

Official Transcript: Claver Sindayigaya (Full Interview)



Role:	Defense Counsel
Country of Origin:	Rwanda
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Location:	Arusha, Tanzania
Interviewers:	Robert Utter Ronald Slye
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Claver Sindayigaya explains how cases against the accused are handled at the ICTR, and how most of the accused were arrested in places outside of Rwanda. He discusses the transfer of trials from Arusha to Rwanda and the criticisms that the accused would not get a fair trial in Rwanda, how the Rwandan judiciary does not yet have the capacity to handle these cases, and how defense witnesses would not be free to speak in favor of the accused. He also discusses the lengthiness of trials – including one client waiting for 14 years for judgment – as a significant criticism. He discusses the different defense strategies used in multiple-accused cases, and the advantages of being a defense counsel from Rwanda.

The transcript of the interview begins on the following page.

Part 1

- 00:00** **Note: The Immediate portion of the video prior to this segment was lost due to corrupted digital files. The interview continues here.**
- 00:07 They should be around 30, around 30 but I'm not so sure because . . .
- 00:13** **Robert Utter: Of, of course.**
- 00:14 I'm not so sure, I know that there's – the c-, the cases that have been completed . . .
- 00:21** **RU: Yes.**
- 00:21 . . . 100% maybe they should be around 30 or a little bit above or less but I'm not really very sure.
- 00:29** **RU: No, and ().**
- 00:30 I know that there are maybe 65 accused at the detention, UN detention facilities. Many of them have completed their cases and are waiting for the transfer to the countries where they will serve their sentences.
- 00:47** **RU: Of the 30 to 35 cases, how many of those have resulted in an acquittal?**
- 00:57 I think we have almost five, five acquittals. I think around five. I know there is two bourgmestres, two ministers, and somebody else maybe. They, they should be around five acquittals.
- 01:20** **RU: And these were acquittals at the trial level?**
- 01:23 Yes, trial levels and appeal levels.
- 01:27** **RU: And appeal included.**
- 01:28 I think one of them the prosecution side did not appeal against the decision rendered by the, I mean the trial chamber here.
- 01:41** **RU: Are the cases similar in a number of degrees that appeared before the tribunal against people who actively were involved in the killing of others or another category of people who planned the killings?**
- 01:59 Excuse me, I have not yet – I've not understood you properly, what () – can you rephrase because . . .
- 02:04** **RU: Yes.**
- 02:04 I missed the, your question.
- 02:05** **RU: Of course, my fault. Is there a pattern in the cases that have appeared before the tribunal? Are they primarily people who were involved individually in the killings or**

were they people who planned the killings? And if, if a combination, what's the rough percentage of those?

02:29 Okay, because – what I can say is that most of the, the people accused before this tribunal were high level officials in the former Rwandan government either in the military ra-, I mean military, on the military side or the government officials.

02:53 I think it, it is a mixture of, of what you are saying; some are accused of having planned, instigated the killings and beside that, some of them are accused of having directly been involved in the killings for instance, because even we have some lower profile people, like a conseiller for instance who is accused of having killed with his own hands.

03:32 So it, it is a mixture, it depends on the, the case. It, there is always a mixture of the plannification and the, the participation; direct participation of the accused in to the killings.

03:51 RU: The more serious crimes have been charged at the tribunal level as I understand. And the less serious have been given to the Rwandan courts, is that correct?

04:06 'Til now the, the, the – most of the people who were accused before the, this tribunal were not arrested in Rwanda. That's, this – they were arrested in other parts of the world and were sent to these, to Arusha for trial so as you are aware there were, there was some attempt by the Prosecutor to transfer some cases from ICTR to Rwanda . . .

04:37 RU: Yes.

04:37 . . . and those requests were denied by, I mean, the, the trial chambers and recently even the appeal chamber has denied that transfer from Rwanda so,

04:51 RU: And, and those were primarily an issue of witness safety, is that one of the primary reasons they denied that?

