



AN UNLIKELY TEAM. AN UNPRECEDENTED CASE. A FIGHT FOR JUSTICE.

THE UNCONDEMNED

269 WITNESS JI	363 WITNESS MY	400 WITNESS OJ
270 WITNESS JJ	364 WITNESS MZ	401 WITNESS OK
271 WITNESS JK	365 WITNESS NA	402 WITNESS OL
272 WITNESS JL	366 WITNESS NB	403 WITNESS OM
273 WITNESS JM	367 WITNESS NC	404 WITNESS ON
274 WITNESS JN	368 WITNESS ND	405 WITNESS OO
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LEGAL DISCUSSION GUIDE

This guide was developed by Elizabeth Topolosky and Lisa R. Pruitt.
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About Peace is Loud

Peace is Loud champions women peacebuilders. Through film campaigns, speaking events, and political empowerment, we advance women's leadership in building inclusive, secure and prosperous societies. Learn more about our work at peaceisloud.org.

To bring *The Uncondemned* to your community or classroom, please visit peaceisloud.org/the-uncondemned.

About Elizabeth Topolosky

Elizabeth Topolosky graduated from the University of California Davis School of Law with a Juris Doctor in 2017. Throughout her career she has concentrated on human rights and international criminal law, working with the International Criminal Court, Human Rights First, the Center for Justice and Accountability, and the UN Special Rapporteur in the Field of Cultural Rights. To date, her research has focused on human rights abuses in North Korea, national security law in the United States, the intentional destruction of cultural heritage, and the types of evidence used in national and international accountability litigation.

About Lisa R. Pruitt

Lisa R. Pruitt is Martin Luther King, Jr., Professor of Law at University of California, Davis, where she teaches and writes about Feminist Legal Theory and Law and Rural Livelihoods, among other subjects.

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PART I

THE FILM

In the aftermath of the 1994 Rwandan genocide, the United Nations established the International Criminal Tribunal for Rwanda (ICTR) to prosecute individuals responsible for war crimes. *The Uncondemned* tells the gripping story of the ICTR's trial of Jean-Paul Akayesu, which marked the first time in history that rape was prosecuted as a crime against humanity and also a crime of genocide. *The Uncondemned* follows the international team of lawyers and activists who fought to bring Akayesu to justice, and the brave Rwandan women who came forward to testify against him and change the world of criminal justice forever.



PART II

THE AKAYESU CASE

On January 9, 1997, Judges Laïty Kama, Lennart Aspegren, and Navanethem Pillay convened the trial of Jean-Paul Akayesu, the former *bourgmestre* (mayor) of Taba, before the International Criminal Tribunal for Rwanda. Just eleven kilometers from Kigali, Rwanda's capital, the small commune of Taba did not escape the violence that spread like wildfire across the country once the 1994 genocide erupted. Akayesu initially prevented killings in Taba, but Hutu militiamen later massacred more than 2000 Tutsis there. According to evidence introduced at trial, Akayesu maintained control over the *bureau communal* (mayor's office) during this time.

In the original indictment, Akayesu stood accused of only non-sexual crimes: genocide, complicity in and the direct and public incitement of genocide, crimes against humanity, and violations of Common Article 3 of the Geneva Conventions. Although some witnesses mentioned sexual violence in passing during their testimony, it was not until March 5, 1997, when one witness testified that she had seen women being raped at the bureau communal, that Akayesu was publicly implicated in the sexual violence. At the end of that day's hearing, the court adjourned until mid-May to allow the Office of the Prosecutor to conduct further investigations into the alleged rapes.

While the trial was paused, feminist activists founded the Coalition for Women’s Human Rights in Conflict Situations. They drafted an amicus brief that called upon the Tribunal to invite the Prosecutor to amend its indictment against Akayesu to include acts of sexual violence. In particular, the brief argued that the indictment should charge Akayesu with crimes against humanity (torture; rape; and persecution on political, racial, or religious grounds) and war crimes (violence to life; health and physical or mental well-being; outrages upon human dignity, particularly humiliating and degrading treatment, rape, any form of indecent assault; and threats to commit the same). The amicus brief also suggested that the prosecutor consider charging rape as genocide.

