



Voices from the Rwanda Tribunal

Official Transcript: Suzanne Chenault (Part 7 of 9)



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Interviewers:	Lisa P. Nathan Donald J Horowitz
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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 7

- 00:00** Donald J Horowitz: Hello. I'm Judge Donald Horowitz from Seattle, Washington and I'm going to do the second part of this interview which will likely be not as long as the first part but we're going to focus on a few, on few things – one of which is you've used the word, and quite properly as far as I'm concerned, the word "jurisprudence" a number of times, many times throughout the first part of your interview.
- 00:27** DJH: And since this conversation is going to be seen and listened to and used perhaps by, by people who are not lawyers, perhaps and I know it's not an easy one but perhaps you could give us at least a running definition or a useful definition of the word "jurisprudence."
- 00:48** I come from a common law tradition and my understanding from my tradition of jurisprudence and I believe now is the understanding of most people here in this tribunal. Remember it's a hybrid system . . .
- 01:02** DJH: Yes.
- 01:02** . . . that we had the civil law and common law. But we now are depending upon our jurisprudence that was established in the 29 prior cases for the cases that are going to be issued and that as background I would simply explain my understanding of jurisprudence as the articulation of the law as applied to the facts in all of the cases that have been brought before this tribunal and all of the facts have been related to three crimes.
- 01:46** They are crime of genocide, which is articulated in our statute, and that is a crime that is perpetu-, that is perpetrated on the basis of one's ethnicity or race or a religious affiliation and you have to prove that the crime was committed because a, a person was a Tutsi. And how do we do that?
- 02:16** Very often it's just someone recalling that one of the accused who might be charged with incitement to genocide. He's asking the Interahamwe, "Come on. Go after 'em. Get the Tutsi. Exterminate them. Exterminate the cockroaches, the Inyenzi."
- 02:38** So that's the law that's been established about, about genocide and it's all of the facts that relate to how the court came to a determination that genocide was committed in that case.
- 02:54** And then the second crime, crimes against humanity. The crimes against humanity means that there is a systematic attack against a group of people and there are different kinds of crimes. There, it can be torture. There can be murder, there can be extermination, there can be slavery, there can be what else? Let me think. Crimes against humanity.
- 03:23** DJH: In Akayesu . . .

- 03:24 Yes?
- 03:25 DJH: Didn't they define rape as a, a crime against humanity?**
- 03:28 Of course, of course, rape is one, of course.
- 03:30 DJH: Yes. Okay, okay. And that was the first holding I guess in history, if I'm correct, that held that rape could under certain circumstances be also a crime against humanity as well the crime of rape?**
- 03:44 Well, yes, but it was, that's interesting. It was, it was charged, it was charged in the st-, in, in the indictment as both genocide. It was part of the whole genoci-, the . . .
- 04:04 DJH: Right.**
- 04:04 . . . all the, part of the acts that constituted genocide and it was also specifically charged as rape as a crime against humanity. So there was a conviction on both. Crime a-, rape a-, conviction on both crime against humanity and . . .
- 04:19 DJH: Okay.**
- 04:19 . . . and genocide. And then the third crime is a war crime. Now, what's interesting about a war crime, whoa, is (___) – there, there, there are a whole number of elements you have to prove.
- 04:31 And you need to show that it is a, that it is a conflict that is limited to the country in which the crime takes place. So it is a non-international conflict and it has to be a crime that is committed, could be rape for example, but is committed in, as an act of war.
- 05:00 So you have to show that it, that you've got, you've got a war going on and it's not just two, it's not just two civilians who are, one who is raping the other. So that is, that is an important, that, that's a, a distinction. But you see that's the jurisprudence that's involving.
- 05:23 DJH: Okay.**
- 05:24 It's the case law. It's the law that has been articulated in one case as applied to the facts and then articulated again in regard again to those three crimes – genocide, crimes against humanity and war crimes and then refined. And then, what also will come into this will be the modes of commission.
- 05:47 How do you commit this crime? And that's one other part of our statute. So the case law r-, c-, really deals with three crime-, three, three crimes over which we have jurisdiction and those are articulated in Article 2, Article 3 and Article 4. Article 2 is genocide, Article 3 crimes against humanity and Article 4 war crimes.
- 06:12 And then, we have Article 6 and that is responsibility. What is your responsibility as an accused person here? Have you, are you just the commander and how can you be – now that's interesting too.

