



Voices from the Rwanda Tribunal

Official Transcript: Everard O'Donnell (Full Interview)



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Interviewer:	Donald J Horowitz
Videographers:	Max Andrews Nell Carden Grey
Interpreter:	None

Interview Summary

Everard O'Donnell discusses the unique characteristics of ad hoc tribunals and the challenges of coordinating multinational ad litem judges. He notes that the ICTR has been effective at tracking and capturing international fugitives such as Jean-Paul Akayesu. Although the ICTR has been criticized for providing 'victor's justice', O'Donnell stresses its efforts to deliver justice impartially. He reflects on the case of Mika Muhimana who was convicted of genocide, but later had his conviction overturned by the Court of Appeal.

The transcript of the interview begins on the following page.

Part 1

- 00:00 Okay. Well, my name is Everard O'Donnell. And I'm the Deputy Registrar.
- 00:04 **Donald J Horowitz: Alright, and I'm Judge Donald Horowitz of the ICTR Information Heritage Project, and I will be interviewing you for a certain period of the time, and then Ms. Nathan will take my place for part of the interview as well. And tell us what the duties of the Deputy Registrar of the ICTR, the International Criminal Tribunal for Rwanda, are.**
- 00:36 Okay. Interestingly, he is not the Deputy of the Registrar just. He has his own separate functions. In any rational organizational structure, somebody who's called the Deputy Registrar might be expected to be the person who assists the Registrar in all his functions, but nothing like that here.
- 00:59 A Deputy Registrar's job is to look after all the sides of the court function process. The actual supporting the court themselves. From the prison, comes under the Deputy registrar, the language section, translation services, court reporting, archives, court management, defense teams, the provision of basically all immediate support to the court system.
- 01:41 As separate from the administration of the organization as a whole, which goes under a separate category.
- 01:47 **DJH: Explain to me what 'the administration of the organization as a whole' means. It's . . .**
- 01:53 Well, in any mission of the United Nations, you're going to have very much the same kind of support – life support systems.
- 02:01 **DJH: Okay.**
- 02:02 Payments, finances, travel, shipping – all those sort of materials. They're they're, separated off from essentially the immediate legal support functions, which comes under me.
- 02:15 **DJH: Okay. So you're not directly involved with those other administrative functions. You are, essentially, the court support, or, and the – and those that come with court.**
- 02:28 That's right. And I mean, Re-, the Registrar himself is in charge of the administrative support functions. So that's why I say that I'm off on the side. I don't sit in the hierarchy of the – the organogram of the tribunal. I don't sit in a line directly beneath the registrar. When he goes away, of course, then I am meant to fulfill his functions.
- 02:52 **DJH: So at this moment, for example, he's not back from somewhere. You're in charge of that as well?**
- 02:57 Ostensibly.

- 02:58** DJH: Okay. Let's go back for a minute – or a few minutes – and ask you a little bit about yourself. Where are you – where are you from, originally?
- 03:09 From England.
- 03:10** DJH: Okay. And tell us a bit about your education and training and profession.
- 03:16 All right, I was – at the University of South Hampton. I did my Bachelors and my Masters in International Politics there, under Professor Joseph Frankel. And then I read for the Bar and was called to the Bar in 1976 and I practiced in criminal law, in both defense and prosecution. I have a rather bizarre little English barrister habit of being a prosecutor one day and a defense I-, attorney the next.
- 03:48 And then, after that, I became a little too specialist in prosecution, so finally I joined a new professional prosecution service in England and became a, a crime prosecutor, then a senior crime prosecutor, before I finally made the fundamental mistake of taking an apple from an American lady in my orchard in Devon, and was subsequently seduced and went to America.
- 04:17** DJH: And where – and, and where, where did you go in, to in America?
- 04:23 I went to a place that very few peo-, it's sort of a cultural black hole called western North Carolina in the Appalachian Mountains, where I soon discovered that my curriculum vitae as a senior crime prosecutor of the west of England did not exactly translate into any known function.
- 04:45 And so, I – after a time, after a time which I devoted to breeding, which I don't think you probably want to hear a great deal about, I had two children and then we – I joined Legal Services of North Carolina. And . . .
- 05:03** DJH: That's civil legal services?
- 05:04 Civil legal services.
- 05:05** DJH: Yes.
- 05:05 Purely civil. And I proceeded to act as pro bono coordinator, and then I worked on HIV AIDS projects in Asheville, and in, in due course was recruited in 2000 to come here.
- 05:22** DJH: Okay. Just to be clear, because there are a lot of people who are going to be viewing this years from now, and, and from different legal systems – when we talk about civil versus criminal, in the United States, everything that's not criminal is civil. Is that kind of your understanding? How would you define, you did civil legal aid, which was different from the prosecutions you'd been doing?

- 05:48 Yeah. I mean, it involved, essentially, I mean, poverty law. It's a special branch of civil () law, as you have defined it. And it is essentially involves landlord and tenant issues, any issues involving entitlements and so on.
- 06:07 A program, actually, a wonderful program, set up by President Johnson in the war on poverty, originally, and then rejuvenated by that great liberal, Richard Nixon, and then I think sort of facing considerable degree of difficulty during the time I was there, of funding.
- 06:27 But it was a very, very interesting and mind-expanding experience, because I was able to see the underbelly of American capitalism, which is an experience that I think everyone should have, particularly those in America who are in leadership positions.
- 06:46 DJH: Okay. And so, in this you are representing f-, may I say the interests of essentially poor people.**
- 06:59 Yes.
- 06:59 DJH: Pe-, the underserved, the vulnerable, and so forth. Now, you were not a member of the – were you a member of the Bar?**
- 07:07 No.
- 07:08 DJH: Did you become a member of the Bar?**
- 07:09 No, no.
- 07:09 DJH: So were you allowed to do some actual court practice?**
- 07:13 No. What we did was basically everything but.
- 07:16 DJH: Okay. ().**
- 07:16 So case preparation, case screening, interviewing, going out, field work. And as far as the HIV AIDS project was concerned, that again, organizing. And in due course, I became President of the western North Carolina AIDS Consortium, which was a sort of – essentially a consortium of funders for you know, targeting the HIV AIDS population of North Carolina. At that time, a very diverse population.
- 07:51 DJH: Mm-hmm. And how many years were you, then, in that area, or in () . . . ?**
- 07:56 Seven years.
- 07:57 DJH: Okay. And then you say you were recruited for the UN?**
- 08:02 Yeah.

08:03 DJH: How did that come about?

08:06 Well, a certain amount of dissatisfaction on my part with being in western North Carolina and not really practicing an area of law that I was very interested in, although the experience itself was very valuable, led to my communication with a number of my ex-colleagues in England.

08:27 And in, in due course an opportunity came up, a particular request had been made by one of the judges here, a commonwealth judge, that he wanted an English barrister to assist with the work of the chambers here. And so I was invited to apply, which I then duly did, and was duly taken on, in, I think, the space of about eight weeks.

08:49 DJH: Okay. And that was in the year 2000, was it?

08:52 Yeah.

08:53 DJH: Okay.

Part 2

00:00 DJH: Let me go back six years, if I may, to 1994. That's a year that has taken on some significance for you, I'm sure. Do you remember, or can you try to remember, what you were doing in 1994, particularly in April when things got particularly difficult? And when you first heard about it – tell us a bit about that experience.

00:29 Well, I don't know whether you've ever been to western North Carolina, but it's a pla-, a place in which not only is it extremely mountainous, but culturally, it's extremely remote from the rest of America.

00:43 And apart from Asheville itself, which is a fairly cosmopolitan town, all the area around Asheville – and I was in, may I say, a, a Fundamentalist Baptist county, a dry county, a county that probably wouldn't have really been able to know in which direction Europe was.

01:07 And so, there was remarkably little reporting of what happened in the Third World, and in particular, Africa. And the first I heard of what was going on in Rwanda was, interestingly enough, at a poetry slam in Asheville, when someone proceeded to read a poem about the events that had been unfolding in April. This was early May that I was at this poetry slam.

01:41 And I was really astonished that anything like this was going on. The guy, the poet, did an introduction and then read a poem, and so I went up to talk to him afterwards and asked him what was all this about. And that was – I heard it word of mouth. Then, of course, I found out all about it thereafter.

02:00 But it had remarkably little impact upon most Americans. And I don't think, for example, my wife and her friends in western North Carolina knew anything about it until months after, abo-, when I, when I started talking to them about it.

02:20 DJH: And that would have still been in '94, or '95?

02:22 Yeah.

02:24 DJH: And in the interim years before you left western North Carolina, did you have any special interest or involvement with, with the subject?

02:36 Well, as a senior crime prosecutor, one of my areas of interest had been international criminal law. I'd been concerned with international environmental law. That was one of my particular professional responsibilities in the United Kingdom. But very little. Most of our work was really national – of national concern.

02:59 DJH: Okay. So now you had this opportunity in, in 2000 to come to the ICTR. What did you know then about what was going on here – that is, what were you told before you got here?

03:17 Well, that's an interesting question, because naively – I mean, I read of course, everything that I could in the short space of time that I had. And it looked to me as if it was, you know, remarkably interesting and a unique organization, and one that my background gave me no particular lead in as to how to approach it.

03:39 And my request via email to the then Registrar for details of my job description and what I would be doing didn't meet with any reply. Telephone calls here didn't meet with any particular information. So I was in a state of somewhat – well, a certain penumbral awareness, as I set out.

04:04 But I, I dropped in on my government in England to meet my previous colleagues in the crime prosecution service, and I met also the people in the foreign office, who had been part of the process by which I had learned about this job. And I was told then, I was given a sort of particular perspective upon the tribunal.

