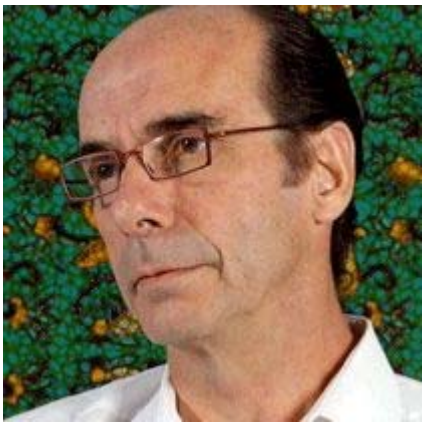
Voices from the Rwanda Tribunal

Official Transcript: Benoît Henry (Full Interview)



Role:	Defense Counsel
Country of Origin:	Canada
Interview Date:	31 October 2008
Location:	Arusha, Tanzania
Interviewer:	Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Benoît Henry speaks about his first ICTR appointment defending Andre Ntagerura, who was accused and acquitted of genocide. Henry reflects on a major shortcoming of the Tribunal surfaced by Mr. Ntagerura's acquittal: the question of what happens to accused genocidaires after they are acquitted? Mr. Ntagerura remained in UN custody because no country, including Tanzania, was willing to accept him. Henry further suggests that to perform their role effectively, defense counsel must distance themselves from the events of the genocide.

The transcript of the interview begins on the following page.

Part 1

00:00 **Donald J Horowitz: I'm Judge Donald Horowitz and I am today on October 31, 2008 interviewing Benoît Henry. And Mr. Henry, will you state your full name, the, your role at the ICT-, at the International Criminal Tribunal for Rwanda and the country that you are from?**

00:26 Okay. Well, my name is Benoît Henry. I am a defense counsel at the ICTR. I come from Canada and so far I have been involved in three different cases here at the ICTR since 1998.

00:43 **DJH: So you've been here ten years now?**

00:44 Just about, yes.

00:46 **DJH: Okay, and in Canada where, where are you from within Canada?**

00:50 I am from Montreal, Quebec.

00:51 **DJH: Okay. Can you just give us a brief sketch of your ed-, professional education and your professional history before you came to ICTR?**

01:02 Okay, well as to my education, I got my law degree in the University of Montreal and after, I made a Master in Criminology. My practice has always been in criminal law, criminal and penal law. I've been practicing with Legal Aid for seven years first at the beginning of my practice and after that I joined a private criminal law firm where I am still am.

01:27 **DJH: With a leave of absen-, an extended . . .**

01:39 With a leave of absence, yes. Yes.

01:41 **DJH: An extended leave of absence, I gather.**

01:43 Yes.

01:45 **DJH: So and what you call Legal Aid sometimes we in the States would probably call public defenders.**

01:49 Yes, that's just about the same thing.

01:52 **DJH: Okay. So and have you done anything profession-, professionally, I mean, in the practice, which is outside of being a defense counsel for people charged with crimes?**

02:08 Not seriously. In fact I've been involved in only one case where I acted on a special mandate from the, the prosecutor; the prosecutor of, of, of the province of Quebec to act as a prosecutor in a penal, a penal infraction against a company who m-, who was alleged to have made an infraction to a, how do you call that? It's, it's a, it's a law on the environmental protection.

02:28 DJH: Okay. And when was that, what year approximately?

02:52 It was in the 90s, the beginning of the '90s.

02:54 DJH: Okay so you had already been . . . and when did you graduate from Law School? I guess I didn't ask you that.

02:58 University of Montreal.

03:00 DJH: But when?

03:02 Oh, when? It was in 1970.

03:07 DJH: Okay so you're a, a bit of a veteran by now.

03:10 Yeah well I don't c-, I don't know if I can call me a, a veteran, but . . .

03:14 DJH: Okay.

03:16 . . . some experience of course.

03:16 DJH: Yes, of course. Have you ever, even as, on a pro tem basis or ad litem basis, done a, done a judicial or a quasi judicial . . .

03:26 I'm sorry I don't catch your en-, your question.

03:29 DJH: Have you ever done any judicial, you know, been like a judge pro tem or done any judicial duties or as a hearing officer or anything of that sort?

03:38 No, no, never.

03:41 DJH: Okay so you've always essentially been an advocate?

03:42 A-, always.

03:44 DJH: Okay. So in, in April or the early part of 1994, can you remember where you were?

03:55 Well, at that time I was practicing in Montreal, in my office.

03:59 **DJH: Okay. When did you first hear about Rwanda and what had been happening in Rwanda during that period of time?**

04:08 Well I guess that about . . . of course like everybody I, I, I learned about the situation of Rwanda but not really in, in a concrete or, or, I, I mean any concrete or, or practical fashion as far as political and geo-, geopolitical aspect is, is concerned. But well, at the time of the events of course we became more familiar with the situation listening to the news, and, and this is how I mainly learned about the Rwandan situation, the Rwandan problem.

04:48 **DJH: And you were at that time – I'm sorry. I, I, I jumped on your answer.**

04:51 Mm-hmm.

04:53 **DJH: And you were at that time engaged in the practice of law in, in your firm in sort of the ordinary course of things?**

04:59 Yes, of course.

05:00 **DJH: Yeah. And when did, when and how did Rwanda take a, or the possibility of being at the ICTR take a more p-, prominent role in your life?**

05:11 Yeah, well, it, it, it's, it's a question of opportunity I would say, because at the time I had a colleague in Montreal who was not in my office but who, who was a, a close colleague practicing also criminal law in Montreal, who told me that he received a mandate from the family of an accused here at the tribunal.

05:34 And he had at that time come a few, on a few occasion here in Arusha to meet with his client. And he then told me that there were several accused here looking for lawyers to represent them and asked me if I was interested in doing that so it was pure question of opportunity and I answered, "Yes of course I would be interested." And then it, it further developed in, in getting a mandate here.

06:03 **DJH: I'm not sure I know what a mandate is.**

06:06 A mandate is, how the mandate, the mandate to, to represent someone is – how do you call that otherwise, I don't know.

