

## Official Transcript: Adama Dieng (Part 7 of 10)



<b>Role:</b>	Registrar
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<b>Interviewers:</b>	Batya Friedman Donald J Horowitz
<b>Videographer:</b>	Max Andrews Nell Carden Grey
<b>Interpreter:</b>	None

### Interview Summary

Adama Dieng discusses the challenges of establishing the 'rape as genocide' jurisprudence, the importance of training defense counsel, and the need to strengthen Africa's national courts. In his reflections on the important role played by Gacaca in Rwanda's healing, he emphasizes the serious challenges that domestic justice has posed to witness protection, as well as the need to avoid 'victor's justice'. He stresses the importance of the presumption of innocence at the international level while advocating for compassion for detainees.

*The transcript of Part 7 begins on the following page.*

## Part 7

- 00:00 **Batya Friedman: Thank you. Let me change topics now for, for a little bit. So one of the really innovative pieces of jurisprudence to come out of the court is th-, this notion of rape as genocide. And I'm wondering if you can speak to that.**
- 00:23 **BF: So again, from an outsider looking at the court, what you might see is that in an early case there was this very important piece of jurisprudence, and then, if you look at subsequent cases, maybe it was used in Yugoslavia, but it appears almost to disappear, or to be left alone in some way. And that might be difficult to understand from an outsider's point of view.**
- 00:53 **BF: So I'm wondering if you can help us understand how that piece of jurisprudence evolved and then how it is, it's been viewed and treated within the prosecution and the defense, such that it has played out in that way.**
- 01:11 To, to, to start I would say that I really regret that this tribunal, the successive prosecutors, did not pay much attention, did not deploy much efforts to bring really the sexual crimes committed during the genocide. Sexual violence is today such a thing in the conflict that one could have do much more certainly, by introducing that count of sexual crime in the various, in, in much of the indictment.
- 01:55 Of course, one need also to have the evidence which is not always easy, but I'm also proud to say that the bench which sat in the Akayesu case, composed of Judge Laity Kama, who was the first President of this tribunal, Senegalese, and Judge Møse, from Norway, who become the third President, and between there was Judge Navi Pillay, from South Africa, the only lady.
- 02:36 I was not privy of their deliberation, but I can see that the fact that those three judges were, at the same time, human rights "activists," I may say so. Judge Kama was a member of the UN Committee on Arbitrary Detention, he was a human rights activist; Judge Møse was also involved on human rights activities at the Council of Europe. Judge Pillay, from South Africa, was also a human rights activist, and more important, Judge Pillay was involved in the work of many women's group, including in the United States. And today, she is the High Commissioner for Human Rights.
- 03:23 When they decided on that issue it was a premiere, it was a premiere in the history of international criminal justice. And many people wonder, how come that rape be consider as genocide, as a crime against humanity. Well, it was the case because it was found by the Trial Chamber in dealing with that case, that when committing rape it was done under a circumstance during which that act was also aim to exterminate the Tutsi communi-, group.
- 04:20 It was not simply that the fact that there was a rape, it was not a simple rape, but it was a rape as part of the intent to exterminate the Tutsi group, so they came to that conclusion in that bench and that is why they convicted Akayesu also for that crime.

And this was taken later on by the International Criminal Tribunal for the former Yugoslavia, which has also a case of rape in which they used the jurisprudence of the ICTR.

05:00 And I do know an American state which also has passed a legislation following the delivery of this judgment on rape, and it is my sincere hope that African countries will also incorporate into their legislation what I consider as an advancement in the definition of rape.

05:29 And to give you another example talking about rape, although this case is still pending, that is the Butare case. In the Butare case we have the only female, the only woman, who has been indicted by this tribunal for genocide, but also for rape. And one may wonder why, how come, that a lady, a woman, be accused of rape?

06:00 And she might not have been the person who directly, but who directed the, the soldiers to commit that crime. But I cannot say more at this stage about it, I can just refer to the indictment of this lady, who is the only female, Nyiramasuhuko – her case is pending and I will let you know and I'm sure you will follow it up, what was the final decision.

**06:32 BF: Can you help us understand some of the challenges in prosecuting for rape as genocide, and some of the ways in which the courts here have tried to address those challenges?**

06:43 Well, one of the difficulties, is, even until today, people who have been victims of rape they tend to not speak out. Sometimes it's very difficult to get the victim of a rape, even in our national jurisdiction, to come out and say that she has been raped. That is one first element.

07:10 The second element is also the, the crime of rape is not always easy to establish, because you need to really come with the element, which, of the crimes. And to just give you an example which was, which happened in the Butare case, that was the cross examination by one of the defense lawyer of a witness. That witness was victim of a rape, she claimed, being victim of a rape.

07:54 And during the process of cross examining, that defense lawyer went to the extent of asking her, "Well, you say that you were raped, can you tell us the skirt you were wearing when you took it out, then, the slip, the under – how did," and question which were very aggressive, to the extent that, at some stage, one of the judges, you know, look onto this defense counsel, and say, "Hey, calm down."

08:30 That is how came this whole story known today, as the laughing of the judges, which created a scandal. People were very much scandalized, because they did not understand what happened really. They only kept what they thought was the reading of the judges, while the judges did not laugh.

- 08:53 Although, I should say, having watched the, the, the tape, one of them had just had a smile, you know, smiling not on the victim but the stupidity of that defense counsel, the lack of sensitivity, the lack of sensitivity, of that legal counsel.
- 09:13 But still, we are in a common law system, whereby, each of the parties has to come and try to convince, you know, and that was, that lawyer was just doing his job but he should have done it with much more sensitive sensibility. And that is just to illustrate how sometime difficult it is for the victims of rape to accept to come out forcefully.
- 09:46 And that is why we managed to organize series of training with some of the women's group so that if they have to come to testify here they know what they will be facing, so that they are ready, psychologically, because otherwise it will look like that you are raped twice, the sole fact that you are, again, reviving the event.
- 10:15 And we will continue, we'll continue, and next January, from 15 to 17 of January, I am going to organize in fact a meeting on gender and justice to focus on the experience of this tribunal on addressing sexual violence during the genocide.
- 10:36 So that the lesson learned from this place could serve tomorrow, Senegal, could serve all the countries, because even in Senegal, my home town, if I take – there is one region called Kaolack. I was reading the other days that there were about 400 cases of sexual violence during the year 2007, but that is a lot, that is a lot, sexual, sexual violence, but, the thing is that, people, how many other cases were not reported because people would feel shame?
- 11:10 And the other thing is, we need also to sensitize judges; judges need also to be educated on gender sensitivity, because some time they have also to get rid of their cliché. And this is a long battle to continue with, to make sure that the judges, when they are facing a case of rape, will detach themselves from their own prejudice. And to achieve that they need to also to be educated.
- 11:43 **BF: Okay, thank you. Well, I think I'll turn things over to my colleague, Judge Horowitz, at this point.**