04:29 And there was a cer-, I was led to believe that there was a certain amount of concern about the lack of progress made by the tribunal at that particular time. The lack of casework, the fact that only by, by that time, only one full trial had taken place. The fact that the other trials, the pre-, the pretrial process had, had not really got off the ground. The fact that, of those arrested, they, it looked as if they were going to be a long time awaiting trial.

05:02 And a general lack of, I would say, lack of certainty on the part of the United Kingdom government about the future of the direction of the tribunal. And indeed, one of the comments made to me as I was leaving was something to the effect of – I'm not going to give you a quotation, but – that they hoped that the efforts could be directed towards bringing the tribunal to a close.

05:36 DJH: All right. And, and so – had you been to Africa before?

05:41 Never.

- 05:43 DJH: Okay.**
- 05:42 I was, I have a, a Middle Eastern background as a child, but not . . .
- 05:47 DJH: Where in the Middle East?**
- 05:48 Oh, everywhere. Aden, Iraq, Beirut, everywhere. My father was a Middle Eastern civil engineer.
- 05:56 DJH: Ah. Okay. So you came to Arusha?**
- 06:00 Yeah.
- 06:01 DJH: Okay. Did you also – well, let me – when you got to Arusha, did you know what your job was going to be?**
- 06:09 No. I presented myself – well, it's always a very alarming experience, particularly in those days, to arrive at Arusha airport, and you get driven through the darkness, all alone in a bus and you know, there are road blocks and lights dimly seen, and then you get thrown out in a hotel. All alone, you have absolutely no clue about where you are or what's, what's happening.
- 06:33 And the next day, I presented myself at the tribunal to be greeted with astonishment as to, “Who on earth are you?” There was no office for me. I presented myself in due course, I think on the second day, to the President, President Pillay, and I said, “I'm a new senior legal advisor in chambers.” And she said, “Oh, are you? Who sent you?” So, it was that kind of experience.

Part 3

- 00:00 DJH: When you talk about the President in a lot of cultures, that's not understood. Is that, was that the President judge?**
- 00:07 Yes.
- 00:08 DJH: Okay.**
- 00:09 Yes, the, the, the judges, the permanent judges of the tribunal – in those days, there were only permanent judges – elect from amongst themselves a presiding judge, who's called the President, and a Vice President.
- 00:21 DJH: And is there some term of office, either by custom or by regulation or statute?**
- 00:28 No, there is a term of office. Each judge has a mandate of four years, and a President has a, a mandate of two.
- 00:36 DJH: Okay. And are they renewable?**

00:41 Yes.

00:42 DJH: Both the President and the other terms?

00:45 Yes.

00:46 DJH: Okay. So the President judge didn't know you were coming?

00:52 No, I, I, I mean, I think, I think the, the President, at that time, there was a considerable conflict between the Presid-, the President and the Registrar, the then Registrar, and there was a considerable lack of communication between the two poles of the tribunal. If I can explain . . . ?

01:11 DJH: Sure.

01:12 As you know, if you've looked at the statute of the two ad hoc tribunals, you'll see that it, it, it's a, it's essentially a compromise between the mission model and between the way a court functions. You have the Secretary General's representative, who's the Registrar, and he, in the statute, is given responsibility for the administration of the tribunal.

01:38 DJH: You're talking about the statute which creates this ad hoc tribunal?

01:42 Right. It's the one passed by the Security Council, incorporated in the original Security Council Resolution, which then became our, to some extent, you could say, our constitution.

01:51 DJH: Okay.

01:51 And . . .

01:52 DJH: And i-, so, this is not a court that is formed by treaty between or among nations?

01:58 No, not like the ICC. No, I mean, obviously we are a treaty creation in the sense that the original United Nations charter is the treaty which set up the Security Council. The Security Council then set up the ad hoc tribunals as subsidiary bodies of itself. So we are, in fact, an organ of the Security Council.

02:17 DJH: And an ad hoc tribunal means what?

02:21 It means that it lives, and then it dies. It, it's a temporary court. It's an unusual situation, because, you know, as you know, in all national courts, we're not used to short-term courts. The Star Chamber, I can, I can remember, in the United Kingdom's experience, was a short-term court.

02:39 Courts set up for specific ex-, events and particular experiences usually are frowned upon, I think, in jurisprudence. It, it, it smacks a little bit too much of non-routine justice. It smacks of

setting up a structure for a particular event. And that's one of the reasons why the ICC was set up to be a permanent institution.

03:04 DJH: Okay. And by ICC . . . ?

03:07 The International Criminal Court in The Hague.

03:09 DJH: Okay. And that was set up by treaty, when?

03:11 It was set up in . . .

03:15 DJH: Approximately.

03:15 . . . it became effective in July 2001, when there were enough signatories to the actual treaty.

03:21 DJH: And so, that came after the two ad hoc tribunals.

03:26 Yes. The two ad hoc tribunals were set up in 1993-4, when you have these two m-, massacre events in the ex-Yugoslavia and in Rwanda, inaction by the Security Council, general feeling – I mean, obviously there was action in due course by NATO in the ex-Yugoslavia, but it was felt to be very much too late in the day.

03:57 There was total inaction in Rwanda, withdrawal of the UNAMIR forces. The United Nations was generally seen to be impotent, and the Security Council in particular impotent.

04:09 And so, there was a sense after each of these events, “Well, how can we be seen to be acting, you know, so that it looks as if we've made some response rather than just wringing our hands and weeping crocodile tears.” Or real tears. Who knows? I mustn't be too cynical.

04:29 DJH: Okay. So let's get back to where you were talking. You said there were some problems between the President, the ju-, the judiciary or the, the judges, and, and the Registrar?

04:38 Right. Right. The Secretary General appoints the Registrar, who's an Assistant Secretary General. And there you have, to some extent, the peak of the pyramid in the United Nations staffing table. And to all intents and purposes, when you look at the statute, the Registrar looks as if he's at the apex of the pinnacle.

05:01 But then you've got the judges. The judges appointed, they're Under-Secretaries General, so they, they elect the President from amongst themselves and the President is a person who's actually meant to be running the scheduling of the court hearings, running the sittings of the judges, the appointments of the judges – you know, basically handling the whole of the judicial side of things.

05:25 And you've got an obvious area of conflict there. I've spoken to the original architects of the statutes, and they both have under-, undertaken that this would never b-, have been done, if it had been done again, had they seen what the result would have been. Because, well, what

happened was after the rules – the rules under the statute – the, the judges were entitled to make rules of procedure and evidence . . .

05:53 DJH: And there were two statutes, one for the former Yugoslavia, and one for Rwanda.

05:56 Yugoslavia, yeah. That's right.

05:58 DJH: Are they were pretty identical?

05:59 Yes. Pretty identical.

06:00 DJH: Okay.

06:01 There are, there are differences in the definitions of crimes because of the difference in the nature of the massacres in the former Yugoslavia. We have a, a – basically our basic crimes are targeted towards internal crimes rather than international crime. So there were special provisions made for that. But apart from that, basically the statutes are the same.

06:29 And the Yugoslavian judges had been given a rule-making power under one of the statutory provisions. And they had met together in plenary even before our creation, and had developed, abou-, just over a hundred rules of procedure and evidence.

06:45 And it was obviously quite early on that the fact that the judges felt that they should be in a supervisory role over the secretariat side of things, became manifest. Because the judges passed a rule making it clear that the supervisory function would be performed by the President over the Registrar. And that is expressed in two of our rules now.

07:17 We took over the rules, again, from Yugoslavia, and so we have the same supervisory provisions. So although it doesn't appear in the statute, in two places in the rule, it says the Registrar shall be supervised by the President.

07:31 So you can see that there, there was – the judges i-, in effect made it perfectly clear that as far as they were concerned, and no matter what the statute said, they were going to be exercising the governance of the tribunal. And it caused conflicts in the early days of the, certainly this tribunal.

07:52 Because the Registrar felt that there were certain responsibilities that he had as the senior staff member responsible to the New York, to the General Assembly, to the Secretary General, that he could not just do whatever it was that the President wanted him to do.

08:11 Whereas the President felt that she had a right to say, "I want this, I want, you know, this, and I want this person recruited," and so on. "And I want it done now." And the UN rules, you know, don't work like that. They work very fairly and they work slowly, it has to be said.

08:29 DJH: Are they – and this affected you in, or your initial experience?

08:34 It did. Because when the Registrar told me, "Oh, you're going to be the Chief of the chambers," I then relayed that information to the President and her immediate response was, "I don't think so. No, you're not." So . . .

08:50 DJH: So what happened then?

08:51 Well, I made my excuses and left, bowing backwards as you know, showing obeisance. And went back to the Registrar and the, the, the matter continued i-, in – with a little bit of a, a delay. In due course, what I – I was able to slowly develop a rapport with the senior judges and in due, in due course, the conflict between the Registrar and the President was resolved.

09:23 The Registrar was removed and replaced by the present Registrar, Adama Dieng, who has always had a very good working relationship with the judges and with the presiding judge. Complete change.

09:36 And basically, our system, our bipolar system, can only work if there's a close working professional, and one hopes sometimes friendly, relationship between the two poles. And that's been the case ever since the appointment of Adama Dieng.

09:55 DJH: And when – and was that in 2000 or 2001?

09:57 2001.

09:58 DJH: Okay. So what did you do in the mean time?

10:01 Just slowly developed, inch by inch, warm relations with people. Diplomacy. Just, in, in, in – so often in the United Nations, personal relationships matter. And the United Nations in this particular continent, one would say they matter even more.

10:23 So you can't just rely upon your formal function and say, "But this is my position. I therefore expect you to do this, this, and this." You have to develop relationships here. And that was a good lesson for me, because previously I had not really been able to work like that.

10:39 DJH: 'kay.

