressor. So yes, I mean you've got to look out for incidences of rape.
- 01:34 So even if you're interviewing witnesses, you know, for mass killings, don't stop at mass killings, try and get leads, you know. You know, and then pursue those leads with deft handling.

- 01:51 As I said earlier, you don't actually need the rape victim to come and testify to secure a rape conviction, if you've got people who witnessed the rape. Because you see the, the, the threshold is much lower than, you know, in your domestic jurisdiction, you know, penetration and, you know, forensic evidence.
- 02:22 I think it was in the Akayesu case where, you know, they said that, you know, rape as an international crime isn't about body parts. Issues of consent, it's been a big debate. In the domestic jurisdiction, the prosecutor has to prove lack of consent.
- 02:51 Again the threshold in conflict situations is lower because of you've established that the circumstances were coercive. You know, any consent is negated. And we also have a provision in our rules; I think it's Rule 96 that suggests that, you know, consent isn't, you know, a defense.
- 03:20 Yeah, so, yeah, there's a need to establish coercive circumstances and if, as I said, if, if, if you have witnesses other than the rape victim who witnessed the rape – because most of these rapes are committed in broad daylight. In Rwanda none of these offenses were committed at night, by the way.
- 03:45 It was like civic duty; it'd start around eight in the morning and knock off around 4 o'clock, 5 o'clock, go and have a drink, sleep, and, and come back and continue from where they left off and you know.
- 03:58 And the rapes were being committed in broad daylight around public buildings; you know, churches, schools. Akayesu case just outside the, you know, bourgmestre's office where the refugees were. And in such circumstances, they're being committed in broad daylight.
- 04:18 Take for example where the, you know, the rape victim is killed subsequent to the rape, you know. You can't use that as an excuse for not charging or being unable to prove rape if you've got, you know, people who actually witnessed the rapes taking place.
- 04:38 The other thing of course is, is to establish a nexus between the acts of the accused and those rapes. My argument has always been that if, if, if an accused instigates or orders the mass killing or destruction of a group, he or she has undermined the law and public order.
- 05:08 And, you know, if, if, if the physical perpetrator in the process of that destruction, executing the instructions, you know, plunders property, pillages, rapes, you know, it's all done at the instigation of the accused.
- 05:29 And, and remember here we're targeting the leadership, not so much the foot soldiers, but the ideologues. You know without whose evil architecture these crimes, you know, would never have being committed.
- 05:45 So yes, in the course of investigation you establish the course of circumstances, or at first establish that there was rape. Establish the course of circumstances and try to establish a link not only between the murders, you know, mass killing and the accused

but also the rapes so that, you know, you can attach liability; criminal liability. Yeah, yeah, yeah.

06:14 **BF: Mm-hmm.**

Part 8

00:00 **Ronald Slye: Okay, let me just pick up on the last conversation, talking about the rape prosecutions and the, the idea that you don't need the victim present.**

00:15 **RS: What, how do you – I mean I guess one of the things that that made me think of this, that if I were defense counsel, I might want to call the victim. Is that something that is allowed or how would you respond to that?**

00:29 Well what if the victim's dead?

00:30 **RS: Okay, but let's assume the victim is alive. I mean, the advantage that you had raised was that the victim doesn't have to testify but (___) . . .**

00:38 I think in all fairness, you know as a prosecutor you'd most probably would have taken the statement of the, of the victim and she may well, you know, decline to testify.

00:53 But in all fairness you offer – you know, if you're not calling the victim, you know, you offer the statement to the defense. And it would be – I mean ha-, we, we've offered statements. We do have, you know, disclosure obligations, you know, and, and, and indeed i-, in, in Gacumbitsi, you know, the defense didn't go down that line.

01:29 Because it's very difficult to subpoena a witness or, or to move, you know, to have the chamber subpoena. They haven't tried it before, but it would be very hard. Would be, even strategically, might play against the defense, you know, trying to subpoena; subpoena a witness, yes.

01:49 **RS: And so they've never tried that.**

01:51 No, no.

01:52 **RS: And would you recommend that defense counsel do that or do you think the risks are too great?**

01:57 The risks would probably be too great. Yeah, yeah.