05:00 Because I read some of the trial chamber decisions, they were so, the – first of all they were saying that the, the, the, those people from Arusha detention cells they cannot get a fair trial in Rwanda because of the highly politicized nature of the, political nature of the, of the cases. They cannot get a fair trial in Rwanda.

05:28 And secondly I think the trial chamber say that the Rwanda judicial system is not so independent to allow them a fair trial. And the other main reason was that I think that the defense witnesses from outside the country cannot really be free to speak in favor of those people.

05:55 So tho-, those were the three reasons why the, the transfer motions were denied and I think the trial cha-, I mean the appeal chamber upheld those (___), decisions mainly on the ground that maybe the defense witnesses cannot come from, for instance, Europe or wherever and go before the Rwandan judges and testify freely to the behavior or action of such and such persons.

06:30 RU: Yes.

Part 2

00:00 **RU: Is there anything about the process that you've been involved in that is particularly frustrating to you? Something that could've been done better that hasn't been?**

00:14 Okay, what, what I can say is that, mainly I can say that the, this international criminal procedure, international tribunal, the process is too long. For instance, my client has been arrested in 1995, he's presumed to be innocent. That is now 14 years later he has not yet been judged to be acquitted or condemned so – and I think we can expect that even in the next one year he will not get his judgment probably because it will take another one or two years to get the judgment. That means 16 years.

01:18 **RU: Yes.**

01:19 16 years waiting for, to know I mean what, what is your verdict. I think this is really, it's something with, I think the national jurisdiction are better in terms of respecting the rights to, to, to be tried without undue delay. I think 16 years – I know that in, in Rwanda some people who have participated in the killings who have, they have been tried by the Rwandan courts and have been sentenced to maybe ten years, 12 years, have served their sentences and are now free people.

02:04 And what will happen if, for instance, he's, he's acquitted 16 years later? I think the damage he might have suffered personally, on a personal level I mean, on a family level is, is so incredible that no remedy can be done about that. So in terms of the delay it's, it, it is really frustrating me because I s-, I think that the international community should not keep somebody presumed innocent for 16 years without I mean trying him. (), it's a violation of human rights to be tried with undue delay.

02:54 **RU: If you were to design a better system, how would you suggest?**

02:59 (), that's a very – it's not simple question.

03:02 **RU: Yeah, I know.**

03:09 I don't think that I can really – I'll sit down and learn from the, the past failures and then design a system that will try to tackle those failures, that's what I can say, ().

03:29 **RU: You have suggested if I hear you correctly that perhaps the defendants be tried in a national court rather than an international court because it would come to a decision more quickly, is, is that correct?**

03:45 No – because I remember when my client was arrested in Belgium in 1995, he was arrested with some other people, Rwandese who were there and there were I think five or six, and the ICTR Prosecutor only chose two and he requested for the referral to the ICTR competence. All those who were, who remained in Belgium were tried by the Belgian judicial system.

04:25 They were sentences to some I don't know, 15 years or I don't know, I don't remember. They have served their sentence.

04:34 RU: Yes.

04:35 I mean w-, I think in the Belgian legal system, when you serve a third of your conviction you can be freed for the – I mean, you don't have to serve the, the, the 15 years en- . . .

04:51 RU: I understand.

04:52 . . . entirely.

04:53 RU: Yes.

04:53 When you have served, I mean have been jailed for instance for four years you are freed and then you go about your normal life for the remaining part of your, your sentence.

05:07 RU: Yes.

05:07 I'm not sure if I'm quite clear, because I'm conf- . . .

05:10 RU: You've ex-, you've explained it well, thank you.

05:12 Okay so I said for instance that if my client had remained in Belgium, he could have had his fate, I mean, clearly determined there. He was sent to Arusha to get a, I mean, a quicker and better trial, but because of the, the, the joinder because it's not the defense who asked to, to, to have a joint case,

05:44 RU: Yes.