Part 4

00:00 DJH: So, but, but I'm still I guess a bit confused, and maybe because it was confusing, about what you did those first months? Were you acting without – forget the title for a minute – were you acting as the Chief of chambers, or would, what . . .

00:15 As far as the staff were concerned, yes. The staff of chambers, the legal officers in chambers had actually wanted a Chief of chambers. They had been very much looking for someone to give them direction, give them some kind of management.

00:27 DJH: Had there not been one before?

00:30 There had been some time before, but it had been a long hiatus, a long gap. And that had, that had caused the certain amount of dissatisfaction, and directionlessness amongst the legal staff.

00:45 So, you know, getting people, going around, talking to them, getting them back together. Devising a c-, a continuing legal education program, having meetings, giving them a sense of corporate identity. By this process, I was able to start to function as a Chief of chambers.

01:03 DJH: And tell me what the functions of the Chief of chambers are.

01:07 Well, the Chief of chambers basically operates as the immediate manager of all the, all the legal staff who work directly for the judges. And then he also acts as the interface between the judge's chambers and the rest of the tribunal in the sense of making demands upon the resources of the tribunal and then also bringing back, information back into – and feeding it into the judiciary and the immediate legal staff.

01:38 That's officially it. In fact, what you found was that the, the most intimate relationship that exists is between a judge – we had nine judges at that time. Well, nine here and then two in The Hague as part of the appeals chamber.

01:56 And each judge has an associate legal officer, usually a very young lawyer, fresh out of law school or with only a couple of years of working experience. Usually very highly qualified, academically, who work on drafting the decisions, advising the judge, legal research, and so on and then finally drafting the judgments.

02:18 Now that, when I came here, that was a very personal relationship between each judge and the associate legal officer – actually, the judges had been selecting directly their own associate legal officers.

02:29 This had been a cause of conflict in itself with the Secretariat and with the Registry, because of course, that's not how one recruits inside the United Nations. One recruits by some general, transparent procedure. And it was quite funny, if I can just give you an anecdote to illustrate the kind of thing that was going on.

02:49 One judge called me in. This judge is no longer here, (___). Called me in, and said, "I want this person," and handed me a CV. And I looked at it, and this particular person came from a country with which I am familiar, and didn't appear to have a very high level of legal qualifications. And I inquired as to why this particular person was wanted by this particular judge.

03:15 The judge said, "Oh, he, because he comes from that particular country." And it wasn't the judge's country; it was a completely – a far away, different continent. And I said, "Oh, I see.

Why, and why in particular that, that country, judge?" And he said, "I spent some of the best years of my life in that country."

03:34 And so, that was the kind of way in which recruitment was done. And in fact, that, as it happened, that particular person was recruited and did very well here. In due course, he got legally qualified under our aegis and has now left.

03:50 But I mean, that's an indication of, of the kind of ways in which judicial recruitment t-, recruitment of judicial assistants tended to be done. And it's, it was not effective, because it produced results that were sometimes bizarre and sometimes not entirely transparent. Well, never transparent.

04:09 So I tried to introduce transparent systems. Also, giving the judges their desire, because it's a very intimate relationship between a judge and what, in America, you would call their legal clerk. And therefore the judge must have a major say in it.

04:26 But you also have to ensure certain other characteristics of recruitment, such as geographical-cultural balance, excellence, minimum qualifications, all those things are adhered to. So that was something I was able to do, slowly, slowly, slowly.

04:42 DJH: Okay.

04:46 Oh, can I mention one other thing?

04:47 DJH: Of course.

04:48 Although I'm technically, was, as Chief of chambers, meant to be directly supervising all these staff, what you found was that the legal officer was supervised directly by the judge and you had very little role. Insofar as we had other legal staff working in chambers, that, that relationship was a lot easier.

05:08 But any time you felt that there was a non-functioning member of the legal assistants staff, somebody working directly for a judge and you wanted to do something about it, what you immediately found was that the legal assistant was able to handle the situation (__) through the judge.

05:26 And so you were unable to touch the situation at all. In other words, you had, what you had was a series of little no-go areas. You, you couldn't touch (__), the, the protected person working with the judge.

05:38 So in fact, there are a lot of informal networks which you, which you cannot tell by looking at an organogram of the organization. And that, that situation is relayed right away throughout the organization.

05:50 So I just thought I'd throw that in, to say that sometimes calling yourself Chief of chambers was often, one felt, an honorary position rather than a very effective position.

06:00 DJH: How long were you Chief of chambers?

06:02 Until 2005.

06:06 DJH: So, five years? Okay.

06:07 Yeah. October 2005.

06:09 DJH: Or four and a half, something. Yeah.

06:10 No, it was – it was four, five years.

06:12 DJH: Okay.

Part 5

00:00 DJH: And when you got there and you know, broadly, what did you find that you felt you really needed to do? You had had a number of comments from friends of yours before you took the job about, you know, shutting it down.

00:17 DJH: And I guess I'd be interested in your impressions about what you found and what you thought you need-, you needed to and could do. And in fact, did, perhaps.

00:26 Well, yeah. Well, no, I was able to play an assisting role. But there were already people here who were aware of the fact that there were certain fundamental structural problems that had to be addressed. In particular, I would say that President Pillay was aware, but in particular I would, I would identify the role of Judge Møse who was the Vice President when I arrived.

00:54 He was very clearly aware that matters had to come to a head, matters had to change. The principle problem was this – you, here you have almost, in fact, at that time, very restricted courtroom facilities. You had three trial chambers with three judges, so that's nine judges. But they were all sharing fairly limited facilities.

01:27 You had the Prosecutor who controlled the tap of the cases – turned it on and off – deciding how many people she wanted to arrest, how she was going to present the indictments, how they would go before the judges, and what crimes were going to be presented to the judiciary.

01:53 And it was perfectly clear to anyone who came, particularly to me, coming in from the outside, but Judge Møse was already on top of the issue, that the Prosecutor's ambition to arrest well over 100 people, given the throughput, the capacity in terms of hours per week, per month, per year, of the judges working with the facilities we had, the tribunal would last for two decades, at least. And that was manifestly, politically unacceptable.

- 02:27 And something had to be done. The Prosecutor had to change. When I arrived, the Prosecutor was Carla Del Ponte, a wonderful woman who one would be very anxious to go in on a frontal beach assault in Iwo Jima with her, with her holding a Kalashnikov. I mean a very brave and a very, very strong wo-, woman, a strong leader.
- 02:53 DJH: Where was she from?**
- 02:54 She was from Italy and had cut her judicial teeth fighting the mafia and with, with great success, according to her press conferences. And she had definitely got a very strong approach to prosecution here.
- 03:16 But of course, she divided her responsibilities with, between pro-, prosecuting at The Hague and prosecuting here. And what she tended to do was to arrive here a bit like the Queen of Hearts, arriving, giving orders, developing, meeting people, and then disappearing very fast. And . . . yeah.
- 03:35 DJH: Let me stop you for just a moment. You said she was prosecuting at The Hague and here? So she wasn't just assigned to this court, she was assigned to both ad hoc courts?**
- 03:45 Yes.
- 03:45 DJH: Okay.**
- 03:46 Yeah. Originally, when the Security Council set up the Rwanda tribunal, they felt that it was important to ensure harmony, to some extent, of both the prosecutorial policy and the jurisprudence. So they produced a common prosecutor and a common-, a commonality between the appeals chambers. So, in other words, the appeals chamber at The Hague with a couple of additions became our appeals chamber.
- 04:13 DJH: Okay. Why don't you go back? You were saying she arrived like the Queen of Hearts and then . . . ?**
- 04:18 Yeah, there were a few sort of "Off with your head" moments, and then she would disappear off back to The Hague and there was a certain amount of concern as to whether management here was – in the prosecution – was actually as long-term visionary as it should be.
- 04:40 Because a part of the issue was, well, you know, "We want to arrest all these people. They're all guilty of genocide to some extent, and so therefore I want, I want them all." And the response to, "No, you can't have them all," was "I am going to have them all."
- 04:57 So you know, to some extent, when you're dealing with that style of leadership, it's a remarkably good style of leadership, but when it comes to actually trying to run a rational organization, there are other considerations have to be brought into effect.

- 05:15 So we had, if I conflate the story a bit – because it could go on an awful long time. There was a meeting of all the judges of both tribunals in Dublin under the auspices of the Dublin government and under Trinity College Dublin, at which we met Hans Corell, the legal counsel as was then of the Secretary General.
- 05:44 And at which these issues were thrashed out – how are we going to put the ad hoc into these tribunals? How are we going to eventually address ourselves to closing it down? And one obvious message that came out between, in the work of the judges, was basically with the resources we have at the moment, and the tap going at the rate it-, it's going, flowing at the rate it's going from the Prosecutor, we have got a problem terminating these tribunals.
- 06:20 So therefore, we need to address both the tap and the resources. Increase the resources and restrict the tap. That's, if I can summarize it, more or less, that's what went on behind the scenes. Do – I think you're going to be talking to Judge Møse – talk to him about it, because he was the, very instrumental in developing the, the way forward from Dublin.
- 06:41 So as a result of that, the completion strategy documents started to be pre-, planned and prepared. And it, it was fairly traumatic, because, certainly here, it was necessary for the Prosecutor to understand that it was impossible to have that particular number of persons arrested and dealt with.
- 07:06 And in due course, after a few Iwo Jima moments, if I can put it like that, we did eventually have, the prosecution addressing itself, to a considerably, considerably, fewer numbers of indictments.
- 07:27 DJH: Okay. So that was the, one of the first parts of the job that you were involved with.**
- 07:33 Yeah . . . Yes. I was in support of the President there.
- 07:37 DJH: Okay.**
- 07:37 And of course, at the same time we also had to increase our resources. And eventually, that message was sold to New York. They did increase our resources. We increased the courtroom capacity, we increased the judges, we added ad litem judges, another nine to our capacity, so we had 18 judges, so that we could sit two subsections of each trial chamber.
- 08:02 And so on. And we then ra-, we actually started to sit in shifts. Morning shifts, afternoon shifts. We elongated the work time of the tribunal and so on.
- 08:13 DJH: Got things moving.**
- 08:14 Got things moving. We doubled, more than doubled the number of legal staff in chambers; we, we, we increased our staff enormously. So it was, it was a difficult message for New York to grasp, that in effect, if you wanted to close down this institution, you've got to increase the resources to increase the throughput to get it closed.

