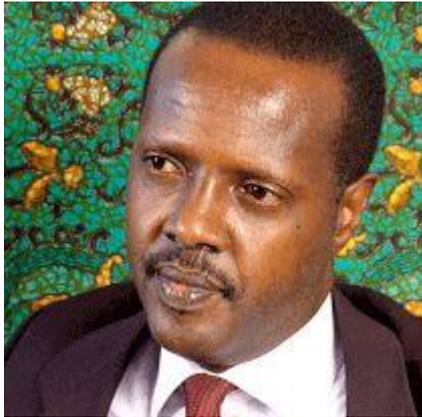




Voices from the Rwanda Tribunal

Official Transcript: Richard Karegyesa (Part 8 of 11)



Role:	Acting Chief of Prosecutions
Country of Origin:	Uganda
Interview Date:	29 October 2008
Location:	Arusha, Tanzania
Interviewer:	Batya Friedman Ronald Slye
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Richard Karegyesa reflects on the relationship between the ICTR and domestic justice systems, discussing transfer of cases and the capacity of Rwanda's judiciary. Karegyesa discusses best practices for the prosecution, the protection of witnesses and prosecuting rape as a crime of genocide. He draws attention to the differences between prosecuting rape as an international crime and a domestic crime and comments on the importance of creating a historical record to protect against revisionist histories.

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Part 8

- 00:00 **Ronald Slye: Okay, let me just pick up on the last conversation, talking about the rape prosecutions and the, the idea that you don't need the victim present.**
- 00:15 **RS: What, how do you – I mean I guess one of the things that that made me think of is that if I were defense counsel, I might want to call the victim. Is that something that is allowed or how would you respond to that?**
- 00:29 Well what if the victim's dead?
- 00:30 **RS: Okay, but let's assume the victim is alive. I mean, the advantage that you had raised was that the victim doesn't have to testify but (___) . . .**
- 00:38 I think in all fairness, you know as a prosecutor you'd most probably would have taken the statement of the, of the victim and she may well, you know, decline to testify.
- 00:53 But in all fairness you offer – you know, if you're not calling the victim, you know, you offer the statement to the defense. And it would be – I mean ha-, we, we've offered statements. We do have, you know, disclosure obligations, you know, and, and, and indeed i-, in, in Gacumbitsi, you know, the defense didn't go down that line.
- 01:29 Because it's very difficult to subpoena a witness or, or to move, you know, to have the chamber subpoena. They haven't tried it before, but it would be very hard. Would be, even strategically, might play against the defense, you know, trying to subpoena; subpoena a witness, yes.
- 01:49 **RS: And so they've never tried that.**
- 01:51 No, no.
- 01:52 **RS: And would you recommend that defense counsel do that or do you think the risks are too great?**
- 01:57 The risks would probably be too great. Yeah, yeah.
- 02:00 **RS: And what sort of risks?**
- 02:10 W-, why would defense counsel want to subpoena, you know, a victim who was raped, you know, to just confirm, you know, the evidence of someone who witnessed the rape? It's a double-edged sword.
- 02:27 **RS: Mm-hmm.**
- 02:28 Mm, mm. What, have her say that, you know, "I wasn't raped?"
- 02:40 **RS: Let me, you started – earlier you talked about, you were talking about investigations.**
- 02:45 Mm-hmm.

02:46 RS: And how one investigates such a massive crime as occurred in Rwanda during the genocide. How do you, or how would you, start to think about setting the priorities in terms of both investigating such a large crime and deciding who to prosecute?

03:08 Well, normally you know this tribunal and others and even what's happening next door in Kenya, the establishment of the tribunal is preceded by some sort of commission of inquiry that does, you know, as it were, a, a crime base investigation.

03:34 And you've got indicators of who the potential suspects are. Now because the, you know, international tribunals can't really, you know, prosecute everyone, in the case of Rwanda, I mean, you've got over 100,000 potential suspects.

03:52 The, the priority was, as it was in Nuremburg, you know, to go after the leadership to the extent that there's evidence I mean, you don't create it. But, you know, once a tribunal is established, it builds on whatever work has been done by the commission of inquiry, by civil society, you know, these human rights NGOs.

