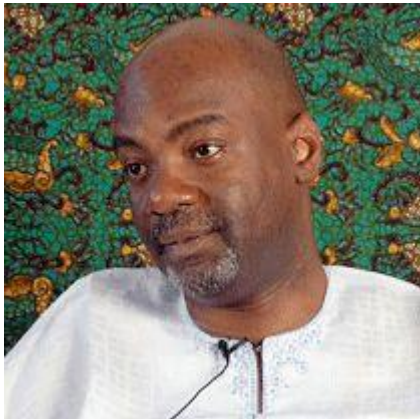




Voices from the Rwanda Tribunal

Official Transcript: Charles Adeogun-Phillips (Full Interview)



Role:	Prosecutor
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Interviewers:	Lisa P. Nathan Robert Utter
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Charles Adeogun-Phillips discusses the impact of the UN's requirement for broad regional, linguistic and racial representation at the Tribunal, which influences recruitment policies. He further emphasizes the need for practitioners, and especially judges, to understand the cultural context of Rwanda when considering evidence. Adeogun-Phillips reflects on the treatment of victims and witnesses in Court, on the merits and shortcomings of adversarial and inquisitorial legal approaches, and the need to involve Rwandans in the justice process.

The transcript of the interview begins on the following page.

Part 1

- 00:00** Lisa P. Nathan: My name is Lisa Nathan. I'm with The Information School at the University of Washington. I would like to thank you so much for your time today.
- 00:06 You're welcome.
- 00:07** LPN: To begin with, I would like you to state your name, the, your home country, and your title here at the ICTR.
- 00:15 My name is Charles Adeogun-Phillips. I'm a Nigerian by parentage and British by birth and I'm a senior trial attorney in the Office of the Prosecutor of the International Criminal Tribunal for Rwanda.
- 00:27** LPN: Thank you. Can you walk me through your timeline at the ICTR and if you've had different roles, what they have been?
- 00:36 Indeed. I, I joined the, the ICTR, having had a few years of private practice in the United Kingdom, in January, 1998. I have since been in the Kigali office of the tribunal and the Arusha office. I spent one year in Kigali, investigating the crimes that were committed following the genocide, actually field, active field work. Following which in January, 1999, I came over to Arusha to prosecute the third trial or the fourth trial actually, pardon me, which was the Musema trial, as co-counsel or co-prosecution counsel.
- 01:16 Since the Musema trial, I have prosecuted nine other cases, eight of them as lead prosecution counsel, including the infamous case against Pastor Ntakirutimana alongside Ramsey Clarke who is the former Attorney-General of the United States. And as you know, Pastor Ntakirutimana was the president of the Seventh Day Adventist Church and he was extradited, and the only genocide suspect to be extradited from the United States of America today. So, that's the story.
- 01:44** LPN: Thank you. I'd like to go back in time, approximately four years before you began working for the ICTR. Can you tell me where you were in the spring of 1994, when the events in Rwanda were unfolding?
- 01:57 I was in London, England in the spring of 1994. I had, I had a very interesting romance with the United Kingdom. I was bundled off to boarding school by my parents in Nigeria when I was 13 or 14 and having been to Repton School in England, I then studied law at Warwick University, went back to Nigeria to qualify as a barrister, and then returned to the UK to qualify as a solicitor. I did a Master's in International Arbitration and started practicing in the City of London.
- 02:31 And so in 1994, I was in some practice in London when, when this happened. I have very vivid memories of actually watching this on TV as it unfolded and I had no idea that i-, in four years later, or five, three years later, I would be involved and be in the forefront of the development of what has become the fastest growing area of public international law today.

- 02:53** LPN: Can you tell me the story of how you then, y-, 1994 you had no idea.
- 02:58 Absolutely not.
- 03:00** LPN: So then, how did you come to work here at the ICTR?
- 03:03 Well I was a criminal defense lawyer in London for the most part. I, I worked in a, in a Greek firm in London doing essentially it was a general practice but I was, I was particularly interested in criminal defense work. And having done that for a couple of years, I then met a Nigerian judge who was then sitting at the I-, on the, on the ICTY bench, the, the former Yugoslav tribunal, just by chance.
- 03:28 And he told me that he was a judge in, in an international criminal tribunal and he asked if I would be interested i-, in applying to the sister tribunal, which was then just getting off the ground in Rwanda. I made my application and it was successful.
- 03:43** LPN: Can you tell me about when you first arrived in Kigali?
- 03:47 Well, what I had thought would be essentially a sabbatical from, from private legal practice in, in, in London eventually has lasted well over a decade. The early days in Kigali involved what was the formative years of, of, of an international prosecutorial office. The challenges were, were immense and one of the major challenges of our early years in Rwanda was, was essentially formulating its strategy, an investigative strategy as to how to investigate this, this, this heinous crimes . . .
- 04:26 . . . what strategies to use, how to investigate sexual assault and sexual crimes, what sorts of strategies, what our priorities are. Because you have to bear in mind that we had a set mandate from the Security Council to prosecute those who bear the ultimate and the greatest responsibility for genocide.
- 04:43 Well, how do you determine who, who bears the ultimate responsibility for genocide? What, what, what matrix and what benchmarks do you apply in reaching, in reaching that, that conclusion and the formative years of the office involved exploring various ideas as to how we would determine that. Would we go on the basis of thematic groups, government ministers, military officials, or regional or geographical groups?
- 05:13 It also involved the indifference, the, the, the po-, political indifference to the apprehension of suspects. How do we, how do we apprehend the suspect, because one of the most unique things about international criminal law is that the fugitives are everywhere but in your jurisdiction, and what is so unique is that you lack a police force and any law enforcement power, so you e-, essentially have to rely on the cooperation of member states of the United Nations, and those were very novel issues that we had to tackle.
- 05:44 Other issues, basic and very practical issues such as the composition of staff members. I, being on a team with a common law background, working with a lawyer from France who doesn't understand the common law approach to this and he, he, he has a, a civil

law approach to it. Communication was a problem. I speak only English; many of my colleagues only spoke French, very few of us were multi-li-, multi-lingual.