06:13 **DJH: (____), well, you, you could be invited to do that. You, I mean, obviously you were not under compulsion. Yeah. Okay.**

06:20 No no no, no no no. Well a mandate is a request from someone to . . .

06:24 **DJH: Okay, from the Registrar, for example.**

06:25 Yes, well . . .

06:27 **DJH: Perhaps.**

06:27 . . . yes, exactly.

06:29 **DJH: Okay and, and you were gi-, given the opportunity to represent presumably some other things that happened. Prior to your receiving the mandate, your qualifications had been submitted and so forth and so on.**

06:41 Yes, yes, yes.

06:42 **DJH: And were reviewed.**

06:43 Yes.

06:44 **DJH: And did, did, did you go through any screening process or did they just, you know, have the information about you in writing and perhaps the, perhaps the evidence of your friend?**

06:57 I guess that's, well I guess that's the way it happened because I filed the necessary documents and I received my answer from the Registrar that I was going to be put on the list of the counsels, a list of counsels.

07:11 **DJH: Okay.**

Part 2

00:00 **DJH: And so you were then at some point asked to represent a particular person?**

00:05 Yes.

00:07 **DJH: Can you tell us who that was and what the case was?**

00:10 Yes. I was, I was approached by the lead counsel of André Ntagerura who at the time was representing him and he needed then a co-counsel. So this is how I, I was, was first approached to represent the accused.

00:30 **DJH: Can you tell – okay, can you tell us the position of Mr. (_____) . . .**

00:35 Ntagerura.

00:37 **DJH: Ntagerura.**

00:37 Mr. Ntagerura was, was the former Minister of Transport and Communication in the interim government, in the interim Rwandan government.

00:47 DJH: Prior, prior to and during the alleged acts of, of, of 1994?

00:52 Events. Yes. Exactly.

00:57 DJH: Okay. And did you accept that position as co-counsel or assistant co-counsel I guess?

01:01 Yes I, yes I did.

01:03 DJH: Okay. And came to Arusha then in you said 1998?

01:09 1998 yes.

01:11 DJH: And had Mr. – had the defendant, had he been in, in custody for some time?

01:17 Yes. At the time, he had been in custody since 1996 having been arrested in Cameroon by, by Cameroonian authorities after a mandate, after an international warrant, I'm sorry, after an in-, international warrant was issued by the Rwandan government.

01:39 DJH: Okay. And, and in '98 you became part of his trial team?

01:46 Yes.

01:47 DJH: And when was he brought to trial?

01:49 He was brought in trial in 2000.

01:53 DJH: Okay. So you were two years from when you came, approximately, working on the pre-trial materi-, events.

02:01 Yes. Yes.

02:04 DJH: Okay. Without going through each detail, are there, were there any important issues that you would like to relate relative to that case, prior to trial, before trial?

02:15 Well, I remember complaining about the, the indictment itself because it was, it was an unclear indictment. We complained several times by making motions to, to, to the court, to the, the Chamber and that is principally what happened.

02:40 DJH: During that period?

02:41 During that period.

02:42 DJH: And you prepared of course for his defense?

02:43 Yes of course.

02:44 DJH: That would mean speaking with witnesses, preparing witnesses, (____) evidence, and so forth? Yeah. Okay.

02:48 Yes. Exactly. Yes, travelling through Africa to meet witness, potential witnesses.

02:54 DJH: Are there any things that you'd like to share about that period? I'm not saying you must. I'm just giving you the opportunity.

03:00 Well, I don't remember anything particular that is worth of saying now.

03:02 DJH: Okay, okay. And then you went to trial in, in . . . ?

03:09 In 2000.

03:09 DJH: I-, in 2000. And that, the trial is before three judges without a jury? As – and coming from the French portion of Canada and practicing there, were you familiar with the jurisprudence or the jurisprudential foundation of this court?

03:26 Well, at that time there was not much jurisprudence already, already made so – but I was of course familiar with the adversary system. We ha-, we also have in Canada adversary system, and . . .

03:40 DJH: Okay. And so in Canada it's based on the common law?

03:44 Exactly.

03:45 DJH: Even, even in the French portion?

03:46 Yes.

03:46 DJH: Okay. But I have learned and per-, I am sure you have as well, that there are some ingredients of the French civil law as well that are in the, in this tribunal; sort of a hybrid system I guess they call it. Can you tell us if there were, about that and if it created any, any difficulties for you as defense counsel?

04:18 I don't believe there was much difficulty for those lawyers used to the common law system. I think that there were more problems for those who were practicing in the

civil law before, because they were not used to the examination and cross-examination of witness, meeting with the witnesses.

04:36 For us, this is something very usual but for them it is unusual. Like for instance, they're not familiar with meeting with witnesses before. In their system they are not allowed to meet with witnesses before, so this is something that was, that was, that puts, that put more difficulties on them than on us.

04:59 For instance, the, the lead counsel in the, in the first case I had here was from a civil law system and we were discussing the, the rules of procedure and evidence. And we could not see it the same, the same way. We could not make the same interpretation. But of course it developed and then we all realized that the witnesses were going to be questions, and, questioned in the way we, we do it in, in common law.

Part 3

00:00 DJH: You have, in the course of your experience here at ICTR, represented defendants in three different cases. I'm going to ask you a question that is often asked particularly by people who are not part of the legal system.

00:15 DJH: The people who you represented were charged with very significant crimes – crimes of genocide, crimes against humanity, et cetera. Major, major, major crimes. How, people often ask, how do you bring yourself to represent people who are charged with such horrific acts if I may? Charged I'm saying. I'm not talking about convicted.

00:44 Mm-hmm. Mm-hmm.

00:45 DJH: And you're talking now, if you don't mind, not to a, a lawyer but to people who are not lawyers.

00:51 Yes. Well, when you are practicing criminal and penal law, this is a question that is very often asked to lawyers representing persons accused of crimes. It is I, I think difficult for a layperson to understand how a lawyer can come to represent a person accused of such heinous crime or such serious offenses. So the question in relation with in-, international law like genocide or, or, or any crimes against humanity is, is, is the same thing to understand.