08:33 DJH: When you say New York, you mean UN headquarters?

08:36 Yeah.

08:36 DJH: Okay.

Part 6

00:02 DJH: The way things were going when you arrived, it soun-, and you were talking about this thing will go on for two decades to, et cetera, et cetera. I'm thinking back to, you know, a basic principle of, you know, speedy justice and, or at least having justice exist within a decade of – or you know, the, the conclusion of something occur within a reasonable period of time from when the person was apprehended or the, or the crime was committed.

00:32 May I just ask you, within a decade of what? A decade of arrest or decade of the events?

00:37 DJH: Well, I, I don't know.

00:39 You let it, you let it drift.

00:40 DJH: Yes. Okay. What, I guess the, the point I'm making is . . .

00:44 I know the point you're making.

00:45 DJH: . . . the, the question, yeah, good. What is it?

00:50 Yes. Well, I, if I am to be suit-, suitably defensive.

00:54 DJH: (____) . . . I, no, I'm not, I'm not really thinking of, I'm thinking about, you know, the mission of the court and your sense of what the court – and, and that's really kind of where I was going to get.

01:06 DJH: I was going to get away from some of the, of the processes for at a least a bit and, and, and ask you what your understanding was of the mission of the court itself? Whether by the statute or by, you know, what was at least accepted or by the judges or – and the, and the various peo-, (____) the authorities.

01:26 Alright. That's a slightly different question but it, it, it links back.

01:30 DJH: Right.

01:31 The mission of the court, if you read the original resolution, you see that the principal purpose of the tribunal was to effect individual justice against the perpetrators of the genocide in Rwanda during the a, actual year 1994, not outside it, in Rwanda and neighboring states. So that was the, the actual geographical component of the mission and the temporal component of the mission.

- 02:03 But there was an added statement that – because of course this was the Security Council using its Chapter 7 powers which of course are peacekeeping powers and quite sincerely I think members of the Security Council – although academics regard this as debatable and you're referred to the literature – the Security Council felt that setting up a judicial institution would bring reconciliation to the Great Lakes region, and . . .
- 02:34 DJH: That being Rwanda, Burundi, Uganda . . .**
- 02:37 Yes, yes. The whole, the whole of the area around the Lake Victoria, and . . .
- 02:42 DJH: Okay.**
- 02:44 So the mission was therefore expressly a peacekeeping mission. Now, one of the interesting things about that mission is that it was therefore, you have this interesting situation where the tribunal is set up for political purposes by a political body and it's set up to deal with politicians and the witnesses come from a very politically intense area and there's still a conflict between two parties in which you are trying one party.
- 03:18 And so the whole thing is intensely political. Nevertheless, the purpose as far as the Security Council was concerned was to bring reconciliation and by doing, the, the obvious logic, the, the nexus between the judicial process and the peacekeeping process was clearly that if you punish the principal perpetrators of the genocide, then not only do, you do two things – You tell the story. You tell the story in a definitive way.
- 03:49 Objective people come from all over the planet with no axe to grind, with no tribal component to their prejudices. They come perhaps ignorant of the tribal issues, of the dynamics of Rwanda. You bring them from Russia. You bring them from India, Pakistan, Norway, Sri Lanka, wherever. And you plant them down and you give them a set of facts, which are in fact historical facts.
- 04:16 DJH: Now, you're talking about the judges.**
- 04:17 Yes.
- 04:18 DJH: You, these people who you just brought, okay.**
- 04:18 The judges, the judges.
- 04:20 DJH: Okay.**
- 04:22 And not only do they judge whether X killed Y, Z, A, B, C, they also have to come to various conclusions about historical facts that took place around those individual events. So you're giving a historical account, a narrative, a historical narrative in each judgment and you're giving it from an objective standpoint – although not a historians' standpoint, a, a lawyers' standpoint and we can return to that another time.

- 04:59 Secondly, you are holding perpetrators responsible who would never have come to justice had you not set up a court. This is one interesting thing – it was a message that I don't think had got home in Rwanda when I was here. I, several times I went over to Rwanda and they were completely, I thought, completely disillusioned with the tribunal.
- 05:26 The ordinary people didn't know what was going on there. They thought it was a waste of resources, which should be spent in other ways. They weren't aware if who'd been arrested and so on; total ignorance over there. And that was our fault. We hadn't sold ourselves.
- 05:43 But the interesting thing is that if Rwanda had been just simply asking the world community for rendition – sorry, that's a bad word to use these days, it now has overtones – for extradition of fugitives, firstly, they would have had to have been tracking the fugitives wherever they had gone, under whatever aliases they had gone, whatever continents they had gone.
- 06:08 They would have to co-, be, have a continuous tracking process that would work all the way through the extradition process until finally arrest took place and then the formal extradition process started. And that was not happening. The Rwandan state was not in a position where it could engage in international extradition of the principals in, behind the genocide.
- 06:30 So unless you'd set up a tribunal of some kind or some kind of institution with a, a police force, an undercover CID that could track globally, give hush money, go spy – e-, essentially a Secret Service, to go all over the continent to track these Rwandan génocidaires, then you would never have caught these principal individuals. And that message had not been sold to Rwanda.
- 07:01 So that was the first thing we started to do, was to say, “Look, none of these people,” – now I don't want to give names because most of the, of them are under trial at the moment, unless, unless what I'm saying comes out in years to come but, but there are people being tried now who are of course innocent until proven guilty.
- 07:25 But let me, for example, choose names of those convicted, supposing you, Akayesu hiding in some foreign country under an assumed name, in disguise. Though he was pr-, in, in charge, a Mayor of a particular commune in which he'd encouraged rape as a form of genocide, famously, “Now you know what a Tutsi woman tastes like” is one of his phrases, to, as he encouraged the, the, the, the Hu-, the Hutu Interahamwe to go out hunting women and rape them before killing them.
- 08:05 Now, those individuals would never have been brought to justice had we not set up an institution like this. So part of the, the, the link between the peacekeeping mission and our existence is capturing those who would never have been caught. And in fact what we ended up doing was capturing virtually the whole of the interim government in 1994.

- 08:29 And again I have to be a little careful because the interim government by virtue of being a government does not mean all its members are guilty of genocide. Although many people have argued otherwise, that is not the legal position. We don't have guilt by association, guilt by organizational membership.
- 08:48 You had something similar to it Nuremberg. Members of the SS for example would have been regarded as having been guilty of certain offenses by virtue of that membership. This is not the situation in Rwanda.
- 09:03 **Note: Gap in Interview (Approx. 5 minutes in duration.) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.**
- 09:12 What essentially we had done was to arrest everyone from the Prime Minister, from all the ministers downwards, the chiefs of civil society, the senior clergy who were responsible because of course the role of the Catholic Church was also somewhat regrettable in some of this, and the military leaders and all the – basically all the people, the principals at the top of what took place in 1994 were arrested. Very few have so far escaped.
- 09:48 So you have a whole government inside the prison here and interestingly enough they still function almost like a government. They issued a communiqué the day before yesterday, which landed on my desk yesterday, in which they proceed to defend the Republic of France against the allegations that the French were involved in the genocide. So they're actually still issuing communiqués as a government even though they are sitting in Arusha.
- 10:17 **DJH: In the detention center.**
- 10:18 In the detention center; very delightful situation. Anyway, the point is that you bring, you show Rwanda in due course. And once we did our outreach, we have a wonderful outreach program that was set up and, and funded by European Union which proceeded to tell the Rwandans more about what was going on here, who was being tried.
- 10:48 And slowly I think the message has got out. Certainly amongst the elites in Rwanda, everyone I think is now fairly familiar and our relations with Rwanda have warmed as a result of that, generally.
- 11:04 And so I, I think the people there know those responsible for the, the, the killings, have been and are getting justice, but of course justice for a lot of the victims may not be living in a prison, in a situation of comparative luxury in African prisons. And we still have a certain amount of criticism of our penal regime.
- 11:36 **DJH: Why don't you tell me what that, what that is?**
- 11:40 Well, we – to set up our prison we took over a corner of the lo-, local Tanzanian prison. And we then set it up according to international standards, as you would expect from the United Nations. And it has individual cells. It has recreational facilities, research facilities so the

people could work on their cases, computers, exercise gym, a chef feeding them food. And therefore it's a fairly enlightened regime in penal terms.

12:21 If you move 50 yards to the right as you look at the UN det-, detention facility, you enter the Tanzanian prison which are a series of block houses in which – and I make no criticism of the Tanzanian government; this is a fairly typical regime in Africa because of lack of resources and of difficulties in using (____) machinery effectively.

12:50 You have hundreds of people all trying to use a very narrow space. In Rwanda itself for example, I feel a little more comfortable talking about Rwanda, the, the, it was estimated that each prisoner has about 40 centimeters of sleeping space – tremendous overcrowding amongst the ordinary prisoners in this part of the world, and very little in the way of food, good food, very little in the way of recreational facilities.

13:24 It's obvious that our prisoners, although they are in some ways (___), some of them, those who've been found guilty, are guilty of the most heinous crimes in the calendar of human crime. Nevertheless, they are treated probably better than the person who stole something in the local market.