- 06:12 And apart from that, we, we, in the initial days of our operations, we didn't have actually fully fledged staff members. We had volunteers, we had secondees from various governments who had seconded people to the tribunal to help out in the investigative process.
- 06:28 With, with the benefit of hindsight, one of the things that strikes me now and i-, if I had to do this again, would be that we lacked the involvement of national staff in the investigative process. We didn't have any Rwandan help. What is the essential drawback of not having a Rwandan on your investigative team? Well, we're foreigners.
- 06:50 We're, we're not native to the locality and there were so many diverse issues and intricacies about the whole genocide in itself that you, you are unable to understand or grasp at a very early stage if you don't have that local context. Is that a criticism of, of, of the organization in itself? No; in the sense that it was difficult in the, in the context of Rwanda to involve nationals of Rwanda because you were not sure who was who. It's a, it's a conflict of two sides.
- 07:22 So how do you go about recruiting Rwandese staff when you're not ac-, actually allowed to discriminate between one or the other, so the, the, the most practical thing was just to keep them out until we settled in. Therefore as foreigners, we then had to grapple with understanding the poli-, political and cultural context of the crimes which we investigate.
- 07:47 So there, there were immense issues which are absolutely unique to this area of specialization, the same issues that the ICC would confront in Uganda, in, in the Central African Republic, in the Congo, the same issues that the Yugoslav tribunal may have confronted in the Bosnia. They're unique to the prosecution of international crimes.

Part 2

- 00:00 **LPN: Can you speak to how it was for you as a human being, so to step aside from your role, your job role for a moment but when you, you know, landed in Kigali and began work there, as you're looking around and . . .**
- 00:15 Frightening, absolutely frightening. With the benefit of hindsight, it's perhaps been the most humbling experience I could ever have, have, have had in my entire life. Going back to the specifics of your question, yes I left; I got on a plane from London, England as a 30 year old. I had only been married ten months.
- 00:35 My wife was literally expecting our first child and I had to leave all that to get on a plane and arrive in a place I'd never – and everybody thought I was mad going to a place called Kigali. In those days, Rwanda was only known for genocide. It was a little dot on a map, but in any case, I, I decided to take the job.

- 00:53 The early days in, in, in Kigali were indeed very trying but, but, also extremely rewarding, i-, in the sense, in the sense that we lived as a family. If you've ever been to a UN mission, say for example in the Congo, we all live in one unit. Because of the security situation, it was a phase five which is the highest phase, when I arrived in December '97 or early January '98. We, we had curfews, so there was a limit to our freedom and our ability to interact and move around.
- 01:29 There were, there were places where we were allowed to go and places where we were not. And, you know, you can imagine coming from a first world country and, and having restrictions on your movement, on who you talk to, and having to com-, and having to hold a, a two-way radio which you must have with you all the time, with a call sign. You-, you're no longer Charles Adeogun-Phillips; you are now 'lima papa six' and everybody had a call sign.
- 01:52 And those were quite, quite interesting and, you know, unique experiences but eventually, things got better in Kigali. The security situation eased out a little bit and we were so involved in fieldwork which, which was, which was entirely different. Frightening in the sense that I, I, I don't think that in my entire life, I had had so much or such close proximity with a corpse, let alone several.
- 02:22 I remember I, I was assigned to the Kibuye investigations. Kibuye is one of the, one of the most outrageous crimes, crime scenes in, in the, in the history of the genocide. It was certainly the longest of, of the killings in the sense that Kibuye witnessed the longest resistance to the genocide. So the, if you hear about killings going on in June, it was in Kibuye, the hills of Kibuye where all the refugees had fled.
- 02:54 I was involved in investigations in, in the, in the, in the Kibuye prefecture and as I said to someone two days ago when we were on mission in Kigali and Butare and we were staying in what, what I would call a, a two-star hotel. I looked at her across the dining table and I said to her, "You know when I started this job in 1998, do you know where we used to stay when we went out into the field?"
- 03:16 And she goes, "No." I said there's a place called Home Saint Jean, which was one of the main massacre sites in Kibuye and it's featured in Nick Hughes' film, 100 Days and that was actually the location for that film. There's a church where several Tutsi civilians had gathered and were killed. Their remains were kept in the sacristy, which is just right next door.
- 03:39 And there was no hotel accommodation in Kibuye in those days and we had to basically stay in, in the church. The, the, the nuns had had little rooms and they would vacate their rooms for us and put us up in there. And in the middle of the night – there are no toilets, there are no en-suite toilets in your room, so if you want to ease yourself in the middle of the night, you literally have to come out of your room at two o'clock in the morning and walk to, to, to toilets
- 04:03 And it was the most eerie feeling I'd ever, you'd, you would literally have to wake up two or three colleagues and say, "I need to go to the loo, can you just, can we walk

together,” in the middle of the night. And that’s how we worked in those days and things have changed a lot since then, a lot, but extremely humbling, extremely humbling.