01:43 The reason why we are there is not because we are in favor of crime. We're not defending crimes. We are defending people accused of crime and these people

have to be defended according to the law because the law provides that – well, this is all to avoid arbitrary convictions. This is all to avoid dictatorship, in fact. And the reason for that is that we have systems that put in place certain principles to avoid that a person be convicted with the possibility of being innocent.

02:37 And this is exactly what we are doing when we are defending a person accused of such a crimes. We are just trying to remind the judges and the prosecution to observe and respect those principle put in place. In fact, we are watch dogs; watch dogs of the respect of the law and that's about it I think.

03:08 DJH: And when there is a competent defense of a person, then if there is a conviction, that conviction I would assume would carry great, greater credibility in, in the society, one would hope. Isn't that one of the ideas?

03:27 I, I, certainly is one of the idea, because of course a pe-, a person accused without being defended has a, has very, I would say very – a weight that is very questionable I'd say.

Part 4

00:00 DJH: All right, let's go back then to the, the first case you were representing. Why don't you tell us what you would like to tell us about that case, in terms of impor-, important aspects of the case, and what the outcome was and, and, and what other issues it raised, some of which I'm sl-, slightly familiar with?

00:20 Well, Ntagerura's situation is a very particular situation. As you probably know, Ntagerura was acquitted of the crimes he was charged with.

00:29 DJH: And, and tell us what crime specifically, what crimes he was accused of.

00:34 He was, he was accused, he was charged with genocide, being an accomplice to genocide. He was cr-, he was also accused of crime against humanity.

00:43 DJH: Okay. And, and, and evidently he, he went through a full trial.

00:47 He went through a full trial, yes.

00:48 DJH: And evidence was presented on both sides of the case.

00:51 Yes, exactly.

00:54 DJH: And after-, afterwards the, the judges, the three judges found that he was acquitted of all the crimes.

00:58 Exactly.

00:59 DJH: And was there any dissent or was it unanimous?

01:02 No, it was unanimous decision.

01:05 DJH: Okay. And do you remember who the judges were on, on the case?

01:08 I certainly do.

01:09 DJH: Okay, who were they?

01:10 It was Judge Williams from Saint Kitts and Nevis. It was also Judge Ostrovsky from the, from the, from Russia. And also there was Judge Pavel Dolenc who was from Slovenia.

01:28 DJH: Okay so, okay so there was this tr-, long trial. Or how long did the trial take?

01:34 Well, the trial took three years.

01:36 DJH: My goodness.

01:37 Yes.

01:38 DJH: From, from beginning to the end of the actual trial, not the pre trial?

01:41 Yes, yes, yes exactly.

01:42 DJH: And why'd it take so long?

01:44 Well, the reason why is at that the time the, the, the Chamber was conducting two, two different trials. So they were doing a certain time with, with our trial and then they adjourn to go with the other trial. And they kept that going for, for three years so –but you know altogether three years we had a 150-or-60 days of trial altogether. It's not, it's not that much.

02:11 DJH: Approximately how many witnesses on each side of the case?

02:14 Okay, so well I have to say that it was a case where there were three different accused. My client was one of the three accused.

02:22 DJH: Ah, okay.

02:24 It was a case of Cyangugu where the, the prefect of the prefecture of Cyangugu was also charged jointly with our, our client and also the camp commander of the, of the prefecture. So . . .

02:40 DJH: And where is that prefecture?

02:41 It's in the southwest of the country.

02:44 DJH: Okay, near what place that (_____) be familiar with?

02:48 Well, it's close to the border of well, Cyangugu, Cyangugu is the name of the prefecture and it is close to the, the Congo Zaire, the, the . . .

02:55 DJH: Okay, what was Zaire (___) . . .

02:58 . . . former Zaire border.

02:58 DJH: Okay, and, and wha-, and the other defendants were represented by other counsel, you-, independent of you and independent of each other? Is that correct?

03:09 Yes, exactly. Yes.

03:12 DJH: Okay and was the verdict, relative, what was the verdict relative to the other two?

03:17 The prefect of the prefecture was also acquitted but there was one, one dissent and the camp commander was found guilty.

03:30 DJH: Of all the changes?

03:32 No, not of all the charges. He was found guilty for some of the charges and he was, he was sentenced to 27 years. But in appeal, he was acquitted on one charge for one particular material fact. And the conviction, the sentence he had for that particular material fact was 15 years. So this, this part of the sentence was also reversed. And that left him with 12 years of sentence.

04:07 DJH: And, and, and conviction of how many crimes? One or two or . . .

04:11 Well, I don't remember exactly. I don't remember exactly.

04:14 DJH: Okay, but he was convicted of . . .

04:16 He was convicted of several, of s- . . .

04:17 **DJH: . . . of several major crimes?**

04:18 Yes, of s- . . .

04:18 **DJH: And, and ultimately.**

04:20 . . . but not of genocide.

04:21 **DJH: But not of genocide? Okay.**

04:23 Yeah, yeah, yeah.

04:24 **DJH: And is there a difference between genocide and crimes against humanity?**

04:28 Well, of course there is a difference. Genocide is, is, as you know, an offense that involves a specific intent to . . .

04:39 **DJH: Do away with a group of, of . . .**

04:41 Yes, yes. To eliminate or to – yes, to eliminate a, a particular group . . .

04:44 **DJH: Okay . . . okay.**

04:45 . . . which intent is not necessary in a crime against humanity, yes.

04:49 **DJH: Yeah, yeah, in a crime against humanity, there are certain acts you do and that . . .**

04:53 Exactly.

04:54 **DJH: . . . the intent, the intent to d-, eliminate the . . .**

04:56 The group itself.

04:57 **DJH: . . . group is, is not a part (___), yes.**

04:58 As a group, yes, it's not part of the crime.

05:00 **DJH: Okay, so he was and, then his conviction at least for the one has stood, and his, he, I assume he's serving his sentence.**

05:07 Yes.