Denying that the amicus brief had been the motivating factor, Pierre Prosper and Sara Darehshori, lead trial attorneys for the Office of the Prosecutor, moved to amend the indictment. The trial judges deliberated for just ten minutes before agreeing to allow the addition of charges of crimes against humanity for rape and inhumane acts, and of war crimes for “outrages upon personal dignity, in particular rape, humiliating and degrading treatment, and indecent assault.”

To prove these new charges, the prosecution relied heavily on witness testimony from five rape victims, including Witnesses JJ, NN, and OO, whose names and identities were concealed to protect their safety. Witnesses played a prominent role in Akayesu’s defense strategy as well. Defense witnesses testified that they had not seen sexual violence at the bureau communal, a claim Akayesu echoed in his own testimony. On September 2, 1998, the trial chamber rendered its decision, finding Akayesu guilty of crimes against humanity for murder, torture, rape and other inhumane acts; direct and public incitement to commit genocide; and genocide. Within this final conviction, the court expressly recognized rape as a genocidal act for the first time in history.

“I AGREED TO BE INTERVIEWED FOR *THE UNCONDEMNED* JUST AS I HAD AGREED TO TESTIFY, ARMED WITH THE TRUTH OF WHAT HAD HAPPENED... THIS TRIAL WAS FOR ALL OF RWANDA.”

— WITNESS NN

“

‘GENOCIDE’ IS THE INTENT TO DESTROY, IN WHOLE OR PART. WELL, DO YOU HAVE TO KILL THEM? WHAT IF YOU JUST CAUSE SERIOUS BODILY/MENTAL HARM AND THEY DON’T DIE? IS THAT STILL A GENOCIDE? THE ASSAULT GOES BEYOND THE PHYSICALITY OF THE ASSAULT. IT’S AS IF SOMEONE HAS REACHED INSIDE OF YOU, AND SOME OF [THE SURVIVORS] TALK ABOUT, JUST PULLING OUT THEIR SOUL.

— PATRICIA SELLERS

LEGAL ADVISOR FOR GENDER, ICTR

”

PART III

DISCUSSION QUESTIONS

1

The Uncondemned recounts the story of the prosecution of Jean-Paul Akayesu for his role in the mass rapes of Rwandan women like Witness OO (Cecile Mukarugwiza), Witness NN (Serafina Mukakinani), and Witness JJ (Victoire Mukambanda). If Witnesses JJ, NN, and OO were in the room with you, what would you like to say to them? What questions would you ask Godelieve Mukasarasi? What would you say to Jean-Paul Akayesu?

2

Article 2 of the 1948 “Convention on the Prevention and Punishment of the Crime of Genocide” defines genocide as “killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about the physical destruction in whole or in part, imposing measures intended to prevent births, or forcibly transferring children to another group” with the intent to destroy a “national, ethnical, racial, or religious group.” During the film, ICTR Legal Advisor for Gender Patricia Sellers mentions that “The Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties” listed rape as a war crime in 1919, and the founding statutes of the ICTR, ICTY (Yugoslavia), and the International Criminal Court also recognize rape as a crime against humanity. Legally, when is rape a war crime and when is it a genocidal act? When is it both? When does rape constitute a crime against humanity? In the Akayesu case, what were the Office of the Prosecutor’s arguments that rape could constitute an act of genocide?

3

The ICTR hired Lisa Pruitt as a gender consultant and instructed her to focus on sexual violence. After reviewing the evidence ICTR investigators had gathered about Akayesu as of October 1996, Pruitt drafted several memos, including recommended guidelines for interviewing sexual assault survivors, which is reproduced on pg. 12 of this guide. Another memo advocated that the existing indictment against Akayesu be amended to include acts of sexual violence as crimes against humanity and acts of genocide. If the UN was interested enough in the sexual violence committed during the Rwandan genocide to engage a gender consultant, why do you think the Office of the Prosecutor chose not to include such charges in the original Akayesu indictment? Why might the Prosecutor have decided not to amend the indictment, in spite of the evidence included in Pruitt’s memo? Do you think that it was fair for the judges to allow the prosecution to amend the charges midway through the trial or were Akayesu’s rights violated, as his attorneys claimed?

