



Voices from the Rwanda Tribunal

Official Transcript: Philippe Larochelle (Full Interview)



Role:	Defense Counsel
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Interviewers:	Lisa P. Nathan John McKay
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Philippe Larochelle reflects on his experience as Defense Counsel, speaking to the many areas where he perceives the ICTR to have failed. He draws attention to allegations that the Tribunal has been politicized by its reluctance to prosecute members of the RPF. He observes that international pressure to secure timely convictions has been prioritized over the genuine pursuit of justice. He addresses the inequities between defense and prosecution teams, as well as the difficulties of securing political asylum for the acquitted.

The transcript of the interview begins on the following page.

Part 1

- 00:00** Lisa P. Nathan: Say your name, your home country . . .
- 00:02 Okay.
- 00:02** LPN: . . . country of origin, and your role here at the ICTR.
- 00:06 Okay.
- 00:07** LPN: So, go ahead when you're ready.
- 00:09 So, my name is Philippe Larochelle. I am from Montreal, Canada and my ho-, my role here as, as a, at the ICTR is that of co-counsel in the defense team of Jerome Bicomumpaka, a man who's currently accused before the International Criminal Tribunal for Rwanda.
- 00:26** Note: Gap in Interview (Approx. 16 seconds in duration.) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.
- 00:34** LPN: I'd like you to tell us your timeline with the ICTR. I believe you've been involved here fo-, for a number of years so it could be the different cases that you've worked on if there are more than one, and then the number of years – when did you first become involved here?
- 00:54 I was called to the bar in 1998 and three years after I was called to the bar, I was about to start working in a big firm in Montreal where I received an offer from a lawyer who was involved in my current case to come here and to meet with Mr. Bicomumpaka at the pre-trial stage where we had to basically interview the accused and obtain information from him. So, that was in 2001.
- 01:20 I started then as a legal assistant. You have to know that every defense team is composed of one lead counsel, one co-counsel, and three other people which are a mix of investigators and legal assistant, investigators doing the investigations and legal assistant doing the legal work. But that being said, legal investigators sometimes do the investiga-, le-, legal assistants sometimes do some investigations and the opposite is also true.
- 01:48 So, my, my role here really started in – w-, was supposed to be a week long and I was thrilled by the idea of seeing that trial through. Mr. Bicomumpaka was the Minister of Foreign Affairs in Rwanda in 1994. He was appointed to that position in 9th April, 1994.
- 02:07 And I tried when returning back home to negotiate with that big firm to be able to take that case and to work for them. It didn't work. So in the end I simply renounced my offer there and since then, I was, I, I am working in the case of Bicomumpaka.

- 02:26 And my, the lead counsel in our, in our team dramatically passed away in 2005 and at that point, I had been appointed as a co-counsel in another case. But since I had a very good knowledge of the case of Bicomumpaka, I was asked whether I would come back into that team and, and finish that case, which I accepted.
- 02:50 While here I was also involved in other cases. I was involved in the case of, I am currently involved in the case of André Ntagerura. André Ntagerura was a minister also in Rwanda and Mr. Ntagerura was acquitted in 2004.
- 03:05 Mr. Ntagerura, since his acquittal, lives in a so-called “safe house” here in Arusha away from his family, away from his friends, and he doesn’t have a job, and he cannot pursue any studies. So I’m trying to find a home country for Mr. Ntagerura because the ICTR is being completely inept at doing so.
- 03:28 There was a request that was sent to Canada to which Canada never answered. So we’re pursuing the case of Mr. () Ntagerura currently before the Federal Court of Canada and before the Appeals Chamber of the ICTR because he’s been now – it’s going to be soon five years since his acquittal.
- 03:47 So we’re trying to resolve that situa- . . . I’m trying, actually, with other friends, other lawyers who are, who work on a pro bono basis in that case to find a home country for Mr. Ntagerura but we can come back later on that topic.
- 04:01 So, at this moment, I am the co-counsel in the Bicomumpaka defense team and the trial finished in June of this year. We are currently writing the final brief and we will present our oral arguments at the beginning of December following which we will be waiting for the judgment.
- 04:20 LPN: And then, are there other cases that you have worked on as well?**
- 04:24 I was involved shortly before the, the ECCC, that’s the, the special courts before the Cambodian tribunals. I, I was, I had a brief mandate date which I was not able to reconcile with my duties here, so I was, I did not continue there but I’m currently representing some victims before the ECCC. So, I may see a bit of work there eventually.
- 04:51 LPN: Were there other cases before the ICTR that you’ve been involved in?**
- 04:58 I was doing some criminal law back home, some civil law . . .
- 05:01 LPN: Before – I’m sorry. Here at the ICTR, have you been involved in any other cases? You mentioned briefly that you were on another case. I wasn’t sure.**