05:08 **DJH: Okay.**

Part 5

00:00 **DJH: So now let's go back. Your client was acquitted. Then what?**

00:03 Mm-hmm. Mm-hmm. Then he was acquitted. This is when some of the problems started. Well, of course . . .

00:13 **DJH: And I understand it's somewhat unique.**

00:16 Yes. It is, it is, it is somewhat unique because the situation of a Rwandan being accused here at the ICTR is, is greatly different from the one, the situation of people accused before the ICTY, for the simple reason that, of course, the regime has changed since. Of course . . .

00:41 **DJH: Regime in Rwanda.**

00:43 In Rwanda, yes. After the events, of course, there was another, another team, if I can say, that took power.

00:51 **DJH: . . . and is now continuing to rule Rwanda.**

00:54 . . . and is now, and is now in place in Rwanda. And of course they were, they were military and politically, and political opponents and obviously the person accused here are considered by the actual authorities as, as responsible of all the crimes that happened and a decision of acquittal is not really welcome in, by the Rwandan authorities now.

01:21 So of course people here who are accu-, who are accused and finally acquitted, are not very hot returning in their country and everybody can understand that. They feel they will, their security will be at risk and they don't feel they, they, they can go back. Well in fact now, Ntagerura asked the Registrar to go to Canada.

01:54 This is a country of, of his choosing and requested the, the Registrar to, to, to be able to, to go to Canada, but so far he is still here under the custody of the tribunal.

02:10 **DJH: Has Canada – has, has the request been made to Canada?**

02:15 Well in fact, there is, there is a problem in regard with that. We on the defense side considered that a certain request was made by the Registrar after his acquittal because a note verbale was sent to the Canadian authorities requesting that they examine the possibility of receiving Ntagerura in the country. But apparent-, well, not apparently, I know for a fact that Canada, Canadian authorities never gave a clear answer.

02:53 They did not even give an answer that we are aware of, because they might have given an answer to the Registrar, but we don't know so we don't know. The Registrar never, never revealed what this answer could have been. So . . .

03:10 DJH: Have you asked the Registrar specifically?

03:11 Of course we have.

03:12 DJH: Okay.

03:13 Of course.

03:14 DJH: And how long has it been since the request was made?

03:18 Well, the request was made . . .

03:21 DJH: (__), at least your request to the Registrar to . . .

03:22 Yes, yes, well the request was made shortly after his acquittal by the Trial Chamber.

03:26 DJH: And what . . .

03:26 It was, it was in February that he was acquitted; February 2004 and the, the request was made a month or two after.

03:36 DJH: Has there been, have there been any request for him to stay in Tanzania but as a resident or as a person at least in legal status in Tanzania?

03:49 Well in fact the – I can't remember the expression in English but it's called a, an accord de siege. This is, this is an agreement between the United Nations and the Republic of Tanzania providing certain conditions for the tribunals being put in place here.

04:14 And in that agreement there is a provision providing that any person being acquitted could not, would not stay here in Tanzania after his, his, his acquittal. So this is a provision provided, already provided in the agreement.

04:31 DJH: Have any other efforts been made to, for him to go elsewhere? Some other country? Formal or informal.

04:36 Well, there was, there was, there was a request made to France. France refused and there was also steps taken to, for him to go to the Netherlands but I'm not fully aware of the answer of the Netherlands. Well, the reason for that is that I'm, I'm

not really acting for Mr. Ntagerura since a little while because another colleague took over the, the matter.

05:02 **DJH: Okay. Do you think if there were a response, somehow or other you'd find out?**

05:07 Yes, of course.

05:08 **DJH: Yeah. Your colleague would tell you. Yes.**

05:09 I would, I would be told. My colleague would tell me and my former client would inform me also.

05:15 **DJH: Have you maintained some contact and relationship with Mr. Ntagerura?**

05:20 Sure. Sure. He is still here in Arusha and I very often meet with him.

05:22 **DJH: And (____) so he is living, where?**

05:25 He is living in a safe house provided by the Registrar for him. And well of course we have to admit that his living conditions improved substantially since his acquittal but he is still here without being, without full, full liberty, full freedom.

05:45 **DJH: Okay, living here sort of I guess under the, I don't want to say shadow but under the influence of, of the United Nations, the ICTR.**

05:53 Yes, exactly. Exactly.

05:55 **DJH: And unable to go anywhere else.**

05:57 Yes. Mm-hmm.

06:01 **DJH: Okay. And I'm sure we'll find out. Do you have anything else you'd like to add with respect to this rather unusual circumstance?**

06:11 Well, what I, what I have to say about that is of course this is, this is a real problem of the tribunal because the Registrar and the tribunal itself is unable to have the decision of the judges being put in place effectively, having an effective freedom for this man who was acquitted.

06:43 So of course this is a problem. And this is a problem that is likely to happen again in the future, for the reason that there will be situation where people accused by either the International Criminal Court or any other tribunal, international tribunal, there will be situation where pe-, person accused like that won't be able to return

to their country. Let's say just, just have in mind the situation of some rebels acting in, within a country.

07:24 If they are arrested, charged, tried and acquitted, these people won't be welcome in their country. So it is, it is a situation that is likely to happen again and this is something, this, there is a lesson here that we have to learn from the situation of this man here in, in the ICTR.

07:49 DJH: Okay.

07:54 We have to learn something about that and we have to find a solution to this problem. How the tribunal can implement the decision of the tribunal. How an acquittal decision can be implemented in a situation like that.

08:06 DJH: Okay.

08:08 So this is, this is a real problem that has to be looked into for the future I think.

08:12 DJH: And probably, we, we know that there is now a permanent court, ICC, International Criminal Court, and I take it that from your point of view this has not yet been addressed either in this, the treaty which creates I-, ICC or in some other document, as far as you know. This, I, I don't mean just your clients, but the issue.

08:36 No, no, no, but you mean, you mean, you mean this issue – I don't believe, well, I know that the ICC is, has some concern about that but I don't know if there was any, any solution, if they found any solution so far. Well, of course they are not at that stage because nobody has been, has been tried yet (__).