02:00 **RS: And what sort of risks?**

02:10 W-, why would defense counsel want to subpoena, you know, a victim who was raped, you know, to just confirm, you know, the evidence of someone who witnessed the rape? It's a double-edged sword.

02:27 **RS: Mm-hmm.**

02:28 Mm, mm. What, have her say that, you know, "I wasn't raped?"

- 02:40 **RS: Let me, you started – earlier you talked about, you were talking about investigations.**
- 02:45 Mm-hmm.
- 02:46 **RS: And how one investigates such a massive crime as occurred in Rwanda during the genocide. How do you, or how would you, start to think about setting the priorities in terms of both investigating such a large crime and deciding who to prosecute?**
- 03:08 Well, normally you know this tribunal and others and even what's happening next door in Kenya, the establishment of the tribunal is preceded by some sort of commission of inquiry that does, you know, as it were, a, a crime base investigation.
- 03:34 And you've got indicators of who the potential suspects are. Now because the, you know, international tribunals can't really, you know, prosecute everyone, in the case of Rwanda, I mean, you've got over 100,000 potential suspects.
- 03:52 The, the priority was, as it was in Nuremburg, you know, to go after the leadership to the extent that there's evidence I mean, you don't create it. But, you know, once a tribunal is established, it builds on whatever work has been done by the commission of inquiry, by civil society, you know, these human rights NGOs.
- 04:23 And, and, and the, the evidence will generate, you know, who the targets should be de-, depending on, on the strength of the evidence. And as I said, if you prioritize – we had, we had a list of well over 300, possibly more, you know, generated by the initial inquiries.
- 04:56 But there's no way, you know, an ad hoc tribunal with limited mandates and resources, you know, could pursue that number of people. So we settled down to the odd maybe hundred or so. And even then we haven't been that successful. I think probably around, you're talking about 94, 94 indictments in all.
- 05:21 But we have transferred files of cases we'd investigated but hadn't indicted. We've transferred files to Rwanda; we've transferred files to Belgium, yeah.
- 05:46 **RS: And how did you decide which ones to transfer to Belgium or to Rwanda?**
- 05:52 I think it was following the Security Council Res-, Resolution 1503 which asked us to go for the most senior, the most responsible. So we did a culling exercise here, you know, and, and took into consideration, you know, you know (____) of seniority but also notoriety, egregious nature of the crimes, the extent, intensity, and strength of evidence.
- 06:34 Yeah, and then, you know, ha-, having reviewed, you know, our docket, decided the ones which we could keep and hope to finish, you know, by December 2008. It's not been possible but – so yeah we're expecting, you know, an extension. An-, and I must draw a distinction between a transfer of files and a referral of an indictment under 11 bis.

- 07:04** **RS: Right. Mm-hmm.**
- 07:07 Transfer of files are files of those we hadn't indicted. And that's at the discretion of the prosecutor. Referral of indictment is on application, you know, to the chamber. And we haven't been successful with regard to Rwanda.
- 07:25 We were successful in respect of two transfers, two referrals to France. We had an aborted referral to the Netherlands that couldn't take off because the district courts in The Hague, you know, found they didn't have jurisdiction. Yeah.
- 07:48** **RS: Do you – some, some look at both those sorts of referrals to Europe or the, you know, the Habré case and sort of the, a, a sort of tug of war between Senegal and Belgium, raising questions about where justice should appropriately be seen to be done.**
- 08:10 Mm.
- 08:11** **RS: What are your views on that?**
- 08:13 Well, I believe it should be done where the crime was committed, period. But of course circumstances in Rwanda didn't permit, you know, in 1994. But 14 years later and we've put in, you know, some good work with the Rwandans, the prosecution service you know trying to ensure that their, you know, laws, you know, meet minimum international standards of due process.
- 08:40 You mentioned Article 14 of the ICCPR; our Article 20 was replicated in their legislation. All the guarantees are there. And the prosecutor you know was satisfied that Rwanda could take on these cases.
- 08:57 Let me perhaps also mention that there weren't any other takers. We visited several African countries a-, and European countries and there were limitations you know. They either didn't have the jurisdiction or if they did, you know, weren't willing or weren't able because, you know, they had their own backlogs or other resource constraints.
- 09:33 One or two African countries said they'd probably be able to provide resources if, if, if the cases were transferred to Rwanda. They didn't want the cases transferred to their countries, but (____) considered technical assistance to Rwanda if the cases are, you know, transferred to Rwanda.
- 09:52 So yeah, at the end of the day, Rwanda was and remains the only willing taker of these cases. Belgium, you know, has a large Rwandan diaspora and is dealing with its own, you know, prosecutions where they're exercising universal jurisdiction.
- 10:14 Britain has jurisdictional limitations and is trying to extradite. Extradition was granted a couple of months ago but it's on appeal and the appeal is being argued in, in December in respect to four Rwandan fugitives.