Part 7

00:00 DJH: And when you determined, and I mean by you, I don't mean you, you personally but when it was determined to cut down on the number of people who were going to be prosecuted which you discussed earlier, what happened to the 100 or so people that you are not going to prosecute? Did they stay here? Were they sent somewhere else? What?

00:29 Well, they fell into different categories, and the Prosecutor, I'm sure, would be only too happy to give you more information about those. But basically there were some against whom it was felt that the process of continued tracking was unnecessary. There were others whom though the tracking was continued and the files were handed over to the Rwandan government for them to take action.

00:56 There were others for whom tracking continues and whom the Prosecutor would like to arrest and bring here for eventual trial here or referral to other states for trial. And, I th-, I believe there were 15 of those. I think we're down to about 12 of those now. And then, even within that group of, of 15, there were, there were five "must haves" and ten, you know, "would likes."

01:25 So there were different categories according to their level of seniority. The Prosecutor I'm sure will be only too happy to open the doors to tell you all about that.

01:34 DJH: Were there some who – you already had custody of and then determined you wouldn't prosecute here for reasons of whatever?

01:45 Yes.

- 01:45 DJH: And, and then you transferred them somewhere else.**
- 01:47 Yes. This is again a matter for the Prosecutor to talk about, because I'm not privy to the process by which the Prosecutor came to that decision.
- 01:54 DJH: Yeah, I'm not asking why but I'm asking what happened to them.**
- 01:57 All right, they were, the Prosecutor announced on several occasions, they were referral cases. There were some who were going, he was going to refer to other states who had expressed a willingness to prosecute those cases.
- 02:16 And then there were others who the Rwandan government had expressed a, a willingness to prosecute. In fact, the Rwandan government would have been happy to prosecute them all. But the-, there were some who the Prosecutor identified as being suitable for referral to Rwanda.
- 02:34 Mr. Munyakazi was the first live individual whom we had in our detention facility to receive that honor of an application to refer to Rwanda and the Prosecutor ch-, chose also some fugitives as well, fugitives from justice for, for referral of the indictments to Rwanda.
- 02:58 There were then referrals to other countries. There, there was a referral to Belgium, a referral to Norway. The same person after that referral was rejected was subject of an attempt to refer to Holland; that also was rejected by the Dutch and he is back here now.
- 03:22 So in, in essence part of the completion strategy was to refer cases the Prosecutor felt were suitable to other jurisdictions, national jurisdictions.
- 03:32 DJH: Mm-hmm. And those people, for example, th-, those who, few or however many that were sent to Rwanda would presumably be detained in the kinds of facilities you described the Rwandans have, as contrasted with the detention facilities here.**
- 03:52 No.
- 03:52 DJH: No?**
- 03:53 No, as a result of the efforts of the Prosecutor and the Registrar, a model prison facility was developed for receiving referral cases from here and with funding from the international donors, the international standard prison was, has been built.
- 04:16 DJH: Okay, in, in Kigali presumably, in or near Kigali.**
- 04:19 Near.
- 04:20 DJH: Yeah, near Kigali. All right, and have any of those been tried by the Rwandan courts?**

- 04:27 None of the referrals to Rwanda have taken place. The judges of – there were three attempts by the Prosecutor to refer and all – well, all three were rejected by the trials chamber, trial chambers for different reasons. And the appeals chamber has now just yesterday – no, no, just end of last week – come to a decision supporting the trial chambers' finding that referral to Rwanda was not going to take place because there was lack of certainty of a fair trial, in effect.
- 05:07 The prison conditions, prison – there were cert-, certain aspects of the penal law were also an issue; uncertainty about whether it was possible that people referred to Rwanda might have to serve imprisonment for life if they were found guilty, in isolation.
- 05:24 DJH: Mm-hmm.**
- 05:25 That was one area. It was a bit – it was, was ambiguity in the Rwandan law. But it, under one reading, it would be possible for people referred to end their days in, and outliving the whole of their life in isolation, and that was felt not to be commensurate with the international standards.
- 05:44 The principal concern of all three trial chambers dealing with these referrals was the independence of the judiciary. The appeals chamber to some extent qualified the findings on that and, or in the, in the present finding, but supported the trial chamber in respect of the, running the defense cases.
- 06:12 How could you – what happens is when we run defense cases here, we bring witnesses. Whoever the defendant wants as a witness we have to bring. Or we get them to testify via video link, if they're too frightened to come to Africa.
- 06:28 Most of the Rwandan ex-génocidaires or Rwandan Hutus are, are in the diaspora throughout the globe. A lot of them are wanted by the Rwandan government for crimes. And so we tend to bring them here under anonymity, under pseudonyms, under secrecy. And we let them give evidence under pseudonyms and then we send them away.
- 07:02 And the idea is that they will not then be able to be prejudiced by their appearance here, by, for example, being arrested by the Rwandan government and its agents. The question arose in the referral cases well, "How are you going to get génocidaires or alleged génocidaires, people who had blood on their hands according to the Rwandan government, to fly into Rwanda to give evidence on behalf of these referral cases?"
- 07:33 And it was felt that that obviously could not take place and manifestly, and I can remember some conferences in Rwanda where people were shouting at me from the back of the room. Some journalists were saying, "How can we let génocidaires come here and then put them on planes and leave them and wave goodbye to them in Kigali?"
- 07:51 It's a very real issue. Well, how could they, emotionally? And it's just a very difficult situation. So the question is well, can they all give evidence by video link? Well, then you have the

situation where all the prosecution witnesses giving evidence in person and all the defense witnesses giving evidence on screen, so it's an obvious disparity and that was felt to be unfair by, by – and the appeals chamber supported that position.

08:18 DJH: So . . .

08:19 More than you ever wanted to know about referral.

08:21 DJH: No, no. Not at all because it, it also addresses another question which – and, and we can wander a bit.

Part 8

00:00 DJH: And the question is, you know, frequently we think justice should be visible to the, to the victims, you know, and not at a great distance from them because at least in that way, the argument is that the victims will feel, some call it reconciliation with their own suffering, call it feeling that justice was done and they could actually see it done. And, and that's frequently a good thing in terms of getting on with life.

00:32 Yeah.

00:33 DJH: But that was not done here and some people must have thought about that. And so what you were just talking about bears to some extent on that question. I would ask you your thoughts on, on, on that question and perhaps some of the other issues that were raised vis-à-vis that.

00:55 DJH: I know you, you talked earlier about developing an outreach program to at least provide information to the Rwandan, the Rwandan people. So is that coherent to, to you and can you respond to that?

01:15 I always say that whenever a judge speaks it's always coherent. But I shall try and extract from it . . .

01:21 DJH: That's not, that's not, that's not always quite the case, but . . .

01:26 Yeah, I think it's a tremendous shame that these trials did not take place close to where the victims are and where the crimes took place, tremendous shame. And I think it's one of the issues that has dogged us in terms of our effectiveness. Having said that, when you go back to 1995, 1996, just think of the situation then.

01:57 The Security Council had to, and the, the Secretariat had to put in place a trial system that was going to be able to operate in a fairly dispassionate, f-, free li-, environment in which defense were going to be able to act freely as well as prosecution. I know they considered Nairobi originally when they were trying to locate a place.

- 02:27 And it, but it was felt that really the situation, although the infrastructure was better, the political situation in Kenya was not such as to make it a very neutral ground. And so Arusha was chosen although dusty and a town with no infrastructure, no computers, no roads, nothing. Was not really the best place in hind-, in hindsight, because it took a long time to get things going.
- 02:59 And it, what it does mean is we have to hire this aircraft, you know, which has almost been on permanent hire throughout the, the, the life of the tribunal. Lifting witnesses with – and a so-called anonymity wi-, with pseudonyms out from Kigali airport, bringing them, flying them into Tanzania, putting them up here in safe houses or in hotels, giving them enough money to survive and then lifting them back and inserting them back into their communities.
- 03:28 Apparently, although, you know, officially not, with the community not even knowing that they've been giving evidence in Arusha, you know, (_____). It, it's unfortunate but you know, it's obvious, it's to some extent impractical.
- 03:43 And it's, it's fairly widespread experience that, you know, the white Toyota car which is, even with no markings, is obviously a UN vehicle appearing somewhere in a rural community to pick up X. Or there, or the time the vehicle appears, X is away from the village, you know.
- 04:04 I mean, it's very difficult for people giving evidence here. Certainly I think this is more important in the early days of the tribunal. Now, our witness protection system is, you know, a lot more sophisticated but even so, people are known. We had a situation few months ago where witnesses who were meant to be anonymous had been denounced by a survivors' organization in Rwanda for giving evidence for the defense.
- 04:39 And they were denounced and they were told they would no longer have the benefits of getting survivors' benefits and so on. And when they complained to the witness protection officer, the witness protection officer in Rwanda, who is not part of us, the Rwandan protection, the government protection officer cooperates within the Procureur General's Office, proceeded to denounce them herself for being snakes in the grass and for betraying their colleagues.
- 05:12 So you can see the enormous difficulties. And so choosing a neutral territory was necessary from the point of view of getting both sides heard. And one thing you see, the, the, when I came here, people always used to say "Oh this was just a . . ." – I mean the, the, to some extent our, our guests in the detention facilities still say that it's a political tribunal and so on and so so.
- 05:39 But – and a victor's tribunal, you know, they old thing about the Nuremberg slander you know, is thrown at us. We try the Hutus. We don't try the Tutsis. But if you look at the way we function, we give the defense every opportunity. We give them equal facilities. We treat them in every way – we, we privilege them.