- 06:26 We, and the third case that was actually litigated, where there was no pleading of guilty which was the Musema case. There was manager of a tea factory and he was charged with being, with superior responsibility. Let me go back because I know I've jumped ahead.
- 06:47 Two kinds of responsibility – one is individual responsibility, the other is superior responsibility. So these are the kinds of responsibility you can, you have to, that has to be proven in the case law for you to be guilty of genocide, crimes against humanity or war crimes.
- 07:11 So, if it's individual responsibility, there are five modes of commission and those five modes are – you actually committed. You actually took the gun and you shot him. Or, you incited. It's not incited, excuse me. It's instigation. You could instigate.
- 07:32 And instigation, how is it interpreted according to the facts of the case? That's case law too. That's jurisprudence or in addition to instigating, commission, instigating, the catch all is aiding and abetting. You . . .
- 07:50 DJH: And conspiracy is another one, yes?**
- 07:52 No.
- 07:52 DJH: No?**
- 07:53 No, no.
- 07:54 DJH: Okay.**
- 07:54 Conspiracy is part of genocide.
- 07:55 DJH: Okay.**
- 07:56 No, no, no.
- 07:56 DJH: Okay.**
- 07:57 Modes of commissions are different. So it's commission, it's aiding and abetting, it's instigation, ordering. You can actually order and the fifth is, there's a fifth mode of commission. Anyway . . .
- 08:11 DJH: If you were, if you were in charge and you didn't stop them from doing it.**
- 08:15 That is superior responsibility.
- 08:19 DJH: Okay.**
- 08:20 So two cri-, forms of responsibility – individual responsibility and superior responsibility.
- 08:23 DJH: Okay.**

- 08:26 Now, back to where I was when I put my foot in. I said third case, Musema. That was interesting because that was the first case we ever had where we had a non – well, that was the first case where there was a non-military person who was charged with superior responsibility.
- 08:47 He was the ow-, he was the manager of a tea factory and he led all of the factory workers up a hill, down a ravine to kill the Tutsi who had fled. And the court held he was responsible not only because he actually (__) shot and ordered, but he was responsible also because he was in charge of them and being in charge of them he then was their superior. He could have, he could have prevented their killing.
- 09:31 And knowing that they killed he could have punished them. He didn't prevent and he didn't punish. And why was he a superior? And when was he a superior? He was s-, a superior only during working hours because he was in charge of them only from the time they came to the tea factory to work, eight o'clock in the morning, till the end of the working period.
- 09:58 But any other time that he may have been with them when they were attacking the Tutsi whom they were purs-, pursuing, he could not be, according to the court, charged with superior responsibility which is under Article 63. So I, I just want to resume for anybody who might be confused.
- 10:18 There, there are really four important ar-, I mean there are many articles that are important but this is the statute. This is the statute that was articulated by the Security Council that gives us the basis for our case law.
- 10:33 DJH: And (__).**
- 10:34 And our jurisprudence. So it's Articles 2 which is genocide, 3 which is crimes against humanity, 4 war crimes and then Article 6 which would be the modes of responsibility, individual responsibility and there are five modes of commission and I could only remember four, and then superior responsibility.
- 10:53 DJH: Okay. And that's been a wonderful lesson for us and I'm (__)** . . .
- 10:57 Sorry.
- 10:58 DJH: No. And that's good. And let me see if I can, at least very briefly take what you've said and, and define jurisprudence briefly which is it's the rules, the principles and the philosophy established by the court in particular fact patterns which enables further cases and th-, and, and, and informs others cases in their decision-making as they go forward. Would that be a fair way of putting it?**
- 11:30 Oh, how eloquent you are.
- 11:33 DJH: Is that a fair way of putting it?**

- 11:34 Oh, you've put it so eloquently. I'd like to have that definition. Please write it for me so that I (____) . . .
- 11:39 **DJH: A lit-, a little, a little later.**
- 11:41 Please.
- 11:41 **DJH: But I want to be su-, I want to be sure that y-, I mean you're not just complimenting me that that's, that's accurate in, in your view.**
- 11:47 No, I'm not complimenting you.
- 11:48 **DJH: Okay.**
- 11:49 I'm telling you you have been extremely eloquent and you have listened well to my floundering attempt.
- 11:57 **DJH: No. Well, the, the flounder is swimming well. Don't worry about it.**