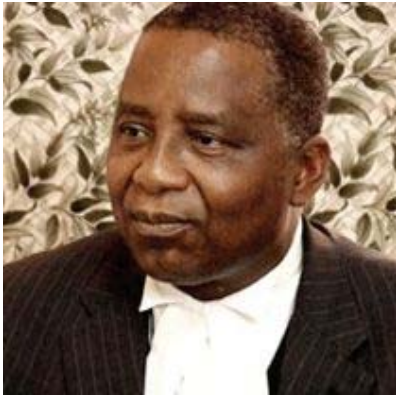


## Official Transcript: Charles Taku (Full Interview)



<b>Role:</b>	Defense Counsel
<b>Country of Origin:</b>	Cameroon
<b>Interview Date:</b>	3 November 2008
<b>Location:</b>	Arusha, Tanzania
<b>Interviewers:</b>	Batya Friedman Ronald Slye
<b>Videographer:</b>	Max Andrews
<b>Interpreter:</b>	None

### Interview Summary

Charles Taku discusses the failure of the ICTR to prosecute RPF members. He refers to a form of 'judicial genocide' through which Hutu victims are denied justice and the Tribunal perpetuates violence through impunity. He notes that the Office of the Prosecutor (OTP) should investigate crimes based on the acts committed rather than on ethnicity or political affiliation. Taku also discusses the controversial principle of joint criminal enterprise which he claims has been abused by the OTP to indict individuals without sufficient evidence.

*The transcript of the interview begins on the following page.*

## Part 1

**00:00** **Batya Friedman: Hi, my name Batya Friedman, I am a professor at the University of Washington. I'm here interviewing Chief Taku. It is November 3rd, 2008 and with me is Professor Ron Slye from Seattle University Law School and Max Andrews who's our cinematographer. So, Chief Taku, can I ask you to please introduce yourself? Say your name, your role here at the ICTR and your nationality.**

**00:29** Well, as you've rightly said, my name is Chief Charles Taku. I'm Lead Counsel in the Military 2, 2 trial. I first came here in 1999 as Lead Counsel for Laurent Semanza. I'm also Lead Counsel in the Special Court for Sierra Leone in the, the case of Prosecutor versus the Revolutionary United Front for Sierra Leone. I'm Lead Counsel for Mr. Morris Kallon. And I'm Lead Counsel here in the Military 2 trial as I've just said. I come from Cameroon.

**01:05** **BF: Thank you.**

**01:06** **Note: Gap in Interview. Gaps occurred due to interruptions during the interviews, technical issues, or corrupted data files.**

**01:10** **BF: So can you tell us a little bit about your role as, as Lead Counsel? When you say Lead Counsel, you mean Lead Counsel for the defense?**

**01:18** Yes, I'm Lead Counsel for the defense.

**01:20** **BF: Yes.**

**01:20** I first came here on the 23rd of October 1989 as co-counsel on the case of Prosecutor versus Laurent Semanza. And a few months after, I became Lead Counsel and I've been Le-, Lead counsel all along. The case of Semanza ended in sometimes in 2004, and I was appointed Lead Counsel in 2005 at the Revolutionar-, for the Revolutionary United Front for Sierra Leone. That's for Major Mo-, Morris Kallon.

**01:56** And two months after I was appointed here again as Lead Counsel in Military 2, as Lead Counsel for Major François Xavier Nzuwonemeye who was the commander of the Reconnaissance Battalion of the Rwandan army.

**02:13** And I work as Lead Counsel and actually coordinator for a legal team constituted by the, the tribunal to defend the accused persons. And I have under me co-counsel and I have a number of legal assistants and investigators. And Lead Counsel, I direct the team, the defense team as it were.

**02:41** And now Beth Lyons, whom you know, became co-counsel about more than a year ago. I met her here on a visit from the US and when I was doing Semanza, she was sitting in the gallery. And when she went back she sent a card to me and I found that very, very touching because many (\_\_\_\_\_) thousand who come and nobody does that. And I said this must be a very good lawyer so I invited her to come back here and join the team.

- 03:14 Unfortunate for me, when she came, my former co-counsel Alao, Barrister Alao, he's from Benin Republic, he had become a Lead Counsel for Colonel Aloys Simba. So he was fast, faster than me and he got her as co-counsel in that team.
- 03:32 And when the, the case ended, I was happy enough to bring her back to come and work with me. So, as I say, Lead Counsel's the one who coordinates the entire defense of an accused person and that's the role I play either here or in Sierra Leone.
- 03:49 BF: Mm-hmm. So, I'd like to take you back to the spring of 1994.**
- 03:56 Yeah.
- 03:57 BF: And, so in 1994 in the spring, where were you and what were you doing at that time?**
- 04:05 Well, about that time I was in Cameroon. I, I followed the story like every other person, about what was happening in Rwanda unfortunately. Of particular interest to me was the fact that the elements that led, the factors or the elements that led to the, the calamity in Rwanda are present in many African countries, including my own country.
- 04:36 The conduct of the politicians, excruciating poverty, economic factors, and of course the duplicity of international community in situations like these. So I followed the events and I followed the events painfully as I watch over the television or listened to the news. There was nobody there to do anything to, to help these people of Rwanda to solve this problem.
- 05:11 And most striking of all was the fact that United Nations was actually there on the spot. And what came to my mind was what use is the United Nations? What use is United Nations that even their presence cannot pre-empt a calamity of that nature? So I was in Cameroon but later (\_\_\_\_\_) that I would play a role in the, one way or other at some point in time.
- 05:36 BF: So, and what were you doing in Cameroon at, at that time, in your country?**
- 05:42 Well, in Cameroon at the time, we, we were facing a serious crisis at the time because I come from the English-speaking part of Cameroon. And these were two Trust Territories who were under the British and the, the French majority were under the French. And were, as Trust Territories, that the UN had a mandate to lead to independence.
- 06:07 It was never foreseen in the UN charter that, well, it could lead to what at the time we thought was annexation – that instead of leading our own part of the country to independence, because we're a former German colony and a Trust Territory of Great Britain, the, the (\_\_\_\_\_) brought us into what we considered as some form of annexation in that our own part was just annexed to the French Cameroons.