- 06:06 We, and you know, will do anything we can to ensure a fair trial. And I think our, our detainees individually, when they are not in their sort of group mode, they all agree that they are actually – we, we do a tremendous job in getting their witnesses here or getting them heard if necessary by video link.
- 06:31 And we get them the best lawyers we can get. We spend, we are often criticized for spending too much money on defense lawyers but we have some superb defense lawyers who, if you compare them with the prosecution lawyers, I don't think they – I have to be a little bit careful here – I don't think they necessarily fall below the standard of the prosecution lawyers.
- 06:55 DJH: Well done. Another piece of it and it's perhaps more practical than anything else is, as a judge myself, I know that sometimes it's important for me to see the area where something's happened and obviously it's a bit impractical to get a court to get on an airplane and . . .**
- 07:22 No, we do it.
- 07:23 DJH: You do it.**
- 07:24 Yeah.
- 07:24 DJH: Do you do it regularly?**
- 07:25 We've got some judges who've just been there.
- 07:26 DJH: I under-, I understood that. I was talking about . . .**
- 07:28 Yeah, no, they do it regularly. Not every, not in ev-, every case but pretty well in most case – now, most cases.
- 07:35 DJH: Mm-hmm. Okay.**
- 07:37 And it, it has to be encouraged. Expensive as it is, it has to be encouraged.
- 07:42 DJH: Okay. And apparently there was a decision made not to, as the years went by and perhaps things settled down a bit in terms of emotion, not to do, not to move the court or not to have at least a body of trials done by the UN in Rwanda or, or near Rwanda. Am I correct?**
- 08:10 That is absolutely correct and I regret that. I mean, I think at one point we did hope that we could try the, do some of the prosecution cases in Rwanda and then bring the trial here and do the defense case here. But it was overtaken by events, essentially. By the time we got to the point where we could have done that, most of the multi-accused cases, which are very long and convoluted were heading to the defense phase anyway.
- 08:39 DJH: 'kay. Okay. You have a, a – the court has a presence in Kigali . . .**

- 08:49 Yes.
- 08:50 DJH: . . . and what is that presence?**
- 08:52 Well, we have a – well, we, it's a very small presence now but it used to be quite big. Basically, the prosecution have their presence there. They are the people who look for the witnesses, look into the evidence they have, basically run case investigation and then case support once the trial's ongoing.
- 09:19 Issues come up in evidence, they immediately phone through to the prosecution representatives in Kigali, get an investigator to go and check this, this and this because this has come up in evidence and so they go and check it and then it's fed back into the trial.
- 09:34 And then also we have other staff whose job it is to facilitate the running of the defense cases, the defense investigators, defense counsel, going around Rwanda, getting into the prisons, going into the communities to get their witnesses.
- 09:49 And then we've also got our witness protection staff whose job it is after the witnesses are finished here to ensure that they are looked after, that they don't have any prejudice, that, if they have needs, they have medical needs, we set up a clinic for treating medical conditions of the witnesses and we look after them basically. The idea being – you see, because if we look after our génocidaires here, we look after our guys here.
- 10:17 And considerable numbers of them have ill-, certain illnesses, infect-, infective illnesses which could be life threatening and we give them drugs, modern drugs which are not available to everyone in Africa. So there's another interesting ethical situation. We are feeding highly sophisticated drugs to keep our alleged criminals and our found criminals alive.
- 10:46 And we have witnesses in Rwanda, and maybe even victims who were infected with certain diseases by some of these self-same people or their, their acolytes and their, their, their foot soldiers, who died because of those diseases already because they ha-, didn't have treatment. And then we have witnesses who come here with those same diseases.
- 11:09 And I don't need to ink in all the details, I hope, but for example if you are a female witness of a rape or a rape wi-, victim and you come here and you have an infectious disease that you caught while you were raped in 1994 and you know that the individuals who ultimately were responsible are receiving highly sophisticated drugs to keep them alive, but that you are not receiving any treatment, what kind of justice is that?
- 11:37 So we set up a, a system to ensure that those sophisticated drugs were given to our witnesses in that position.
- 11:44 DJH: And victims, or at least . . . ?**

11:45 Not victims, you see in general, no. We did work, in fact we have an officer whose job it was to try and encourage the NGOs to get those drugs available and they've done tremendous work. And we-, through the NGOs in Kigali where we have ensured and we h-, we're getting the victims organizations we worked with to get those treatments out, out there.

12:06 **DJH: Mm-hmm.**

12:07 But, you know, how, hundreds of thousands of people – no, not hundreds, hundreds or thousands of people lost their lives before that took place.

Part 9

00:00 **DJH: One of the things we – we got onto some issues versus the specifics of your job. We went from some of the things that you've been actually working on in your current job versus when, when we were talking earlier about your being Chief of chambers and, and, you know, moving things along.**

00:24 **DJH: So let me come back to that and I, I suspect we're going to, somewhere soon, have to, have to take a more permanent break for today and then perhaps we'll come back another time and, you know, finish up some of the things that would be good to talk about.**

00:47 **DJH: In, in the process, again going back between 2000 and 2005, apparently things began to move along. You got more resources. You got some additional judges and so forth, and the judges were ad litem. Can you just tell us quickly what that means?**

01:09 Well, ad litem judges were essentially the, had the same qualifications as the permanent judges under the statute but the idea was we didn't want to pay them pensions. We didn't want to pay them all the benefits. That would have made it a very expensive option. Part of the way it was sold to the General Assembly, our funding body, was that this is going to be a sort of quick easy option.

01:35 We'll bring them in for a maximum of three years to do specific trials, often much shorter than three years, and then we'll send them out. Unfortunately, they were, as a result of another whole series of processes in which we lost judges from long running trials, we were, we – the judges passed a law allowing su-, substitute judges for judges who were already sitting in the middle of trials.

02:07 And so some of the ad litem judges were put into long running trials. For example, Judge Bossa when she arrived, was put into the Butare trial; one of the Olympic record breaking trials of all time, and you know, long ago I think exceeded her three-year limit and is you know sitting (___).

- 02:28 And so that in, in essence has meant that the ad litem judges have had to have, be given more benefits and some of these are still, the issue is still being looked at by the President and by the judges.
- 02:42 The idea was that, you know, we, we just needed to be able to put judges – you know, when you're trying to run a court, as you yourself know, you want to put judges in for particular cases and then pull them out. You want the flexibility. With nine permanent judges all (___), all sitting in individual cases, you've lost that flexibility.
- 02:59 So you had a pool, what you had with ad litem judges, you've got a pool of judges you can call upon and they're elected by the General Assembly and the President picks from the top. Whoever gets the most votes comes in first, gets slotted into this trial then slotted into that trial and then is meant to go away but most of them haven't gone away.
- 03:17 Ask Judge Short about it when you talk to him. He's an ad litem judge who, you know, ended up sitting on two trials and ha-, indeed had to drop out of one trial because of his health. And it's, it's a very difficult situation. They're not so ad litem at all.
- 03:33 DJH: Mm-hmm, mm-hmm. It's – I'm, I'm sort of figuring that out, yeah, and, and we'll be talking with Ju-, Judge, Judge Short . . .**
- 03:41 Yeah.
- 03:42 DJH: . . . sometime next week. All right, and, so why don't you sum up for us if you, if you would, your period as Chief of chambers. What other issues were there and what was done about them? (___), you know, of any significance.**
- 04:01 Well, I think the introduction of professionalism in the legal work of chambers – that was a very definite necessity and with a, a wonderful person called Suzanne Chenault we devised a continuing legal education program, which the judges have also participated in, and judgment writing seminars. Originally, the judges felt that they, you know, shouldn't really be trained but I think that that original ethos has given way to a more modest attitude.
- 04:33 So we've tried to improve our jurisprudence. We've tried to improve the, w-, the style. We've tried to improve a number of things about our output. I'm not sure we've actually overall improved our jurisprudence. Certainly looking at the appeals chambers' recent treatment of our trial chamber judgments, I would say we got a long way to go.
- 05:01 DJH: Okay.**
- 05:02 It's a bit late now.
- 05:04 DJH: It's a, and, and a couple of your judges are actually on the appeals chamber.**
- 05:08 Yes.

05:09 **DJH:** How, how does that, that work? And I don't mean just the, the connection between your judges, the judges here and appeal chamber. The appeal chamber is what it, what it is – it handles appeals from decisions made by the court here or the Yugoslav court, I presume.

05:28 Yeah.

05:31 DJH: What's the mixture of judges? Is it not just judges from here that decide about the cases from here?

05:37 No. Basically, it's up to the presiding judge of the appeals chamber, who's the President of ICTY, to move the judges around as he wishes and he, he can assign any number of judges from the ICTY, or rather five, to our appeals chamber and then they mix and match with our two, but our two sit on ICTY cases as well so it's, it's totally flexible.

06:03 DJH: Okay.

06:04 One of the more bizarre situations is that the appeals chamber judges come down here for our plenary sessions, which amend our rules and pass our rules. And therefore we've got an interesting situation where the appeals chamber judges who are actually going to be passing upon the lawfulness or not of the provisions of our rules are the people who also participated in the passing of those rules.

06:33 One, let me just give an interesting example. When we effected the substitution rule for judges, it was fairly novel at the time for us. I don't know, I mean, there aren't many jurisdictions which allow you to substitute judges in the middle of a trial, who have not participated or listened to the evidence but who have to familiarize themselves with the transcript and records and watch any of the video that they wish to do so.

07:03 And then certify they are familiar with the proceedings and then jump in and replace the previous judge. Unusual situation and one that could have been addressed in an appeal but since our appeals judges took part in the passing of the rule that allowed it, of course, to some extent the position of the appeals chamber as a, a long stop, as a protection of the rule is removed. So you can see that there's a certain amount of structural exoticism in the way we do things here.