04:23 And, and, and the, the evidence will generate, you know, who the targets should be de-, depending on, on the strength of the evidence. And as I said, if you prioritize – we had, we had a list of well over 300, possibly more, you know, generated by the initial inquiries.

04:56 But there's no way, you know, an ad hoc tribunal with limited mandates and resources, you know, could pursue that number of people. So we settled down to the odd maybe hundred or so. And even then we haven't been that successful. I think probably around, you're talking about 94, 94 indictments in all.

05:21 But we have transferred files of cases we'd investigated but hadn't indicted. We've transferred files to Rwanda; we've transferred files to Belgium, yeah.

05:46 RS: And how did you decide which ones to transfer to Belgium or to Rwanda?

05:52 I think it was following the Security Council Res-, Resolution 1503 which asked us to go for the most senior, the most responsible. So we did a culling exercise here, you know, and, and took into consideration, you know, you know (____) of seniority but also notoriety, egregious nature of the crimes, the extent, intensity, and strength of evidence.

06:34 Yeah, and then, you know, ha-, having reviewed, you know, our docket, decided the ones which we could keep and hope to finish, you know, by December 2008. It's not been possible but – so yeah we're expecting, you know, an extension. An-, and I must draw a distinction between a transfer of files and a referral of an indictment under 11 bis.

07:04 RS: Right. Mm-hmm.

- 07:07 Transfer of files are files of those we hadn't indicted. And that's at the discretion of the prosecutor. Referral of indictment is on application, you know, to the chamber. And we haven't been successful with regard to Rwanda.
- 07:25 We were successful in respect of two transfers, two referrals to France. We had an aborted referral to the Netherlands that couldn't take off because the district courts in The Hague, you know, found they didn't have jurisdiction. Yeah.
- 07:48 **RS: Do you – some, some look at both those sorts of referrals to Europe or the, you know, the Habré case and sort of the, a, a sort of tug of war between Senegal and Belgium, raising questions about where justice should appropriately be seen to be done.**
- 08:10 Mm.
- 08:11 **RS: What are your views on that?**
- 08:13 Well, I believe it should be done where the crime was committed, period. But of course circumstances in Rwanda didn't permit, you know, in 1994. But 14 years later and we've put in, you know, some good work with the Rwandans, the prosecution service you know trying to ensure that their, you know, laws, you know, meet minimum international standards of due process.
- 08:40 You mentioned Article 14 of the ICCPR; our Article 20 was replicated in their legislation. All the guarantees are there. And the prosecutor you know was satisfied that Rwanda could take on these cases.
- 08:57 Let me perhaps also mention that there weren't any other takers. We visited several African countries a-, and European countries and there were limitations you know. They either didn't have the jurisdiction or if they did, you know, weren't willing or weren't able because, you know, they had their own backlogs or other resource constraints.
- 09:33 One or two African countries said they'd probably be able to provide resources if, if, if the cases were transferred to Rwanda. They didn't want the cases transferred to their countries, but (_____) considered technical assistance to Rwanda if the cases are, you know, transferred to Rwanda.
- 09:52 So yeah, at the end of the day, Rwanda was and remains the only willing taker of these cases. Belgium, you know, has a large Rwandan diaspora and is dealing with its own, you know, prosecutions where they're exercising universal jurisdiction.
- 10:14 Britain has jurisdictional limitations and is trying to extradite. Extradition was granted a couple of months ago but it's on appeal and the appeal is being argued in, in December in respect to four Rwandan fugitives.
- 10:36 You know, a-, and we had transferred those files to Rwanda. Norway, we had an unsuccessful attempt to have an indictment referred there. They didn't have

jurisdiction but they recently, I think early this year, amended their legislation and I believe they have an active investigation going on of a Rwandan who is resident there, thus giving rise to jurisdiction.

11:09 And who knows, now that we've been unsuccessful in our bid to refer cases to Rwanda, we may want to revisit Norway which had exhibited willingness at that time but didn't have jurisdiction, but now has jurisdiction so we might want to revisit it.

11:27 And the, the Special Prosecutor, you know, for international crimes is going to be here on a conference next month. We might take it up with her while she's here.