- 06:36 And the people, population was agitating at that time. Thousands of people were agitating that they want independence, not (\_\_\_\_) independence. The, the policies of the, the, the majority in power, the French majority in power, were very oppressive.
- 06:52 And, at that time I had been on the bar council, (\_\_\_\_\_) of the bar council and also one of the perhaps very visible lawyers at the time because a lot of people were arrested, many of them died in detention.
- 07:07 And at least in '92 people were brought before the military court and they were being indicted before the military court, civilians of course, for treason. That carries mandatory death sentence under the Cameroonian military court.
- 07:26 And I was Lead Counsel defending these, these, these people. The case was going on around the time that this was ha-, was happening and we just thought that oh, maybe this crackdown may lead to some other serious crisis.
- 07:43 At that time we need also not just to defend the courtroom but to get international support, because we thought that the, the military people were not people who can do justice to civilians, especially as there was no reason to bring them to military court in the first place. These were civilians; they were not armed. There was, there was no reason to bring them there.
- 08:06 More importantly but because they were arrested from the English-speaking part of Cameroon and carried over to the French-speaking part to be subjected under different legal system and to be tried in a language they didn't understand.
- 08:18 And we were busy trying to rally international support, the embassies in Yaoundé. And at some point in time I left and went to Washington and thought that we could, the press in Washington could help us.
- 08:30 I went to the Voice of America. Scott Steel was still a very young reporter at the time preparing at the time to come to the Great Lakes. So, he was asked to interview me and I was there with him in the program "English to Africa" for over a week highlighting the, the problems with this trial, that the, the fair trial issues. And of course he did a very effective job.
- 09:01 At the end, when we came back, this, the Voice of America actually helped us in really propagating, I mean, our own side of the story, because back home the media is controlled by the government, so nobody could have known that whole story. When I came back now, almost, most of the people were acquitted but a few of them (\_\_\_), some 20 years, some 15 years, I think one or two life here.
- 09:29 And for us in, under the circumstances, it was a victory – thanks to the Voice of America, thanks to the international community because the US Embassy in Yaoundé also they were very interested in the case. They came to me at every turn and they were in court at every session of the trial. So these, these two events were going on simultaneously with what was happening in Rwanda.

09:52 And the, the – we were telling the journalists at Voice of America, was telling the Cameroonian government, “Let there not be another Rwanda. This is leading to another Rwanda; this is leading to genocide,” and so on and so forth. And therefore you will be surprised that it is my performance on that case that cleared the role in me being called upon, shortly thereafter, to come and defend here.

10:15 **BF: Mm-hmm.**

10:16 Yeah.

## Part 2

00:00 **BF: So how, how did that happen, how did you end up here at the ICTR?**

00:06 It was surprise. My name was not on the list of, of lawyers because I didn’t know the procedure at that time. But after that case in Cameroon I came over here. And I said “Look” – I heard that sub-, subsequently, I heard that the court had been constituted – and I said “Look, let me have this experience, because this may well happen to us at some point in time as long as our problems subsist, and as long as the momentum is building that will lead to this.”

00:40 “So let me come.” So I came to Arusha and when I came here, I met one of the secretaries and I said, “Look, I want to know how to, one can, can become a lawyer here in these proceedings.” So she got me some forms, “Fill these forms.” I filled them and somebody signed and my name was put on the list. And I left here and went to Washington and I was in Washington for about three months.

01:06 And one day I got information from Cameroon that they were looking for me in Arusha. And that I’d been called upon to come quickly to be co-counsel for one of the accused persons. And when I came here, I didn’t know anybody here in Tanzania apart from the (\_\_\_\_\_) here, and it was very, very exciting and I met the accused and I discovered that the accused was a former mayor.

01:36 He was no longer in command, he had no position and he was not as literate as the others would be. And I started working for him and sometimes in February, there was an interlocutory appeal that had been filed challenging his arrest and detention, because the defense at the time felt that the, the arrest and detention were illegal. There was no warrant and when they obtained the warrant for another person, they used that warrant to arrest him and he was brought here.

02:11 So the, the Lead Counsel withdrew from the case and the appeal chambers had indicated that they were going to come here two weeks thereafter to, to hear the interlocutory appeal. And they wrote to me and said, “Well, you have to be prepared. We’re coming, we, we cannot postpone the session so you should prepare for the interlocutory appeal.”

02:37 So I went on reading the transcripts and preparing the briefs and, and when I did the arguments and it was good, one of the judges, Judge (\_\_\_\_\_) was very impressed.

Of course on the other side I had the, the Prosecutor with seven prosecutors, Carla Del Ponte herself. And the, and the advantage I had is that all the seven of them decided to, to argue the appeal and I found a lot of contradictions.

03:02 It was easy when the other, the other person got up, he contradicted the other person and that was the situation. In the end, the remedies I, I was seeking that he should be set free, we didn't get that, but we heard midway that (\_\_\_\_\_) the trial proceed.

03:20 If he's convicted, they should take into consideration the arrest, the illegal arrest and detention, and that should affect in the sentencing. And that is why I think at the end of the day that, that we benefited from that.

**03:34 BF: So when you first came to the tribunal and you wanted to participate here as a lawyer, did you clearly say, "I want to participate on the side of the defense," or did you, were you open to being both a prosecutor on the prosecution side and the defense? What, what was your thinking?**

03:54 My thinking was to be on the side of the defense and the reason is very, very clear. I already knew that there was some politics involved in the court by the f-, mere fact that the UN was present in Rwanda and they did nothing. And I knew that if the very UN should constitute a court to try the alleged perpetrators, they would try to hide their role or the role of the UN officers who were in the field.

04:22 I already knew and, or suspected this, and therefore I told myself, I went on the side of the prosecutor I'll be complicit in this. Let me be there so that I can have opportunity to see through this case and see all the complexities of this case. See all the politics about that case. So in case that it happens again, I will be in a position from that (\_\_\_\_\_) to be able to take part in trying to point out the, the politics of that.

04:53 It is this suspicion of the political intrigues that might have informed the creation of the court especially from the standpoint of the UN. And my suspicions were proved right thereafter, because the UN from inception, from the Security Council, from the Secretary General report, now characterized the conflict as an internal arms conflict, but you know this is a major component of war crimes.

05:26 The evidence now points otherwise. It points that Uganda was involved. It points even to the mere presence of the UN itself, some of its officials. Now which (\_\_\_\_\_) that they were trying to conceal, to pre-empt any attempt to litigate the role of the UN and that of some of the neighboring countries and some of the superpowers that were complicit in one way or other, either by commission or omission, to the thing that took place in Rwanda.

05:54 So my suspicions were right in that, although I didn't have the picture as this, but as evidence unfolded and people now feel more comfortable to testify (\_\_\_\_). But the court cannot (\_\_\_\_\_) finding because their hands are tied; the Security Council including the court, Secretary General, all they said was an internal arms conflict.

- 06:13 And of course ordinarily an independent court should be in the position to disagree with the Security Council – that in spite of your position that it’s an internal arms conflict, the evidence points otherwise. Of course that’s another issue.
- 06:29 It all depends if the judges themselves who are United Nations appointees, Security Council appointees from different member states, if they’re bold enough to go that far. That’s another issue but my suspicions exceptionally have been proved right.