- 10:36 You know, a-, and we had transferred those files to Rwanda. Norway, we had an unsuccessful attempt to have an indictment referred there. They didn't have jurisdiction but they recently, I think early this year, amended their legislation and I believe they have an active investigation going on of a Rwandan who is resident there, thus giving rise to jurisdiction.
- 11:09 And who knows, now that we've been unsuccessful in our bid to refer cases to Rwanda, we may want to revisit Norway which had exhibited willingness at that time but didn't have jurisdiction, but now has jurisdiction so we might want to revisit it.
- 11:27 And the, the Special Prosecutor, you know, for international crimes is going to be here on a conference next month. We might take it up with her while she's here.

Part 9

- 00:00 RS: So do you, do you see the role of your office and of the tribunal as building up the capacity of a country like Rwanda so you can transfer these cases, or is that something that . . . ?**
- 00:12 Yes, I mean you see, we did have EU funding for capacity building in Rwanda. We had European Union funding, you know, for outreach programs. We also got, you know, Rwanda requested it.
- 00:36 And over the last two years I've been running courses for prosecution service, you know, investigation, evidence management and handling, international criminal law, procedure and practice, and trial advocacy, you know. You know and it was at Rwandan request but funded by the European Union and we used to go there and run, you know, courses, anything from one week to two weeks.
- 01:08 So yes we do have a role, because we acknowledged and, well, Rwanda acknowledged its limitations, and was preparing itself, you know, for the reception of these cases and wasn't trying to say so. And said yeah, you know, "Y-, you guys have been there done that. Can you come and, you know, hone our skills?"
- 01:33 And, and, and we do have, you know, several Rwandans employed here in the Office of the Prosecutor, you know, who most probably after the closure might take their expertise back home.
- 01:53 RS: What's . . .**
- 01:53 And one of the, one of the things we'll be looking at, at this conference is, is, is those countries, you know, in Sub-Saharan Africa that may want to take on these cases because of, you know, if they have jurisdiction, if, you know, we need to identify, you know, capacity limitations.
- 02:24 We may not be able to, to, to engage in capacity building but I'm sure we can mobilize resources and there are NGOs out there. There's International Criminal Services, there's an NGO that is actually focusing on capacity building.

- 02:50 The Open Society Justice Initiative in East Africa in particular with which I've worked closely, is – has an active program in capacity building.
- 03:00 We're trying to get the teaching of international criminal law on the core curricula of universities in the region. You know, and there, there are live issues like the Ugandan situation. I think the pretrial chambers is sitting this week or possibly next to consider whether the ICC should defer to, to Uganda to try the Joseph Kony case.
- 03:35 They have capacity issues and their Director of Public Prosecutions has engaged our Prosecutor here. So yes, there's a role we could play in terms of capacity building for those who, you know, acknowledge the need and ask for it.
- 03:52 **RS:** What do you think still needs to happen in order for a case to be successfully referred back to Rwanda?
- 04:01 We lost on two things, and one can be corrected legislatively or judi-, judicially. There's a question of, there's some ambiguity on sentencing regime. In Rwanda it wasn't clear.
- 04:23 Conflicting pieces of legislation you know and the, and the doubt was resolved in favor of the accused. There was a potential threat that if sentenced in Rwanda he may be held in solitary confinement.
- 04:38 We didn't buy that, but that was what the judges, both the trial chamber and the appeal chamber, thought. The more complex matter that seems incapable of resolution is this whole issue of witness availability.
- 04:57 I don't know whether you've read the appeals chamber decision in Munyakazi but basically it comes down to the appeals chamber saying the determinant for a fair trial is at the, you know, whims of an unidentified witness, you know, saying, "Hey, I'm afraid of going to Rwanda." You know. And that's what it comes down to. Yeah, yeah, yeah.
- 05:35 RS: And is there anything that can be done about that or the . . . ?**
- 05:37 Well no and I mean, you know, the, you know, the, neither the chamber, you know, the trial chamber nor appeals chamber really conducted sufficient inquiry.
- 05:58 Rwanda has facilitated witnesses, defense witnesses to come to the tribunal and safely return to Rwanda. I'm yet to hear of a defense witness who's been bumped off. It's our prosecution witnesses who get bumped off.
- 06:22 But Rwanda too has facilitated the travel of witnesses to Belgium, to Canada. You know for the trials Belgium has held to date, I think about four trials; the Butare four, the Kibungo two, Ntuyahaga, yeah – four, yeah about seven, seven, eight accused defendants.
- 06:59 And Rwanda has facilitated the travel of both prosecution and defense witnesses, who've safely returned home. We don't have any capacity for protecting witnesses in Rwanda. It's done by, you know, the, the, the Rwandans.