05:45 it's the prosecution side. We opposed that vigorously saying that if you joined different people in a joint case, this would cause undue delay to them.

05:58 RU: And it has.

05:59 And it has and at that time the Prosecutor was saying that it will help to speed up the proceedings and the, unfortunately the trial chamber I mean (), I mean accepted the prosecution theory and at the end of the day look at the result is.

06:23 RU: And, and here you are eight years later.

06:25 (), and it's not yet over.

06:28 RU: Yes. At this point let me turn the interview over to my co-counsel Professor Slye.

Part 3

00:00 Ronald Slye: So I'm, I'm Ron Slye, I'm a law professor at Seattle University. I wanted to – you just ended talking about the joinder of the case, and you had mentioned before the multiple and single accused cases and that in the multiple accused case,

like you're involved in, there are conflicts or there're possibility of conflicts arising among the defendants, how do you deal with those conflicts?

00:34 Of course each accused has his own strategy so we have, for my client we have our, our own strategy so we try the best we can to d-, to defend. I try the best I can to defend the interest of my client and the other defense counsels also try to defend their clients. But what I can say, for instance, for the Butare joint case, is that my client really there is no-, not much conflict of interest with the other five co-accused.

01:15 Because our case is like separated from the other fives, because my client is accused of, of what happened in a rural village in Butare prefecture, while almost the other five accused, I mean are accused of what happened in the Butare town. So, the Butare town – we have nothing to do with the Butare town, we are just a separate case within a joint case. So the conflict of, of interest is, does not really touch us as defense of Ndayambaje, so.

01:57 RS: And what's, what's your relationship with the other, the defense counsel of the other defendants?

02:04 I think the, the, the only connection with the other defen-, I mean co-accused is that first of all the prefecture is the same, in terms of territory because it's Butare prefecture and the Muganza commune is within Butare prefecture.

02:22 And secondly I think one of the five other co-accused was at the swearing ceremony of my client in June 1994 so he also is accused of having made an, a bad speech during that swearing ceremony. I think that's the only link we have with, with the others.

02:51 RS: Do you, but do you have conversations with the counsel of the other defendants? (), do you coordinate with them; do you discuss with them the case or the strategy of your respective cases?

03:06 No, no, each counsel has – of course we, we do meet outside and share a cup of tea or coffee but we do not coordinate in terms of having the common strat-, defense strategy no, each and every accused has his own strategy.

03:24 RS: And do you have good relationships with them or?

03:27 Yeah, we don't have any problem they are just – we are professionals and we – in the court we behave professionally and outside we, we're just friends and we . . .

03:42 RS: And what about with the Prosecutor, do you have a cordial professional relations with them?

03:45 Yes, yes, we, we meet outside and we just greet each other and . . .

03:52 RS: Have you been impressed with how well the prosecutors have done their cases?

03:59 Okay, first of all, what I have noticed with the prosecution side is they have been changing because the one we were dealing with in 2000, 2001, '02, are no longer the

same, they have changed; they, they, they keep changing so, so we, we deal with the prosecution I mean prosecutor people who are there. If they ha-, they have assigned to other cases we don't mind, we don't know, it's up to them to, to handle their cases.

04:33 RS: Let me – you had mentioned before about witnesses that you brought; defense witnesses to testify. Could you talk a little bit about how you identified witnesses and what challenges you faced in both identifying them and bringing them here?

04:53 Of course the, the, the main problem is to, first of all to identify them and locate them where they are because most of, you know many Rwandese ha-, have scattered all over the world. It's a huge work to go and locate them wherever they are; in refugee camps or in, in different countries.

05:26 It's a very hard work, it's, it's, it's very difficult to, to locate them and secondly even when you have located them, I mean, to convince them to come to testify to Arusha it's another step because many of Rwandese people fear for their lives because they, they think if they testify here and it's known to the public, their lives may be in danger.