### Part 3

- 00:00 **BF: So if, thinking about tribunals in the future and you can imagine that we may have others, other situations that arise where a tribunal is needed – we might not want that but that might be the case – what kinds of checks and balances would you put in place in how other tribunals are constituted to try and address this problem?**
- 00:23 Well, in the first place, the statute here guarantees the independence of the judges. The statute also guaranteed independence of the Office of the Prosecutor. And I think this independence of the Office of the Prosecutor has been abused to the extent that the Prosecutor in refusing to indict the RPF perpetrators, even when the Security Council mandate directed clearly that all the people without distinction, that per-, perpetrated the crimes should be indicted.
- 01:01 In spite of the fact that the, the RPF itself has admitted – in spite of the fact Prosecutor himself has said so many times that, “We’re investigating the RPF, they will be indicted.” The fact that the Prosecutor is unable to do this, presumably due to other influences, and he can hide behind prosecutorial independence, I think it’s an abuse of the notion of independence.
- 01:28 There should be an, an organ, an organ to hold the prosecution to account. To say, “Look, your mandate, you’ve not been able to meet the, the, your mandate. You’ve not been able because, you’ve turned the tri-, the, the court into a victors’ court,” and that at the end of the tribunal, the c-, the, the, the – at the end of the tribunal, there’s every indication that the violence will start all over, as long as one of the parties believe that they too were victims.
- 02:13 They believe that justice has not been totally done, (\_\_\_\_) victor’s just-, justice. And as the, the, the factors that led to the crisis in the first place remain with thousands and thousands, no, millions of Hutus now as refugees, not in the sub-region but across the world, they will be telling they want to come back to Rwanda.
- 02:36 They want to regain their land, the land issue remains unresolved. They, they, they want free and democratic elections – one man, one vote under international supervision. They want that this injustice should, should be, sh- – of course we know exactly that the, the conflict is still playing out now in the Congo.
- 02:58 Now, as long as the Prosecutor cannot prosecute the RPF, the perception that the tribunal has condoned impunity will remain. And therefore that will be a viable factor

- to start the war again, (\_\_\_\_\_) tribunal. As long as the tribunal is here, and the ability to arrest, it serves as some form of – it pre-empts.
- 03:30 You see, people will look at the tribunal as it is on the continent, not only in Rwanda, but in the African continent. It serves as a monument to people who may like to, to, to take up arms and kill people at that massive scale. That, “Oh, look, that could be you. Those people there, that could be you.”
- 03:49 But as long as the tribunal is not and as long as the many dictators in the continent can continue to, to stonewall in ratifying even a treaty of the ICC or if there were to be a special tribunal of this nature, they will use all sort of limitations of – I mean they’ll (\_\_\_\_\_) to limit their participation to, to, to make sure that they can't, they’re not held accountable.
- 04:26 They’ll put the politics of it ahead. As long as the African Union remains a club for dictators on the continent, they don’t really have the power to say no. I believe that that, that act of impunity that has been condoned by not going after all the perceived perpetrator of the crimes, will remain. It will remain a scar, a (\_\_\_\_\_) on the conscience of this tribunal.
- 05:01 And I say so for good reason, because one of the reasons why the, the, the – it has been ruled that this is a genocide is because of the fact that the Tutsis were targeted. Now when you have a tribunal that targets the Hutu, it becomes a sort of judicial genocide, sort of judicial genocide.
- 05:24 And the, the tribunal and United Nations, did they do, do, do justice? No, they didn’t do justice, as long as that perception remains very, very strong, especially on the majority of Rwandans. Not just the majority of Rwandans but majority of people of the ethnic, the same ethnic composition of the Tutsi-, the Hutus in Congo, in Congo Brazzaville, in Central Africa, in Cameroon.
- 05:49 And the, the Tutsi that constitute the Himas in Uganda or other places, the wider, the wider ethnic configuration as long as it remains, it remains a major problem for the – so I believe that if another tribunal were to be set up, yes there should be independence of the, the Prosecutor’s office, but it should be well-defined to say that we will hold you accountable at some point in time, in order for you to justify that you carry out your mandate consistent with United Nations resolution, with the statute.
- 06:24 With the judges, there is very little you can do because these come from member state of the UN. And if I can say this from the African continent and some of the smaller states where at the moment (\_\_) war is going on, I doubt whether the government of these countries will submit to the Security Council the name of a judge who is truly independent. It must be someone who has rendered service or rendered service to the regime in power in the respective countries.



- 07:00 You can (\_\_\_\_), look, look at the countries and the background of the judges. I, I, I say with due respect; some of them are very, very good. Some are very fair minded. Some of them have transcended the limit of being subservient to their respective countries.
- 07:16 But so many of them are still very, very – especially some on the African continent and some of the oth-, some from the Asian countries, some from the, the islands, some of them you find out their background, just read their CV and find out their background.
- 07:38 You’ll find that it is very, very difficult. They come with that concept in mind and the, the potential for influence, political influence, is still very, very great. If you look at the first judgments that we had from here and the, the, the judgments we are having lately, you find that they have overturned themselves several times because some of the, the notions were just (\_\_\_\_\_).
- 08:05 The notion of joint criminal enterprise, developed right from the Tadić case, have been so much abused to sign a conviction by association. There has been so much abuse and if this tribunal should close down and perhaps the tribunal for Yugoslavia, without them putting that notion into context, and if it were to be (\_\_\_) a jurisprudence not only at the international tribunal level but also in national jurisdiction, imagine what dictatorships can make of that.
- 08:44 So some of these later notions that were conceived in order to address particular situations now have a potential to be a weapon in the hands of dictators to perpetrate further genocide, judicial genocide in the community, in the country in which they preside or as tools of oppression in order to remain in power.
- 09:10 BF: So back to . . .**
- 09:10 So, so, so my suggestion is that there should be a potential apart from this, that apart from just having a review of the cases, the UN should put in place a structure that can review some of these decisions, and really have a, a good debate about that, so that the tribunal (\_\_\_\_\_) some of the judges will know whether they succeeded – one, in making their mandate and two, if the legal pre-, pre-, the legal precedent that they laid out for the international community are going to do good or bad for international justice.

## Part 4

- 00:00 BF: So I want to make sure I, I understand what you’re saying. The, with respect to the Prosecutor, the Prosecutor’s choices about where, who to prosecute – so, you’re saying that the issue here is not so much that the people who are prosecuted should not have been prosecuted . . .**
- 00:21 Exactly.
- 00:22 BF: . . . but that they’re an incomplete set. Right.**
- 00:25 Exactly. Yeah.