- 07:15 We protect witnesses when they're in Arusha by driving them around in bulletproof cars. But when they go back to Rwanda you know, the actual protection is a duty of the state.
- 07:30 You know, and when threats are reported we don't have the capacity to, you know, to do the policing, we refer the matter to the Rwandan authorities, you know, who take care of security of witnesses.
- 07:44 I was just looking for example at the, the, the Canadian statistics where the defense had seven witnesses fly in from Rwanda and took depositions of another seventeen, you know. So the, the, the judge, the single judge in the Munyaneza case in Quebec, you know, didn't get to meet the seventeen. They didn't have any video link testimony. No, it was, I don't know whether you're familiar with depositions taken on a commission rogatoire.
- 08:36 Basically prosecution and defense, you know, with an officer of court go to a country, in this case Rwanda, you know, and take, you know, record the testimony, you know. So the testimony of seventeen witnesses was paper testimony, I mean the judge didn't meet them. The same thing applies to the current trial against Joseph Mpambara in the Netherlands.
- 09:12 The investigating judge went to Rwanda, heard all the evidence by deposition. It's, it's like a mini-trial; you've got the prosecution, defense represented and the investigating judge, you know, asks all the questions and if, you know, if either party wants to intervene they're free to do so.
- 09:34 A-, and he's carried all this paperwork back home. No witnesses traveling to, to The Hague, you know, for the classical, you know, adversarial hearing as we know it here.
- 09:46 Now this is so, you know, the point I'm trying to drive home is that the judge or judges determining the matter don't actually have to have physical contact with the witness.
- 10:06 Same thing happens in France. They're most probably if, you know, the two cases they're prosecuting, they'll probably send, you know, an investigating judge down to, to Rwanda who, you know, will bring back the papers and . . .
- 10:26 So if it's good for other countries, for other legal systems, why not for Rwanda, which is a hybrid between adversarial and inquisitorial? Assuming for a moment that not all defense witnesses would be willing to come to, to Rwanda they can have an investigating judge go, you know, with defense and prosecution to take depositions.
- 10:53 We have it here; I mean it's the exception to the rule. We have video link and so do they in Rwanda; they made provision for video link testimony which is becoming very common now. And they've got provisions for taking deposition evidence.
- 11:14 So yes, I think, I think the decision was very harsh on Rwanda and it's ridiculous to the extent that the determinant of a fair trial is, is left to the whims of, in this case, unidentified witnesses.

- 11:35 The-, there was no witness list, you know. There was no evidence that the witnesses, the purported defense witnesses would be reluctant to go. Nobody had interviewed them to find out, you know. I mean, at least no evidence was presented to, to the trial chamber.
- 11:56 So you know, h-, how do you correct that? There's, you know, we can't – there's no provision for appeal against, you know, appeals chamber's decision. It's final. S-, s-, so how, how do you correct that? It's, it's basically ruled out any transfers to Rwanda.
- 12:20 So even if – and this is what is happening right now, I think they're trying to get a judicial or legislative interpretation of the, of the applicable law with regard to sentencing. Even if that is sorted out and clarified, still you know you, you know, y-, you can't have a fair trial because some witnesses would be reluctant to go.
- 12:44 And yet, you know, there's no evidence, you know, from the witnesses. You know we'd, we'd applied in the alternative that, you know, this matter be remitted to a tr-, trial chamber for further inquiry, yeah.
- 13:01 **RS: Not done.**
- 13:02 Not done.

