



Voices from the Rwanda Tribunal

Official Transcript: Philippe Larochelle (Part 6 of 8)



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.

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Part 6

- 00:00** John McKay: 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 Bicamumpaka 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 Bicamumpaka 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.” Bicamumpaka appears in a statement on the 7th statement and one day after, another completely foreign individual, “boom.” Bicamumpaka 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 Bicamumpaka 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 disclose, 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.