- 00:26 **BF: And when you say that they're an incomplete set, one thing you could say is, "Well, it is the Tutsis, the RPF, that also need to be prosecuted." But maybe I also heard you say that beyond that, there are people beyond those say in Uganda or elsewhere, that you've felt should also be prosecuted here as part of this tribunal?**
- 00:53 I really hesitate to say, to put the, the, the parties in this compartment – Hutus, Tutsi.
- 01:03 **BF: Mm-hmm.**
- 01:04 Because we, w-, a notion has emerged where you have a group of people called Hu-, 'Hutsi,' because of etymologies (\_\_\_\_) they're now called 'Hutsi,' Hutu Tutsi. And the, the, (\_\_\_\_) they're people that speak the same language, they live in the same hills, they know themselves for so long. The RPF was not Tutsi, just as the government of Rwanda was not Hutu. They, they were mixed.
- 01:29 So we find now, now. You see the, the, the pattern in which people are fleeing the country even now, you find so many Tutsi who were in the RPF fleeing the country today. You find even the king, who is now in the U.S., the, the, the, who was Tutsi. He's in the U.S. He can't come back to the country, because Kagame is saying, "You come back as an ordinary citizen." Yet this was the symbol of power before the revolution 1958.
- 01:58 And it's more acceptable even to the Hutus now than even the Tutsi. So I hesitate to put it that way. I just say that 'the perpetrators of the crimes that were committed by the RPF.' And the RPF, you find that they were soldiers of the National (\_\_\_\_), Registered Army of Uganda, that, that, that front part of RPF.
- 02:21 You find also that what, when (\_\_\_\_) was investigated, the assassination of the three Tutsi presidents; two of Burundi, and one of Rwanda. If the Prosecutor – because it falls within the mandate of the Prosecutor to investigate and go after the perpetrators. If that were to be done, if they were to prosecute some RPF . . .
- 02:47 Take note, before April 1994, the soldiers of the Rwandan army then did not control the entire territory. Large portion of the territory was under the control of the RPF. Yet thousands were massacred there. Somebody ought to be held accountable for that.
- 03:07 The United Nations tried to organize an election there, and all the Hutus who won elections – the RPF lost – all of them were killed. And in the course of this trial you had many RPF officers coming to testify in closed session for their own protection. "Yes, we were asked to killed these number of people."
- 03:31 Or, in Burumba, Kagame 250,000 people in the stadium, Kagame asked to kill all of them. Or immediately after the, the, the shooting down of the plane, Kagame left Mulindi the north, and came to Moshu, near Kigali. Kigali (\_\_\_\_). And he sent a company of 160 soldiers that cleared this corridor. "Any person you find, clear the corridor," for him to be able to come close to the capital, to (\_\_\_\_).

- 04:04 Now this is evidence which the Prosecutor was hiding for so long. You must have heard about the decision we had on the 23rd of September, 2008. Exculpatory evidence that the Prosecutor was hiding.
- 04:20 Trial Chamber II ordered that this exculpatory evidence should be disclosed to the defense forthwith, and held the Prosecutor in contempt by saying that, "You are the minister of justice, you should be seen as doing justice, not only in this trial but to international community." And that he should be (\_\_\_\_\_) personally.
- 04:39 Now he has disclosed some of the material. What does the material contain? Crimes of the RPF. Why has he not prosecuted them?
- 04:47 BF: Mm-hmm. And then (\_\_\_\_\_) . . .**
- 04:49 Crimes ascribed to the accused in this case; you committed these murders. This disclosed material now shows that that witnesses from whom we took statements in 2002 are saying that he got statement from them, statement about the perpetrators of the crime by the RPF.
- 05:06 The assassination of Habar-, Habyarimana. The evidence matched. The witnesses come in closed session, "we were the ones who were on the spot. We were the ones who took part in the assassination." He kept the information. Why has he not prosecuted them?
- 05:24 The only answer is this: that he's submitting himself to political influence. There can be no other, no other explanation for this. At least officially, the tribunal is going to end, perhaps this year, perhaps next year.
- 05:42 The official statement from the, heard from the Prosecutor every day is that, "We are investigating the RPF. Do not mind, we (\_\_\_), the indictments will come." That is the official statement. If he said that, "I've found no evidence at all," one would understand. But that's not the case here.
- 05:56 So we're not saying that the Tutsi or Hutu – no. We're saying that the perpetrators – crimes have no ethnicity. Criminal is a criminal. There's a presumption of innocence though, for everyone until they're found guilty. But if there's any (\_\_\_) of, leads to the fact that crimes have been committed, or may have been committed, (\_\_\_), we want at least the prosecution to be able to say no.
- 06:22 BF: And from your . . .**
- 06:22 The Prosecutor should be accountable to someone. If he didn't do this.
- 06:25 BF: Mm-hmm. And . . .**
- 06:26 It cannot be, it cannot be independence of the Prosecutor's office. Cannot, cannot (\_\_\_\_\_) impunity on the part of the Prosecutor.

## Part 5

**00:00**      **BF: And so, from your point of view, from the things you've seen and heard, then you would say, "Well, clearly the RPF, the pro-, there, there should be some prosecutions there." And are you also of the view that beyond the RPF there are other parties that should be prosecuted or possibly investigated for possible prosecution?**

00:21      I wouldn't put the blame on the Prosecutor here . . .

**00:24**      **BF: Yes.**

00:24      . . . with the (\_\_\_), countries like Uganda that provided army and arms, and things like that because the Security Council and presumably some of the superpowers, the United States and perhaps a country which is not a superpower but a very, very important country in Europe and the world; Belgium.

00:48      By virtue of being the heart; the depository of the secret of the western world, NATO, European Union, (\_\_\_\_\_). They're a very small country, but so important, more important than even some of the superpowers for that matter. They play a major role in this; the evidence leads to them at every turn.

01:09      Their own ambassador testified here in open session and said, "We are more interested in getting out our people and that was the right thing to do because we didn't care about the (\_\_\_\_\_)." That's what he said at the opening session. Those were his transcripts (\_\_\_\_\_) reading a few days ago.

01:24      My problem is this, they were the ones United States sitting there in the Security Council. They drafted the statute that was brought to us. And we filed a report saying, "Look, this was an internal arms conflict." Now if this an internal arms conflict, automatically no matter what amount of evidence you leaked in regard to this case, with regard to the international character of the conflict, it's not going to be considered.

01:54      In other words they make it impossibly for anybody to enquire into their own role. In Semanza I applied to get one – Professor Max Hilaire of Morgan State University as an expert witness on the role of the international community in the Rwandan con-, conflict. He prepared a report and the court at the end of the day said, "No, we will not allow the evidence." They said, "We'll not allow the evidence." Why? No reason was given.

02:28      And the only reason can be found in the Secretary General report to the Security Council at the time. So when the constituting elements and the travaux préparatoires themselves have limited the scope of the evidence and the, the inquiries, state of the inquiry you can't put that blame on the Prosecutor.

02:50      It is the Security Council and when the Security Council we know means some of the superpowers. I will never know for sure why, for example, the United States would take that position. But what I can guess now is because Carla Del Ponte, was a former Prosecutor, has said that a lot of influence was put on her not to conduct investigation against RPF, not to indict them even though she has enough evidence.

03:14 Her spokesperson has written a book saying the same thing and whom do I believe? I believe Carla Del Ponte if she says that that influence is there. And if – and that she even says the reason why they removed her as a prosecutor of this court was because she insisted on going ahead with the prosecution.

03:33 If her predecessor takes over, and doesn't prosecute, it will mean that he was a more convenient person through which they could hide this. But the question is, in this particular context, can they actually hide? No.

## Part 6

**00:00 BF: So one last question before I will turn to my colleague. Is your perception that of your colleagues very broadly here at the tribunal – so not just the defense but among the prosecutors, perhaps judges, Registrar's office – do you think the vast majority of your colleagues in some way share your view that, th-, that a broader prosecution would have been better for the tribunal?**

00:27 Well, in answer to that question let me just give you one promise. When the tribunal closes down, in order to prove that they share my view, wait and see what many of the prosecutors are going to write. I'm perfectly aware about the position of most of the prosecutors who are very good lawyers; ordinary prosecutors, very good lawyers.

