



Voices from the Rwanda Tribunal

Official Transcript: Dennis Byron (Full Interview)



Role:	President and Judge
Country of Origin:	St. Kitts & Nevis
Interview Date:	28 October 2008, 5 November 2008
Location:	Arusha, Tanzania
Interviewer:	Robert Utter
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Dennis Byron expresses satisfaction at the approach to reconciliation taken by the UN in Rwanda. He highlights the responsibility of Tribunal judges to ensure that justice is conducted fairly and impartially, and appears as such in both process and result. He notes that, in addition to delivering justice, the Tribunal also creates a factual record of events that occurred. He expresses frustration with the Tribunal for the unsatisfactory length of trials, inefficiencies in administration and infrastructure, and the extradition process of suspects.

The transcript of the interview begins on the following page.

Part 1

- 00:00 **Robert Utter: Your Honor, I had the privilege of reading your biography and I'm fascinated by it. There's so many questions I have, not relating to the ICTR that it would take all day to work through those but if I may introduce myself first.**
- 00:16 **RU: I was Chief Justice of the Washington State Supreme Court, a state with about 7,000,000 people and approximately 25,000 lawyers. In our state we're in charge of the lawyers as well as the judges and so we have a great deal to keep us busy.**
- 00:35 **RU: I also chaired a national organization called the American Judicature Society. It dealt with merit selection and retention of judges and judicial education. I was fascinated to read this outline of your program for the next four or five days, 'cause it is identical to what we do, not just in the United States, but it's been my privilege to conduct programs like this throughout the world.**
- 01:02 **RU: I educated Iraqi judges for three years in Prague and we touched on almost exactly the principles that you speak of here, so I'd love to hear what your program will be. I was interested in the titles that are involved here. 'The Right Honorable,' I must say, you've earned. Tell me, what is that?**
- 01:27 You know, we, we're still part of the British Commonwealth . . .
- 01:30 **RU: Yes.**
- 01:31 . . . and although St. Kitts is an independent state, it's a monarchy.
- 01:37 **RU: Yes.**
- 01:37 And the Queen of England is still the Head of State and from time to time she appoints members to her Privy Council and I had the privilege and honor to have been appointed as a member of Her Majesty's Privy Council.
- 01:58 So the phrase, 'Right Honorable' is a result of that appointment. Of course, because I, I am an overseas appointee, it's rather honorary, although I have attended a meeting of the Privy Council on one occasion but it is, I think, it's probably more honorary than functional.
- 02:27 **RU: But it is a nice recognition of your ability, your stature and thank you for the explanation. There's one other thing I ran into in going through your biography and that is your assignment to the Maurice Bishop criminal trial. It was just mentioned in two lines in the biography I read but what was involved in that, sir?**
- 02:49 Well you, you recall that in, in 1983 the US Government was involved in the invasion of the State of Grenada?
- 03:00 **RU: Yes.**

- 03:01 And that had to do with the end of the revolutionary government under Maurice Bishop's regime. It had come to an end when a faction of the government killed Maurice Bishop and a number of other persons and there were a number of trials arising out of that, including the trial for the murder of Maurice Bishop and ten other persons at the, one of the army headquarter sites in St. Georges, Grenada.
- 03:48 The, the persons who were accused were the members of the Central Committee of the governing party and some of the soldiers who affected the killing. I was assigned by the Eastern Caribbean to act as Chief Justice in Grenada for the purpose of conducting the trial and it lasted for approximately one year in 1986.
- 04:20 RU: And was that at all similar to the work you do here at the ICTR?**
- 04:26 Well, one can find a number of similarities but it, but it's different because I was representing, I was sitting in a domestic jurisdiction.
- 04:34 RU: Yes.**
- 04:35 I was a single judge with a jury. Here, we are conducting an in-, international tribunal. I sit on a panel of three judges, without a jury. The rules of procedure although similar, have significant differences. The security issues are much the same on, on both situations. There, there are similarities and, and, and differences.
- 05:07 RU: I would be interested in the procedural differences and similarities.**
- 05:14 Well, the, the, as you would imagine, the, St. Kitts has a common law system, (____), and which is very similar to that in the United States in the management of criminal trials with a jury.
- 05:35 And the criminal procedural rules here in the, in the ICTR combine many elements of the common law procedures but they also include some elements that are more common to the civil law practice and procedure. It's a bit of a hybrid system. So the, I think the, the, the first issue is that the process of, of issuing indict-, an, issuing the indictment includes the judge.
- 06:11 RU: Ah.**
- 06:13 When the Prosecutor has enough information to, to indict, he has to apply to the judge to confirm the indictment and he submits the supporting material, which informs the preparation of the indictment to the judge.
- 06:32 The judge has the opportunity to confirm it or to refuse to confirm it, or to direct amendments or, or further the investigations if he thinks it is necessary. So, so that's the first issue.
- 06:47 Then the, the second issue is the, the process of initial appearance. When the, an arrest is affected, the judge or a judge of the tribunal has to see the accused person at the