06:02 So we have to explain the protective measures which are in place and sometimes you don't know, I mean the, the, the response you'll get. Sometimes it's yes or no and when it's a no you have to go back there and try and because sometimes it's a, it's a key witness, you cannot find maybe two, three, four key witnesses to an event, you have to try and get your person on the board which is not very easy.

06:39 RS: So what do . . .

06:40 And there (), we have also the financial restriction from the tribunal because if have to go for instance to US to look for somebody, the first time you don't get the person, the tribunal has paid for you the tick-, air ticket and expenses. If you ask for the second time to go back there, they might say, "No, no. You should have found that person during your first trip," which is not easy so we have so many challenges on our way.

Part 4

00:00 RS: The witnesses that initially are reluctant to come, what do you say to them to convince them to change their mind?

00:08 I, I think what we tell them it's only the, that the, the truth has to come out one day. It's, it's only – we try to persuade them only that they have to contribute to the search for justice because if, for instance, somebody is in prison because someone has held any (), any vital information we try to convince that it's better that somebody be courageous and enlighten the whole world of, on what happened.

00:49 Of course we try to explain the protective measures; protection of identity for instance and – that is all because we, we, we don't have any other measures to – it's only to try to convince them on the need to tell the truth before this tribunal so that one day this,

the chamber might render a judgment knowing what happened at a particular date at a certain place. It's all.

01:25 RS: And would you – are there aspects of the protective measure, measures and also you mentioned the financing and the limi-, limited resources, if you had control to create the ideal system, what changes would you make that would make it easier to convince witnesses to come forward and testify?

01:48 I don't think the, the, the fina-, the finance side does, does really matter in those kind of because you cannot promise somebody a reward for having testified. That will, it will completely destroy the, the, the whole system because in that case you will get even the false testimonies if you, you promise money. The whole system is, will collapse immediately. It's, it's, it's no longer ethical or you'll no longer be searching for justice, you will be just bribing people to, to get, you know, this (____).

02:24 But what I can say is that if for instance somebody expresses fears of dange-, I mean persecution, for instance, for having testified, I think the tribunal, the UN body that has created this tribunal shoul-, should, look into ways of, I mean, addressing that fear because if somebody is fearful for his life, for instance, and gives some kind of concrete information that make him fear for his life, I think the tribunal, the UN should deal with that kind of problem.

03:15 And if somebody maybe want to be relocated to another place – I'm just thinking like this, I don't know if it's, it's practical, but I think the UN should look into, into such kind of difficulties expressed by potential witnesses, either for the prosecution or the defense, I'm, I'm not making any difference, but it's all.

03:43 RS: You, you mentioned that you started as an investigator . . .

03:46 Mm-hmm.

03:47 RS: . . . and then worked your way up to counsel. And as an investigator I'm sure you must have seen a lot of pretty horrible things. How did you cope with that?

04:02 I've heard many stories. I, I'm trying to cope with those stories – okay tha-, that it depends on the personal capability or capacity of each and every one to, to deal with those kind of stories.

04:23 In fact I'm not even the only one, even those, all the people who have been involved in, in the trial proceedings for instance, even interpreters or court recorders or court reporters I think, they have heard in their, I mean, ears so many horrible stories either from the prosecution side or from the defense. So I think that is a reality we'll have to live wi-, with. It's, it will be part of our lives until we die so I don't know how, I'm trying to cope with those things.

05:07 RS: Do you get the sort of support you think you need here to do that?

05:12 Here at the tribunal?

05:13 **RS: Mm-hmm.**

05:15 No, no because, no, (___) I think – I don't know if the tribunal d-, does have such kind of support, sup-, support facilities, I don't know, I have never heard such kind of things. (___).

05:32 **RS: Do you think they should have such facilities?**

05:35 I think so, I think so but I don't know if – because now the tribunal is going quickly towards its end. Everybody is talking about the completion strategy; the budgetary problems and, and so forth, I don't, I don't think the-, the-, they do think about creating another department or what, I don't know (___).