00:47 And some of them who have said, "Look, when we started these trials, we didn't know that this where the evidence leading to." And some of them have said, "No, this inadmissible." And, and I, and I promise you this, that most of them are very, very fine lawyers, good lawyers and they said, "Look, we cannot be seen as being complicit in this."

01:05 And probably even before the end of the trial, most of them must have left because of this. Also try to talk to some of the investigators because you find many are in America, some in Canada and among the, the, the prosecutors, talk to some of the African prosecutors and others, and also some from Europe.

01:25 And now they are covered by the six months. The UN, after six months when you are still (\_\_\_\_) you cannot talk. But let me tell you. They share these views. I think we talked to the Prosecutor and put the question to him, "Why have you not prosecuted RPF?" I don't know how he is going to respond, but maybe he'll tell you, "We are still investigating," because he cannot reverse himself on that.

01:49 And I think that most of us are very, very frustrated. I, coming from the continent, from Africa, I being a traditional ruler in my community, I know very, very well that this impunity will just exacerbate the conflict. Not necessarily only in Rwanda but in the sub-region. There's absolutely no doubt about that.

02:11 The indicators, the elements that led to the conflict is this, if anything that's been exacerbated by the fact that the end structure put in place to redress these crimes has failed woefully in its mandate. Now, ask, I asked, I put this question to the former President of the court Judge Møse. I said, "Look, Judge, how do you think, rightly or

wrongly, the people who are indicted, there are some people, probably so many people out there looking, thinking that they are their leaders.

02:46 They now symbolize the identity of an-, any group to the extent that the prosecution is ethnic-, is, is influenced by ethnicity, or perceived to be so. What do you think Judge if this tribunal should close down one day, would I say (\_\_\_) Tutsi? Why don't you think that these people would just say, 'This world, this Rwanda, this new Rwanda that the tribunal has left behind. It's not worth living. Let us take up arms and do justice to ourselves.' Don't you think so?"

03:27 I said, because my perception, my question is informed by the fact that the Gacaca proceedings in Rwanda target the Hutu. The tribunal ICTR target Hutu. The Rwandan legal system targeted the Hutu; the (\_\_\_\_\_) across the world targeted the Hutu.

03:46 So where can the Hutu victims find justice? Absolutely nowhere. Well, only France and Spain have tried because of their citizens who were killed, to make a reasonable and principled attempt in order to indict these individuals, issue warrants. Now, the tribunal, what is your position about this? Originally your spokesman joined Rwanda in condemning the French and the Spanish.

04:21 It's only when a trial chamber in the case of Munyakazi when the Prosecutor tried to transfer some of the cases to Rwanda, and the trial chamber said, "Look, there can be no justice in Rwanda." And among other reasons it said, when the French judges indicted some RPF soldiers, when Spain indicted them, they insulted and threatened those judges. If they did that to foreign judges, what about the Rwandan ju-, judges if they intended doing justice? Even worse.

04:58 And I was the person – I addressed the court about that in our own trial and said, "Look, to hand over any of these people to Rwanda, by the procedure of this court, we only harden the perception that indeed it exists the policy of this court to hand over these people to the victor to immediately sentence them to life imprisonment in isolation." Every time there is a conviction here the government of Rwanda intervenes. But when there's an acquittal, they condemn.

05:37 Say, "That person ought to be convicted." They have never shown, neither the Rwandan justice nor the government of Rwanda has shown that they are ready; Kagame is ready to behave and act as a president for all Rwandans. He's behaved as the president for some of the Rwandans, not all Rwandans by his conduct towards this tribunal and towards the Hutu majority and towards the accused in this trial.

06:02 And I pointed this out to the judge, and I pointed this to the court. So, my point of view is that probably at this point in time, if you ask the Prosecutor, ask the judge, (\_\_\_), "If we are to close down today, what would be the hallmark, what would be the legacy?"

06:22 They will name a series of cases, "We tried this (\_\_\_), we tried this." Yes, but what are the principles of law that we've laid down in the trial of this case? Yes, some of the

principles are balanced, some are consistent with the attainment of international legal principles but some have done a lot of harm.

06:44 And I say joint criminal enterprise has a potential that if anybody should put your name, say, "Well, you were never there, you were American," joint criminal enterprise it is a web that can sweep just any person depending on the whims and caprice of the judge, that particular judge where he stands. No, that is not a legacy. That is not even the principle that can help the world. It would do more harm.

## Part 7

**00:00 Ron Slye: You mentioned a number of criticisms of the tribunal. On balance, do you think that it was a positive or a negative institution with respect to justice and reconciliation?**

00:17 Let me say the mere fact that the institution was created and existed and has operated on the continent is very, very positive, because for once in our own century, our own times, dictators on the continent now know that they can be (\_\_\_\_), held accountable for crimes perpetrated, perpetrated by them.

00:45 More important, people to whom, people have, who have been elected or people who have held up themselves as commanders, army officers, others whose major role was to protect the people, to rule the different countries, now know that if they turn round and kill their own people or they fail to protect their own people when they had the capacity to do so, they will be held accountable.

01:21 On that, I can say that it's positive. And I can say that the mere existence of the tribunal per se outweighs any other criticism as far as the African continent is concerned. As far as international justice is concerned, it came too late in the day because there was a possibility of pre-empting the crisis. So was the Security Council with this (\_\_\_\_\_) did this just in order to hide its face and therefore – but better late than never and today it stands as positive.

02:05 On the development of international law, yes the jurisprudence on rape as a war crime is a major development. I think it is one of the greatest legacies that this tribunal will leave, because personally, women and v-, people, vulnerable groups ought to be protected from warfare. And for them to use women and the vulnerable groups as instruments of war, it is wrong.

02:35 Whether as the facts evolve the law applies to particular factors is another issue but the mere principle itself is good. With the, the, the precedents that were laid out in Nuremberg and Tokyo, this tribunal has followed those precedent to the extent that the, the, the "victor's justice" concept has been followed to the letter.

03:02 And that's a bad precedent that happened so many years ago from 1945, '46, '47, so many years ago. And it has set, it set a bad precedent for the world and this tribunal has just walked along those lines and it's unfortunate.