first convenient moment after the arrest and ensure basic guarantees of, of his rights have been, have been provided to him.

07:29 You know, we make enquiries of the provisions of a lawyer, the fact that his, he's received information in a language that he can understand and various things of that nature, and we take the plea.

07:45 Then there is a, a, a procedure which follows, which allows, which requires the prosecution to give detailed information to the accused of the cause of the charges against him and this involves serving all of the statements that are to be used in the trial 60 days before the commencement of the trial.

08:14 And, and during that pr-, process, the defense also has an opportunity to challenge the indictment or, and, or to, to apply for the court to, to, to assist in tightening the indictment up. And the tribunal has developed very, quite a significant body of jurisprudence on the, on the, on the indictment. We, we call this the vagueness of the indictment jurisprudence.

08:48 RU: Yes, yes.

08:50 Requiring the Prosecutor to be very precise, as precise as possible in identifying the nature and cause of the charges against the accused. So you, we have a, a, a pretty active pre-trial jurisprudence and process before the c-, trial actually commences.

09:11 Once the trial starts the, well, we have, I have this discussion with many people as to the, the, the, the interplay between the common law and the civil law processes and I, it's very interesting that even, I think that during that pre-trial phase, the rules allow the chamber to exercise many of the powers that one would associate with an investigative judge.

09:43 And, and it's been used to a great or lesser extent from time to time and by different chambers over the duration of the, of the tribunal. Once the trial starts, the actual hearing starts, the process is much more similar to the adversarial advocacy to which the common law jurisprudence are accustomed.

10:07 The, the, the Principle of Orality dominates the proceedings. The majority of evidence is given orally by the witnesses and the witnesses are led, in chief, by the side of the party which calls the witness and then there are rights of cross-examination.

Part 2

00:00 The, the, the attitude to the admission of evidence is informed by, by the rules which simply say that the court has a discretion to admit evidence which is relevant and probative. So we are not governed by many exclusionary rules of evidence. So there tends to be a, a, a much wider reception of evidence than what happen in my home country or in the, a normal Commonwealth, common law countries.

00:41 RU: Do you feel comfortable with that?

00:43 Yes. Well, you, we still have a discretion to exclude, to exclude evidence and the basic principles of, of relevance and probative nature, I think, gives an adequate protection . . .

00:58 RU: Yes.

00:59 . . . against undue time wastage and the taking in material which is not helpful to the adjudicative process. The rules specifically allow hearsay testimony and we also admit quite a lot of documentary evidence.

01:19 Additionally, the, the bench, the Adjudicative bench is three professional judges and so we don't have to worry about a jury being influenced by, you know, irrelevant or illogical processes in considering testimony that comes before the trial.

01:42 We, we, we have the power to admit written, written evidence, which we do exercise in certain circumstances. We don't take, we can admit written statements of witnesses but only when the evidence does not relate to the acts or conduct of the accused person.

02:02 And so, that allows an opportunity also to use that, that, that technique to save time in matters which don't impinge directly on the assessment of the behavior or conduct of the accused person.

02:20 RU: It sounds as if you had the opportunity to devise an ideal system. And . . .

02:24 Yeah. I thought so. I, I think that the, I think that the, the, the Rules of Evidence and Procedure have, have utilized, I think, the, the best practices of the common law . . .

02:37 RU: Good.

02:39 . . . and, and there are adoptive practices from the civil law which I think have even improved the practice quite a lot. So from my own per-, personal perspective, I think that the, the, the rules of Practice and Procedure provide an excellent opportunity for trial management in a fair and expeditious manner.

02:59 RU: And does the judge in, in the conduct of the trial have the ability to move counsel along if they drift too far from the point?