Part 3

- 00:00 **LPN: When you said, you were talking about it was completely different working in the field and I think that what you were just t-, that story that you were just explaining is part of how it was extremely different, can you ex-, tell me about, you know, even a, a story that stands out in your mind of your time in Kigali, of trying to do these investigations in the field which I imagine there were many challenges – language, culture. Is there a story that you can relate, of . . . ?**
- 00:32 The story that comes to mind is not necessarily one that affects my stay in Kigali but one that affects my, my field work in Rwanda. It’s not, not, it’s not Kigali related but it’s Kibuye related. I have had the, the opportunity, even as, as counsel, to, to always go back into the field and one of the most trying experiences that I’ve had as counsel in relation to field work is in relation to the sexual violence investigations.
- 01:06 As you know, I was lead counsel on the landmark sexual assault case of Mikaeli Muhimana in 2003 or 2002, I, I can’t remember the date now, and in in-, investigating and preparing that trial, we, I must have come across some of the most extreme challenges.
- 01:24 The challenges were having to deal with women who were unlike every case that I had tried here or any case that had been tried in the tribunal. The uniqueness of Muhimana was that the vic-, the, the witnesses were not only witnesses, they were victims. They were actual survivors of genocide.
- 01:47 I had tried Musema in 1999 which also had a rape count. But in Musema, there were witnesses, and this is not to demean the, the substance of the evidence by an-, by any means but just to distinguish my experience in Musema from, from Muhimana where I was dealing with a witness who saw what happened to others. In Muhimana I was dealing with the witnesses themselves, the victims themselves.
- 02:13 Now, it was often the case in Muhimana that we would have a witness statement or we would have a witness in the field that we have, we have shortlisted as a witness to a crime. I was fortunate enough to have a very young Rwandese lady on my team who had worked with me as an intern and then gone off to Notre Dame University in the U.S. for a Master’s in human rights . . .
- 02:38 . . . and then came back to work with me, Florida Kabasinga who is a native Rwandan Tutsi young lady, and another Zimbabwean lady – I, I had a team full of, of, of ladies, which was a good thing because I didn’t realize what the challenges would be.
- 02:55 And there were two challenges. The first challenge was that we would go into the field having shortlisted a witness on paper, thinking this is a good witness to a crime of rape

committed by the accused. Halfway through the prepping process and the reconfirmation process, we then ask a question.

- 03:13 “How come you were able to see, there were four of you in the room, everybody else was raped except you. How did you survive?” And she looks at me and she says nothing, but then she turns to my colleague and says to her in Kinyarwanda, “You know, can I trust this guy?” And she says, “Why?” “Because you know what, I haven’t told the whole truth. I was actually raped myself.” “You were? But why haven’t you said so?”
- 03:41 The cultural impact of a woman being raped in Rwanda triggers and at that stage, we have to stop the whole process and the counselling, the, the, the legal aspect stops and the social aspect starts. The men leave and the women stay, and Florida holds her hand. It might take nine hours, it might take ten hours and they very slowly get her to talk about her own experiences.
- 04:10 Now that’s the practical difficulty as opposed to the legal difficulty because now I have told the accused that I am calling ‘Miss X’ in relation to having witnessed something, but it now turns out that ‘Miss X’ is now going to make an allegation that well, the accused actually raped her herself which is, which he has no notice of. That’s one point, but that’s not the most difficult point.
- 04:36 The most difficult point for me as lead counsel was having to make decisions based upon further re-, revelations that she makes to us. So she’s now told us her story and we’re thinking what are we going to do with it?
- 04:50 So they tell me about her story and I turn and I look at her and I say, “Well, are you willing to come to court to say that?” And she goes, “Well, I have a problem.” I’m like, “What is the problem?” “I never told my husband about it.” “You never told your husband; why not?” “Well if I told him, I wouldn’t have a husband today.”
- 05:13 So right there, I’m faced with an ethical dilemma. I have a good witness. I have a victim to a crime. I need to secure a conviction; she’s a convincing witness but then she’s posed a question to me which means that in essence, if I put her on that stand and I risk putting her on the stand and I know we have witness protection, and we, we have pseudonyms, and we have anonymous protections and other things.
- 05:43 But it’s still a decision that I have to take, as to whether or not I want to take the responsibility of this woman’s husband finding out what had happened to her, and risking her marriage at the expense of her testifying on behalf of Mr. Muhimana.
- 05:59 And those were some of the difficult challenges and decisions that one had to make in the field. In the end, I dropped her because I wasn’t sure that I was able to take on that responsibility personally.
- 06:12 To be able to say to this woman, “Well, if you haven’t told your husband this, I’m not going to risk bringing you to Arusha and risk the information leaking to your husband and you having to cope with the domestic situation that emanates from what you’re

trying to do for humanity and for, for international criminal justice.” A typical example of a, a grueling day in the field.

Part 4

- 00:00 LPN: Through your work here – perhaps it was something you brought with you on the plane when you landed in Kigali – but do you have goals in your work here?**
- 00:11 I do and what I would say to anyone and if, if, if anyone was aspiring to be an international criminal lawyer or practitioner, there is no experience from any jurisdiction that prepares you for this sort of work. There isn't. It is totally different from anything you can ever imagine in this world.
- 00:35 In terms of the law, in terms of the procedure, in terms of the practical challenges, and even the terrain; there is nothing that prepares you for this sort of work. And it's just a very humbling and steep learning curve and that's why I've stayed in it for this long to just ensure that I have the, the, the total experience, rather than just coming in and doing one case 'cause it's just, it's just so varied.
- 01:04 The law is being developed as we speak. We are the ones who are developing the law. We create the jurisprudence. The crimes are unique, the terrain is unique, the personnel and the practical challenges that we, we, we encounter are, are, are completely unique to, to this area of specialization. Investigation of crimes that were committed several years before the investigations commence. Investigations being, being, being carried out by people who are not native to the territory or to the jurisdiction, who don't speak the language.
- 01:39 In my, in London for example, a witness statement will be taken by a law enforcement agent in English, sometimes written by the witness, him or herself. Here, we have to use interpreters. The interpreters are not necessarily certified interpreters. Now, if there is a discrepancy in that statement and the witness is being impeached on the stand by counsel, which is quite rightly his right . . .
- 02:09 . . . how much, to what extent can you hold that witness responsible for the discrepancies in her statement? But guess what, at the back of the statement, we made her sign a declaration saying, “I believe and I confirm that the contents of this statement are accurate and true,” which you and I would do in our national jurisdictions because we speak the, the, English and we've probably written it ourselves.
- 02:35 In the context of an illiterate Rwandan witness, who's had to rely on third party for interpretation, and when the third party is not necessarily a certified interpreter, to what extent can you actually make her sign a declaration? There is no contemporaneous record of the interview. There is no tape recording of it.
- 02:54 It's, the-, they're basically notes that are taken and expanded upon after the interview, typed up on a computer and open to all sorts of discrepancy. Now, is it reasonable for anyone to impeach a witness on the basis of that statement? I would say not. These are

things that are unique to this area of specialization; whether you are at the ICC, or the International Criminal Tribunal for Yugoslavia, or the ICTR. It's just international criminal law, it's just the way it proceeds.