- 03:18 Now, may, do, do we have another tribunal or wait for another tribunal to come and put an end to, to, to this, to, to this conduct, to these principles? I do not know. But again, just as we were saying, in Nuremberg the world was saying "never again," you now know why. That, that "never again" was an empty slogan to the extent that we have victor's justice and to the extent that it has been repeated in this particular court, it remains an empty slogan.
- 03:53 And in anything, it leaves us with a perception that whenever victor's justice is applied, it enhances impunity for the, the party that feels aggrieved. That they can always take up arms and repeat the same crimes. To that extent, I think this court, this tribunal has failed woefully on that.
- 04:16 And as you say, in order for them and I see this development – unfortunately development that was developed in the Tadić case, I see that unfortunate development of joint criminal enterprise as was just another means by the court in order to enhance the victor's justice principle was extended further.
- 04:36 If you can't get them in any form of accomplice liability, then why not extend this notion of joint criminal enterprise? Know that it is a web that once you throw it wide open, the person will be caught somehow – jailed by association.
- 04:55 So, so, I mean look at Article 6(1) of the statute on individual criminal responsibility. Because there is no joint criminal enterprise in the statute, how do you fit it, how do you fit joint criminal enterprise under 6(1)?
- 05:14 When 6(1) enumerates the conduct, that the enumerated conduct is there. How do you fit it? Of course they say they fall back on customary international law. But if it (\_\_\_\_\_) customary international law and they move back to Nuremberg again and to the Tokyo trials, where the principle was first admitted but not as in the concept in which you find it.
- 05:39 And the manner in which it was discussed in Tadić you find out that even there, it is victor's justice looking for a means of criminalising and convicting the particular individual when it pleases them to do so.
- 05:58 So on that score, the tribunal has failed because it has set a bad precedent for the rest of the world or it has developed further a bad precedent that has its origin from Nuremberg then Tadić, and continues.
- 06:13 **RS: Those who defend joint criminal enterprise, sort of raise the problem of dealing with atrocities that a lot of people are involved in, and that, that you only have genocides or crimes against humanity if there's a very large organizational structure with both very high level people and mid-level people and low level people involved.**
- 06:40 **RS: Do you think that, leaving aside the legal issue you raised about the origins or the, the, the legitimacy of joint criminal enterprise in the ICTR statute, do you think as a general principle it is a good principle or a bad prin-, principle in terms of individual liability?**



07:00 If it were, if it were applied very restrictively it could be good. Because you know, especially criminal genocide, the specific intent, specific intent has, it has a higher threshold. So if we were to, to apply it as, in that concept, how do you – especially with the system, the systemic form of joint criminal enterprise – how, how, how do, how do you, how do you, how do you get the (\_\_\_\_\_) on specific intent?

07:34 So, you know, it is has been abused, it has been abused. In fact, I think it might have been conceived in order to, to, to, in order to remedy a mischief, the way you put it, but the fact that it has been abused in rare cases.

07:52 And in that, in that, in that particular situation, you find that the judges are so divided, some of the judges (\_\_\_\_) say that, “We can never apply it,” in the same, in the same court. Different appeal chambers have come to different conclusions.

08:08 (\_\_\_\_) appeals chamber (\_\_\_\_) followed by the idea (\_\_\_\_) – and the danger for us is this: In this concept, if these courts must be modelled and these concepts, these principles were applied to national jurisdiction, (\_\_\_\_) the African context in the hands of the dictators in power, believe me, you would do substantial injustice. It would lead to war. It would target just about any person who is perceived to have taken part in a (\_\_\_\_) joint criminal enterprise in any of the three forms. And that is our worry.

08:48 And that’s why in, in Sierra Leone I pointed out that the judges of the Special Court should take note that joint criminal enterprise is not part of the statute of the Special Court for Sierra Leone. They cannot create another form of criminal liability, which is neither in the statute nor flows from the statute. They were out of their mandate.

09:13 I, I’m waiting for, for what, whatever decision they’ll say about that but I’ll raise it. In other words, what you’re saying is correct. It was, it was perceived to redress a perceptible mischief but the fact is that from Tadić it has been abused. It was poorly applied in Tadić and in many other cases that here these couple of people were acquitted of all other forms of liability except the joint criminal enterprise. How can that be?

09:42 **RS: Well, in Tadić there were three different categories, right, of joint criminal enterprise, and the third is the most controversial.**

09:47 Yes.

09:48 **RS: Let me ask you if you were advising somebody setting up a new tribunal, now, so you could write the statute, would you include any form of joint criminal enterprise in that statute whether the first, the second or the third?**

10:03 Well, ordinarily there, there’s a problem here. You see like in the case of Mpambara here, the judges in that case expressed the fear that there’s some form of confusion between joint criminal enterprise, especially the first and second forms, with other forms of accomplice liability, in aiding and abetting.

10:26 And as long as we have on the statute books all forms of aiding and abetting and of course, and that's why they derived the notion of criminal enterprise – aiding and abetting. There's a lot of confusion there, the law is not certain there and the courts are not certain there.

10:43 At this time, at this point in time no, at this point in time for me, no. But if they could really reconcile themselves, maybe and say okay the first form of cr-, of joint criminal enterprise, maybe even the second, we can (\_\_\_\_\_) to the laws. They will (\_\_\_\_\_), but the third form is the most controversial, I mean the most controversial of all.

## Part 8

**00:00 RS: Let me, let me shift gears. You, you mentioned that you've also worked at the Sierra Leone tribunal.**

00:05 Exactly yes.

**00:06 RS: You also mentioned that you're a traditional ruler . . .**

00:08 Yes, yes.

**00:09 RS: . . . and so we have sort of three different types of models that you may be familiar with – the international model, the ICTR; the hybrid model, the Sierra Leone tribunal; and then we have the Gacaca courts, a sort of more traditional form of justice. Do you think that – which, which one of those is better suited to dealing with these sorts of atrocities?**

00:36 Let me say one thing, the, the model that we have in ICTY (\_\_\_\_\_) have been the best because of the fact that you don't have the, the country in which the crimes took place interfering unnecessarily either with the court or witnesses.

00:53 But Sierra Leone has emerged as a more successful model. And surprisingly I would say so because in terms of – I, I mean actual performance, in the sense that the, the prosecutions are taking place in Sierra Leone and the government has not inter-, interfered that much. Why? Because all the parties to the conflict were prosecuted.

01:24 You had the Kamajors, CDF Kamajors, you have AFRC and you have RUF and of course lately Charles Taylor. So, probably this is what I'm (\_\_\_\_) about the stability of the proceedings, that the citizens of Sier-, Sierra Leone see the same fairness in that all the parties are prosecuted.

01:45 Maybe if they were to prosecute only the AFRC or RUF or the Kamajors, maybe the potential for instability after that would have been there. But I have been there and I find that the government cooperates when they subpoena the, the former president came, the Sierra Leone government.

02:08 Even though they had – the, the, the Special Court is very, very unpopular among the Sierra Leone people. Because they had a Truth and Reconciliation Commission and even

though suddenly before the elections the, the former vice presidential candidate opened the doors of the prison and, and set free all the, all the suspects who were there because they played a major role in the elections and were somehow popular. Especially the rebels played a major role.