03:08 Oh yes. The, the judges have control of the, of the, of the trial to the extent that they wish to exercise control, and s-, some judges do. I, I think to some extent, as in every jurisdiction, there are different styles, different personalities at play but the, but the rules do allow a judge to do that if he wishes.

03:29 RU: We had the privilege of interviewing Judge Weinberg yesterday, who left the impression that she moves things along briskly.

03:36 Yes.

03:38 RU: Well, I gather that's the option for a judge who is presiding.

Part 3

00:00 **RU: Going to another area. Your previous Chief Judge wrote a law review, review article where he mused on lessons learned from what he had observed during his time on the court and things that he might, might change. In reflecting back on the time you have spent here, the successes you've had, the frustrations you've had, are there things you might change?**

00:30 Well, you have the better of me because I, I, I must confess I have not had the opportunity to, to read that book myself, so I'm not certain exactly what are the issues but I have not actually refined my thinking of that as yet. I, I'm in the process now of being in the Chair and I, I'm in fact considering ways of improving, improving the process to the extent that I can.

01:02 I do have, I d-, I have set up a, a Rules Committee and they are considering some, some changes but these changes at, at the moment are to a large extent aimed at facilitat-, facilitating our ability to comply with the, the phrase, "Completion Strategy," . . .

01:28 **RU: Of course, of course.**

01:29 . . . which is dominating our thinking at the moment as we are actually in the final stages of the work of the tribunal. I'm also very much interested in the extent to which, in the short time we have left to us, that we can address the issue of expedition in our trial, trial, not only trial process but, but the trial management processes.

02:02 **RU: Yes.**

02:05 And so we are making issues of this nature, dealing with issues of this nature. In terms of the overall is-, the, the, the issue of the length of trials has been an issue which has bothered me. I consider that, the, initially, the, it was inevitable that things would take time because the, there was no prototype really to follow.

02:43 **RU: Of course.**

02:44 And so the persons who came here were creating something new. The investigation, I thought, must have been extremely difficult because the ICTR is not a state and the investigators don't have, do not have police powers. So the, the, the process of getting information had to use techniques that, because it is voluntary on the part of the witnesses, could be compelled to testify.

03:22 And then you also were faced with the, with the reality that the persons to whom they wish to or from whom they wish to gain information were scattered around the world and many of them were in hiding for security and other reasons. So initially, the, the, the actual investigative challenges must have been quite enormous.

03:49 Then there was also the problems of, at the time the tribunal started, the conceptualizing issues like the definitions for genocide.

04:04 **RU: Yes.**

04:04 How do you prove that the people in one nation had different ethnicities, was a theoretical challenge, which had to be addressed.

04:17 And then you had issues, I think, which also resulted from the, the mandate of the Security Council, which required the tribunal to foster reconciliation among the former p-, combatants and assist in the restoration of peace.

04:43 And I have looked at some of the early discussions and even I have participated in some discussions since I've been here and there's a general view that the fostering of reconciliation requires the establishment of a, of an actual, a factual historical record of what transpired.

05:10 So if you look at the, the, the evidence and the judgments of the, many of our cases, you will notice that the, the trial examined and addressed factors which went beyond the, the elements of the crime.

05:33 So they addressed matters that were far more, far wider and broader than were necessary to establish guilt or innocence in particular cases. They, they, they undertook the task of developing a, a pretty comprehensive factual record of what transpired during th-, during that, that period and the period building up to it.

05:57 So it may very well be that when one is thinking in terms of the future of international justice, it may be that the issue of distinguishing the role of the court may be significant and, 'cause if we, if people had seen this just as a court, the, I think the, the, the speed of the process would have been different but we had adopted two roles – the, the, the role of fact finder and the role of historical chronicler, in addition to the role of the court.

06:34 For me, it was, I, I, it was one of the issues which I found inspirational, I, I must say. Even if the, the issue of time was an, was an issue for me because, when, when you're living in, in today's world and you're thinking in terms of the, the challenges to the rule of law, it is fascinating to me that the politicians who so often get criticized, the politicians, the politicians at the United Nations, globally, unanimously, seem to feel that in order to achieve the political objectives of peace, reconciliation, that a judicial process was appropriate.