08:55 DJH: Right, right, but one hope they would pre-plan.

09:00 Exactly. Mm-hmm. Exactly.

09:01 DJH: Okay, all right. And you don't know the answer to whether, what they're doing about it now in terms of deliberating on that. Okay. Okay.

09:07 No. No, no, no. Well, they must, they, they must, they must be thinking about this because this is, this is a real problem. This is real situation.

09:15 DJH: Can you . . .

Part 6

00:00 **DJH: Let – if, if I may, is this, may we move on to another (_____) . . .**

00:04 Sure, sure, ano-, to another issue.

00:07 **DJH: Now you've handled t-, two other cases to conclusion.**

00:10 Mm-hmm. Well, one to conclusion and one is still going on.

00:13 **DJH: Okay. Okay. Would you tell us about the second case?**

00:16 Yes.

00:19 **DJH: And anything of importance or that you think is significant.**

00:22 Okay. Well, the second case was the case of a person called Nchamihigo Siméon who was a Deputy Prosecutor in the prefecture of Cyangugu who was charged with genocide, crime against humanity, extermination, murder and who was very recently found guilty of all those crimes and sentenced to life imprisonment.

00:52 **DJH: Okay. And do you have any observations to make on that case?**

00:57 Well, what can I say about that? We made our best, of course.

01:02 **DJH: Of course. Any, any, any lessons learned for the future, not just by you but by the (_____)?**

01:09 Yes. Well, I don't know exactly what lesson we could, we could learn from that case. I'd say that possibly, in general, we have to hope that the experience will serve. Well, I mean when I say experience, I mean the whole experience of the tribunal.

01:45 Not the experience necessarily in this particular case but in this case too, will serve for the future. For e-, for example, one thing that, that, that struck me and that, that concern me in this case, well in the other case also, is the way the investigations are conducted.

02:15 **DJH: Okay. Tell me what you mean by that.**

02:18 Yes, I will. My, my experience in that matter brought me to think that the investigators who investigated tho-, those crimes were, did not have enough experience to investigate serious crimes like that. And . . .

02:51 **DJH: Lack of training, lack of experience.**

02:53 Lack of training, lack of experience

02:56 DJH: And these are the pros-, the investigators who work for the Office of the Prosecutor? Okay, go ahead.

03:00 Exactly, exactly. So just for instance what we realized is that well, they, they took some declarations. They, they took some written declarations from some witnesses, brought that to the Prosecution Office. They did not to our understanding take the, the time to verify the credibility of those witnesses. They did not take the time to test those, those witnesses and we realized that they were just taking their word.

03:49 And also, there's also, well, we have to deal with, with the people we have so Rwandans are, are, are particular persons. They have, they have a culture that has to be taken into account and their way of saying things, of, of, of explaining what happened is, is sometimes, has, is sometimes questionable.

04:20 And they have, they, well, they need to be experienced investigators to investigate those persons, which we found was, was, was not the case.

04:34 DJH: Sometimes we talk about understanding words but understanding idioms is different.

04:39 Yes.

04:42 DJH: And likewise with conduct; to understand somebody's conduct, you must understand the idiomatic, the cultural context of the, of the, of, and I think that's at least a, a, a part of what you're saying here.

04:57 Exactly, exactly. And also their way of, of, of telling what happened and just telling one part of the, of the matter, one telling one part of the story without telling the, the rest of the story like they say, well that person was there and he did this and he did that. But they are not telling that other people were there too. They're just refraining from, from saying the whole story.

05:22 They say the truth sometimes but they don't, they don't always say the truth, but I can see, I'm sorry.

05:27 DJH: It's alright.

05:27 But I can see that they certainly do tell the truth sometimes, but partially, you see. And the way they are asked questions after, because if they are further investigated

and asked question about, about another person, they're just going to tell you the same story about the same fact . . .

05:46 . . . now putting this other person in the same story without having said in the first occasion that the person was there too. So it, it makes, it makes the story very difficult to understand because of their manner, of their way to tell the story.

06:05 DJH: Mm-hmm. Okay, and I understand that and it also probably adds a bit to the time that it takes to get out a fuller story because you're having to go one by one by one. Yeah.

06:17 Exactly, exactly.

06:20 DJH: Okay.

Part 7

00:00 DJH: Okay. Any other lessons to be learned, if you will, from trial number two for, for you? Special lessons.

00:13 Well, I wouldn't say it, it's in relation with trial number two. I'd say that it's mainly with all the trials here.

00:22 DJH: Okay, go ahead.

00:25 Well, I think there is also when, this is one of the points I wanted to, to, to raise with you.

00:30 DJH: Okay. Please do.

00:33 It's, it's, it's a question of, of getting experience of a tribunal, of an international criminal tribunal. When I was first here at the beginning of the tribunal in 1998, I, I, I found that the principles, the way of deciding, the way of doing trials was not yet settled. People did not know exactly how to conduct trials, well, in, in my perception of course.

01:09 Judges were not – well, of course they're coming from different system. It's hard to, to, to decide in the same way, to think the same way. And there had to be experience to, to be taken and I think that now things are moving in a good way. But also there, there is a question of, of, of conducting trials of course and there is also a way of conducting prosecution; disclosure of material, for instance, disclosure of exculpatory material.

01:56 It is not in the mentality, it is not in, in, in the mentality of the prosecution to disclose what they have. They are trying to hide what they have in order to get a conviction. And that I can say because I lived it. I, I, I experienced it very closely.

02:17 DJH: Can you tell us, give us the example if you feel comfortable doing that?

02:23 Yes, I, I have an example. In the first trial I made, I remember an occasion when I was (_____) a, a declaration made by a witness who was stating in his declaration, in his written declaration that a person, a certain person was assassinated by one of the three accused in our case. It was not my client who was involved but it was one of the three accused.

02:59 But he was also stating other things against my client and so I had to challenge his, his, his credibility when I crossed examined him. And I also had another declaration made by an investigator who had interviewed this particular witness and who made a report saying things that the witness declared to him, told him. And . . .