- 05:09 Yes, basically what happened is that to be a, a, a counsel or co-counsel in a, any given defense team, you need ten years – you need to justify ten years of, of, of bar call and, at some point, they changed that to seven years.
- 05:25 And this is when, when they changed that rule, then I was, I received an offer to be involved in a different case in the so-called Butare trial which has six defendants and I was asked by a lawyer from Burkina Faso called Maître Pacere to be his co-counsel to, in the defense team of a man called Nteziryayo.
- 05:47 So, but this was a very short, very short duty because the, the, my, on my first day of assignment in that trial, () Maître Gaudreau, the lead counsel in Bicomumpaka at that time, passed away. So I only appeared for a day and then I switched back to my previous mandate, which is that of Bicomumpaka.
- 06:11 LPN: So, if I may go back in time – so I’m going to switch gears a bit here and ask you where you were in the spring of 1994.**
- 06:24 The spring of 1994. Well, I don’t remember. I was back home. Spring of 1994 – I was studying at Laval University my, where I studied. I do not remember exactly at what stage of my studies I was but I was in, back home in Quebec City where I lived all my childhood.
- 06:48 LPN: Do you remember when you first heard about the events in Rwanda in the spring of ’94?**
- 06:55 I remember hearing and following up what was happening in Rwanda, but I could not give you an accurate date as to what I heard, where did I hear it, what were people saying, what media – no. I, I mean, it’s, it’s, it’s like, it’s 20, it’s almost it’s going to be 20 years soon and it’s . . .
- 07:20 And in fact, working so intensively on other material dealing with what happened in Rwanda in 1994, I think, also makes it very difficult for me to remember what, what my first contact was with that dramatic event. It’s, I, I, I remember like fo-, because I’ve been always following international news so, I, I know I read about it and I was following it up.
- 07:46 But what and where and when and, and, and what impression I, I, I got at the time that, I’m sorry to say, I don’t remember.
- 07:55 LPN: So when you have, you worked here at the ICTR and you’re now head counsel?**
- 08:02 No, co-counsel.
- 08:03 LPN: Lead, lea-, co-, co-counsel. So, can you explain some of your responsibilities as co-counsel?**

- 08:10 I came back in the Bicamumpaka team just before we started presenting our defense. So, that means at that time, the responsibility was getting ready to present some evidence. So, basically lead the defense witnesses through their testimony.
- 08:28 Interesting, what's interesting is that these are people that I had myself interviewed because as the legal assistant, I had myself done the groundwork of finding these people, meeting them, getting statements from them, preparing them to come and testify in Arusha, and the turn of events eventually made it so that I myself examined most of these witnesses.
- 08:55 So these were my primary responsibilities at the time. And at this point now, we are trying to figure out from this massive amount of evidence – we have over 400 days of trial, over 1,000 exhibits, dozens of witnesses – so we're trying to put that in order and, and present our case to the judges at the beginning of December.

Part 2

- 00:00 LPN: So, you were saying that right now, the challenge for you is all of this mess . . .**
- 00:05 Is, is to see through very contradicting, confusing pieces of evidence and testimonies. And we'll get to that but lies and deceits and deliberate intents to implicate these guys so, it's very difficult.
- 00:23 LPN: So, I think you're just getting there but, can you speak more specifically to the challenge that you were just . . .**
- 00:30 Well, basically, we have, we have to deal with over 40,000 pages of testimony, many, many thousand pages of exhibits from radio broadcast to UN cables to prior statements to Rwandan constitution through various political parties' manifesto. These are the exhibits we have to use. We have to . . .
- 01:01 And, what makes the task more difficult, I can say, is the fact that the Prosecutor has not yet figured out himself how to use this massive amount of evidence to prove its case against (___), against the various defendants.
- 01:17 So, we have, there's a, there's a – we received the Prosecutor's brief at the beginning of the month of October, which is riddled with misleading information, that quotes five exhibits out of the 420 that the Prosecutor hasn't used in that trial. So there's a bit of a – we're not so much answering a case as to trying to figure it out.
- 01:43 There was, if I can talk about my own case, there was an indictment that was served to the diff-, different accused. My client was arrested in 1999. He was served at that time with an indictment that would use in pretty much every – against pretty much every accused, especially ministers in this tribunal.

- 02:04 And just to give you an example, my client never held any political position before the 9th of April, 1994 where, wh-, when he was appointed as Minister of Foreign Affairs. Yet in that indictment, he's named as a minister who received information about a conspiracy in 1991, which is like such a blatant mistake. He's, he is named there as being a, a member, a founding member of the () RTLM which is completely untrue and about which there was no evidence ().
- 02:35 So, what I want to ta-, wha-, what I want to say about this is that this 80 pages indictment that we received in 1999 did not allow us to prepare in any manner whatsoever about this trial. So they, what they did is b-, just on the eve of the trial – two weeks before the trial started, they filed what they call a pre-trial brief in which we got a better notification of what the charges were there against the, against the accused.
- 03:02 There are no mention of any murders, for example, in the, in the, in this very generic indictment. This came only when we got the, the pre-trial brief two weeks before the trial. And this confusion continued during the trial to the point where now when they serve us with that – their final brief, there, there i-, there is this great confusion between – it's impossible for us to relate the evidence to the different counts of the indictment; it is not done by the Prosecutor in their final brief.
- 03:32 So now we are, we – on, on top of having to answer all the difference, different allegations that are made against the client, we also have to clear out and sort out what, how the Prosecutor is building up its case. Because the problem is that they're – on, on the whole, they're charging these people because they were members of the government which, in fact, is something easy to say but when you're trying to translate into a legal theory, is way more difficult.
- 03:59 These guys are basically living under the assumption that there was a genocide, there was a government; then you are responsible. Ministers have been acquitted. Some have not been even prosecuted. You have to formulate a coheren-, coherent legal theory to explain why, by virtue of the fact that you are a minister in that government, you are responsible for these horrible crimes. And that, that, they have not yet managed to formulate, so . . .
- 04:28 And there is evidence. There is an expert witness here – Alison Des Forges – who is quite well-known, who sort of take the same view but again, I mean, an expert witness is, is no evidence. She has to rely on established facts and give you her own interpretation of these facts.
- 04:45 Here, unfortunately, we, we have her opinion but it's, it's, it's not substantiated by any reliable evidence. The, the, her main, the main, the main witness upon which sh-, she relies has been recalled because he's been fou-, he's been found to be lying during his testimony, so that, that gives you worries about how they're going to deal with that. But I don-, I, I'm, I'm wandering . . .