4

Because the ICTR focused on prosecuting only relatively high-level organizers of the Rwandan genocide, most alleged perpetrators were prosecuted by local courts called *Gacaca* (“ga-cha-cha”). These courts divided crimes into four categories, originally listing rape alongside petty theft, until women’s marches, including those led by Godelieve Mukasarasi and her grassroots women’s group SEVOTA, prompted re-categorization of rape into the first, most serious category. Why do you believe the Gacaca originally placed rape in the least severe category of crimes? Should international criminal processes defer to local cultural understandings?

5

During trial preparation, Sara Darehshori gave witnesses pseudonyms to protect them. (Witnesses JJ, NN, and OO publicly revealed their identities for the first time in *The Uncondemned*.) Despite these measures, Emmanuel Rudasingwa, the husband of Godelieve Mukasarasi, was gunned down along with his daughter and nine others in order to prevent him from testifying in the Akayesu trial. Today, anonymity and witness relocation are mainstays of the witness protection programs of international criminal tribunals. Are these programs sufficient? Should international tribunals be able to prosecute those found to be intimidating their witnesses?

6

At the end of *The Uncondemned*, Witnesses JJ counseled: “If I could meet those rape survivors, I would advise them not to keep quiet about it. Keeping quiet kills you softly. That pain in your heart destroys you. But when you open up and you talk about it, the wound gradually gets better.” Although Witnesses JJ, NN, and OO testified in the Akayesu trial, overall survivor participation in the ICTR was not robust. Unlike the hybrid tribunal established in Cambodia to prosecute the crimes of the Khmer Rouge, which allows survivors to directly participate in prosecutions as “civil parties,” the only survivor participation the ICTR allowed was in the form of witness testimony. Thus, for many Rwandans, the “opening-up” Witness JJ describes must take place outside the courtroom. What role should survivors have in international criminal proceedings? How can courts balance the needs of survivors against the rights of an accused to a fair trial? Should international tribunals sponsor survivors’ programs or should their mandates be limited to high-level prosecutions?



7

Although many women experience sexual violence during conflict, communities commonly ostracize rape survivors, associating assaults with a loss of socio-cultural value, the spread of sexually transmitted disease, and, sometimes, betrayal or infidelity. This stigma often prevents survivors from receiving the social support necessary for recovery, or discourages them from testifying in legal proceedings. What measures can those within affected communities take to prevent or reduce such stigmatization? How can international actors help? Would such help be appropriate or would it constitute a form of cultural imperialism?

8

When ICTR investigators initially met with Witnesses JJ, NN, and OO, none of the women discussed their sexual assaults. Witness OO remarked that, while the investigators did not pressure her, “they weren’t very nice either.” Meanwhile, Witness JJ initially believed that the investigators “knew the story and they were mocking” the Rwandan women. Lisa Pruitt’s guidelines (see page 12) include some best practices for speaking to sexual assault survivors about their experiences. Among other things, Pruitt’s guide suggests speaking in a soft voice, allowing the rape survivor to bring friends to the interviews, and asking general questions about rape not linked to their own assaults. Is it important for investigators to have special training regarding how best to interview victims of sexual assault? What about training on how to interview victims from a particular culture? What legal implications can a lack of such training have? Discuss the recommendations listed in the Pruitt memo, and try to come up with best practices for interviewing other vulnerable victim groups like children.

9

The Akayesu judgment defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” This definition considers a broader range of acts than some past definitions of rape, and it does not place importance on the sexes of the victim or perpetrator. Given that rape during conflict has overwhelmingly affected women, do you believe this gender-neutral definition is appropriate? Should the rape of men be classified as a separate crime? Which sexual acts would or should this definition cover?