03:26 DJH: And, and that investigator statement had been provided to you by the prosecution?

03:31 Yes, yes.

03:32 DJH: Okay.

03:34 And I, and I had it. So when I started cross-examining the witness, prosecution reacted in saying, “How, how come does the defense have this document?” They, they were – well, we could see the reaction. Of course they did not make, make it public but of course we could see the reaction but the document had been disclosed.

03:54 We had, we had the investigator's notes. So I started to cross-examine the witness and it was almost impossible just to have the witness admit that he had met this investigator on the second occasion. Well, first it was a question that the witness who didn't want to say, probably because he remember having said different things in that declaration and he never admitted having, having met with an investigators.

04:25 So I had to call, in defense, I had to call that investigator and I finalized my, my cross-examination with the witness by this simple question, “Did you or did you not meet with the investigator on such a date and made a declarations to hi-, and made a declaration to him?” He said, “No.” So I had a defense to prove that he made another – how do you say that? How do you call that?

04:59 **DJH: Statement?**

05:01 Another prior inconsistent statement.

05:04 **DJH: Oh okay, a prior inconsistent statement, sure.**

05:04 Yes. So I had to prove that. I, I first had to prove that he made a statement and then I had to prove that he made an inconsistent statement.

05:13 **DJH: Right.**

05:15 So I called, I called the investigator as a defense, a defense witness. He testified to the effect that in fact, he met the witness on such date and that he, he got the declaration of the witness and that the, the, the witness said an inconsistent, gave an inconsistent statement with what he had said in court. So I had to that, but what I want to make, the point I want to make is that the prosecution was never able to admit that this investigator met the witness.

05:58 It would have been very simple if they had an, an openness culture to say, "Well, of course we have an investigator who met the, the, and we admit that the, the, the investigator, the prosecution investigator met with this witness and, and had and took a declaration from him." This would have been a very simple matter but they were never able to admit that, you see.

06:29 **DJH: And, and presumably, what I'm hearing from you is that somehow you got this statement, the witness statement not through, or this investigator's statement, not through the prosecutor's office but some, some other way. And I won't ask you what that way was.**

06:48 No, no, no, no. But I can, I can say (_), I can say what I said in court. Of course it was public. If I remember well, this statement had been disclosed to another accused who was at the . . .

07:02 **DJH: Same place.**

07:04 Who was at the same place, who was at the UNDF.

07:06 **DJH: Okay. Okay. But it was not disclosed in your case.**

07:11 It was not disclosed in my case, okay. And finally I obtain that decl- my client in fact obtained the, the, the declaration from another colleague detained with him at, at the UNDF and this is how we finally obtained it.

07:25 **DJH: Have there been other . . .**

Part 8

00:00 **DJH: Have there been other situations, and we won't go through all of them, where you have had if not exactly the same experience, similar experience in terms of a culture of non-disclosure.**

00:11 Yes. In the same case I had another situation that is very close to the one I, I, I just explained but I'll give some details to, to explain it to you. My client was accused and there was, there was a witness who testified that on a certain date he, he made a, he made a, how do you call that? A (_____) . . .

00:43 **DJH: A statement?**

00:44 A statement, a public, a public declaration. It was public meeting and he did a declaration during a public meeting. But for that occasion he, he, he very clearly said that it was at a specific period of time. And I knew for a fact that at that time – oh no. I'm sorry. This is not the good story so withdraw that from the camera.

01:12 **DJH: Okay, alright. Very good.**

01:15 I'll, I'll start again. It's another thing. No, I was, I was confusing in between two stories with the same witness but I'll, I'll tell you the, the story I, I had in mind, okay. So the, the, the story I had in mind is that my client was accused on a specific date which was the 28th of January to have come into a particular place in a helicopter with a military to, with particular military coming from the same prefecture who was, who was a known military, to distribute weapons to militia.

01:53 My client said, "Listen, I did not do that. I did not go to, to that place on that date. I, I, I was in Kigali. There is no other way I can say I was in Kigali. I, I was just in my office on that date. I remember because it was the, it was a, it was a holiday. It was the, the Republic Day and I remember having been in my office during that day.

02:23 But the person I'm accused of having distributed weapons with is General Kabiligi and Kabiligi on that particular date was in Egypt. He was in Egypt. He was on a mission, on an official mission in Egypt." So what I did, I called the, the, the witness. I called Kabiligi. He testified to the effect that he was in, in, in Egypt and that he, he was on an official mission from his government.

02:59 And he had documents, documents that were disclosed to him in his case by the prosecution. And the documents was a report that he had made to the president of

the Republic on his return from his mission. It was a mission report. The prosecution had that. They never admitted having that.

03:24 They never admitted that this document was a real document although they had disclosed the document to Kabiligi himself. So they had, they had to, to write to the Republic of – to, to Egypt.

03:41 DJH: Sure.

03:42 They had to write to Egypt to obtain all sorts of documents which they finally after a very, very long and hard process, they finally disclosed to us and had to admit. But you see it, it, it is something very easy to admit and very clear this is the truth. This is the simple truth.

04:02 They know the truth and they don't want to admit it because of course they would break their, it would break their evidence. You see, so this is something I, I have, I still have problems with.

04:14 DJH: Okay. And you know of course that the rule is that all exculpatory evidence must be disclosed . . .

04:18 Sure, sure.

04:20 DJH: . . . to the defense. And also I gather all statements, all statements of anybody who the prosecutor wish, wishes to call as a, as, planning on calling as a witness.

04:31 Mm-hmm.

04:32 DJH: Okay. And I, I was told that by a prosecutor.

04:34 Yes.

04:35 DJH: And I take it you'll agree that that is the rule.

04:37 Well, of course it is clear in the rules. It's Rule 68. It's very, very clear.

04:40 DJH: Okay. Okay. Let me go on because we have limited time.

04:43 Okay.

04:45 DJH: And let's talk briefly about the case you're currently handling which is – and I gather is not concluded and obviously I don't want you to go into anything which

is privileged or confidential, but maybe you can tell me a bit about what the nature of the case and at what stage is it.