03:25 So nothing, no, no experience in this world would prepare you for this sort of work. It's just, just, you just have to be willing to be open-minded and just learn.

03:37 **LPN: Thank you.**

Part 5

00:00 **Robert Utter: My great pleasure to be with you sir.**

00:02 It's a pleasure to be here too.

00:03 **RU: My name is Robert Utter. I was a former Chief Justice of our Supreme Court in Washington State.**

00:09 It's very nice to meet you.

00:10 **RU: And served there for 24 years.**

00:12 Wonderful.

00:13 **RU: I was a judge for ten years before that at various levels . . .**

00:16 Wow.

00:17 **RU: . . . but, and I've done, as you noticed on my card, some arbitration mediation since then, which I believe firmly in, because I've seen the non-predictability of what happens in our formal legal system.**

00:30 Yes.

00:30 **RU: But this has been a great privilege for me to participate here and learn more about the human side of what occurred. My questions will not primarily be directed to the legal issues . . .**

00:42 Sure.

00:42 **RU: . . . but more to the human issues because people can see in the written record what occurred.**

00:47 Absolutely.

00:49 **RU: But the human part of it is what makes the difference . . .**

00:51 Absolutely.

00:52 **RU: . . . what happens. I thought I'd start by asking you what you would say to future tribunals and future judges who serve in a similar situation, that might not appear in**

the written record. What kind of advice could you give, let's start with tribunals, to make them more effective, more victim sensitive?

01:13 Well, I, I started off with one, one of the, the, the m-, the issues that I find most central, with the benefit of hindsight of course, which is what I . . . the, the, the ability to involved, to involve the, the, the locals in the formative years of investigation, which is what this tribunal lacked of course. I'm not so sure that the Yugoslav tribunal suffered from that but certainly the Sierra Leonean tribunal improved on that . . .

01:43 . . . because it, it, the, the tr-, Sie-, Sierra Leonean tribunal was the first example of the truly hybrid tribunal in the sense that it was a, it was derived as a result of a cooperation between the government of Sierra Leone and the United Nations. And it had a sizeable element of local involvement which, which must have made all the difference to the initial investigations and indeed the prosecution of the crimes they were, they, they, they had to face, which is essentially what we lacked here.

02:17 I don't think there was any Rwandan involvement in the work that we did, the initial, certainly not in the initial investigations. And in the prosecutions, I don't think we started employing Rwandan nationals in the Prosecutor's office until at least eight years into the life of this tribunal.

02:38 And you can, you can imagine what the, the, the practical effect of that is, in, in, in the sense that w-, we may have, we may have based many of our trials on erroneous theories and stra-, strategies, not out of negligence but out of ignorance . . .

02:54 RU: Yes.

02:55 . . . and not being able to understand the, the intricacies of what really may have taken place. But as I said in the case of Rwanda, it's not a criticism in the sense that you can also understand why they were not able to do that much earlier, because it, it was, the UN rules in some cases may conflict with the, the, the need for e-, ex-, expedient investigations in the sense that you are not allowed to discriminate between sides.

03:24 And it would have been difficult to be able to ask potential employees, "Well, what's your ethnic group?" to be able to decipher whether or not they, they, they were on the right or wrong side or whether or not they themselves had been involved in any atrocities. So, one understands why that may not have taken place in the, in the, in the earlier days of, of, of our work, but certainly there's everything to be said for, for having a sizeable amount of local involvement.

03:57 The, the, the only other thing that I would talk about is to have a very straightforward but logical strategy and theory, case theory. One of the initial drawbacks of the prosecutions of the genocide was a lack of a unified case theory, and, and that is a problem which, which directly emanates from the lack of involvement of locals.

04:35 It's one of the worst things you can do as a prosecutor, to, to base your strategy on a theory that is not unified. Why does that happen; in the sense that the prosecutor's office of most international tribunals are divided into various trial teams.

- 04:55 The risk of operating in that manner is that it is easy for each trial team to imagine that they're prosecuting a different genocide. So, you would often find Team A proceeding on this theory, Team B proceeding on this theory, but at some stage, people have to understand that there was only one genocide in Rwanda.
- 05:21 And even though we're divided into 20 trial teams, each, each, each headed by a senior counsel, it is one case, it is one theory, it's one genocide over three months, taking place in one country. Why does that happen? That happens because lawyers by their very nature are egocentric. Lawyers like to take charge and each lawyer wants to distinguish himself and flourish.
- 05:46 RU: Unlike judges.**
- 05:47 Well . . . perhaps.
- 05:49 RU: We'll talk about that later.**
- 05:51 Well we, we've, we've had, we've had a different experience then.
- 05:52 RU: Yes.**
- 05:53 We'll come, we'll come to that later. But in essence, lawyers tend to want to take charge and no one lawyer, rightly or wrongly, wants to confer necessarily with his colleague. What we found in the practical result of that is that various trial teams at some stage in the formative years may have adopted conflicting theories to what is essentially one case. So a unified case theory certainly would help; local content, a unified case theory.
- 06:23 The, the, the other drawback in my experience of working here is getting the right personnel on board from the onset. The tribunals are structured around the formation and the setup of the General Assembly. This is not the UN General Assembly and the UN has a habit of structuring its offices around the member states. Well, it's all well and good if you want to have diversity, but this is a court and we have serious work to do.
- 07:00 It shouldn't really matter if every lawyer in their office is Canadian, if they can get the job done. There is no point proceeding to replicate the UN General Assembly in a law office if only that's going to cause conflict. If I can't speak to my colleague, who has a civil law background, and I speak French and he speaks Italian, what's that going to achieve?
- 07:25 If he can't understand where I'm coming from and he can't draft a brief in my language and I can't understand what he's drafted in his language, how are we going to get the job done? The practical effect of that is just delays. If we have everyone from Burundi, as long as they get the job done, it shouldn't really matter. Your qualifications should matter more than your nationality.
- 07:52 I think that again, the need to sort of replicate the, the, the UN General Assembly and to have diversity in, in, in the organization may have led or may have slowed down this.