Part 10

00:00 DJH: And that brings me to another question that you had talked earlier about the Prosecutor and that she or the office itself served both the ICTY, the Yugoslav, former Yugoslavia and the Rwanda tribunal. Did that change at any time?

00:24 Yes, excuse me. There was a conflict with Rwanda over the RPF cases. The prosecution of individuals, Tutsi individuals who've been part of the invading army that stopped the genocide, and were essentially run by General Kagame as he then was, who is now President. () . . .

- 00:50** DJH: RPF, RPF stands for what? Sorry.
- 00:55 Po-, it was basically the popular front, Rwandan Popular Front.
- 00:58** DJH: Okay. Okay.
- 01:00 They'd invaded from Uganda . . .
- 01:02** DJH: Right.
- 01:02 . . . and were officered to a large extent by English-speaking Tutsis under English-speaking General Kagame as (____) part of the general cultural issues that overplay the tribal situation in Rwanda.
- 01:19 And they – it is alleged that during the course of the invasion and during the course of the pacification process, the RPF engaged in killings, mass killings of Hutus. And therefore the question has always been raised by those we have in the UNDF, by their defense counsel and by the Hutu diaspora, “Why haven’t we prosecuted the RPF people who committed massacres of thousands of Hutus?”
- 01:55 And this has been, you know, long been you know a bone of contentions; the Prosecutor hadn’t done that. Prosecutor’s position was always, “Well, I’m investigating. I’ll, I’ll, I’ll look into it and I’ll tell you later.” And Carla del Ponte in fact reinvigorated the investigation of the RPF cases and this definitely did upset certain individuals who might have had something to lose as a result of that.
- 02:32 And it caused political problems for Carla del Ponte and she has always said that the reason why she was removed as Prosecutor of this institution was because of her – the vigor with which she was pursuing the RPF cases. But in fact there’d been considerable dissatisfaction, and I can vouch for that, with her dual role as . . .
- 02:54 The question really was whether the prosecution was being given its full attention in this institution as it was being given in the ICTY. And certainly I think the completion strategy issue was one of the issues where that came to the fore most. And so I think the issue was on the table whether, whatever the situation with Rwanda.
- 03:16** DJH: Mm-hmm. And when was – who decided and what (____) . . .
- 03:20 The Security Council decided to remove her.
- 03:24** DJH: And not just re-, remove her but actually set two offices, in other words. Am I correct in that?
- 03:29 Yes, they appointed a new Prosecutor, Hassan Bubacar Jallow.
- 03:35** DJH: And that person is the Prosecutor only for the Rwandan court.

- 03:39 Absolutely.
- 03:40 DJH: And then there was a separate one . . .**
- 03:42 For Yugoslavia.
- 03:43 DJH: (____) that for, for the Yugoslavia.**
- 03:44 Yeah.
- 03:44 DJH: And when did that, that happen? What year, approximately?**
- 03:50 I've forgotten.
- 03:51 DJH: Okay. A-, was it after you took your current role?**
- 03:56 No, no. I was still Chief of chambers. So it'd be about . . .
- 03:58 DJH: Okay, so sometime before 2005. Okay.**
- 04:00 . . . 2004, '05 (____). I'm sorry. I (____).
- 04:02 DJH: All right.**

Part 11

- 00:00 DJH: We're, we're reaching sort of the last, last 15 minutes we can give to this today and I'm going to switch over to something () very much be interested in about yourself and your role, whatever it's been, whichever role you had. What would you tell us that which you've done which or been part of that you're most proud of?**
- 00:30 Keeping it going.
- 00:32 DJH: Yes. All right.**
- 00:36 No, I think supporting the judges, trying to assist them make a go of it. I mean they are the ones whose job it is to keep it going. There have been times when we've had crises; you know, endless crises, you know, people having problems under pressure. I'm not talking about judges here. I'm talking about legal officers.
- 01:06 And you know you've always got to be ready to put out fires. I think just keeping the whole thing going, just using diplomacy, getting people to continue talking when they wanted to walk off away from each other. We've had over 80 different nationalities all trying to work here on one system.

- 01:23 And you've got division between the Francophones and the Anglophones. You've got the civil, c-, common law distinction. You've got people who sometimes don't want to understand each other.
- 01:35 You've got all kinds of areas where conflict can arise, daily they arise. And I think more or less getting one's verbal WD-40 out and running around and spraying it and, and just keeping the thing going is, is what I would say, is, is the principal achievement. There are, I can think of many failures. I can think of many things that . . .
- 02:05 **DJH: That was my next question. What, you know, what are those things where you wish you or, or the – or th-, that which you were involved with would have done better?**
- 02:14 I think the quality of the jurisprudence. That has, that's the thing that saddens me most; not being able to get the judges to agree to devote themselves to improving, as a corporate group, our jurisprudence.
- 02:33 **DJH: What, what do you mean by the jurisprudence? I mean, that's a word that lawyers themselves are sometimes imprecise about and we're going to be talking, you're talking right now to . . .**
- 02:43 Yeah.
- 02:43 **DJH: . . . people who are not lawyers.**
- 02:47 International criminal law is actually pretty easy. It's not difficult. There are actual answers to actual problems. There are fairly clear legal answers to most of the issues that arise in our daily, day to day work. And our judges arrive relatively innocent, if I can put it in that way. I mean no disrespect to them. It's very few judges who arrive here with a knowledge of international criminal law.
- 03:24 And they bring with them the wisdom of their years on the bench, their knowledge of their own national law. And a lot of them continue to believe that's enough to deal with any issue that arises. But the truth is that we have now a body, a corpus of law relating to grave crimes, to procedural issues that it is actually out there and it's easy to know. It takes effort.
- 03:54 But it, I mean one of the great publishing boondoggles of the last ten years has been enormous quantities of textbooks issued on international criminal law and I would say three-quarters of them are miserable, terrible, but there are some really good ones which are, you know, decisive, clear, comprehensive and if only it were possible to ensure that our jurisprudence, (), by in which I mean our judgments, were written in a way that just dealt with the law as it is, as we have now developed it.
- 04:33 We spent – if you look at the two tribunals and the other hybrid tribunals, we must have spent now nearly 40 judge years, if you put them all together – you know, eight years, ten years, and

so on, you add it all together. How is it then that we can still make some of the most fundamental errors in our judgments and that really does, I think is one of my great failures.

05:00 DJH: Why yours?

05:01 Well, I suppose if I had been more forceful, more like Carla del Ponte, I would have been able to lead all the judges into the promised land. But it's, it's just not been like that. They, they are very much individualists. They still bring their own views to the table. They're not going to be led. They're not going to be – this sounds disrespectful. I don't mean to be.

05:30 But they don't feel that the knowledge they have, for example, of French jurisprudence or of the common law jurisprudence is to be thrown out, and other issues – the whole question of the doctrine of precedent for example. I mean we've had civil law judges who simply refused to follow precedent. Point blank, "I don't care what, you know, is being said by the appeals chamber. I'm not going to do it. This is my view." This, it's a s-, fundamental principle. You know, what can you do?

06:01 DJH: And you have here some sort of combination of the civil and the common law. (____).

06:07 Yeah, I mean the, the, the difficulty for the civil law is, is that it's common law triumphant . . .

06:12 DJH: Mm-hmm.

06:13 . . . you know, by and large.

06:14 DJH: Mm-hmm, mm-hmm.

Part 12

00:00 DJH: Well, I don't want to necessarily camp on failures but you used the word in plural. Is there something else you'd like to . . .

00:08 Oh lots, lots. I, I wish that we were cheaper and leaner. I would wish that we had not become so enormous and expensive. I think we could have had a structure that was totally different. We could have, instead of following this enormously bloated mission model which is what we have here where we have everything happening in-house, we could have just had a core of judges, a core of lawyers, basic administrators and then had everything else contracted out.

00:43 You know, it would have been half the price. I wish we could have done a lot of our work in Rwanda. I wish we were more victim-oriented in our punishment system. I wish we were more punitive.

01:06 DJH: How do you mean?

01:07 Well, we're talking about the gravest crimes that mankind can commit and human, the human race has known. We're talking about the, the murder between 800,000 and 1,000,000 people

- who were murdered after horrendous torture. Torture was part of the process; it was never clean killing.
- 01:32 The Rwandan victims themselves wanted to use their last resources, their last shillings, their last goods to try and beg the Interahamwe to shoot them and their families rather than to start hacking away at them as they did.
- 01:49 But no, the Interahamwe burned them alive, used sharpened hoes and machetes to cut their Achilles' tendon and then left them w-, you know, crawling around so they could come back over at their leisure and slaughter them slowly by cutting off their limbs.
- 02:08 It was just absolutely horrendous. It was worse than any Hieronymus Bosch vision of hell. There's never been – I mean, you know, you and I know about Auschwitz and we know about Belsen and so on. We know about all the shootings in the Eastern Command and so on.
- 02:29 Nothing, even as horrifying as that, nothing prepares you for the ferocious bestiality of the way in which these slaughters took place in Rwanda. And by, by and large people don't dwell on it.
- 02:49 And it was (___), one of the greatest pieces of child slaughter in human history as well. I mean about 400,000 children were killed and when you find – you talk to the Interahamwe, you know, why were so many children killed. Because the whole point was they were killed easily, quickly.
- 03:06 They run around in circles screaming, so they just club them and no problem. Easy. And then the old people and – eventually in the Bisesero hills they had – the hills were just covered with nothing but refugee Tutsis and so they went back day after day leisurely and they would just torture and torture.
- 03:22 They would – I mean, there's one woman who's, who, who was, Mika Muhimana, who's our Lecter Hannibal, was convicted of killing. Her name will live forever and she and her – she was pregnant. She was just an ordinary farmer, a poor farmer but a Hutu, or a Tutsi. And Mika gets – comes after his daily blood and they've dragged her out of hiding out of the bushes and she's got (___), pregnant.
- 03:59 He cuts her apron, pulls out the fetus to see whether the fetus will live, you know like that, then throws the fetus down, then they cut her arms and legs off and they put sticks in her so she's flopping around. You know, I mean it's just absolutely unbelievable.
- 04:14 And those individuals are sitting here in our prison getting luxury food and, you know, (___), we're just giving them – we're about to inaugurate a new exercise ground for them this, this week. I'm going there to watch a volleyball game between the staff and no doubt Mika will be there.