07:19 **RU: Yes.**

07:20 And so, to some extent, that fascinated me and, and, but in terms of, of, of time and the relationship of investment to outcome, people would have to decide whether the court just functions simply as a court to establish innocence or guilt, and you have a separate entity to adopt the fact-finding commissions of inquiry type of function, which was also implied in our operation, or whether it is better to have both combined into one unit.

07:59 And i-, if the, the tribunals like this are (____) do both, then one would have to allow time. So that, that's an issue that I'm interested in, in, in exploring and discussing. I, I don't at the moment have a – you know, I, I can see both sides to the, of that coin so I haven't come down on one side or the other as yet.

08:22 RU: It's a good . . .

08:23 And there, there are other issues (____).

08:24 RU: It's a good preliminary state of mind for a judge to be in, isn't it, when we still haven't tipped the balance of justice.

08:32 Yeah, mm-hmm.

Part 4

00:00 RU: It strikes me that your job or definition of duty includes reconciliation, and if that had not been there, it strikes me that your process could be much more summary. Is that accurate?

00:14 Yes, yes, that's the point I'm making. And I think that, that the, the, the actual undertaking of reconciliation has influenced the way how the tribunal has operated enormously. If that had not been part of our, our, of our mandate, I think the trials would have been much quicker than they, than they in fact were.

00:38 Right now, for example, we, we are able to undertake cases much more quickly than, than at the beginning and, and partly because in many of the instances, the, the factual background has already been established in, in our judicial decisions, which we don't have to redo.

01:07 The, the, the historical, the sociological, the political background to the causes of the conflict have been examined in, in a number of cases and it's, would be unnecessarily re-, repetitive to re-examine those same issues again at this time.

01:31 So you will find that the, the, the current trials, we estimated, my judicial calendar, I now estimate, after consultation with the, with the Prosecutor and defense counsel, to some extent, I now estimate that it would take the prosecutor approximately five trial weeks.

02:01 And five trial weeks amounts to 44 six hour days per week. So, we, we work a trial week at 24 hours. I estimate that it takes five trial weeks to put on a prosecution case and then after a break, we do (_____) roughly the same for the defense case.

02:28 One of the, the, the delays which has become almost built into the system is that the defense lawyers seem to feel that, that, that the statutory guarantee in the, our statute to provide them adequate time and facilities to defend their case, they feel that that, that implies that there must be a substantial time between the close of the prosecution and the commencement of the defense.

03:08 And you, you, you would look at – you, I’ve seen s-, well, I’ve had the, the, the situation myself in cases of, over which I’ve presided, where they’ve been complaining bitterly that four months is not enough time for them to put on their defense. So that’s a very important management issue, which we are addressing at the moment.

03:29 But, but, but the, the, the, I now think that the actual time spent in adducing evidence is approximately ten or so weeks now for the single accused cases that are being tried.

Part 5

00:01 RU: We’ve touched briefly upon time to get to the decision. In talking with the people in Rwanda, about the tribunal and their feelings, almost unanimously, they have a desire that the tribunal might have been located in Rwanda rather than Ar-, Arusha. And do you have any views on that?

00:25 Well, yes. I think that I’m – as a sovereign state, Rwanda is a sovereign state and I think, I do think that management of one’s own judicial processes is part of a s-, of, of, of an, an, an element of, of sovereignty. (____), that’s clear. But I think that when the tribunal was initially established, which is in, I think the, the, the founding resolutions were in 1994 when the issue of security was a major issue.

01:08 RU: Yes.

01:09 It was actually, I think it would have been taking a major risk for the tribunal to have been located in, in Rwanda at that time. So I, I believe that the, the decision to locate it outside of, of Arusha probably reflected reality at the time.

01:34 Now what we are facing with now, what we are facing now is as we are moving towards closure, we still hear evidence in the, in the, in our court of witnesses on both sides having feelings of insecurity . . .

02:02 RU: Of course.

02:02 . . . because they testified. And so, and in fact, you w-, probably would have been familiar with the issues of referral to, to Rwanda and the, the issues of the witnesses was an important element . . .

02:28 RU: Yes.

02:28 . . . in the decision-making of the, of the chamber and the appeal chambers. So the, the, the issues now of, I, I think we’ve also come to the view that there are certain types of (____), certain types of cases which ought to be tried by an international-type tribunal.