- 05:09 **LPN: No, n- . . .**
- 05:10 . . . away here. And what I'm saying to you is that the, the biggest challenge we have to figure out now is that there is this huge amount of evidence that we need to analyze and, and, and to respond to, to a certain extent. Not all of it because there are four co-accused so – and not all of it concerns us but yet, there still remain a massive amount of evidence.
- 05:30 We have, we have, we are dealing with a Prosecutor which have not been able to formulate a, a, an understandable or coherent legal theory based on these facts and this is going to be put in the hands of judges which going to have to formulate their judgment about that.
- 05:46 So, that puts us in a very awkward and difficult situation which means that we have at the same time to answer some evidence and to, trying to do something which a (___) Prosecutor has not done and, and see what path or what legal theory they can use to eventually convict or acquit our clients.

Part 3

- 00:00 **LPN: So, before I ask any more questions, I would like to give you the opportunity if there is something that you would like to say that perhaps I won't get to in a question or something that you would like to share with the future, with the world about your experience here before we go any further.**
- 00:20 **LPN: We will return and ask a similar question at the end if something comes up during the talk, but if you have something right now that is on your mind . . .**
- 00:28 Well, me myself after seven years here, I am, I am very disappointed and, and still wondering about what this tribunal, what, what kind of, what kind – it comes down to this: What, what kind of legacy will that tribunal leave to the world? The, if you go – I mean, if you, if you want to find out about that, I think the best way is to go and find the initial resolutions that were adopted at the Security Council.
- 00:53 And there are two main objectives, main, the, the, “Here is why we're giving this gift to the world, to the international community. We want to fight the culture of impunity,” okay? “We want these crimes no longer to go unpunished.” This is – this was, “Now look, we're going to prosecute the responsible ones now.” That was the first task.
- 01:12 The other task was to, “We want to know what happened, why this happened, and why it was not prevented, and who eventually bears some criminal responsibility.” So basically, these were the two main reasons why this whole thing was created.
- 01:27 And my, my feeling is that on both issues, it's a complete waste. On impunity, the RPF has never been prosecuted. There is massive amount of evidence showing that Kagame and

his gang is also responsible for some of the stuff that happened. How come they've never been prosecuted?

01:45 So the message is really take power, hold on to it as much as you can and as strongly as you can, and you will not be worried. And that's the message it's sending. These people, these other dictators are not crazy. They see what's going on here. They saw how the, the war unfolded.

01:59 Kagame was controlling a part of the territory right from the beginning. All the north of the country was under RPF control and there massive, there were massive casualties there. There are m-, massacres committed there.

02:11 And now it's slowly dripping out now. We're nearing the end of this thing and we're getting statements and we're getting this, this – Louise Arbour stopped the investigation on, on, on these things which I, I – it's, you know, to us in the defense it was very un-, difficult to understand.

02:28 But anyway, I think – so, fighting the culture (___), o-, of impunity – missed opportunity. Missed opportunity, like no objectivity, no balance. You're just like – one side of the story, "You guys are guilty, we're going to prosecute these guys." Some of them, maybe.

02:42 I'm not disputing the fact here that, that, that people that are responsible i-, in what happened should be prosecuted and should, should, should be well prosecuted. So, but all of them should be prosecuted. So that's, I think, the first missed opportunity.

02:56 The other one is to find out what happened in Rwanda in 1994. And I'm sorry to say that after reading for seven years the material that was generated by the Prosecutor in terms of, you know, investigations and witness statement, and in our c-, our case was started with that – this man called Maxwell Nkole who headed the, the investigation services of the Prosecutor for a long time.

03:23 And basically like, he was pressed during days and days to explain to the court what, what, what their investigation yielded and, and what results they got and everything because there was – in our case there is this, this report that was produced by a man named Rousseau who was some Belgian volunteer who went in Rwanda in 1996 . . .

03:47 . . . and felt some, felt he needed to do something so he started investigation in all the, started investigations in all the – it's a public document in, in our case – so started investigations in all the communes, interviewed people, tried to know how many victims were there and, and did all, all of that.

04:03 And after – at that point when Nkole took the stand this report from 1996, that's in November 2003, so that's seven years later, and after being pressed for a couple of days –

“Yeah, we, we managed to find a couple victims more, you know, like in this banana plantation.”

04:21 It was ()– we, we, we fell off our chairs, like that after seven years of investigation that that was the result, you know, they, they, they managed to have found a couple of more victims.

04:32 But – this, this is, this is just an anecdote but the problem is that the Prosecutor is still, for example in our final brief, is still alleging these, like, vast conspiracies and they’re still working under the assumption that some people are guilty by virtue of the positions they held in that country.

04:55 So the point I want to make with that is that after so many years and resources devoted to investigations and trials, we still – we yet have to arrive at a comprehensive narrative of who’s responsible for what and when, and who, who, who conspired to do that, who planned that.

05:18 There are received ideas which, you know, like, you just – people read, for example, that they were using the radio to incite genocide. So the Prosecutor produced one broadcast in our case where, according to Alison Des Forges an expert on the topic, if you read the thing in a certain manner, you could understand it.

05:42 The famous word that would mean “work,” that “work” would equate “kill,” you know, so if you read it in a certain manner with a certain understanding of the Rwandese context and all that, that it could be understood as constituting incitation to genocide.

05:59 Yet, if you take all the tapes, if you go from day – from the 6th, the 7th, the 8th, the 9th, the 10th – if you read all these tapes, what you see there are government ministers calling on the population to stop hunting people for the reason that they are Tutsis and doing exactly the opposite of what is alleged by the Prosecutor they did.

06:20 And we’ve produced all of these tapes in our ta-, in, in our, in our trial. I don’t know what the end result will be but we were so surprised by – when we read that material and we found that, that the, the official radio in Rwanda – I’m not, I’m not talking about RTLM. The prosecution was that these people, these ministers were actually positively incitating to genocide on the radio, on Radio Rwanda.

06:44 And when you read their messages, it’s exactly the opposite, and this is not the only sort of – we, we have started calling it the “accepted version of event” in our trial. There’s an accepted version of event, which people don’t go behind, people don’t have the opportunity to go behind. People don’t examine and people don’t have the will to really assess whether it’s true or false.