Part 10

- 00:00 **RS: Let me shift gears a bit. One of the purposes of the tribunal, or at least one of the stated purposes of the Security Council, was to foster reconciliation in Rwanda. There's a couple of questions related to that. How do you think – well, I guess the first question is do you think that's an appropriate goal of a tribunal like this?**
- 00:23 I think it's – and I stand (_____) – but I think it's to contribute, contribute to peace and reconciliational, or reconciliation and peace.
- 00:37 **RS: Mm-hmm.**
- 00:39 I think it's a legitimate expectation because the primary objective, you know – and this isn't in the statute or the rules, it's in the resolution nine, nine, 9.5.5 – the dual objectives, you know, accountability and deterrence, reconciliation and peace, contributing.
- 01:01 Now the, the, the mistake is to look at the tribunal as the sole contributor, you know, you know, the sole dynamo for, for reconciliation and peace. No. This is just part of, you know, broader transitional justice measures, you know. This is re-, retributive justice. They've got – this conflict has been going on since 1959 for Christ sake; it's 50 years.
- 01:27 And, and, and, you know, prosecuting an odd handful, you know, 100 perpetrators, you know, isn't in itself going to bring around reconciliation and peace. There have to be other mechanisms to redress, you know. You know, what the current coinage I think is you know, restorative justice. We don't have any of that in our tribunal. It's beyond our remit.

- 02:03 Yes, and, and the whole host of, you know, decades of discrimination, victimization – so all we’re doing is we’re contributing by bringing perpetrators to account, ending the cycle of impunity. We’re contributing to the restoration of the rule of law. Y-, y-, you know, it’s a building block, you know, peace-building rather than peacemaking, you know, and hopefully reconciliation.
- 02:43 I have no empirical evidence of whether we’ve succeeded in that regard but what I do know and, i-, is that, you know, on the initial objectives, the primary objective of accountability and deterrence I think we’ve scored very highly.
- 03:01 RS: If you were starting this whole process over again with those objectives, would you structure the tribunal differently or would you add or recommend adding something like a truth commission?**
- 03:14 Yes.
- 03:14 RS: Like in Sierra Leone?**
- 03:15 Yes. Truth commission hand in glove with the tribunal, you know, and, and other restorative mechanisms, yes.
- 03:29 RS: And how would (___) . . .**
- 03:29 I mean it worked quite well in South Africa without – or s-, so we believe. Maybe tell me, you know, has . . .
- 03:38 RS: You can interview me later.**
- 03:39 Okay, yes, no, no, but I, I, I, I – you know given the sheer numbers we’re dealing with here and, you know, with 20/20 hindsight, yeah, a truth and reconciliation commission may have complemented, you know, the, the, the core role of the, the criminal tribunal which is – first of all it’s, it’s away from Rwanda. This would have had to be situated in Rwanda. Easily accessible, you know, a-, and dealing with a larger mass, you know, of victims and perpetrators alike.
- 04:30 And in a sense – I’m no authority on this but you know – Ga-, Gacaca does have an element of truth and reconciliation. Not so much reconciliation but alone, it’s truth, a bit of reconciliation and, and a bit of retribution.
- 04:52 I, I think it provides an avenue for neighborhoods to come to grips with what happened. I remember being told that, you know, at the lo-, the local level the, what used to be the (___) . . .
- 05:14 You know Gacaca started out trying to establish what happened to the Tutsis who used to live in that area and, and you know, people were encouraged to tell the truth.
- 05:27 And people were offered an amnesty of sorts by reduced sentences or, or, or labor, you know, for killing several people. You know, as long as you confessed and sought apology, you’d just be sentenced to community work.