02:54 Although there have been many indictments and prosecutions launched in Rwanda, we have only issued 90, 90 indictments. And even among those indictments, the prosecutor had, had, had adjudged that a number of them were suitable for referral to domestic jurisdiction.

- 03:14 So it is not our view that, that every case needs to be tried here but we thought that the, that those issues which are of a particular character, bore the stamp of international criminality and should be tried in international, internationally based tribunal.
- 03:37 RU: Another feeling that the people of Rwanda had that we spoke to was the, perhaps the need for a Rwandan judge on the panel or a Rwandan prosecutor or defense wit-, attorney. Do you have any views on that?**
- 03:53 Well, I, I think there are Rwandans who work in the tribunal, in different capacities and there are Rwandans who work at the OTP. There is certainly no prohibition against Rwandans serving in the tribunal and in fact, as I mentioned, some actually do.
- 04:11 The, the, the process of appointment of the judges is done at the United Nations by, by election . . .
- 04:19 RU: Yes.**
- 04:20 . . . and I, I'm not aware that there is any prohibition against a Rwandan applying or, or, or being confirmed if he won sufficient votes.
- 04:31 RU: Is there a Rwandan now serving on the panel?**
- 04:35 Not as a judge. But as I mentioned, there are many Rwandans employed at the tribunal in many different capacities.
- 04:40 RU: I understand.**

Part 6

- 00:00 RU: As Chief Judge, you have a wide variety of responsibilities but before we get into that, let me talk briefly about one of my favorite subjects. And this is judicial education, which I understand is, is one of yours as well.**
- 00:13 Ah . . . yes.
- 00:17 RU: This is an inspirational program and it's so similar to programs I've seen all over the world, not only in the United States, and in the Balkans and Southeast Asia where I've taught, but particularly in the program we did for the Iraqi judges. And almost point-by-point we went over the same things, the origins of law, judicial administration, continuing education by the countries. Tell me how you became interested in this.**
- 00:47 Well, as you know, this is a, thi-, this is really something a little bit different from my work at the tribunal.
- 00:55 RU: Yes.**

- 00:55 Although there is a, a, a link, an important linkage. I think it was as long ago as 1995 or 1996, when I attended the Commonwealth Judicial Education Institutes in study, intensive study program for judicial educators . . .
- 01:21 RU: Yes.**
- 01:22 . . . in Halifax. We – the Institute is housed at Dalhousie University in Halifax. It's, it's a Commonwealth institution but located in Halifax, partly because the founding judge, Judge Sandra Oxner, that's her hometown and she had it located there.
- 01:43 What the institute does is, it reaches out to the entire Commonwealth, assisting in developing national judicial education programs, developing national judicial education institutes or, or bodies for training and helping to develop and share best practices in, in judicial training. I'm currently the President, President of that Institute.
- 02:26 RU: Congratulations.**
- 02:27 And we have a, a bi-annual conference of judicial, Commonwealth judicial educators. So (____) . . .
- 02:44 Note: Gap in Interview (Approx. 1 minute in duration.) Gaps occurred due to interruptions during the interviews, technical issues, or corrupted data files.**
- 02:50 RU: We're trying to establish a record for the tribunal that people can look through in the future. We have no idea what form that will take but these interviews are surely a part of that. But to a large extent we depend on what people find in writing and perhaps from these video interviews – is there something that falls outside of that that you would like to speak to the future about the tribunal and your observations and hopes?**
- 03:21 Well, again, I, I don't have a prepared thought on the subject. I am, in my position right now, I am, I have to be aware that the United Nations has taken a decision that the tribunal, as such, is ad hoc and must have an end.
- 03:52 And we're under the mandate of the Security Council Resolution, which had put that date at the 31st of December, 2008, but has recently extended it for one year. That's f-, for trial cases with a, a subsequent period for the completion of appeals.
- 04:16 So the tribunal itself is going to end. But as you know, the courts were never designed to end and there are residual functions, which would require some judicial supervision even after the, the closure of the tribunal as such.
- 04:37 And so one of the challenges that we are addressing at the moment is developing what we call the residual mechanisms, which will continue to address the, these issues after the closure of the tribunal.
- 04:56 Well, in terms of my own vision, in fact, if that was what you're dreaming, aiming at, I, I would, would, would think that it's, it would be useful for the, for international criminal

justice to become a, a, a routine part of the, of the modern world, because that will assist in guaranteeing the application of the rule of law to human rights activities worldwide. And it will also assist in guaranteeing the adherence to principles of international humanitarian law.