07:07 And when, when you're surprised – it was very surprising to realize that when you dig into these things and you actually try to get a, a comprehensive and objective, an objective understanding of, of what is going – what went on or – anyway, what is alleged by the Prosecutor went on i-, is, is sometimes very removed from reality.

07:29 And that is disappointing. You're expecting, you know, neutrality and objectivity from the prosecutor. These people are not – you get the feeling sometimes that these people are rather duck hunting than trying to present objective, and (___), and doing their job in a neutral way where they – "Here is the evidence," you know.

07:54 We're not here to win or to lose. The-, there is no – being a prosecutor i-, is not a – there shouldn't be a concept of winning a case or losing a case. You're there, you're there as a, as a, as a justice officer to objectively present what you think is, you know, relevant and, and, and probative evidence about what happened. And we, we get the feeling this is not what they do.

08:15 LPN: What do you mean by duck hunting?

08:18 Just like, "We'll get him. We'll get him. We'll get him." This, this is the feeling you get when you speak with them. I just, you know, don't want to point out to anyone or anything . . .

08:26 LPN: (___) . . .

08:26 . . . but I've been here for seven years. I think there are many reasons for that. But, yeah, this is the – this is my own feeling of, of, of what you get here.

Part 4

00:00 LPN: So, if you were going to be on a, to advise people who might be creating a tribunal similar to this in the future, based on your experience, what are some things that you would want to have in place in the structure?

00:17 Right from the outset, some safeguards, okay? This is more of a political exercise than a judicial exercise, I think. You're, you're asking lawyers to figure out what happened in the head of politicians a-, and other people like that. If you want to keep a, a certain measure of, of objectivity, right from the outset you have to think about the fact that some individuals would be accused, okay? So, I think it is important that when . . .

00:48 Like the defense got involved at a much later stage in all these proceedings. So you have to find a way – and I'm, I'm, I, I, I've never participated in creating international tribunals but I think (___), if you want to arrive at a better, better objective and, and, and accurate narrative of facts at the end (___), because always you're dealing with, like events of historical proportion – I think you need to, you need a safeguard.

- 01:16 Because what happened there is that they were looking for guilty people. They were, they were not looking – and you can see there was a comment from Judge Kama at the beginning, “We’re going to pronounce our first conviction soon,” you know? There is this – there is an assumption that you are, you’re trying to catch guilty people. These people, some of these people have spent like eight years in jail before being released after their acquittal.
- 01:41 You, we tend to forget, I think, to, to lose sight of the fact that one, one, one of the problem, I think, in that too is the fact that – I suspect that the tribunal was a bit, became a bit of a, a tool in the hands of the, the current regime in Kigali.
- 02:02 I think – I don’t want to – there, there are examples where they decided to stop cooperating, and in our own case there are examples where we actually see positive actions in, in, in generating false evidence against the accused which there is at least certainly a bit of interference here.
- 02:18 In, in a, in a, in a tribunal where th-, you have like a very, by and large, a very, an immense political – there is a political sort of side to the, to, to the things that are happening here. And so you have to be very careful because, in the end, you’re, you’re dealing with individuals for which you have to decide.
- 02:38 So, my, my thing as a defense lawyer would be to make sure that the rights of these pe-, people that are accused here are respected right from the outset because otherwise, if you, if you, if you get carried on in, in that task of finding, finding the responsible people, then you get list of, of, of persons who are involved from Rwanda, you yourself have no knowledge of what happened there. So you, more or less, rely on that stuff.
- 03:00 I think in, in circumstances like that it’s very important that you integrate right from the beginning some manner by – I don’t know how, but that you integrate safeguards to make sure that the accused persons that will be judged, you know, in 12, 14 years after the events, receive fair trials.
- 03:20 LPN: Did you, this will be my last question before we break, did you have goals or a goal when you first became involved with the ICTR in your work here? When you made the decision to move away from a big law firm in Canada, you made a decision to stay working here. I imagine you had something in mind, some goals in your work here.**
- 03:45 Goals – well, first, professionally when I started, I started reading everything about Rwanda and, and, and by extension, the Great Lake region. Eventually, I, I realized that I was in, in a new field and developing an expertise at that stage of my career was very interesting so – and yet, it’s still a criminal law, so . . .

04:07 But, you know, apart from doing my best in putting my, my, my clients' case through then, which is still my goal, that's pretty much it, ().

04:20 LPN: Okay.

Part 5

00:00 **John McKay: I'm John McKay. I'm a former Federal Prosecutor in the United States and currently a Professor of Law at Seattle University Law School. Thank you very much, and I just wanted to turn to follow up on some of Lisa's questions. You've talked a quite a bit about your relations with the Office of the Prosecutor.**

00:20 **JM: I want to move a little bit more to what you have observed. You've been here for a long time and you, you've had an opportunity to see the way in which the international community here at ICTR . . .**

00:31 **Note: Gap in Interview (Approx. 2 minutes in duration.) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.**

00:46 **JM: But, but you've observed the, some of the development of the legal theories advanced by the prosecution and allowed by, by the tribunal. Would you want to comment on, on any of those?**

00:58 **JM: And I, I have in mind for example, the – we would simply say conspiracy elements here but the, the joint enterprise, I think they call it Joint Complicit Enterprise in this, in this tribunal, which we understand people have called "Just convict everybody." Wh-, what, what – do you have any, any thoughts on the development and use of, of, of legal theories here?**

01:19 Well, most certainly I think I can – what I can say from our prosecutors anyway is that they have – they are certainly are, are not the one that created those theories but they always are very happy to exploit them. (), they are reacting rather than creating legal theories.

