

Official Transcript: Suzanne Chenault (Part 4 of 9)



Role:	Legal Officer and Juris-Linguist
Country of Origin:	United States
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Location:	Arusha, Tanzania
Interviewers:	Lisa P. Nathan Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Suzanne Chenault discusses the importance of establishing jurisprudence that will pave the way for future international tribunals, and offers some reflections on the Akayesu case which was the first case to address rape as genocide. Chenault stresses the need for investigators to have deep contextual and linguistic knowledge of the communities they are working with, especially when collecting evidence around sensitive topics such as rape. She stresses the lack of communication among different trial chambers within ICTR as a core challenge.

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Part 4

- 00:00 **Lisa P. Nathan: So, before we go any further, because of the wealth of knowledge and experience that you have from your time here, is there anything that as, as you reflect on that time that you would like to share with us that I or Don may not bring out with our questions? So please take your time and, and think. There may be a few things that you would like to share with us before we go any further and we will return to this question at the end as well.**
- 00:29 You know, when I first came here, the first judgment which was the Akayesu judgment in which I had no role was disparaged a bit. I remember there were a number of whispers down the corridor about it was, it was too long, it wasn't, didn't address issues directly, as, as, as it could have, but it has in so many ways stood, withstood the test of time.
- 01:08 And sometimes I refer, when I'm coordinating a judgment or when I'm advising a judge, I will go back and refer to the Akayesu judgment and its articulation of, of, of genocide because it was the first case in any international tribunal that, that held, that made a holding on genocide.
- 01:39 And it was the first case that charged rape as an act, as an act of genocide and the first conviction for rape as a tool of genocide and as a crime against humanity. So it was – and also the definition of rape was just so incredible as you think about it.
- 02:04 And I, oh my goodness, I fought so hard as we were moving away from that definition and the Muhimana judgment to conciliate what was then perceived as a divergence and to, and to work for the judges to show that it really wasn't a divergence, that in fact, we still were adhering to the Akayesu defin-, conceptual definition of rape and that the elements of rape which were mechanical, mechanical that is they were specific in terms of the penetration of what, of, of, of what part of the body by, what part of the body.
- 02:48 (), You know, it . . . so, () I can get very, very specific about this. It's, it's really quite graphic and Ake-, and this was, this mechanical definition had been articulated by the appeals chamber of the ICTY in Furundzija and in, my goodness, my goodness, it'll come back to me in just a second. My goodness, but I'll come back to that.
- 03:22 And there was the argument that there was a rejection of Akayesu and I was reading what number of scholars were saying, particularly somebody whom I admire greatly by the name of Kelly Askin and she had made the argument that no, no, the Akayesu definition which is a conceptual one which is – if I can read it to you – a physical invasion of a sexual nature committed on a person under circumstances which are coercive.
- 04:06 General, there is no element of consent – it was rejected because this was a situation of genocide. How could you even envision consent in a situation like this of such violence?

- However, in a, the ICTY Appeals Chamber, in the appeals, there was again () consent right in there and we're back to "You have to have the invasion of () part of the body."
- 04:59 Would it be the mouth? Would it be the anus? By the penis or by an object? I mean here you were. You were using all of this, the-, these, these graphic mechanical specific elements and so how do you reconcile going with these specific elements and this conceptual definition?
- 05:23 I think and I do hope this is adhered to by future judgments that that conciliation was achieved in Muhimana. And this was a, a judgment issue in 2005. We have had a paucity of judgments that have addressed rape. Out of the 29 cases, only to date and I'm talking about to date as of today's date.
- 06:00 We're not talking about any of the judgments that may be issued in the coming months before January, 2009. We have had only eight cases charging rape – only eight. And of those, only four have been upheld on appeal.
- 06:21 Now, you probably need to talk to the Prosecutor as to why there were no great, more, more, more cases charging rape. There are certainly reasons for this. It's more difficult perhaps to prove rape because you need to have the wit-, the victims or the, or the witnesses be survivors.
- 06:52 How many of those who were raped survived? And how many of those who survived given the cultural taboo in the Rwandan society are willing to testify? What do they get from testifying? In fact, there's a wonderful, () wonderful, horrific story of a witness in Akayesu who after testifying of course like many, when I say of course, it's not obvious but like many, she was a vic-, she is, she's still alive, a victim of AIDS.
- 07:35 And also, somebody living in great poverty and there was a program here also through the trust fund that provided housing to many of the victims who survived of the Rwandan genocide.
- 07:56 And this one witness in Akayesu – I think it's witness JJ, I'm almost positive – was living as far as here to that pillar from this new development of homes built by trust fund moneys for survivors. She, three years after her testimony, was living still with no wall in her little dwelling, of course, no electricity, of course, no running water.
- 08:48 And she pointed to that building and she said, "You know, that was built for the survivors but there's one person who owns three of those little houses and rents them. So in fact, those people who most need them are not necessarily receiving them."
- 09:30 Now there was a bit of publicity about this and a church group subsequently helped her to restore that wall that had been opened. She had courage to testify. There are many survivors because of all of the issues involved with making known your story do not testify.

09:58 Are you going to have a husband, if you're young enough still to have a husband? You're a tarnished woman. Oftentimes at least you're thought of being a tarnished woman. And consequently it is difficult to find the witnesses testifying to sexual violence.