05:02 Okay. This is a case of well, which is commonly called here Military Two. This is a case involving four militaries.

05:16 DJH: High up, I take it.

05:18 High ranked militaries, yes. I was very recently appointed co-counsel in this case. This case has been going on for four years. There are more than 350 days of trials so far and I came at the very end because the co-counsel of one of the accused just left.

05:43 He withdrew from, from the file and the lead counsel asked me to replace him and, and help him in, in concluding this case, concluding this case and preparing the final arguments and, and this is at this stage only that I came in to the case.

05:58 DJH: Okay. So you're fairly recent.

05:59 Yes.

06:00 DJH: How soon do you think the case will be, will conclude, at least in the presentation of evidence (_____)?

06:05 Yes, at the presentation of the evidence. Well, from what I can expect, it, the evidence will be concluded probably by the end, no, by the beginning of 2-, 2009.

06:18 DJH: Okay.

06:18 We have a session now. We have, we are actually, actually going, have an on-going session that is supposed to end on the 5th of December. And w-, we think that they will, they will need an additional, they will need an additional session in January because the, because of a decision of the court who concluded of, who concluded that there was a violation of the right of the accused to be disclosed exculpatory material by the prosecution in order to recall some (__), of the witnesses and call additional witnesses.

06:58 So we can see that there will be an additional session at least.

07:02 DJH: Okay. And who are the three judges in the case currently pending?

07:06 Okay. We have Judge de Silva. We have Judge Hikmat and Judge Khan.

07:14 **DJH: Okay. And I remember de Silva's from Sri Lanka. And . . .**

07:18 Yes. Hikmat is from Jordania, Jordania and Khan is from Korea.

07:27 **DJH: Okay.**

Part 9

00:00 **DJH: My next question is, is there something that you've been associated with or that you feel you've done of which you are particularly proud? And you've been here a long time. One or, one or more if you want.**

00:15 It's hard to say, hard to answer that question, question except that I'm proud of having participated in the process of dealing with the justice, with in-, with international justice. This is of course, this was of course new to me and it was, it was roughly a good experience. Well, the fact that I came more than once in, that I was involved in more than one case shows that I was, I was really happy of doing that.

01:02 **DJH: Okay.**

01:03 But there's nothing in particular that I would be proud of except participating, doing my, my little part in this, in this system, in this, this international justice system.

01:15 **DJH: Okay. Anything that disappoints you about either your own participation or about the process, the court . . .**

01:24 Well, as I have mentioned already it's, it's mainly to realize how, how the prosecution was, was acting in, in this matter because I, I gave you a couple of stories relating to my first case but things like that happened in the second one too and, and I can realize that things like that happen in the third case too.

01:45 So I'm, I'm, I hope this will help but I think the decision of the chambers will help the prosecution to, to go along with, with this and make a certain evolution in, in the way they are thinking, in the way they are acting. I hope it will make a certain, we will make certain steps.

02:10 **DJH: Okay. I want to talk about sentencing for a minute. Sentencing in Canada or in the United States – you know the cases we have done ordinarily involve multiple and multiple murders or multiple significant crimes. They may, but none at least of the numbers here and, and crimes, genocide. How – what is your**

perception? Are the, is the sentencing kind of, pretty much the same considerations and quality or is it something different?

02:50 **DJH: We know that the death penalty is not (_____) here . . .**

02:53 Applicable here.

02:55 **DJH: Not applicable and I don't think it is in Canada.**

02:58 No, it is not either.

02:58 **DJH: It is in the States as you know.**

03:00 Some, some states, yes.

03:01 **DJH: Some states. So, but leaving that aside, is . . .**

03:08 Well, I think that of course as an international tribunal, judges have to deal with a certain scale, with a certain – they have to establish a certain scale and they have, well, they have to establish that certain crimes won't be punished by, by life imprisonment; because if I'm just making a comparison with what we have in Canada, being convicted of a murder is life imprisonment.

03:51 Of course, if you are found guilty of, of, of several person, it's life, you know, it's, but in the course of a, of an international criminal justice, I believe there has to be a scale. There has, judges have to determine what deserve life imprisonment and what does not. And well, in my eyes it's quite appropriate what they have decided so far, as far as sentence is concerned.

Part 10

00:00 **DJH: Rwanda itself is, and I don't mean the country but perhaps the country but certainly many of the people of Rwanda, are in some ways a party in interest, if you will, to what goes on here. Do you have any thoughts about the relevance of what's happening and how, whether there has been s-, sufficient relevance, connection if you will, to the victims or to the Rwandan people in, in this process?**

00:31 **DJH: And, I mean I understand the defense side is not looked upon with great glee by many of the people there. I'm thinking of you now as an officer of justice which is what ultimately, hopefully all of us are.**

00:55 I don't know if that will answer your question but what I think is, of course, the tribunal here is important to Rwandan people and I'm thinking of the people themselves. I'm not talking of the authorities which is . . .

01:19 DJH: Yes.

01:19 . . . which is a different matter.

01:20 DJH: Sure. And I'm talking about the people as well.

01:23 Okay. Okay. I think it is important for them to have the crime against them recognized by an international authority, an international justice, an international court. It is important for them because they suffered great pain. It is important that a, a tribunal like the ICTR comes to decision concerning the crimes committed at the time and it is also important that these decision be known to the, to the public, be known to, to the person in Rwandan, in Rwanda.

02:18 But sometimes explain, because people in Rwanda can very hardly understand why a person accused here who was at the time an authority, how a person can be acquitted. That they do not understand. So it has to be explained to them. It has to be explained how it happened, what they did exactly because everybody is presumed in, in, in . . .

02:49 DJH: Innocent. (_____) . . .

02:50 In the mind of, of the ordinary person, everybody, everybody here is a guilty, is a guilty person. They don't understand the role of the tribunal, the role of deciding of the guilt or the innocence of, of the accused here. And this is, I think, part of a certain educational, is that a word? Educational, educational . . .

03:16 DJH: Yes. It's a word.