Part 5

00:00 **RS: Being originally from Rwanda . . .**

00:06 Mm-hmm.

00:07 **RS: . . . does that do you think provide you with certain advantages to other defense counsel and does it also provide certain challenges for you?**

00:20 Advantages I can say yes, because (___) I mean if I start with the, the small things for instance, I know to distinguish names of places, names of people and so forth. I don't need-, need a spelling list or if somebody mentioned somebody's name, I know that's, that is a person, it's not a hill for instance.

00:57 That is an advanta-, advantage. I was in Rwanda of course I was not in Butare because I met my client at the prison here; I have not known him before, so. But I think even the other defense counsels who study their cases properly they can handle it as I do, so the, really the advantage is not so enormous if I can say.

01:33 **RS: Are there particular . . .**

01:33 Of course I have also the advantage of interacting wi-, with defense witnesses easily because I speak their language. I don't need an interpreter and you need when, when somebody is translating or interpreting sometimes we get 80% of the message or sometimes less than that.

01:58 So I know how to read from somebody's demeanor, somebody's gest-, somebody's language; I know wha-, what he means really and he can have such kind of confidence with me because we speak the same language than he can have with you as a foreigner. I think that is a, a great advantage I can have.

02:26 **RS: Are there particular disadvantages or challenges that you face because you're from Rwanda?**

02:39 Challenges not so many. I, I ca-, I think I have more advantages than challenges. I don't see really particularly, I mean significant challenges when it comes to, to my work as, as

a counsel. I have more advantages that I don't see really any major challenge I can, I can present to you.

03:10 RS: Let me – one of the people that may be watching this interview sometime in the future might be a young school child and the school child might ask how someone who was allegedly involved in such a horrible atrocity could be defended and how somebody like you could agree to defend somebody who's accused of such terrible atrocities. What would you say to that child?

03:42 I would say basically that that person who is accused of having done such atrocities is first of all presumed to be innocent until he has been declared guilty by a court of justice. So, th-, that is a basic human right that has to be respected all over the world because in many cases people have been accused of having committed such horrible things and at the end of the day the chambers or the tribunals found them not to be guilty.

04:31 So I'll tell that small child that every human light, ri-, I, I mean human being has a right to be defended by a lawyer until he's guilty has been proven by a chamber. So we should not just take what is being presented as the final verdict unless it has gone through a fair legal judicial process and there can't be a legal judicial process unless there is a defendant.

05:13 Even somebody who is the most criminal over the world, he deserves to be defended by a qualified lawyer so that his right might be respected until the end. And the child should know that if the person is really guilty and if, if he, it goes through a legal process, that person will get, will be convicted accordingly but after having been I mean defended by a, a, a lawyer as we are doing right now. I think th-, that what I can say.

05:57 RS: And then, and then suppose they asked why you chose to be defense counsel as opposed to a prosecutor?

06:10 As I told you I started in the defense team so I could have started with the prosecution side, but I was not maybe aware that there was an opportunity there, and after this ICTR (_____) have closed down I might join other tribunals there now; the International Penal Court in The Hague, I can go there on the prosecution side.

06:42 So I'm, I'm finding myself on the defense side but I could find myself on the other side also because what, what matters is search for the truth and the justice no matter where you are; on the defense side or the prosecution side, both do work for the same purpose theoretically I say.

Part 6

00:00 RS: (___), and the purpose of the tribunal is there's truth and justice and then the other thing that people talk about, and the security council mentioned, is reconciliation. Do you see your role as contributing to reconciliation?