05:47 So, with or without the continuation of this tribunal, the principles which the tribunal has stood for, the, the body of jurisprudence it has built up – I hope it will be part of the foundation stones of an international criminal, criminal system.

06:16 **RU: Thank you, sir.**

Part 7

00:00 **RU: I've previously introduced myself but I forgot to ask you to give your name and your title and the country that you come from.**

00:10 Okay. My name is Dennis Byron. I'm the President of the ICTR and I come from the country of St. Kitts-Nevis, in the, in the Caribbean.

00:26 **RU: And how long have you been with the ICTR?**

00:29 I joined the court in June, 2004.

00:36 **RU: And have you always served in your current position then, since joining the court?**

00:39 Oh no. The, the Presidency of the tribunal is elected, elected by the judges at Plenary Session. So I came in as a, as a judge and it was in May of 2007 that I was elected as President.

00:57 **RU: And you have arrived at a time of many challenges?**

01:01 Yes. Yes.

01:03 **RU: Tell me where you were in 1994?**

01:06 1994?

01:07 **RU: Yes. When the genocide started.**

01:10 Well, I was, I was a member of the court of appeal of the Eastern Caribbean Supreme Court, based in St. Lucia.

01:18 **RU: And how did you become aware of the genocide?**

01:22 Well, well, I, my, my awareness level at that time was, was low. I just was a, a, a spectator from my home country. And the news, as it was reported, on world, world news stations. At that time I had no idea that I would be connected in this way with that tragedy.

01:48 **RU: And how did your appointment to the tribunal occur?**

01:52 Again, that was something quite coincidental. Judge Lloyd Williams, who was a national of St. Kitts-Nevis, had been elected to the tribunal in the normal appointment process and he resigned. And under the rules that govern these, the appointment process, St. Kitts-Nevis, had the right of a nomination, of nominating his succ-, his successor and I was nominated and accepted by the UN, both the General Assembly and Security Council and appointed.

02:40 **RU: Given your, given your background, it's easy to understand why you were nominated. It's an impressive one, sir. But did the nomination surprise you or was that . . .**

02:52 Yes. I was not consulted before I was nominated and I had not asked for it.

02:59 **RU: So it was a true surprise?**

03:00 Yeah, mm-hmm.

03:03 **RU: Let me switch a bit then, if I may, and talk about what we hope to accomplish with this information project. It's essentially trying to establish for times in the future, far beyond what we can speculate on at this time, a way where people can understand the humanity of the people who were on this tribunal.**

03:28 **RU: They can find in books and records, the records that have to be found, but we want to give the public 50 to 100 years from now some idea of the people involved. And I wonder in this frame of mind, if you have something that you would like to say that may be looked at 50 or 100 years from now, first about the nature of the tribunal and then words of advice to the judges who may sit in some future tribunal?**

04:02 Well, the nature of the tribunal. Well, I, I must say that I have, even before coming here and getting caught up in the, in the administration of, (____) international criminal, criminal justice, I did have a philosophical support for the idea of an international, legal or judicial order. So the, the idea that there would be some form of criminal justice system, which formed a routine of international life had appealed to me for some time.

04:48 Now, this court is an ad hoc court . . .

04:52 **RU: Yes.**

04:52 . . . it's, it's, was created for a specific situation and with a, a time, time frame. So it does, what I think that the work that the tribunal has done has laid a, a foundation for the development of a long-standing international criminal justice system, which I find an attractive, an attractive idea.

05:25 I, I think I mentioned to you that I had a particular feeling of, of, I suppose, satisfaction when I, I digested the thought that the, the, a political body like the UN would, would consider that to achieve political objectives, such as peace, restoration and

reconciliation, and abolishing impunities, that the concept of a system of, of impartial justice was a, a method that could be adopted for it.

06:08 So I, I, I think that, that, that in order to, to honor the trust placed in the tribunal, the judges have to guarantee the fairness of the trial process and I think that, that however else the tribunal has to be judged or may be judged, at the end of the day, I think that our acceptance will depend on whether the reasonably informed onlookers would believe that both the process and the result was fair.

06:51 And I think that probably is the most important mandate and obligation of judges in these tribunals and tribunals of this nature; the upholding of the concepts of fair, fair trials.