01:38 We – our case is interesting in that you're dealing with four ex-ministers which don't know each other, okay? When I started this case, Joint Criminal Enterprise is not even pled in the indictment, and it's a bit like conspiracy. I was, I did a case in the Supreme Court of Canada on conspiracy and they, they called it like the, "the bomb in the prosecutor's tools," you know?

02:03 I pretty much, many, when you're not, and these are evolving. They started in Tadić couple of years back and they're not, they're still not well-defined. They, they are, they are, still very few, few people perfectly understand what they're all about and you can read that when you read the, the jurisprudence about them.

- 02:26 And what I could say about that is that it's – we're, we're in a case – my own experience is the Prosecutor introduced that, you know, after – while they were presenting their evidence and all of a sudden, they – but in, in our case anyway, they have not, they, they have not prepared at trial to try to establish that there existed an, an, a criminal enterprise in Rwanda.
- 02:49 Far from that, they are now saying basically, they are putting things in reverse order. They are saying – there was a genocide, there was a government. The only possible rational conclusion is that the government was responsible. And they're trying, they're trying now to fit that equation in all kind of boxes, amongst them, Joint Criminal Enterprise.
- 03:14 But since – in the brief, in their final brief, they only cite Tadić which is the initial case where Joint Criminal Enterprise was created. They don't go beyond that. They stopped there. It's, it's terrible that you're dealing with people who should be professional prosecutors in the forefront of, of what is happening, especially here.
- 03:36 This is, these are the forums where, where, where these legal theories are, are being developed. Whether we are working on it now, I think it's, it's, it's, it has way too far reaching theories because you are getting – my, my, my impression personally is that you are getting into the realm of holding people accountable by virtue of the fact that they were belonging to organizations or collective, or, or groups, which I think is a mistake.
- 04:02 And, it actually runs contrary to what, what the initial resolution says which you want to – if, if you find someone guilty, you have to demonstrate their own, you know, guilt intent and, and, and guilty acts. You cannot held someone guilty by the fact that they belong, merely for the fact that they belong to a government, a political party or an organization.
- 04:22 You, you still need to demonstrate their own guilt and, you know, it's a short cut. Joint Criminal Enterprise here is a short cut: "You were in the government, the government has some blood in its hands; therefore you have some blood on your hands."
- 04:36 And that's, to me, it's very dangerous because we're, we're, we're, we're circumventing, you know, individual criminal responsibility by that of collective criminal responsibility, which, I think, is a bad, bad thing.
- 04:48 JM: Do you have any thoughts about some of the other legal theories such as the media cases involving incitement to genocide or the, the development of rape as a part of, of genocidal acts?**
- 05:02 Rape as a part of genocidal act – I mean this is, I think, a welcome, you know, advancement because it's – we had an expert in our case which stated something that everybody sort of, you know, know that when in, in, in context of war and civil war or, or, you know, there is

always, there is always an unfortunate prevalence of rapes and, and sexual infractions that are committed. So, I have no difficulty with that. I certainly welcome that.

05:33 Inciting – I think it’s very interesting to, again, you always have to – it’s interesting to have legal theories but you have to see how well they are – you can, you know, demonstrate the, the guilt of, of the various accused here before this tribunal.

05:48 And I was – as I was stating earlier, there is, there is this assumption that there were incitation there without having – the, the Prosecutor is actually holding on their broadcast and material which would allow an objective and, and proper examination of whether incitation took place.

06:08 And if y-, if you read the appeals judgment in Nahimana, his conviction now stand on a very, very weak fact, you know. Everything has been – he’s been cleared of pretty much everything. There is just one witness now on which they rely, or one event, I’m not quite sure, but . . .

06:24 You need, before advancing these new legal theories, you need to have solid and concrete facts, and this is, this is – to me, this is what is worrying is the quality of the evidence that’s being advanced here to support these different legal theories.

Part 6

00:00 JM: Let me ask you about your views of the discovery – the, the disclosure of, of documents including exculpatory evidence. Are there – is there tension around that? There usually is in any criminal case but, but, but . . .

00:14 It is, I can s-

00:15 JM: . . . can you talk about that?

00:16 Yes, this is, this is one of my, dear or dar-, you know, more, more important issue. There is a culture here at this tribunal of not disclosing, and I explained earlier that I think associating the defense to the process of discovery at an earlier sta-, at, a, a, an earlier stage would be very important.

00:39 But also, the Prosecutor needs to be sanctioned for the way it has hidden – I’m saying hidden – evidence in various trials. And it – the Prosecutor has been sanctioned in other trials in the, in Ndindiliyimana. Now they have to, at a great loss, they have to recall 30 witnesses because the Prosecutor was not able to do his disclosure job.

01:00 In the Karemera trial, the, the, the, one of the prosecu-, one of the counsel there, Mr. Robinson, asked for the duty of disclosure to be taken out of the hands of the Prosecutor because he was able to cite 20 examples where he was basically – I thought that was quite

funny – he was writing a letter to prosecutors saying “I want this.” He knew. He had found it already and he knew it existed.