And I, I will suggest that yes, it is, it is right to have diversity but have the right people on the job and it doesn't really-, it shouldn't really matter if everyone is European or African or whatever; get the job done. So that would be another, another advice that I, I would have in, in retrospect.

Part 6

00:00 **RU: And who would be the person wise enough to put this together?**

00:04 The people who decide or pass resolutions to establish courts. I think, and when you look at the, the issues that we're having to deal with in relation to the completion strategy, you would understand very quickly that the people who administer the tribunals do not actually understand for the most part what lawyers do.

00:35 When – and, and digressing a little bit, when, when, when the, the General Assembly or the Security Council encourage you to wind up your proceedings, one gets the impression that somewhere, they think that that's the end. It's like a UN mission. We all pack up and go and we dismantle and we go, but this is a court.

00:53 We have people serving jail terms and someone has to administer those, those tariffs. People will come up for a release; there will be issues on appeal based on new evidence that would arise. There has to be some sort of structure, some sort of tribunal that would exist in perpetuity.

01:16 And I wasn't so sure that those issues were foremost on their minds when, when, when they passed all sorts of resolutions and, and, and encouraged us to do all sorts of things, and you would find as you talk to members of the Security Council and, and diplomats that they, they're actually surprised when you say this.

01:35 Say, "Oh right," so yeah, I say, "So what happens when someone comes up for, for release? Who supervises the, the, the prison terms and who or how do we deal with cases that, that arise on appeal?" So it, it's interesting. I mean one, one just has to, to, to suggest that as we go along, there is a body out there that is, is experienced in, in, in establishing international tribunals.

02:02 That said, one has to bear in mind that the ICTR and the ICTY are indeed unique exper-, experiments that will never be repeated; they will never be. We would never find institutions like this again. First of all, they've cost too much money, they've gone on for so long, they're extremely elaborate in their, in their setup. And more importantly, the crimes that the ICTY and the ICTR have had to deal with will never in our lifetime reoccur.

02:36 I, I, I can almost guarantee it. I can't imagine anyone in this world sitting back to allow the magnitude of what took place in Rwanda to reoccur. You can see the response to Congo in the last week. In, in, within five days, we've had five diplomatic missions from the U.S., the foreign minister of France, and the British foreign minister all coming to Kigali and saying, "We have to solve this problem."

- 03:01 Therefore, it is going, it is, to my mind personally, it is unlikely that the world would sit back and allow what happened in Rwanda to happen. So in terms of the scale of the atrocities, I can't imagine us ever having to confront this sort of crime. So the crimes themselves, in their selves are unique, either here or in Bosnia.
- 03:20 In terms of the cost, I would very much doubt that the world would ever see tribunals that will be funded from the regular budget of the United Nations. You only need to look at Cambodia and Sierra Leone and East Timor to see that. It would never happen. They would be funded by donations from interested parties. They would never have the sort of funding that they've had from the, from the regular budget. So all in all, these are very unique experiments, experiments that would probably never, ever be repeated.
- 03:56 RU: Is there some place where it's been done right in your estimation?**
- 04:00 Sierra Leone.
- 04:02 RU: Sierra Leone.**
- 04:03 Well this, this, (___), my, my criticisms by no means suggest that these, that this, this experiments haven't worked. They were, they were the formative tribunals after Nuremberg. Some, (____) . . .
- 04:15 RU: The word 'ad hoc' has been used.**
- 04:17 They're ad hoc.
- 04:18 RU: It describes it.**
- 04:19 Absolutely. They had to start, we, we had to start somewhere.
- 04:21 RU: Mm-hmm.**
- 04:22 And they have created the basis for the permanent International Criminal Court of The Hague. The law has been developed here. I always say that this is the genocide court. The Yugoslav tribunal is not the genocide court; it's a war crimes court.
- 04:37 This is where the law of international, of genocide has been developed, so they've been extremely successful in their own right. In other respects, they've had serious drawbacks, but in terms of the jurisprudence and she's asked me about practical experiences dealing with rape victims, the, the, the practical difficulties of preparing a rape victim for, for her testimony and having to deal with cultural issues – it's all been developed here.
- 05:07 The issues that serve as negative, as far as these tribunals are concerned, concern the framework of the operations. Is it logical for these tribunals to proceed on a hybrid of rules? Should they be more inquisitorial in their approach for example, not because of the tribunal but (___), but because of the nature of the crimes that they seek to investigate.

05:35 If you're investigating and prosecuting crimes that are large scale crimes, that have taken place several years before the institutions were, were established, should we not consider a more inquisitorial approach? Like in Cambodia, where there's an investigating magistrate that compiles its own dossier and he takes charge of the situation.

05:56 Questions such as, "Is an adversarial approach more relevant to international crimes?" Those are things that we can derive from the work of the ICTR and the ICTY. So in that sense they're extremely successful because we're able to actually judge – look at Milosevic for example. Milosevic died during his trial based on the adversarial system. The length of the proceedings . . .

06:23 RU: God was the ultimate judge.

06:24 Exactly.

06:25 RU: Yes.

06:25 Absolutely. Absolutely.