07:06 RU: The reality of fairness and the . . .

07:08 Yeah.

07:09 RU: . . . appearance of fairness.

07:10 Both, yeah.

Part 8

00:00 RU: What would you have to give as advice to judges who are sitting in your position in the future; things that you've learned that you feel might be of help to them?

00:11 Well, one of the issues I'm grappling with right now, which is, has to do with the improvement of, of efficiency and effectiveness, because I, I recognize that one of the most important criticisms that the tribunal has had to live with has been the duration and cost of trials. And it's a criticism to which I am particularly sensitive as I am interested in the, in the old adage of fair and fast trials.

01:06 However, I, I also recognize that there was a, a reason for this which had to do with the perception of what was expected of the tribunal by the international community and I think that the, initially, the idea of, that fostering reconciliation required telling the story.

01:37 So the, the investigation and the prosecution went beyond what was necessary to establish the essential ingredients of the crimes charged and it also took into account allowing some victims the opportunity to be heard by a court and it went into great detail trying to establish the historical and, and other causes of the conflict that led up to the 1994 tragedy.

02:14 Now, the, I think you'll find that in, as we have already had 14 years of, of experience, that the, the theory of prosecution has undergone a, a change.

02:34 RU: Yes.

- 02:36 Most cases now are, are now single accused trials rather than the multiple accused trials which were common in the early stages of the tribunal. And the, the indictments are leaner, more, more, and the, the average number of witnesses is less, and the average anticipated or projections for leading the prosecution case has now come down to approximately five weeks.
- 03:20 So the, the, I don't think it necessary for, for me to give advice as such but because I think that as the process has evolved, the lessons have been learned and we are more focused upon the primary role of adjudicating the issues alleged in the indictment.
- 03:44 To some extent, it is not necessary to go into the historical causes of the dispute anymore because these have been quite fully examined in cases which have already been heard and there is already a, a comprehensive judicial record of these issues.
- 04:04 So, in addition to, perhaps, concentrating more fully on the, on the adjudicative purpose of a court, the, the idea of telling the story is no longer a, a priority as the story has, has already been told. I think that, that you will find that from the judgments of the court, there is already a fairly comprehensive . . .
- 04:32 **RU: Yes.**
- 04:34 . . . judicially authenticated record, factual record of what has happened.

Part 9

- 00:01 **RU: If you were talking to your great, great, great grandchildren, which may be, who knows how long, what would you tell them was the most satisfying part of your work here?**
- 00:12 Well, I don't know. It's, it's probably a feeling and, and I got this pretty early after coming here because as I'd indicated to you, I had not indicated any interest in, in coming here.
- 00:35 **RU: Yes, yes.**
- 00:37 So I also had to sort of deal with myself and make myself comfortable with the assignment. You know, it wasn't long after coming here that I recognized that what this court is doing is serving humanity as a whole. Whereas I had had a, a strong commitment to serving the court in my own country . . .
- 01:02 **RU: Yes.**
- 01:03 . . . I felt that this was a, a higher, higher and, and better calling in terms of the impact of the tribunals of this nature went far beyond the, the disputes upon which we were adjudicating and having an impact on the lofty ideals of the United Nations and humanity in general. So that's the feeling that I feel best about since I've been here.

01:33 **RU: And that's not an unusual feeling among people in courts. The ability of people to just tell their story often is the most important thing regardless of what the Court does.**

01:44 Yeah.

01:45 **RU: I, a point in my career was hearing cases between men and women who were getting divorced. And that was the most important thing was just tell their story. It's minor compared to what you've had to hear but it's an adage that holds true.**

02:02 **RU: Again, if you were talking to your grandchildren way down the line, what would you tell them was the most frustrating part of your experience here?**

02:13 Well, w-, n- I have to think about that . . .

02:14 **RU: Ah. More than one . . .**

02:15 . . . because there's more than one thing that frustrates me. But, but again, I suppose being a bit of a, interested in, in administrative efficiencies, I have, I have been a bit bothered by the way the bureaucracy here has been working. So the, the, the way in which the provision of resources, the recruitment process, the proportion process works has been a bit slow and, so we've had to deal with issues of, of administrative management.

03:14 Then I suppose, in the courtroom, to a large extent, the, we have not, I have not always felt that the legal practitioners before the court were on the same page as we were . . .