- 01:22 The Prosecutor systematically failed in identifying the evidence which was either exculpatory or would be of some help to the defense. The, the, the – we’ll talk a lot about the Prosecutor, an-, but the, the, the disclosure here I think – the disclosure issue here, if it had been properly dealt with with the Prosecutor, would have allowed these people to have much fairer trial.
- 01:45 They, they have – they don’t – it’s, it’s a mix of, I think, incompetence and, I suspect, dishonesty. But, there is – there, there has been here too many incidents of, of evidence that turned out much too late that’s been not disclosed to the . . .
- 02:04 We are dealing with that situation now. We have a detainee witness in our trial who, who, wh-, who – I will, I will give you that example. We have, we have two witnesses who alleged that Bicomumpaka participated in an event in, in a given prefecture. Two detainee witnesses.
- 02:21 They came – actually, before, before, initially, before the trial started, we had four witnesses saying that. Two saying he wasn’t there, or that they (), did not remember seeing him. And people of the utmost . . .
- 02:32 One who remained in Rwanda after 1994 and, and held a very high position there up to 1997, so somebody whose credibility is very difficult to doubt. And another one who held similar position. These two people – one saying, “He wasn’t there,” the other one saying, “I don’t remember seeing him there.” And two detainee witnesses saying, “He was there.” Two detainee witnesses saying he was there.
- 02:57 Eventually, one of those two detainee witnesses – out of jail, out of Rwanda in a different country – corresponds with the defense, “I need to meet you.” And explain to us how the evidence was fabricated against Bicomumpaka and this was so – in many jurisdiction, you would get a mistrial and a stiff proceedings for that.
- 03:18 The guy explained how authorities from Rwanda were circulating with list of name to implicate. This is on videotape. This has been given. I mean, there’s no – it’s not me who’s, who’s inventing that. So the guy says, “These people, these, the authorities in Rwanda are circulating a, with list of people to implicate in what happened in 1994.”
- 03:36 And what is even more worrying is tools – legal tools such as corroboration. Where you have an unreliable witness, you’re going to look for reliable evidence that confirms, you know, what he says. Well, if you take that against the accused, it becomes very dangerous because “Aha, corroboration. We won’t put one. We’ll get two.”

- 03:57 So, and the guy actually states that they explained, “To be more credible we’ll, you know, we’ll take two of you dealing with the same ev-, the same event and putting you at that place at that exact moment.”
- 04:08 So, this guy managed to flee Rwanda, communicate with us, is filmed, Prosecutor present, we are present, Registry present. Recalled, can come back and explain the whole thing in a different case and explains how you’re in jail since 1994.
- 04:24 It’s 2000, 2001. You st-, claim you have nothing. You claim for five years you have nothing to do there. They come to s-, to visit you in prison and they tell you, “Just give us a couple of names. Go testify there, you’re out,” and they did.
- 04:38 And the guy did and accepted to do it. But at least one of them felt bad and had remorse when he was out of Rwanda, okay, so called us. We got the whole information about that and explained that the other witness that we still haven’t, you know, that still alleged that also did it with him, you understand?
- 04:59 So, this is when you, this is the, the thing we’ve been able to expose, okay? How about these other – where everything points to that. Witnesses give like eight, nine statements and at some point, “boom.” Bicumupaka appears in a statement on the 7th statement and one day after, another completely foreign individual, “boom.” Bicumupaka appears in the statement.
- 05:18 Same investigators – you can see it from the signatures. So it’s, you know, that’s why I’m – we’re talking disclosure and, and the work of the Prosecutor. How can you take the two other witnesses who are – o-, o-, one outside of Rwanda fearing no pressure and, and, and telling you what the story was.
- 05:35 The other one – I, I’m, I, you’re not, I’m not giving you the whole story because I don’t want to indi-, identify these individuals or what, you know, but, anyway, the other one whom should have been your primary witness for that event which – and we called.
- 05:49 We called the two witnesses that were rejected by the Prosecutor. They still rely, in their brief, they still say, “This is an allegation that stands.” They still pretend that Bicumupaka was there, you know?
- 05:59 It’s just like, to me this – what – have, have they seen the same case? Have they? Have they done their homework? I think, you know, there, there’s no measure of objectivity if you present the kind of evidence which I’ve just given to you.
- 06:13 **JM: Well, let me ask you, your view on that is – i-, i-, do y-, is that, in your judgment a problem caused by individuals who are behaving badly or is there something about the tribunal that should be adjusted? And, and what I’m getting at is, you know, if, if, if**

Prosecutor misbehaves, you would expect the tribunal to sanction the Prosecutor and to say, "You're not following the rules."

06:36 JM: But the difference may be, maybe the rules aren't, aren't strong enough or maybe the rules aren't correct. Have you, have you reached any judgment on that?

06:42 Well, it's very difficult to understand, you know, like, I, I come from, from a jurisdiction and so do you where – how, how can a guy still be in jail ten years after the events when that is the quality of evidence you're bringing against him? To me, this is enough said. You know? There's something not functioning about this tribunal if tha-, such a situation can arise.

07:04 And now, they're like, "So, they ordered investigation. We have no idea. We're closing." Can you believe it? We're closing this case without having the chance of hearing the guy who is recanting because he, he disappeared again. He left. He was a – he left. Anyway, he disappeared.

07:16 So, like, there is, there is, there is a, a fundamental problem with that institution which is that it's, it's, it's short-lived. It has to finish its work, you know, within a certain mandate, within a certain time, within a cert-, within a given time with a certain budget, a certain means at its, at, at its disposal which, I think, makes – you cannot start an investigation.

07:38 What you should do about that is stop it. We need to start an investigation in the practices of the prosecution, and a big one, okay? Because this is a, this is an incident which I heard. I told you () another incident in (), another trial where they, they were ordered to discl-, to recall 30 witnesses because of the Prosecutor's, you know, failure to disclose.

07:58 And these witnesses – the, the, the two I've been talking about – they have been – we just have the luck to be the 4th person against whom they're testifying because the first one who was found guilty on the, on the basis amongst other of the evidence of these people . . .

08:10 We just have – we're just lucky enough to have a long trial which, which, which made it so that we had the benefit of all the previous statement and, and to show to a certain extent, you know, the contradictions therein and all of that, and also the, the fact that we're still under trial when this guy recanted.

08:24 But what about the first one? What about the first guy who was, who was convicted on the basis of, of, of such evidence? There, there's a problem there but – back to sanctions against the Prosecutor and the, and the Chambers, they're a bit – we have not seen, I think, what should have been done here which is, you know, like something a bit stronger about evaluating whether or not you have still, you know, exculpatory evidence.