06:27 RU: The suggestion I've heard is that the civil system may well work better.

06:32 I agree.

06:32 RU: I hear you saying that.

06:33 And I agree; having done this for ten years, I agree. I, I didn't know anything about the civil system before I came here . . .

06:38 RU: Yes, yes.

06:39 . . . but I've seen it work and I, I've spoken and I've researched it, and I think in the context of such broad, large scale crimes, the inquisitorial system may be a lot more relevant to the work that we do here, disclosure issues, disclosure of exculpatory material. They just, in the, in the, in the present case in Government One, one of the accused persons is unwell.

07:08 The trial has been going on for several years. The latest prognosis is that he wouldn't return to court in six months and that's just an estimate. Now, the trial is at, it, it's, it's just basically halted.

07:24 RU: Yes.

07:25 Now, would an inquisitorial approach have been different in that case? I don't know enough about the civil system, what would they have done in that case, it may be different. It's all dealt with on paper I understand.

07:37 So the ability for an accused person to insist to be present throughout the trial, either his own trial or that of his co-accused may or may not impact on, on, on that system. Those are the lessons we've learned from the work we've done here, and in that sense,

these institutions have been extremely successful. Who's done it right? Well, I wouldn't use the word right or wrong; I would use the word different.

08:03 Sierra Leone has adopted a mixed system with a local content, but then Sierra Leone is different in the sense that S-, the Sierra Leonean tribunal is located in the jurisdictions . . .

08:17 RU: (____), of course.

08:18 . . . where the crimes were committed, another drawback of the Rwandan tribunal. We are so far removed from the victims of these crimes that they don't even understand what goes on here. I go to Rwanda, I have Rwandan friends. Half the time when they see me: "What's going on there?" Which is sad.

08:39 Outreach or no outreach, it's a, it's a different ball game when you can walk into a court room and follow the trial of someone who raped your sister or killed your father. It has to have a healing effect and aid to reconciliation. The fact that the tribunals are situated away from the location, the locus, must, must have some, some, some negative bearing on their success.

Part 7

00:00 RU: You've read my mind on the reconciliation issue.

00:02 Oh, absolutely.

00:03 RU: Le-, let me ask if perhaps the use of multiple defendants in a trial is a handicap to more expeditious justice.

00:14 That was going to be my next drawback.

00:15 RU: Mm-hmm. We're even then.

00:16 The, the, the fourth, the fourth, the fourth point, the fourth point was going to be the, the, the w-, our charging strategy.

00:23 RU: Yes.

00:24 The, the charging strategy has to change. I have been involved in both joint trials and, and, and single trials and I, when we look at the, at both, it's clear that unless there is evidence and strong evidence of defendants acting in concert or one of a conspiracy, there will be no useful purpose served in proceeding on joint trials.

00:54 In my, in my days in the UK, we would have eight or ten defendants in the dock at the same time. But that was based on a stronger case of conspiracy where we could use one witness to, to, to implicate all . . .

01:13 RU: Yes.

- 01:13 . . . rather than call ten witnesses to implicate one for one, one minor aspect. But in, in this, in, in this environment, it hasn't worked very well. In the early days, one of our prosecutors, Louise Arbour, wanted so much to replicate what had happened at Nuremberg and she, she, I was actually in the office in 1998 as legal adviser, and in the sense that I hadn't actually addressed this issue in your, to your colleague's question and she'd asked what positions I had held in the office.
- 01:44 I, I, I worked as a legal adviser for one year in my Kigali days before I came across to Arusha as prosecution counsel. And when, when I worked as legal adviser, I was involved in the formative years of the indictment drafting process. With Louise Arbour, we once drafted an indictment that was rejected, thankfully, (___), with the benefit of hindsight, that implicated 27 people, Bagosora and 27 others.
- 02:12 It was what we call the global indictment. It was an indictment that she had a concept in, in, in her mind to replicate Nuremberg, to charge those who had the greatest responsibility, in other words the entire cabinet . . .
- 02:25 RU: (___), mm-hmm.**
- 02:26 . . . the entire military command and the political figures in a single indictment and charge them with conspiracy to commit genocide and other, other, other enumerated acts of genocide.
- 02:41 In rejecting that motion to amend indictment or the motion for joinder, a Pakistani judge in those days called Judge Khan, an extremely brilliant man, went through a myriad of reasons and said, "First of all, how are we going to accommodate 27 accused persons in the court rooms here? Where are their lawyers going to sit? Each accused person has two counsels and two investigators."
- 03:10 "Would the infrastructure present in Arusha accommodate?" He dealt with all the practical issues and then he dealt with the legal issues and said, "Well, delaying effect on the trial." God forbid, one accused person falls ill, so what? It's, the whole process . . .
- 03:27 RU: (___) stops, exactly.**
- 03:28 . . . is halted for 27 others. And he, i-, it's an interesting decision to, to, to read because he went through both the legal and the practical difficulties of actually joining 27 people in one case in the context of international crimes. (___) thought this wasn't feasible.
- 03:46 We then went back to the drawing board and that indictment is what became five cases today. The Mil One case, the Mil Two case, the Gov One case, the Gov Two case, and one other case. They would have been joined in one single trial, and that would have, I mean we would have been here . . . Butare has been going on for seven years or eight years – it's only got six accused persons in it. You can imagine if we had 27 people sitting in the dock in Arusha. It wouldn't have worked.