- 05:46 I-, it's apparently the deniers I think who get heavy sentences but, you know, those who cooperate and tell the truth and ask for forgiveness are indeed forgiven. It's, there are reports of it being mismanaged. I, I can't comment. But I think yes, a truth and conci-, reconciliation commission would have worked very well with, with the, with the tribunal.
- 06:20 **RS: If you had a commission like that, would that change how you would approach your decision about what cases to prosecute before a tribunal like this? I mean would you take into account issues of reconciliation in making that decision or the existence of these other processes, or would it be a similar sort of calculation that was used absent those institutions?**
- 06:52 I think, I think – y-, you know you're dealing with mass murder here. You're dealing with the mass slaughter of a million people and, and I think, I think to end the culture – you see because the-, these crimes are largely, you know, state inspired and state driven, you know. And that's, that's, that's where you've got to nip it in the bud you know, a-, at the level of the state, you know.
- 07:22 You know, so if, if, if you've got, you know, senior leaders in the state apparatus clearly implicated you know in the, i-, i-, in the planning and execution of these egregious crimes, there should be no compromise. The, the, the truth and reconciliation, I think applies to the second tier of executioners.
- 07:57 I would still go for the leadership to the extent the evidence justified it, yeah. And of course there are resource limitations and things like that.

Part 11

- 00:00 **RS: We're, we're getting near the end of our time. Let me . . .**
- 00:02 Are we?
- 00:02 **RS: Let me, yes, let me ask you, if you were speaking to a group of Rwandans today about the tribunal, what would you want them to take from the tribunal? What would you want to say to them about what the tribunal has accomplished?**
- 00:24 We have brought to account leaders that would otherwise never have been brought to account. In the last 14 years Rwanda only got one rendition. Frodouald Karamira, leader of the Hutu power faction of the MDR party was renditioned or rendered from Ethiopia. I don't think there's an extradition treaty. Given a fair trial and shot in, you know, in a public square.
- 01:09 You know, so there haven't been any extraditions to Rwanda. You have an Interpol wanted list of 93 key, you know, fugitives, all in positions of leadership. In fact actually one was picked up yesterday in Réunion. Head of the military intelligence in the office of the President, Captain Pascal Simbikangwa, you know. And – but, but, you know, Rwanda hasn't been successful in getting, you know, its extraditions from France.

- 01:53 Or from anywhere for that matter. So to the extent that we've managed in the last 12 years or so to arrest 75+, you know, fugitives from about 36 countries, we-, we've been able to neutralize or incapacitate, you know, the extremist element you know, who'd be out there if there wasn't a tribunal, probably in the Congo trying to make a comeback, you know.
- 02:47 But more importantly we've documented judicially what actually happened. I'm sure you're aware of the denials of the Armenian genocide, you know. That's a result of the failure of the Constantinople prosecutions after the war. We still have revisionists and deniers of the Holocaust. It's been criminalized in several countries but deniers abound and it's the same thing.
- 03:18 We have puerile theories being peddled, you know, by defendants here. Denying the genocide or minimizing it. But yes, we've, we've, we've documented the horrors that took place. You know, even in the cases where we've had acquittals, it's not so much that the events didn't happen; it's just either a question of poor pleading or failure to prove that a particular individual was involved.
- 03:54 So there's, you know, there's an historical record of what happened. And you're contributing to this, you know, by, by capturing the heritage of the tribunal. It's hard of course to, you know, to say much more to the Rwandans on either side of the divide.
- 04:30 But I think, you know, I'm, I'm proud of the little we've accomplished a-, and the legacy we leave to, to international criminal justice; a large corpus of jurisprudence. Probably without us, the ICTR and ICTY, the ICC may never have come to life.
- 04:55 So it was a watershed moment, the establishment of these two tribunals, for international criminal justice. And they're not a fix-all but I think they've substantially contributed to the development of international criminal law. And, and y-, you have countries asserting universal jurisdiction, criminalizing these, you know, offenses and, yeah, yeah.
- 05:39 RS: Is there anything we haven't touched upon that you think would be useful for future generations to know about this process?**
- 05:47 Well, I'm sure you've talked to many people and you've still got many more people to talk to. I must run but if you do think of something you can always give me a shout before you leave (___), yeah, yeah.
- 06:01 RS: Okay, great, thank you very much.**
- 06:03 Thank you very much, too, yeah.