04:35 And I find that very, very disturbing that – it does not accord with my perception of what justice is. My perception of justice may be out of date and very primitive but I don't believe that this process gives the world any more justice.

Part 13

00:00 DJH: Let me step back for a minute. Before we go on to your definition of, of justice at this point, which I really would like to hear, you were describing a, a case or the facts of a case. What was the name of that case, (___), the allegation, the perpetrator, the, the person convicted?

00:21 Mika Muhimana.

00:23 DJH: Okay, and, and he was convicted in the trial, in the trial chambers. Is that correct?

00:32 Yes, he had received several life sentences . . .

00:35 DJH: Okay.

00:36 . . . for a number of grave crimes, including individual murders as well as participation in the general genocide.

00:50 DJH: Okay. Was there an appeal?

00:53 Yes, the appeal. There was always an appeal in these cases.

00:58 DJH: Okay. And what was the outcome of the appeal?

01:02 Well, he still had his life sentence affirmed but some of the individual counts were quashed.

01:15 DJH: By the appeals court.

01:16 By the appeals chamber.

01:18 DJH: And why was that?

01:19 Well, I was describing to you a case of Pascasie Mukaremera who was this Tutsi farmer who was pulled out and tortured and had her baby ripped out of her stomach and . . .

01:37 DJH: (___) . . .

01:39 . . . and we would never have known about that if it hadn't been for just one witness who was hiding in the bushes 20 meters away. Otherwise it would be an anonymous death, you know, like so many of the hundreds of thousands of deaths, just anonymous.

01:56 But just one person happened to be hiding in the bush unseen and was able to give evidence about what Mika did to her and to her baby. And he was convicted of that murder and . . .

02:13 DJH: Individual murder.

02:15 Individual murder. When it got to the appeals chamber, unfortunately, the prosecution had not amended the original indictment before trial. They had originally alleged that another named individual had committed the crime, I think in the presence of Mika.

02:40 And it was felt that even though there had been some notice where the time of the service of the statement of the witness that, of what the allegation was going to be, but nevertheless, the d-, indictment was sufficiently defective so that the indictment, the conviction had to be quashed.

03:01 DJH: Of that particular case?

03:02 Of that particular case.

03:03 DJH: With that particular woman and those particular facts you described?

03:06 Yeah, yeah.

03:08 DJH: And . . .

03:09 And another where there was a rape charge also, quashed in which the e-, evidence was said by the appeals chamber to have been ambiguous. What happened was that some young girls, teenage girls were taken into a room by Mika Muhimana and another perpetrator and the witness gave evidence about what their, their screams and about them saying, "Why are you doing these things to us? Why, why are you doing this?"

03:43 And then it was obvious that they had been raped and then they were killed, th-, when they came out and it was felt that the – there was ambiguity because they could have been talking to the other person in that room, not Mika.

04:04 DJH: So that was quashed.

04:05 Al-, albeit that presumably Mika was a willing participant in something. Nevertheless, I make no criticism but that was the, the finding of the appeals chamber and therefore that allegation was also quashed.

04:22 DJH: What was the reaction, if any, of the staff here at the UN when or some of the staff at the UN?

04:30 Well, I well remember when Pascasie's – the facts of Pascasie's case were being read out in the, in the trial chamber. That was a very strange moment for me because Judge Khan, who is from Pakistan, was the presiding judge in the trial chamber and she was sentencing Mika

- Muhimana for his crimes. And he was standing in front of her, in front of the glassed-in public gallery and Mika has always had a smile playing around his face.
- 05:08 He, he never s-, never really – the smile never left him. And Judge Khan was reading out the facts about how he had taken a knife and cut open her belly and pulled out the baby and then they had chopped her limbs off and stuck sticks in her stumps and stuff like that – and she was just reading it out.
- 05:29 And there's the smile still playing around Mika's face. And I saw behind Mika in the public gallery two staff members in fact were watching, two women, secretaries. One is the President's secretary actually, an Ethi-, they're both Ethiopians. And they were just totally overcome by what they were hearing and they were both holding on to each other like this and weeping.
- 05:59 And it was astonishing to watch Mika smiling and them crying behind him as the judge was reading out what he had done to Pascasie, the unspeakable things he had done. And it was like almost like a Pieta, you're watching this and I was actually sitting watching all of this in the judge's lounge upstairs on the camera, on, on the, the monitor.
- 06:26 And I could actually hear sniffles and the noise of weeping around me and there were the other judges in there watching, and staff members. And it was clear that everyone was overcome by what they were watching, including me.
- 06:43 And it somehow seemed to me – it was kind of one of those moments where you, you say maybe international justice is, is right and it is worth it. Because you – here we have this anonymous farming woman who nobody would have known about except by the sheer accident of somebody hiding in a bush.
- 07:02 And you then had all these people who come from all over the planet, don't know anything, you know. They're, they're, they're, as I said earlier, almost innocent in their ignorance, and they come and they hear these facts and they are moved and they, they mourn.
- 07:21 They mourn for her, this anonymous woman although we know her name, Pascasie Mukaremera. And high and low, whoever they are, they're all mourning her. And they, they – it does her homage. It does her death homage. It may be something of a conceit to say that this justifies the whole operation but to me, it somehow felt one of those moments where you say, "Yes, yes this, this, this international justice works."
- 07:50 Unfortunately, of course when we got to the appeals chamber and the appeals chamber in, in their wisdom and they rightly so, I mean, I say as a matter of law they were no doubt correct, quashed the finding, the count, not on the facts but on the law, on a technicality, against Mika. And presumably they wouldn't have been so ready to do that if he didn't face lots of other life sentences as well.

- 08:20 Then presumably, you know, they would have probably bent over backwards to find some alternative. But anyway, he was acquitted of that and of the rape and I guess there was a – I, I had a sense of outrage. For a moment, my loyalty carapace dissolved a bit and I felt angry and I know a lot of other people, other people did feel that.
- 08:47 But again when you look at it dispassionately after 30 minutes, you, you say, “Yes, yes that is international justice. That is fairness.” You know, if you were (___), you had just allowed your emotions to run these trials and not law, then he would have been convicted of everything, for what, for what it’s worth.
- 09:07 But there is a dispassionate component that says, “You have to fulfill this condition, this condition, this condition. Only if those conditions are fulfilled can you find this person guilty. No matter what the emotions, that is what the result is going to be.”
- 09:23 So it told me both that we are doing right. We have recorded Pascasie Mukaremera’s story for the rest of time. Wherever digital media survive, people will know that witness’s, that witness will be able to speak – perhaps through your project.
- 09:40 You will have that witness’s testimony about what happened to Pascasie. You will have the sentence and you will have the appeal. You will have the story of Pascasie Mukaremera forever. It will never die. When you and I have been forgotten, Pascasie Mukaremera's story presumably will remain.
- 09:57 And so even if it was quashed, the story, the history of that particular event, in that particular small event to a small farmer in a small part of an anonymous piece of land, will live on and nobody will be able to gainsay that particular event. The, the judges found, all the judges, even the appeals judges, they didn’t doubt the facts for a moment. So that, that was the story of Pascasie Mukaremera.

Part 14

- 00:00 **DJH: And what follows is the last question today and perhaps you’ve answered it at least in part already. What is your definition of justice, as to what this court ha-, has, should be doing?**
- 00:16 Oh, so easy a question.
- 00:17 **DJH: Yes.**
- 00:18 Thank you. I think here, I would like – I’m probably – you see, I come from a different time. I sometimes feel I’m a bit of a dinosaur. I come from a different generation. I was born just after the Second World War but I was, I was sentient during the Eichmann trial and during the subsequent trials.

- 00:46 My sense of justice with crimes like this requires more than the perceptions of kindness and, and enlightened penal provisions that we apply to these kind of crimes. I'm afraid I am one of the last, apparently one of the last capital punishment enthusiasts left on earth. Even Rwanda has now ba-, abolished the capital punishment provisions.
- 01:21 But I think you want a justice system – when you look at the actual crime in all its horror – I think you want a result that is in some way commensurate, so that you don't feel when you watch it that the scales of justice are being unbalanced.
- 01:41 And to me, when you treat people like this who committed the most unspeakable crimes and inflicted the most horrible extended pain on my fellow human beings, then I want – I think there is, the justice has left the world if you don't treat them extremely harshly in turn.
- 02:03 But you do it dispassionately. And you invent a system that reflects in some way the cruelty. It may not mean just hanging people. And I, I confess this is very much – I'm out on a limb here. This is not U-, even United Nations. I would be high-, highly disapproved of by my masters and no doubt disapproved of and disciplined because I step totally out of place, but to me these crimes deserve unique punishments.
- 02:35 And if I, if I could think of a punishment that would work for somebody like this, I would think of a punishment that would leave them alive but with a continuing consciousness, a never, a never failing reminder every day and every second of their lives that remain, of what they did.
- 02:57 So they, they could sleep. One would never deprive people of sleep if their consciences allow them to sleep but their, all their daily waking should be a reminder in one form or another of what they did to who, whether it be on screen or whether even the remains of the people they inflicted their tortures and killings on be in some ways present and close to them for the rest of their lives. Something like that.
- 03:34 DJH: Thank you for today. Thank you very much.**