

Official Transcript: Adama Dieng (Part 6 of 10)



Role:	Registrar
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Location:	Arusha, Tanzania
Interviewers:	Batya Friedman Donald J Horowitz
Videographer:	Max Andrews Nell Carden Grey
Interpreter:	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.

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Part 6

- 00:01 **Batya Friedman: So, it's hard to follow that with a question, but I do want to ask a question, something we spoke about at the beginning of our meeting, not recorded on the video. And that has to do with the notion of an even-handed prosecution. So, in the case of Rwanda and the genocide it's quite a complicated cycle of violence that you spoke about, and quite a complicated political situation in which the tribunal sits and participates.**
- 00:40 **BF: And so I'm speaking here of the Rwandan Patriotic Front and what kinds of crimes against humanity might have been committed there. And a question that the tribunal to date has not prosecuted there. So I think perhaps you might speak to that, what, what your thoughts are and perhaps help people understand why the prosecution has unfolded in the way that it has here, and perhaps what your hopes might be, or thoughts might be.**
- 01:15 Well, we know that Rwanda is composed of a population at that time, before the genocide, the percentage was about 85 percent Hutus, 14 percent Tutsi, and one percent Twa. Twa is the smaller ethnic group in Rwanda. Sometimes people even ignore that there is a third group and the same composition we find it in Burundi.
- 01:51 And during the genocide, of course, the Tutsi were the ones targeted by the genocidaires. Otherwise there would not be genocide, if these crimes were just simply perpetrated against everybody, but these were perpetrated against the Tutsi, because they are Tutsi; because they are Tutsi, that's why they were killed. Because the idea was to exterminate those people and that is how th-, this tribunal did recognize that genocide occurred in Rwanda.
- 02:27 But beside the genocide crime, there are other crimes which were committed, war crimes, for instance. And some of the people who have been indicted here for genocide some of them also were indicted for war crimes. But the war crimes were also committed by Tutsi people against Hutu people.
- 02:51 And that is why the mandate of the tribunal was to try not only genocide, but to try all other breaches of international humanitarian law rules. And that is why there has been many criticism about this tribunal not having indicted RPF soldiers to be tried here in Arusha.
- 03:26 My personal opinion on this is that it would have certainly contributed a lot towards the reconciliation process would those RPF soldiers being investigated by the ICTR Prosecutor were indicted and tried here in Arusha. Hopefully, the Prosecutor was able to find a solution which was to hand over cases he was investigating of RPF soldiers' crime, the same cases were apparently being investigated by the Prosecutor General of Rwanda.

- 04:17 So the agreement was, therefore, to let those case being tried in Kigali. The first of those cases was called last June and the trial was completed in October 24, 2008. Among the four people who were brought before that tribunal in Kigali, two were acquitted, one General and one Major, and two were convicted and sentenced to eight years prison each of them.
- 04:50 Is that satisfactory? Would that really help to strengthen the reconciliation process in Rwanda? I'm not sure; I think there is a need for more, to make sure, really, that the Hutus will also feel that justice has been done for them. And this is only to enable the justice process to be complete. Because if they see that only one side was tried and the other side was left out, there'll be still some bitterness, and which would not help to really cauterize the wound easily.
- 05:39 It's a very, I know, controversial issue because the authorities in Rwanda, they don't want to equate at all, and rightly, genocide, with other crimes, but still I think it is their duty, also, to accept that crimes committed by their own people should be prosecuted, tried and punished.
- 06:09 **BF: So I don't know if you can speak to this or not, but I'm thinking, you know, ten, 20, 100 years from now, I think people will want to understand what happened here such that the tribunal didn't engage in those prosecutions and if there's anything about that, the process, the discussions, the reflections here that led to the particular solution that you feel you can share.**
- 06:39 **BF: I think that could be very useful for people, i-, in the spirit of transparency. So sometimes things happen and it's not quite the way you would want to go, but when you have access to the thinking and the care and thoughtfulness, at least you feel you understand why, so.**
- 06:59 Well, I, I, I should say that one cannot really cast the blame on the tribunal, but on the other hand, one cannot also be silent. Because who could initiate, that is the Prosecutor, and if the Prosecutor doesn't, nobody can force him. Because the Prosecutor is independent, and autonomous – he can do, he can decide, like even in national countries, sometime a crime may be committed somewhere and the Prosecutor in that country may decide that, well, this case has no merit to be pursued.
- 07:49 And if I refer for instance to the civil law system whereby the Prosecutor, he is (_____) speaking under the Minister of Justice, the Minister of Justice can ask the Prosecutor to start a case, and the Minister of Justice can say, o-, ok, "classement sans suite," no follow up on this case.
- 08:09 To the extent that at some stage, some of the prosecutors in France were of the view that their independence was in danger. And the then President Mitterrand, who is a lawyer himself, was of the view that, well, there should be an umbilical link between the Prosecution and the Ministry of Justice and the Executive power.

- 08:32 And his reasoning was, let's suppose that there is a situation in Lyon, which is one of the France province, and if ever, the person who has committed that offense, if he or she is arrested it will lead to such public order problems in that city, so that you, you are going to create such an upsurge of violence by the sole fact that you want to prosecute that person, that might be then a reason to not move and imprison that person.
- 09:20 So I think the same situation when it comes to the Rwandan Tribunal. If the Prosecutor – the first Prosecutor, as I did mention I think earlier, when we discussed, did not even dare to open the file of the RPF, that was Justice Goldstone; Louise Arbour who succeeded started and then closed it. Only Carla del Ponte after a while decided to make it open, but even then, Carla (___), at some stage, Carla del Ponte, was about to agree to make a deal with the Rwandan authorities on how to go about these cases.
- 10:05 And for what I know, she was ready to accept that the trials be conducted in Kigali, but that the Prosecutors' Office be there. Which is more or less what today the current Prosecutor who succeeded to Carla, has accepted. Maybe with a slight difference because at some stage the idea was to have a hybrid jurisdiction sitting in Kigali.
- 10:35 But, returning to the rationale, would any of them at that time, decided to indict and arrest the RPF soldiers and bring them to Arusha, that could have hampered the functioning of this Tribunal. And one may remember even a time witnesses who were member of the survivors' group association, name Ibuka.
- 11:08 Ibuka is a Kinyarwandan name but it is in other words the survivors association. They asked their members to boycott the trial here. And it was felt that any time del Ponte raised this issue, it would create tension among the victims. So, that was one thing, that was one thing to, to paid, paid attention.
- 11:43 That is to say that my own preference would have been that some of those RPF be brought here to Arusha. But, in my tradition we say that, "If you don't have your mother to take the milk from the breast, you will use your grandmother." So, in front of the situation we faced, I think, the decision which has been taken by the Prosecutor to hand over some of those cases is, to my view, normal.
- 12:20 But, there are other cases still. And I cannot say if the Prosecutor is going still to bring them to be tried here, but in light of the near closing down of this tribunal, I doubt that it will happen.