- 04:17 With an inquisitorial approach by the way . . .
- 04:20 RU: Yes.**
- 04:21 . . . it may have been different and that may have been what Arbour was thinking . . .
- 04:25 RU: Mm-hmm.**
- 04:26 . . . based on her mixed experience . . .
- 04:28 RU: (_____) of course, yes.**
- 04:29 . . . in Canada. At the back of her mind, she may have been thinking, alright, maybe this is – we, we can do this But that would have worked if we had a purely inquisitorial structure, because then, it would be the invest-, inve-, investigating judge that would take charge of the process and it would all be dealt with on paper and that may have worked, but not, not in an adversarial system. So in the sense that who is doing it right, well who is doing it differently? Sierra Leone is doing it differently.
- 04:59 They have joinders too but they're joinders that are based on actual conspiracies of people acting in concert, where they can use minimum witnesses to, to, to achieve convictions. I think Cambodia is (____) it right. I've been out there, my, my, my colleague who co-heads the, the prosecution there is Robert Petit. I worked with Robert Petit in Kigali in, in 1997 and '98 and I know Robert very well, he's Canadian. And I've spoken to Robert in relation to their approach.
- 05:34 Cambodia certainly has its drawbacks in, in , i-, in the sense that, one sense that there's an element of friction between the government and the, the UN part of it. But in se-, in, in, in terms of the structure of the court for crimes that are being prosecuted several years after the events, I, I, I think the structure they have is going to expedite the proceedings. So we have Sierra Leone which is a good example. We have, we have, we have Cambodia as well.
- 06:03 But the ICTR's main success it's in, has been in i-, in i-, in its ability to actually appr-, apprehend the high level criminals which, which up until recently, Yugoslav didn't, the Yugoslav tribunal didn't succeed in doing it. So they all have their pros and cons. In terms of if you're, if you're looking for the example of, the best example of international cooperation, it's the ICTR. By 1997 or '98, the ICTR had almost the entire cabinet in custody.
- 06:38 In one, in one operation in Nairobi, the NAKI Operation, nine or ten people were arrested including the prime minister and several members of his cabinet. So in, in that sense, when you cross reference to the fact that Milosevic was only apprehended or surrendered to the ICTY after so much diplomatic wrangling and then now Karadžić, y-, you, you, you get the sense that in terms of, the best example of international cooperation has come from here, clearly.

07:08 **RU: Been helpful. I have a confession to make, I (____) my confession. I was once a prosecutor as well so . . .**

07:15 Most judges . . .

07:16 **RU: . . . so I hear what you're saying with some sympathy.**

Part 8

00:00 **RU: But let's go on to judges now, because you've had a unique experience in working at a prosecutor's level. You've also viewed the way different judges operate. What advice would you give judges in the future?**

00:17 Interesting. Just, just like the prosecution or the investigation staff, get the best judges for the work, for the job. I mean we, we've had a mixture of judges pass through all the tribunals. Some have had better judges than others and better in the sense that their prior experience. I have been a criminal practitioner all my life, but I've also had colleagues that have been academics, and my father was a professor of law for most of his life.

00:53 My father would tell me that there's a distinct difference in an academic and a practitioner; for obvious reasons. Different people have different skills and again, in an attempt to absolve people from most parts of the world, you get the impression that the rules are relaxed to be able to have as many people in the bag as, as, as possible.

01:19 So you, you would have for example then say people who have experience of lecturing or academia, people who have experience of judicial work or practitioners. Well, it's got to be one or the other. You either want to judge or you don't want to judge. The people who make the best judges are practitioners or people from the bench.

01:43 Academics have a very academic approach to things and if you read a lot of the decisions that we, we've had here, you would wonder where many of these judges are coming from. Sometimes you, you, you would imagine that a judge would be, would have a, a more positive response to the plight of victims. We've also had judges who have been diplomats, who have no experience of either academics or practical experience.

02:17 But more importantly we have, we've, we've had judges who – and this happens all over the world including the UK – who have no idea of what obtains in reality on the ground. They have no idea of the sort of dilemmas that I've talked about, the kind of things I've faced. They have no idea of the terrain.

02:42 So when a witness says, "It took me 20 minutes to cover a distance of one kilometer." Or . . . you have to be able to understand that in the context of the terrain in Rwanda that he was probably, he probably took a shortcut or he went around a hill or he could see.

- 03:07 When a witness testifies as to how the accused came to his neighborhood and even though he didn't know him before, had no prior knowledge of him, he was able to decipher that that was the Minister of Transport. Obviously, because he comes from a location where there are no cars.
- 03:28 If a man drives up in a truck or in a car, in a Mercedes in a village, in the context of that village, everyone is going to make it their business to know who he or she is. People have to understand the cultural context of what we're dealing with. It's not New York, it's not London.
- 03:49 If a man says, "I saw him . . ." or, "I was able to identify him." "I was able to identify him because he stood out. His clothes were different. He's not one of us. It was obvious that he had come from somewhere." There are cultural issues that are unique to this whole area of specialization, that if you don't take the time to understand what those cultural issues are, you would not understand the context of the issues that we're having to deal with.
- 04:24 RU: So you want a judge who is bright but who's had practical experience.**
- 04:28 Yeah. It's the same thing in the UK. It's not, it's not, it's not a criticism of the judges in international courts.
- 04:33 RU: It's all over the world, all over the world.**
- 04:34 Absolutely. I, I, I prosecuted a case in – I defended a case in the UK when I was there, where a judge gave, the judge passed a comment. It was a rape case and said, "The victim having worn a skirt so short was inviting trouble." That was a very unfortunate statement but in retrospect when I got home, I, I, I thought about it and I said, well the judge lives in the Inns of Court.
- 05:03 He doesn't go to nightclubs and he crosses the street from the Inns of Court to the high court. He doesn't know what young ladies, how young ladies dress. He needs to see my teenage daughter to see what – do you understand? If you're so far removed from, from reality and from society, it is difficult for you not to, to understand what obtains in reality.
- 05:24 So if you say, "She was asking for it because she was dressed in a short skirt," it means you have no idea of what teenage girls wear. So it's, it's not a criticism that is unique to this area of specialization but it's, it's the entire world. They just need to know what obtains in the real world. Look for the right judges. There are loads of them out there.
- 05:44 RU: The rules need to be changed for a selection then, perhaps.**
- 05:49 Yes. Well, do they have rules for selection? Well, perhaps yes. I mean the, the, the ICC has different rules; they have more structured rules. The ad-hoc tribunals have . . . they're a little bit more flexible in their rules. I mean I've looked at some of the people who appear on the list of ad litem judges and sometimes you worry as to how people

make this. This is just lobbying. It's I think what, ten years' experience of either being a lecturer or diplomat or something. (___).