10

In *The Uncondemned*, Sara Darehshori and Pierre Prosper, lead trial attorneys for the prosecution, discuss some logistical challenges to setting up the first African field office for an international ad hoc tribunal. Paper had to be rationed, and the investigation team spent an entire meeting discussing which type of cover page should be used on court documents. Discuss the impact of technology on the logistics of setting up an ad hoc tribunal. What has changed technologically in the two decades since Akayesu was tried, and what impact would these changes have on the prosecution’s job?

RESOURCES

FROM THE FILM

[Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath](#)

bit.ly/ShatteredLivesReport

Nowrojee, Binaifer. Report, Human Rights Watch. September 1996.

[Jean-Paul Akayesu's Indictment before the ICTR](#)

bit.ly/AkayesuIndictment

Prosecutor v. Akayesu, Case No. ICTR-96-4- T, Amended Indictment (June 17, 1997).

[Judgment in the Prosecutor v. Jean-Paul Akayesu](#)

bit.ly/AkayesuJudgment

Prosecutor v. Akayesu, Case No. ICTR-96-4- T, Judgment (Sept. 2, 1998).

[In Rwanda, Too, Rape Was a War Crime and Must Be Punished](#)

bit.ly/RwandaWarCrime

Fleischman, Janet, and Norwojee, Binaifer, International Herald Tribune, July 25, 1996.

[Wave of Rape Adds New Horror to Rwanda's Trail of Brutality](#)

bit.ly/RapeRwanda

Lorch, Donatella. New York Times (New York), May 15, 1995.

SCHOLARLY RESOURCES

[ICTR Legacy: Administrative Achievements and Challenges](#)

bit.ly/ICTRLegacy

Kilemi, Sarah M. ICTR Legacy Symposium, Arusha, Tanzania, November 6-7, 2014.

[The Evolving Jurisprudence of the Crime of Rape in International Criminal Law](#)

bit.ly/EvolvingJurisprudence

Weiner, Phillip. Boston College Law Review 54, no. 3 (May 23, 2013): 1207-237.

[The Rise of International Criminal Law: Intended and Unintended Consequences](#)

bit.ly/RiseOfLaw

Anderson, Kenneth. European Journal of International Law 20, no. 2 (2009): 331-58.

[Engendering Genocide: The Akayesu Case Before the International Criminal Tribunal for Rwanda](#)

bit.ly/EngenderingGenocide

Van Schaack, Beth. In *Human Rights Advocacy Stories*, 193-213. New York, NY: Thomas Reuters, 2009.

[The Rwandan Patriotic Front](#)

bit.ly/RwandanPatrioticFront

Human Rights Watch.

[When Rape Becomes Genocide](#)

bit.ly/WhenRapeBecomesGenocide

New York Times, September 5, 1998.

[Barriers to Justice](#)

bit.ly/BarrierstoJustice

Physicians for Human Rights and Columbia University's School of International and Public Affairs, May 2013

WORKING IN INTERNATIONAL CRIMINAL LAW

[Opportunities with International Tribunals and Foreign Courts](#)

bit.ly/LawOpportunitiesYale

These tribunals offer unpaid internships in international criminal law year-round. Internships are usually available in the Office of the President, Office of the Prosecutor, the Registry, and the Office of Defense. Some courts also offer internships with individual defense teams. On average, these internships last between three and six months. Produced by the Yale Law School, Career Development Office.

[The International Criminal Court \(ICC\)](#)

bit.ly/WorkingAtTheICC

The first permanent international criminal court, the ICC is a court of last resort, only exercising jurisdiction over cases the UN Security Council has referred to it or over which it has jurisdiction through state signature of the Rome Statute. Furthermore, it will only try international crimes committed after 2002. It is located in The Hague, the Netherlands.