08:51 It's, there, the-, it's, it's, the, the, there are Canadian cases which says that the, the, the evidence at the di-, disposal of the Prosecutor does not even belong to him, you

understand? It belongs to the, the justice system to find out whether that person who's accused committed or not crimes. It's not – it's something which, over which they sort of, you know, revendicate a property and they – it's very difficult.

09:13 For example now what's starting to dripping out as I was mentioning earlier, is the involvement of the RPF, and statements – these failed investigations which never led to accusations against the RPF leadership were, we-, were not – I don't know why, () I have my own views on that but . . .

09:33 And, nevertheless, there was a special unit or whatever of investigators which generated a few statements dealing with, you know, the means, how the RPF was, was, was leading that war. And that's very interesting because that goes to how, how, you know, our own side – the, the, the other side was leading the war.

09:53 And I think it's so relevant and so important to have access to that sort of evidence. Yet, the chamber doesn't want to push things back. The tribunal doesn't want to push things back so they're trying to sort of not, you know, they're not going, they're not going far enough.

Part 7

00:00 **JM: You have a lot of, of, of criticisms directed towards the ICTR and you've talked about them in some detail here today. You, you've written out in, out in the real world as it were that, that, that you, you view the ICTR as a, as a grotesque judicial exercise and a, and a waste of money.**

00:20 **JM: Do you think the international community should be exercising some different role here? And if so, have you given some thought about that? What, what should be the role of the international community in, in trying to address what occurred in, in 1994?**

00:35 That's the question I've been trying to answer because () – it's easy to criticize but, you know, "Do you have an alternative?" is the obvious question. And it's a very difficult one. But what I can say is I, I'm, you know, I think – how can you be the judge and be involved in that? That's, you know, I go back there.

00:57 The U-, the interna-, the United Nations recognized its re-, responsibility in what happened there – the failure to intervene. There's a report of the United Nations and Kofi Annan () apologized to the people of Rwanda, you know?

01:15 **JM: So you're suggesting that by setting up the ICTR, a, you know, a complicit organ is creating the judicial system . . .**

01:22 Not complicit, I, I, I don't think the people that created the ICTR had any ulterior motives. I think they were – I think it was – their intention was, was noble. I think you, your start –

and it shows. It shows in the resolution that created the tribunal. I think the, the – it's not so much a problem of having bad intentions.

01:43 I think these people – there was no – some people go very far and say, “This is a conspiracy.” I don't think this, it was a conspiracy of any sort – the, the creation of the tribunal, I mean. I think there were a genuine intent to prosecute responsible people and to, and to carry on that fight, you know, against impunity and all that.

02:02 I think these objectives were genuinely present when they created the tribunal. The problem is implementation and how you achieve that. And you know, France is – the role of France is always discussed. They're a part of the Security Council – already there you have to be careful and right from the beginning, I don't think a, a, a, an, an institution like this within the context of Rwanda can work.

02:31 JM: Let me ask you about that then. If there was no ICTR, what would you hope for in terms of – you're obviously a man who's interested in justice – what would your hopes for justice from the genocide be with no ICTR?

02:47 Convict these people where you find them, create special chambers in Canada like they're doing now – in the United States, in France, in Brussels where you have already, you have i-, in African countries where you, you have them, you know.

03:02 It's not trying to – out of nowhere, you know like *génération spontanée* or spontaneous generation thing that, in time, you can, like within a couple of years, sort out these events and, and, and figure out what happened there.

03:18 To me it's, it's – and the problem I think – one of the major problem here is that you're creating an institution which has no arms and no legs. It has no sovereignty, so you're completely dependent on states' goodwill to achieve fair trials.

03:35 Can you, and I think, I think if you're doing a bit of international law, I think sovereignty is the most perfect form of immunity, okay? There's no – but it's true. And you're dealing here with an institution that has no power, and I'm seeing that in *Ntagerura*. The Registrar addressed a note verbale to Canada, saying, “You take that man who has been acquitted.”

03:55 Canada is a member of the United Nations and the tribunal was created under Chapter 7 of the Charter, okay, which specifically states that, you know, if states have to abide by request of cooperation because without states' cooperation, there's nothing. There's air.

04:11 Everything – they depend for everything – for carrying people here, for getting witnesses, for getting prosecutors, for getting money, for getting room. For getting everything, they depend on, on, on state's goodwill.

- 04:23 If you don't have that, well, you cannot achieve anything. And this is, this is the, the real issue here, you know, like do you – you just throw that thing in orbit, and then after that states shut their door and say, "Well, you know, fuck off. Get, you know, do your own things and don't, don't bother us with that."
- 04:40 But you have to be coherent, and, and, and the most problematic state in, in that, in that picture, I think, is Rwanda.
- 04:49 JM: Well, let me ask you about that because – let's assume there is no, there is no tribunal. RPF, Kagame who you (), spoken about before is in power now. Are you satisfied that, that Rwanda conducting its own trials in dealing with certainly hundreds of thousands of people who were killed by hundreds of thousands of people. How, how does that work?**
- 05:14 I'm not, and the appeals chamber is not either because it refused () the tr-, to transfer the accused in Rwanda because they were concerned about, you know, whether they would receive fair trials or not there and whether witness protect-, there was a witness protection issue which is still valid.
- 05:28 This, there was a bitter war between these two – between Kagame and, and, and the people that are currently facing trials here at the ICTR so it is very, very – it would be very unsafe for them to be sent there, and there were very interesting questions that were raised there.
- 05:46 But I, you know, I'm, I'm struggling about finding an alternative to the ICTR since a couple of minutes and I, the more we think about it, I think, they've, they've spent a billion and a half dollars in that thing so far with, with the result that I've mentioned to you, you know. Actually, I think it's, it's completely failed in its dual objective.
- 06:07 And I think that money would have been better invested at, at helping the judicial system of, of these countries where these people eventually took refuge – many of them in Belgium, many of them in South Africa and surrounding countries.
- 06:19 And this, on the whole, I think this was not properly addressing the problem. The ICTR is not – and I don't have myself a, a – unfortunately I don't have anything other than, than that as the alternative.