03:20 . . . role of the tribunal. The, these decision have to be explained so that the people understand, that a person here is accused of a particular crime with a particular material fact. And there has to be clear evidence that the person is guilty. Otherwise, the person has to be acquitted. This has to be explained. Well, it, it, it's very similar to what happened in our national system.

03:54 In fact, we all know for being in the system that once a person is, is arrested by the police and charged before a tribunal, well most of the people think that person is guilty. But even though the person is guilty, it's, the person sometimes have to be

acquitted because the evidence against him or her is not sufficient, is not beyond reasonable doubt.

04:24 And there is still the possibility of being innocent – that has to be understood by the people. And, and, as far as the tribunal has an ed-, educational role, I believe this has to be, to be done.

04:41 DJH: Okay. You've partially answered another question I'm going to ask you in a couple of minutes.

04:45 Nell Carden Grey: (_____).

04:46 DJH: Okay.

04:47 NCG: There's four minutes left on this.

04:48 DJH: Okay, we'll do the best we can. And I, I'm not sure this will work but, because the next question is, you've been here a long time. I think you've probably gone back and forth to Canada sometimes but you've heard a lot of very agonizing facts, difficult facts, some of them very horrible facts. How has this affected you? How has this changed you as person?

05:19 Well, you see we, we are, we're doing a, we're doing a job. Of course when we are listening to, to all those, those facts, of course it is disturbing. But it is like – it is like, it's the same thing for the judges. It's same, same thing for, for, for everybody here but we are dealing, of course, we are dealing after the fact. We are not – I, I, I wouldn't, I would not even think of being present when such an, an, an horrible crime happened like that.

06:04 But you see after the facts, it's, it's something different. We, time has passed. Things are, are, are explained to the court, are told to the court and of course we have to keep a certain distance between what happened and the role we have to do otherwise we wouldn't be able to, to act as, as defense counsel.

Part 11

00:00 DJH: (__), have you, in the course of, you know you talked about you tried not to let it affect you, but other times when sort of it gets to you and you must talk to a friend or your family or, or whatever to, to sort of deal with your personal, or have difficulty sleeping or whatever, whatever it is and I'm not trying to get into too, too deeply. I'm not being a psychologist here.

00:26 **DJH: You know, you're right. We've, it's the same in some respects for you and the judges and the prosecutors. You all hear much the same information and I'm just trying to get at the human aspect of it and you needn't, you know, go too far if you don't wish to.**

00:43 Well, as I have mentioned it's, it's always very disturbing to, to, to look at what happened at that time because it was horrible. It was, of course, it was absolutely horrible.

00:57 **DJH: And have you taken site visits as part your process here as a defense counsel?**

01:03 Yes. I have taken part in one site visit, but it was, it was not a, a, a visit with the whole chamber. It was a, a very private, I would say a defense visit that I made in a particular location because we had a witness who was present and who was telling at that time that our client made, made a public meeting, and that he made declarations before the public.

01:32 And he was establishing – well, it, it was very material. He was establishing that he could hear very clearly what was said by my client when we could have very strong doubts about that in view of the distance he was from him and in view of the place he was hiding. So we went to the place and realized that the witness was saying in court that he was at a distance of approximately ten meters.

02:02 And in fact when we went to the place we realized that he was at least at 50 meters which was quite different. So I made a, I made a site visit just to see the place, how, how the location of it and how, from where he could have seen our client. And, and after that, made a, made some evidence about that.

02:26 **DJH: Was this a site that, besides this question, was one that would demonstrate what went on there?**

02:34 No, no, no, no, no, no, no.

02:36 **DJH: Okay. Yeah.**

02:36 No.

02:37 **DJH: And have you been on your own or, or officially to like some of the site-, quote "memorial sites?"**

02:44 Yes. Yes. I've seen some of them. Very impressive, very impressive.

02:49 **DJH: Yes. Have you been to the one that's beyond Butare, the one – in the school up on the hill where the sk-, where the skeletons are? Yeah.**

02:57 No, no. I did not see that.

03:01 **DJH: No, okay. But you have seen . . .**

03:02 Pictures of that, yes.

03:04 **DJH: Pic-, pictures of that, and you have been to some of the other sites.**

03:07 Mm-hmm, mm-hmm.

03:08 **DJH: Have you been to the genocide museum?**

03:10 No.

03:10 **DJH: Okay.**

03:12 No. Maybe later.

03:14 **DJH: (_____) Yeah, yeah I understand. I, these are questions I must ask. Yeah.**

03:18 It's okay.

03:19 **DJH: And, and, at the, at the end of the day, I'll ask you the question you know I'm going to ask you and I know it's, I haven't given you pre-, preparation time but if there was, if there were a few things that you, if you were designing a tribunal for the future and I hope it would not be necessary but I, I think current events may be telling us different.**

03:48 **DJH: Are there some things that you would want to be in the design of such a tribunal that you think would make, make it better, better quality of justice, or more efficient or more fair?**

04:10 If you give me the chance to think about it, I could possibly come back with some observations.

04:18 **DJH: Okay. Okay.**

04:19 But for the time being, I'm just a little bit caught by surprise by this question.

04:23 **DJH: Okay and I apologize for . . .**

04:24 And I would, I would prefer to, to give you an answer after having thought, after having thinking about it.

04:31 DJH: Okay. Thought about it, okay. And if you want, if you want, if you want to send us a few paragraphs or whatever in writing, I'm not, you know, not going to hold this, you know, by email or something.

04:37 Okay. Okay. Okay.

04:42 DJH: But we'll work out some way because I would like to have the benefit of your thought. And the last, then the last question is without any structure at all, you are now speaking to the future. These, this film will be seen by high school children perhaps or legal professionals or just citizens, whether of Rwanda or other parts of the world.

05:06 DJH: Is there something you'd like to say to the future at this time based on your extensive experience here?

05:20 Again, I think I will ask for time to think about it and then possibly come back to you with that, with that question or some . . .

05:30 DJH: Okay and you are, you are cordially invited. And it won't be as long as we have done here today.

05:34 Okay. Okay.

05:37 DJH: Well, thank you very much.