- 02:35 That will not be a model that anybody want in any other country because all other African countries are not Sierra Leone and secondly, yes, if this model had all the parties in the conflict, Yugoslavia has been somehow successful also because all the parties to conflict have been prosecuted.
- 02:55 In terms of stability, in terms of the ability of the international community to foresee, to foresee ten years, 20 years from now, is there potential for conflict? They can see. Can you see the same about Rwanda? No, so this model remains the best, but for the fact that all the parties in the conflict (\_\_\_\_\_) and that, that is the difference. So I think the Yugoslavia model remains the best.
- 03:23 RS: And why do you think the Yugoslavia model and the Sierra Leone model were better in that regard than the Rwanda tribunal?**
- 03:30 In the first place, if you find time and, and read some of the proceedings in the, in the Sierra Leonean, the judges are actually, they actually try to be fair. They, they give all the possibilities for the parties to be heard. They conduct joint trials but they make it known from inception that each accused is being tried as if he were being tried separately.
- 03:57 And they will not let a co-accused incriminate another accused in the course of the trial, because that would lead to a mistrial. Because if they were tried separately that would never happen. If you sit in this court you will find that the so-called completion strategy is a factor that has been taken into consideration by this court. And the court has put a lot of tension, especially on the defense, and the comple-, the completion strategy has done a lot of injustice.
- 04:26 They'll cut the number of witnesses, they cut the cross examination, they (\_\_\_\_\_) even to look for witnesses. I mean of, of course the international community, the defense is not always very popular with them. They can provide all the resources with the Prosecutor but with the defense they will not. So they try the completion strategy here.
- 04:43 In Yugoslavia there are few cases, yet the international community have told them, "No, you can close 2010." But here they put a lot of pressure to stop. Stop. Now, come to think about it a problem arises, when Yugoslavia, when the trial in Yugoslavia started, when the trials in Yugoslavia started – when the conflict started, I'm sorry, the international community jumped in and Bill Clinton . . .
- 05:19 . . . the bombing, you remember the bombing and you know very well that at the IC-, at the ICJ, they attempted bringing action against all the states involved but the statute of

the ICJ, ICJ did not permit them, that they can bring them collectively, NATO countries – so they had to bring cases against all of them, even though again they didn't succeed.

05:42 But, the, at – under the same circumstances in Rwanda they look away and pull out their troops. The same situation now is repeating itself as we move towards the end of the tribunal. Much as they are trying to say, “No, stop Rwanda, end quickly, do everything to end quickly.”

06:00 They are asking Yugoslavia tribunal, “Take your time. See that you can, justice is done” (\_\_\_\_\_). But you ask yourself what informs this conduct on the part of the international community? In this type of situation I don't have the answer, they have the answer.

06:19 But it's unfortunate because that perception is there, that you were, you weren't there, you left the Rwandan, you abandoned them when they most needed you. Now you are trying to abandon them again to rush the defense of these people or rush other cases, close the case quickly. The Yugoslavia that has few work cases, you give them more money, you give them more time.

06:50 What? I cannot really give an answer to that because I would be speculating if I were to give any answer to that. But the circumstances are there, the circumstances are there for one to see. At the end of the day, Rwanda, the quality of justice that is here will be rushed.

07:12 They will cut one witnesses to about 50, some who had 100 and something when they cut them to about 50. The Prosecutor has been prosecuting for the past six years, cutting witnesses. Now in under a year you want the defense to end in some of the cases.

07:29 And the ambassador at large, UN Ambassador at large at that time was Pierre Prosper; he came. He held a meeting. I was present in the meeting. Pierre Prosper was telling us, “Oh I came here, nothing else, the end game. Let me know. So what are you people doing in order to close the cases?” Of course it is only now of late that Carla Del Ponte's spokesperson in his book clearly says that (\_\_\_) went to the State Department, met Pierre Prosper, with Carla Del Ponte and he said, “Don't touch these files, the RPF files.”

08:04 I'm not the one saying it, it's in the book. So at the time he came here and spoke to us and I was in a meeting, for me it was, it was, I thought that was, was in good faith. I'm not saying that what Carla Del Ponte's spokesperson has written is right, but I'm saying that at least this is the Prosecutor saying this. This has come from the Prosecutor.

## Part 9

**00:00 RS: Should we – do you need to?**

00:01 No, no, no, proceed.

**00:03 RS: You're okay?**

- 00:03      Yeah. I, when we finish I will stop them, I will let them wait in here.
- 00:08      **RS: Okay. One of the audiences of this sort of interview, which was mentioned before, may be school children in India, China, Rwanda. One of the questions they might have for someone like you is that you are defending people who have been accused of some of the worst atrocities that we have known. How do you explain that? How do you justify that to them?**
- 00:34      I would tell them that it is in the interest of, it's in their interest and the interest of the international community to know the truth of what happened. And, if the persons are found liable, to know what motivated them to do so, to read into the minds of these people. And that what the parties know is a prerequisite to true justice, so that it doesn't happen again.
- 01:06      So that we can be able to say look, when the alleged crimes were committed, this what this or that person was thinking about. These are the factors. This is the defense. Except we know all this.
- 01:19      Secondly, I would tell them that the rule of law matters. The rule of law. Where there is no rule of law there is impunity, and that this process is needed to enhance the rule of law. This is what I would tell them.
- 01:34      And that it is in their interest so that they grow up learning perhaps the people before them, when the conflict started in 1958, they had a credible process and the rule of law prevailed, we would never have been here. This is what I would tell them.
- 01:51      **RS: When you mentioned the importance of understanding how they think . . .**
- 01:55      Yes.
- 01:56      **RS: . . . can you talk a little bit about your changing perceptions of your clients over the course of your representation?**
- 02:05      Well, let me say one thing, my clients were at the war front, especially soldiers. And you have to make a clear distinction here between the politicians and the soldiers. And you'll be very surprised that many RPF officers in closed session have come to defend them because they knew whom the (\_\_\_\_\_) were.
- 02:24      And you ought also to know the Rwandan system as well. The politicians in Rwanda from first the, the, the coalition government, if you look at their case, the attempts for them to take power from Habyarimana and they went at different times to get to some former (\_\_\_\_\_) RPF. RPF was an armed rebel movement. It was not really a political movement as such. It was never a political movement in Rwanda.
- 03:05      You have on the one side politicians sitting on the table and talking where armed rebel movement that is talking and attacking and this position had nothing. You had the arms embargo on the Rwandan army from Belgium and international community at the time. You had the supply of weapons from, from, from Uganda and now of late we now know