06:21 **RU: It's not, not enough.**

06:24 It's worrying.

Part 9

00:00 **RU: You've been very kind with your time. I've just checked my watch. We're about two hours, and I've enjoyed every minute of it. Let me ask, in all of the matters that you've handled here, what impact has this had on you personally when you look back at the person you were ten years ago and the person you are now?**

00:20 I think my wife would answer that question a little bit better than I, than I would. I think I've taken a lot of things for granted and I, I may not have realized how, how much of a toll this, this, this certainly has, has taken. It's, it's extremely difficult, extremely difficult to be able to deal with (_____).

00:44 And like I say to people, I, I lost my dad in, in May, 2005 and I, I was amazed that – I'm an only child – and I was amazed at how I received a phone call right here in Arusha to say, "Well, your dad is, is ill." And I got on a flight to, to Lagos from Nairobi and then got to Lagos and he had died like hours before. And right there, I had to go to the hospital, deal with having his body moved from the hospital to a mortuary because he had died in a hospital that didn't have its own mortuary.

01:25 And just hit the ground running, making the arrangements, taking charge of my mom, taking charge of the family, making the arrangements for his funeral and I was just go, go, go, go. And at the end of all this, having not shed a tear and buried him, I was thinking, where did you derive that strength from, you know?

01:44 And in retrospect, having dealt with things like this for so many years, talking to victims of such heinous crimes, women, kids, husband killing child, wife killing, brother killing, and you think, "Gosh. I've become so cold and, and hardened to some of the things that would break any, any human being" and it's only from experiences like that that you rewind and you think, where did I derive that strength from?

02:16 And it's got to be this, this sort of work. It's, it's, it's perhaps, apart from being humbling, it's perhaps one of the most trying things you could ever . . . having to sit down with witnesses day in and day out that just relive their experiences. And, you know, to be able to help them tell their story, you literally have to put yourself in their position and visualize what, what they . . .

02:38 **RU: Of course.**

02:38 . . . what they went through and it's, it's very difficult.

02:42 **RU: Must tear your heart out. Yeah.**

- 02:43 Absolutely, absolutely, absolutely.
- 02:46 RU: One last question. We had a marvelous interview with a judge the other day. He indicated someone had given him a, a gift, The Iliad and the Odyssey, and he re-read that, he'd read it before of course in school. And after he finished it, he reflected and said, "Things have not really changed much from those days." Do you share the same view or do you have hope for, for something better from what you've seen?
- 03:15 Well, I do have hope. I worry about Rwanda and I've shared that with many people. I'm happy from what I've seen that the country seems hell bent on moving on and developing themselves and moving on from being known or recognized with genocide. But I worry as to whether or not they're healing and I, I, and I have reason to know because of the work that I've done.
- 03:50 I've had the privilege and I'm, I, I must be one of the very few people who have been able to look at the Rwanda story from both sides. Having been in the tribunal for ten years and prosecuted ten cases, the Prosecutor then got me involved with the RPF files, which was the other side and I had those files for 18 months and I headed the special investigations for 18 months.
- 04:18 And so I have a unique opportunity to actually look at this whole story from two different angles. That aside, and without making any specific reference to the, the, the merits or demerits of, of, of the whole genocide story, one won-, wonders on a broad scale if they're healing, if there is healing, if there's reconciliation.
- 04:45 And, and if so, how, how healed people, is there, is there a prospect that Rwandans would be reconciled? I say this to my, my, my Rwandan colleagues, be they Hutus or Tutsis and I asked them and I said when I was investigating the RPF files, I would go out and talk to people in the diaspora because now, I'm looking at the other side.
- 05:19 And they would tell me things, not about the RPF files but about the RPF and about the Tutsi and about the government of the day, and what, and they would tell me things that they're telling their children. And I would walk away from that interview, that meeting and I would sit on a plane and I would say to myself, isn't this the same old story? Wasn't this what these guys were telling their children when they were out there?
- 05:49 And I'm hearing this in 2007 and 2008 from a guy sitting in Montreal or in London or in Quebec, and he's telling me how, "Even if I don't go back, my children have to go back." And he's not sounding like he's reconciled or like he's come to terms with the situation and I, I sense vengeance and I sense revenge, and I sit down and I, I worry. I worry and I, I, I certainly don't want to be doing this in 20 years or, or, you know, be involved in things like this.
- 06:30 I had thought that this would – this whole system of international justice would deal very adequately with the, with the problem. And I'm very happy for Rwanda in terms of

the economic development. I'm very happy with the pace of the economic development, but I'm worried about the reconciliation.

06:52 **RU: Perhaps reconciliation is too broad a term.**

06:55 Maybe it is.

06:56 **RU: And one wise person I spoke to in Rwanda said, "Reconciliation, perhaps. Learning to live together, probably." Let's hope at least, let's hope.**

07:06 Absolutely. Absolutely, absolutely. And I – another way to look at it is that the country may become so important economically that that in itself may, may help to build bridges and, and reconcile people and there, there might be so much economic buoyancy that they might, that might pacify ill-feeling, and . . . but there is a lot of division.

07:31 **RU: Yes.**

07:31 I sense it from the work I've done on both sides, there's a lot of division and I, I hope that we've done, we've, we've, we've done our own little call to help, to help solve the problem.

07:47 **RU: You've been very kind. I could continue this discussion for hours literally but I think we have a film problem.**

07:56 We're running out of . . .

07:56 **RU: So let me thank you so much.**

07:57 Thank you sir for having me. Thank you very much. Thank you.