Part 8

- 00:00 JM: Let me, let me turn to just sort of a, a, a final area I think which is to, to ask about you in your role. You talked a little bit to Lisa about this but . . .**
- 00:09 JM: Y-, you know, I can see in your, in your comments you were, you, you were, you were poised to go where, you know, law students and, and new lawyers want to go**

which is in a very successful – you'd be served coffee with fine china, you'd be dealing with major corporations and clients in Montreal or, or, you know, somewhere travelling in, in probably better class than you're travelling, living better, making more money.

00:36 JM: What, what is it about this work that has attracted you and caused you to stay?

00:42 Well, this, this thing is writing history and it's not writing it correctly, you know. So that's where I eventually manage to squeeze in there. You see they're, they're writing the history of that country, of those people, and – you know, a murder is one thing, you know? But 800,000, a million is another thing.

01:02 You're, you're dealing with – that's the political sort of side to this whole story. You're, you're, you're, eventually, you're ending up doing a job which is half legal and half political. And that's different. That's different and that's a great challenge.

01:20 And that's also on a more personal level. You know, I was profoundly shocked by how the Prosecutor alleged things which were obviously untrue, which were not checked, which were not – so that also . . .

01:37 Which, although as a criminal lawyer, you're not supposed to espouse your case. You're supposed to, you know, be somehow cold about it and, and, and you know, sort of remain in your role as just the justice officer and, you know, whether you're guilty, whether you're convicted or found innocent, it shouldn't matter because you should be happy that justice is being done.

01:56 But here, you, when you, when you, when you are hit by the fact and by the feeling that justice is not done and this guy would be, you know, to my, to my opinion, you know, wrongly convicted – if found guilty, well, that, that, that reaches you and certainly, you want to give it every effort that you can.

02:18 JM: You know, I, I, I'm personally convinced of course that the, that the role of defense counsel and good defense counsel is, is a critical part of any justice system. And I, I know you and I would, would agree with that.

02:30 JM: As you look back, if you were to look back on your time here – it's, it's 20 years from now and you look back on whatever final amount of time you spend here, what do you think this will have meant in your career?

02:44 Well, a lot because I, I definitely want to keep doing international law and international criminal law because I, you know, I, I – it's – (___), I have never been in Africa before coming here. And now, like I can, I can have like very lengthy talks, you know, with, with experts on Rwanda and the Great Lake region.

- 03:06 So, aside, aside from law – law is a tool. You can fit anywhere you want in that box, and what I fitted in here is like the history of, of, of a couple of countries and, and you know, which is – y-, you don't get every day the opportunity to, to do a great deal of history and, and, and cultural – this is a very . . .
- 03:26 We haven't touched on that but we're, we're used with a certain way of doing law, you know. Judges, you know the people who are talking. When they say things, they come more or less from the same background as you do and all of that.
- 03:43 Here you're basically parachuted in a place where, you know, like some guy comes from a village which you don't know where it is unless you've been doing investigations there, and this – they, they come from a completely different cultural background.
- 03:56 And this, you know, part of the difficulties that are met here in this tribunal, this may explain some of them too, you know, like the, the, the oral culture of Rwanda. People are, are, are telling things which have been told to them which is just, you know, "hearsay, hearsay," but not – (___), this is, it's part of them. They know that, you know, even though they've been told by somebody who's been told.
- 04:18 This is – I find this fascinating trying to import, you know, to (___), to what extent have they been successful in doing that, I don't know. I have my reserves about that, but to import a, a, a certain manner of doing justice and doing legal things and then to bring into that box people who have been traumatized by these, these dramatic events, I think, you know, there's, there's a lot of interesting researches that could be done there.
- 04:40 And that's, that's a new way. That's what I like, you know? It, it changes you from your regular practice where, where you're, you're, you're, you have, well, you cannot grasp if you, if you h-, were not, if you have not lived there or you were not born there, or if you have not been through these, like traumatic events.
- 05:58 It's very – you can try to understand but it's, it's every, every new witness, every new person you meet is a, is a, is a new fascinating challenge. And that's, that's what I, that's – when I will look back at that, I will look at my African years, you know, and I will certainly, I certainly developed a great deal of love for that continent and for that, for that country – Rwanda, Tanzania, and . . .
- 05:21 **JM: Do you have, do you have hope then for justice on, on terms that, that, that, that you understand and you, you believe for the people of Rwanda and, and the people of, of Africa?**
- 05:32 No, not for Rwanda because on the whole, if you want to see what kind of legacy this tribunal will, will leave to Rwanda, it will exacerbate divides which exist. The, you know, like people, pe-, there were – over the years, these pe-, these two communities – let's call

them that way. I don't want to get into things, but – the, the Hutus and the Tutsis over the years have, have managed things and, and doing things a certain things.

06:00 But this tribunal, what it has done, it has exacerbated these – it has taken that one side, these false stories, these false allegations, and they have brought it over here against, against people who know exact-, who know that it's not true.

06:14 The people, people that come from Canada, United States and even like you know, neighboring countries, know very little about the history of that country and the culture of that country. But if you are Rwandan and if you've lived all your year there and your parents have lived there, and you see the kind of, sorry, bullshit that goes here.

06:34 You know this is – you know where you fit. You know what happened. You were there. You were there and you know exactly what happened. So, you, you, you can try as much as you want to twist things and to, to, to tell them differently and to try to squeeze them in, in, in certain boxes. Eventually, you know, truth will always come out. I hope anyway.

06:54 JM: Thank you very much. I really appreciate your taking the time.

06:58 No problem.