- 00:20 I think this – I'm not so sure if really the tribunal has, has evaluated his role, his role as, in th-, in the reconciliation among Rwandese. I think this side of its mission has been forgotten really because reconciliation between whom and whom, because some might say that this tribunal is, has failed to reach.
- 01:02 When you, I mean hear, I mean some kind of what is being said by Rwandese you talk to on the street, they don't see really the work of ICTR in reconciling Rwandese. It's something which is being done somewhere there and they are not aware of what's going on and other people do say that this tribunal is onl-, only prosecuting one side of the people who were in war in Rwanda; mainly the former government officials.
- 01:46 I think you are aware that many people do criticize the ICTR for not, not having indicted I mean the other people who were fighting with the, the former Rwan-, Rwandese government; mainly the RPF soldiers or officials who might have committed some crimes against humanity.
- 02:13 So these kinds of failures do make some people think that the tribunal has failed totally in addressing or in meeting this reconciliation objective. That what I can say on this issue.
- 02:31 RS: We're reaching the end of the interview. Is there anything else that you think people in the future should know about your role, the tribunal or something that you want them to know about it that we haven't already touched upon?**
- 02:51 Okay, what I can say is that this tribunal has been created by the United Nation, and I think we are now moving towards the end of this tribunal but the, in the chambers we, we have started to feel the pressure of the end. Now we're being pushed beyond reasonable limit to finish this tribunal to the detriment of the right to a fair trial.
- 03:32 That's an, a problem I'm, I'm seeing now because everywhere you see the chambers are pushing everybody to, to, to finish this, the, the I mean the work of this tribunal, even when it, it seems to be impossible. So it, I think it's, it, it will be unfortunate that some kind of maybe completion strategy or financial constraint might, might at the end of the day violate the, the, the right to a fair trial.
- 04:09 There are now some people who are being brought here, who are, who are being arrested and they are being brought here. I'm sure the tribunal, the chambers will say this trial have to end, has to end within a very short period and maybe the defense or, will not have time to, to, to prepare the case so I think there is now, they are more, the tribunal is more interested in finishing this tribunal than respecting the rights of the accused and so forth. That what I can say for now.
- 04:48 RS: (___), well, thank you very much for taking the time to talk with us.**
- 04:50 Okay.
- 04:51 Max Andrews: I have one last question.**

- 04:51 (____).
- 04:52 RS: Oh yes.**
- 04:53 MA: Do you have any hope for the future; the next generation?**
- 04:58 Rwandese generation or which generation?
- 05:01 MA: What's that?**
- 05:03 RS: Rwanda (_____) or . . .**
- 05:03 Rwandan generation or . . . ?
- 05:05 MA: Or either Rwanda or the world or both.**
- 05:08 Okay, I'm hopeful and I'm hopeful by nature so, I'm not pessimistic – I don't know if this a proper word in English . . .
- 05:19 RS: Mm-hmm.**
- 05:20 I'm not p-, pessimistic so I hope things one day will . . .
- 05:25 MA: If – for people my age if you could give some advice that you've learned through your time here, what would you think is most important to, to teach us?**
- 05:38 What is most important is to – for the young generation is to, I mean t-, to love each other, because basically when you look at the things what happened in Rwanda, for instance in 1994. It is, it was terrible, it's horrible, and it is a shame that for instance, somebody young like you are might, for instance, kill, you might kill your neighbor or harm somebody's life, so I think the younger generation should learn from the, the past, so that the future, in future such things might never happen again. That's what I can say.
- 06:33 RS: What, what should they learn about the tribunal?**
- 06:37 Sorry?
- 06:37 RS: What should they learn about the tribunal, in terms of – so they should learn about the past . . .**
- 06:44 Mm-hmm.
- 06:44 RS: . . . and also are there lessons from this process that you think they can take?**
- 06:50 Okay what I can say for instance from th-, the lesson from this, this, this tribunal, I can only take one example is what I said about the, the, the, I mean, the – what I can say, the undue delay in the proceedings for instance. They should know that some, if they have to, somebody has to be tried for what he has done, it has to be done quickly so that his right might be respected in a shorter period than what, what has been going on in some cases here at this tribunal. That what I can say at this moment.

- 07:32** **RS: Okay, thank you.**
- 07:35** **MA: Thank you so much**
- 07:35** **RS: Thank you very much.**
- 07:36 Okay, you're most welcome.