03:36 **RU: Yes. Yes.**

03:38 . . . in terms of, of the, the concepts of fast and fair trials. Very often, the, the process was delayed and sometimes just by having, just by strange attitudes, self-interest perhaps, or, or, and sometimes concepts of, of failing to, to respect some of the, the fair trial principles, which the tribunal insists on. Simple things like, like the disclosure rules.

04:19 **RU: Yes.**

04:20 The non-compliance with disclosure rules has contributed enormously to delay and, and various things. So the things that have impacted upon the efficient progress of my work have, to some extent, been the issues which have frustrated me most here.

04:39 **RU: Do you have sanctions you can apply (_____)?**

04:41 Yes. Yes. I, I suppose that I've always felt that judges shouldn't c-, shouldn't complain too much when they have powers that they can use to solve these problems. The sanction regime here though, is a bit limited because it's not backed up by close linkages with any professional associations.

05:10 **RU: Yes.**

- 05:11 So the powers that we have here, we can, for example, deny defense counsel fees. And I suppose the only other things that we can do, is to deny audience or, or, or make or reprimand, express displeasure.
- 05:38 I suppose we can report to the National Bar Associations and we do have the draconian power of Contempt of Court proceedings . . .
- 05:51 RU: Yes.**
- 05:51 . . . which is specifically included in our rules. So there are things that can be done and to some extent, many of them have been used in, but not very frequently at the tribunal.
- 06:09 RU: The old adage, “The best power is the power you never have to use.”**
- 06:13 Right. Yes.
- 06:15 RU: As judges that of course applies to us, us as well.**
- 06:19 Mm-hmm.

Part 10

- 00:00 RU: Tell me about the effect of this service on you as a person. Are you the same person as you were before you came? If not, how, what effect has it had on you?**
- 00:14 Well, your question made me smile or, or, or it made me have to suppress a smile. The, the, coming here made me get re-married.
- 00:35 RU: Ah.**
- 00:37 I, my marriage had broken down many years before and I had, I had, I had more or less joined the ranks of confirmed bachelorhood and then I came here. And somehow or other, I, I don't know exactly how to rationalize it, but I suppose, I felt lonely and in need of companionship.
- 01:15 And, it wasn't long before I addressed the issue directly and made a proposal to someone who accepted it and, and frankly, I can't imagine why I didn't, hadn't done it before, because it has really improved the quality of my life enormously.
- 01:40 Now I don't know if I should attribute it, attributed that to the work I'm doing here but that has been the most major change in my life since I've been here and it's been, I think, a change for the better.
- 01:51 RU: We appreciated the invitation to your home and the great crowd there and the great hospitality. If your wife was part of that, which I know she was . . .**
- 02:02 Yes.
- 02:02 RU: . . . give her our thanks as well for me please.**

- 02:04 Certainly.
- 02:07 RU: What, what hope do you have for the future in seeing all of this, perhaps, irrational acts of humanity involved in this genocide?**
- 02:20 Well, hope. It's, it's, it's I don't know what to say. In fact, one of the, you know, a few years ago, a friend had asked me to be godfather to his daughter, who was given a name out of Homer's Odyssey.
- 02:44 RU: Ah.**
- 02:45 And, and he gave me as a christening gift, a copy of the book.
- 02:52 RU: Yes.**
- 02:54 I suppose when I was a kid I had read extracts of it but I was idle enough to, to read it again and it was very depressing because I recognized people. And I wondered – has humanity really developed? You know, do we see cycles of this type of behavior recurring?
- 03:23 I, I sincerely hoped that the result of our work would have supported the promise of “Never again,” but I listen to the news every day. I see Darfur, I see the violence emerging again in the, in the C-, DRC, you see. And, and so I wonder.
- 03:52 I had felt that one of the major lessons that the tragedy had taught was the importance of early intervention but I don't know if even that lesson has been fully learned. So I am not sure what to hope for but I wish I could hope for something.
- 04:16 RU: Thank you very much, sir. Is there anything that I've not touched upon that you would like to add?**
- 04:25 Well, I would like to thank you. I, I think that your, you have pulled me out quite a bit. If, if I was asked to just make a speech on these issues, I don't think that I would have had anything to say. So I must commend you for the quality of your, of your inquiries and I have enjoyed working with you in this manner very much.
- 04:56 RU: As have I, sir. Thank you.**