[United Nations Mechanism for International Criminal Tribunals \(MICT\)](#)

bit.ly/MICTInternships

The MICT was created to perform any court functions remaining after the closure of the ICTR and ICTY. It is responsible for tracking and prosecuting captured fugitives, handling appeals, reviewing ICTR and ICTY proceedings should new information be discovered, and conducting retrials and trials for contempt or false testimony. It also oversees the enforcement of sentences and witness protection. It is located in The Hague, the Netherlands.

[The Extraordinary Chambers in the Courts of Cambodia \(ECCC\)](#)

bit.ly/ECCCInternships

The only hybrid international-domestic criminal court currently in existence, the ECCC was established in 2001 to prosecute the crimes committed by top Khmer Rouge officials. The ECCC is located in Phnom Penh, Cambodia.

[The Residual Special Court for Sierra Leone \(RSCSL\)](#)

bit.ly/RSCSLVacancies

Focusing on crimes committed during Sierra Leone's civil war, this tribunal was the first to prosecute a sitting head of state and the first to paint the use of child soldiers and forced marriage as crimes against humanity. It was also the first international court to address attacks directed against UN peacekeepers. The court is located in The Hague, the Netherlands.

[The Special Tribunal for Lebanon \(STL\)](#)

bit.ly/STLInternships

Established in 2009, the STL was created to investigate the assassination of the former prime minister of Lebanon, Rafik Hariri, in 2005. The attack killed 22 people in addition to Hariri, and injured many others. Unlike the other international tribunals, the STL offers need-based compensation for some selected interns. It has offices in The Hague, the Netherlands and Beirut, Lebanon.

APPENDIX: THE PRUITT MEMO

The memo below was written by Lisa R. Pruitt while she worked for the ICTR in Rwanda in 1996. Pruitt delivered these guidelines to the investigative and legal team at the Office of the Prosecutor in Kigali. As featured in *The Uncondemned*, these guidelines include then-best practices for interviewing sexual assault survivors. These practices were ultimately implemented after the Akayesu indictment was re-opened to consider sexual assaults that had occurred in Taba. Pruitt wrote additional memos, including another discussed more prominently in the film, which featured legal analysis of the evidence against Akayesu and advocated for survivors. Together, her memos were cited as a “blueprint” for the prosecution’s investigation and pursuit of the rape charges.

Guidelines for Interviewing Sexual Assault Survivors

The watchword in interviewing sexual assault survivors is *empowerment*. This is true from a counselling perspective, but it is very useful from an investigative perspective, too. The survivor has been greatly dis-empowered by the criminal act that has been committed against her, but there are certain simple steps that investigators can take to give back to a survivor some semblance of control and power. Doing so will make her more comfortable and thereby more willing to talk openly with investigators. Empowerment can be accomplished by gestures as simple as these:

- * provide as much privacy as possible for the interview
- * let her decide where she is most comfortable giving the interview, e.g., her home, the ICTR vehicle, the ICTR house in Kibuye.
- * offer the witness something to drink or eat if circumstances permit
- * let her choose where she wishes to sit during the interview
- * let her know she is an important person, but without putting undue pressure on her to talk
- * tell her she can end the interview at any time she wishes; it is an option she will very rarely exercise, but it is important for her to know she has that option
- * ask her if she has preferences regarding who she talks to and who interprets, the idea being that some women will feel strongly that they wish to talk only to female investigators and legal officers, through female interpreters. Asking this question gives a woman the option of excluding from the interview a member(s) of the team who may, for whatever reason, make her uneasy and reticent.
- * allow her to have a friend or family member present for the interview if she wishes
- * speak in a soft voice, especially if the witness is speaking softly

As with any initial witness interview, the exchange should usually proceed from the general to the specific. That is, it is not useful to begin the interview with questions about the woman’s own sexual assault, even if part of her story is already known (as from a previous interview) and investigators are seeing her primarily because they know she was sexually assaulted and want details of that incident. If this is the case, begin by following up on information provided in the previous interview or by asking if she knows of any women who were raped and then seeking all the details of those stories. It is best to wait until a certain confidence and rapport are established before asking about the witness’s own sexual assault.