- that some of the arms came from Libya, from world experts who have been able to come (\_\_\_).
- 03:33 And of course when you have all this, you will find that – and when some of them will have testified, you find that apart from what they call command responsibility, it will very, very difficult to find that any soldier will have killed this man, killed this person, no, that’s not the case. Or they didn’t do enough to, to, to protect the civilian population. It will very, very difficult.
- 04:00 Having defended the politician and defended the soldier I can tell you this – the responsibility of the soldier is very, very, has become difficult to prove apart from, as we say, notions of joint criminal enterprise and perhaps they tried in paragraph (\_\_\_\_\_) of the indictment to talk about conspiracy and the court have ruled out any direct agreement.
- 04:21 You see, there were, there were some other acts from which some inferences were made. But when you have more than one inference from the same facts, it poses a problem. And I think the Prosecutor has serious, more serious – has a lot of difficulties proving the claims against the soldiers than the civilian politicians, (\_\_\_\_\_).
- 04:44 So, with them as it is, I think they love their country so much. They love Rwanda and they are aware they lost a war; they admit that. They know exactly where responsibility lies, they were only soldiers under the command of civilians, civilian government and I don’t think that you can really put them and the civilian politicians in the same basket. It’s very, very difficult. And I don’t see them accepting that. They, they still believe that they were soldiers.
- 05:12 That’s why you’ll be surprised that the presidential guard that is accused for having committed most of the murders, three quarters of the presidential guards are now in the RPF, including some of the officers that were alleged to have committed the crimes.
- 05:27 General Gatsinzi was the interim Chief of Staff of the Rwandan army at the time that most of, some of the murders took place is the Minister of Defense in the RPF today. The RPF knows so well that these were adversaries.
- 05:42 And the other reason why some of those people are here now is because they are the people who refused to come back home and they are the ones who are perceived to be supporting the rebellion in the east of Congo. The people who said, "No. We surrendered." Wh-, whom they suspect (\_\_\_\_\_).
- 06:00 And the ones who are here are some of the best soldiers you’ll find. They went to some of the best military school, War College and many of them went, did military training in the United States, in Belgium, some were in North Korea.
- 06:12 So you’ll find that they are well-trained soldiers. And I cannot pre-judge a case, I’m not, I don’t have the authority to do so but I think generally the evidence against the soldiers is very weak except in cases that they apply some of this notion of liability.

- 06:33 But direct perpetration no, or to say that they had knowledge to commit this war crime, no. On the contrary they did the best, they did the best they could in their circumstances.
- 06:45 And take note that the embargo was only on one side. Take note the RPF moved into the capital from different directions and attacked, weapons. General Dallaire was there on the spot. He did not, he didn't even attempt to stop them.
- 07:01 So as I say it is, it is one case that at the end of this case I think the archives of this court should be preserved by the United Nations. They should not be handed over to Rwanda or to any person.
- 07:14 They should be preserved under the auspice of the United Nations so that the researchers and (\_\_\_\_\_) others who come and read through the transcripts. Read through this, read through the exhibits and read through the rulings that the judges would make when the case went on, because when you read the judgments you would (\_\_\_\_\_) exactly all this.
- 07:34 When that is done, it is researchers like y-, like yourself who ought to tell the world exactly the case, what actually transpired here. Based on the judgment you may decide that at least some of it is in closed sessions. You will never really know the facts of the case as it is.
- 07:52 Even Gacaca is not in closed sessions, it is done mostly (\_\_\_\_\_) and yet the witnesses are virtually the same. Yet we found witnesses who came here and gave one version of the story. Before Gacaca they could not because they are known, and the (\_\_\_\_\_) changed, so.

## Part 10

- 00:00 **RS: I have two more questions. One of the purposes of the tribunal is to promote reconciliation. Do you think that your clients are more open to reconciliation because of this process?**
- 00:14 Wi-, without this process I think reconciliation would still have been possible.
- 00:19 **RS: Would have been impossible?**
- 00:20 It, it would still have been possible if there were a Truth and Reconciliation Commission. It, it would still have been possible. I think the tribunal, the prosecutions have not succeeded in that aspect; they failed. I don't think any (\_\_\_\_\_) anybody could think about that.
- 00:38 That, that I can say, because the attitudes of the RPF in power towards the trials, the propaganda against the court, the attacking of witnesses, arresting of witnesses, targeting witnesses who came to testify for the defense – I think these has not encouraged reconciliation as the case may be.

- 00:59 And the, the tribunal itself – yes, one of the most effective witness protection units you can find. I think that’s one of the legacies we’re going to leave for international justice. I think it’s the best compared to all the others.
- 01:11 And the witness protection unit has really done a marvellous job in some of the people, protecting in different countries where they now reside to make sure that they don’t come in harm's way. But RPF, as soon as they know somebody testified here, the person’s name is put on the list of génocidaires. And that being the case, you can now understand that it (\_\_\_\_) the way out for reconciliation.
- 01:34 And take note, what I know is that when I go around looking for witnesses and I meet some of the people who are still, who have, (\_\_\_\_) arms in the forest in Congo, and when they tell me, “Look, we told the international community we’re prepared to lay down arms, we’re prepared to go back to Rwanda, provided the international community organizes a free and fair election under their own supervision. If we lose we will concede.”
- 02:04 And that is Kagame refusing because a free and fair election under international supervision he cannot win. He will never win, so he will never let that happen. So I think another way of encouraging reconciliation is: tell, let the international community say, “To supplement this, let us organize free and fair elections. We’ll supervise it. No intimidation.” Are they prepared to do that?
- 02:32 They did that in Sierra Leone and there’s peace in Sierra Leone. And the government that emerged in Sierra Leone is accepted by all. They can do that in Rwanda but they are not willing to do that.
- 02:46 RS: Let me lastly ask you to reflect upon yourself and your experience of this whole process. How do you think working in this capacity at the ICTR has changed you as a person?**
- 03:05 Well I, I addressed this issue on the 18th of May. I was invited by the, the Association of Federal Administrative Judges of the United States in Washington D.C., in the annua-, annual luncheon to talk about this tribunal. And I talked specifically about victor’s justice. But let me say one thing. This, this process has changed me in many ways.
- 03:37 The first, the first aspect of it is that I’ve always had opportunity to tell the people here, who came to work here, it is not about money, it’s not about career. Let them stop once in a while and think that we are here because thousands, hundreds of thousands of people lost their lives. And those people will never have the opportunity to be heard, so we ought to be their voice. We have to talk for them.
- 04:10 Whether they were killed by RPF or some other person or whatever, whoever responsible. We have to be seen as standing up and talking for them, so that let their death and the reasons for which they died, let that death not go in vain.
- 04:28 The world should know. So whenever we think about that, that has touched me so much. It has also told me, taught me that we should also have in mind that we’re here



because there's a country that – and people of all ethnicity – that wants just to live in peace under the sun.

04:50 And that neither the international community neither the judicial process seems to be offering this. Now what are we left with? We are left with perhaps the goodwill of men and women across the world and that when we leave here we should be messengers, ambassadors of peace. And to say no to war, no to poverty, no to disease, no to all the factors that made the pogrom and the massacres in Rwanda possible.

05:25 It changed my perception of politics, s-, changed my perception of the law and international law, but also made me to understand people and understand international situations even better and also to understand international law. I now know when, when correctly applied and it is there for the world to see, when it is wrongly applied what it can do.

05:53 And it also tells, tells me that at least there is no alternative to the rule of law and that impunity as it were, is a (\_\_\_\_) on the conscience of the world, all of us who help fight impunity and uphold the rule of law. And that peace start from our hearts. When one person is not at peace, another peace is not a peace, this collective situation leads to what happened.

06:25 And I think it changed me a lot. In my own country I take the message everywhere and it makes me to scrutinize politicians even more, political discourse. It makes me ask, "Can they be trusted? Can these people be trusted?" I'm leaving this tribunal with a lot of distrust for politicians. Unfortunately so. They ought to be encouraged. I wonder whether they can change. So that, that's what I think.

**07:00 RS: Thank you.**

07:01 You're welcome.