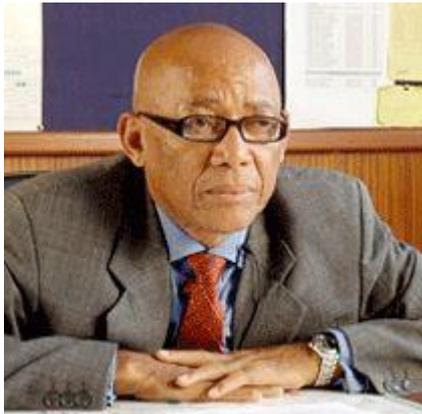




# Voices from the Rwanda Tribunal

## Official Transcript: Emile Short (Full Interview)



|                           |                                   |
|---------------------------|-----------------------------------|
| <b>Role:</b>              | Judge                             |
| <b>Country of Origin:</b> | Ghana                             |
| <b>Interview Date:</b>    | 21 October 2008                   |
| <b>Location:</b>          | Arusha, Tanzania                  |
| <b>Interviewer:</b>       | Robert Utter<br>Donald J Horowitz |
| <b>Videographer:</b>      | Max Andrews<br>Nell Carden Grey   |
| <b>Interpreter:</b>       | None                              |

## Interview Summary

Emile Short discusses the importance of creating an accurate historical record of events in Rwanda. He reflects on the ICTR's contributions to generating a rich body of jurisprudence that future tribunals can draw upon. Short remarks that the ad hoc tribunals have not provided as many direct avenues to reconciliation as might have been provided by other mechanisms. That said he recognizes that reconciliation is a long and complex process of which justice is an important part, particularly for victims.

*The transcript of the interview begins on the following page.*

1 **Part 1**

2 **00:00** **Robert Utter: I'll start with my introduction and then ask you to introduce yourself.**  
3 **My name is Justice Robert F. Utter. I'm from Washington State. I formerly served as**  
4 **Chief Justice of their court and on the Supreme Court for 24 years and a judge for 14**  
5 **years in other levels of courts before that. I'm here with the ICTR Information**  
6 **Heritage Project.**

7 **00:27** **RU: And in that capacity, it would be my honor to ask questions of my colleague**  
8 **judge, Francis Short. Mister Justice or Judge, whichever, whichever you prefer, we'd be**  
9 **interested in your background, how you got here, and what were the reasons for**  
10 **seeking this position.**

11 00:49 Well, my name is Emile Francis Short. Presently, judge with the International Criminal  
12 Tribunal for Rwanda. Prior to taking up this position in March 2004, I was the head of  
13 the State Human Rights Commission in Ghana as well as the Ombudsman from 1993 to  
14 2004.

15 01:19 In that capacity, we adjudicated complaints of human rights violations, administrative  
16 injustice, et cetera, and also did a lot of public education on human rights issues. Prior  
17 to that, I was in private practice for about 20 years in Ghana and during that period, I  
18 also lectured in law part-time in the University of Cape Coast Ghana and I have also  
19 lectured in law in London for some time.

20 01:57 And I also worked in Rochester, New York as an assistant editor with the Lawyer's  
21 Cooperative Publishing Company for a period of about three years. Briefly, that's my  
22 background. I'm of course obviously a lawyer by profession. I hold a Master's Degree  
23 from The London School of Economics and Political Science.

24 **02:23** **RU: And how did you get to your present position and what interested you in this?**

25 **02:28** **Note: Gap in interview (Approx. 1 minute in duration.) Gaps occurred due to**  
26 **interruptions during the interview, technical issues, or corrupted files.**

27 **02:36** **RU: Mister Justice Short, how did you arrive at this position and, and what was your**  
28 **interest in doing this?**

29 02:44 Well, I've always had a passion for, for justice, you know, and have always been  
30 interested in, in adjudication, you know, which I was involved in, in my previous job as  
31 head of the Human Rights Commission and as an Ombudsman.

32 03:04 That position was a very challenging one, inasmuch as we had to investigate as well as  
33 adjudicate on, you know, human rights complaints against public officials and the  
34 manner in which they exercise their power or exercise their discretion.

35 03:24 After, after many years in that position, I felt I needed another challenge and I saw this  
36 position as a bigger challenge and I wanted to be involved in dispensation of justice at

37 the international level. So I intimated to my government that I would like to be  
38 considered for intern-, an international judicial position.

39 03:59 And so my name was forwarded to the United Nations and, you know, we wen-, we  
40 went through the usual process of elections and luckily I was one of those who was  
41 elected to serve on this tribunal.

42 **04:18 RU: Has it met your expectations?**

43 04:23 The – well, in many ways yes. This work is very intellectually stimulating. You know,  
44 international humanitarian jurisprudence, international criminal law jurisprudence is  
45 very complex and very interesting. It's a different kind of jurisprudence, which I wasn't  
46 used to, but I've found it very exciting and very challenging.

47 04:56 And here, we, we, we have to deal with lawyers from all over the world, from every  
48 part of the world, you know, and you have some of the best lawyers appearing before  
49 us and the intellectual discourse is quite stimulating. And therefore to that extent, the  
50 work itself I've found very, very interesting and very satisfying.

51 05:27 At times it has been stressful because we're under pressure to complete our, our work.  
52 And so for the last two or three years, we've been sitting full days, you know, that's  
53 from nine to five thirty and sitting in court continuously, you know, wi-, with the usual  
54 short breaks can be stressful at times. You know, you have to be attentive throughout  
55 such a long period. So yeah, it has been quite stressful at times.

56 06:07 It also has been sometimes disturbing to see or to hear the events that took place, you  
57 know, in this continent and how it has affected, you know, our national development.  
58 So there are different perspectives; I have different perspectives of my experience  
59 here. Some are very satisfying, others are quite disturbing.

## 60 **Part 2**

61 **00:00 RU: What has your role been with the ICTR?**

62 00:04 Well, as a judge, my first and foremost role of course is to, is to dispense justice, to, to  
63 determine the guilt or innocence of those that are brought before us. But you know I  
64 think all of us have a much wider role, and in order to, to identify that role, we must  
65 look at the, the objectives of this institution.

66 00:33 First of all, I think this institution, like the other ad hoc, you know, tribunals, was  
67 established to, to fight impunity against gross violations of international law and so, I'm  
68 contributing to that objective. This judicial process also in my view upholds the rule of  
69 law. You know, in Africa in particular, the issue of accountability of public officers is a  
70 very critical and important one.

71 01:20 And to the extent that I'm involved in this process of accountability, I find that I am  
72 contributing to the establishment of the rule of law and to providing justice to the

73 many victims, you know, in this tragic event. Of course, I must emphasize that like any  
74 other judge, we, anybody that appears before us is presumed innocent until proven  
75 guilty.

76 02:00 None of my remarks should be interpreted as, you know, prejudging anybody that  
77 appears before us. As you know, some people who have appeared before the tribunal  
78 have been acquitted. So that's o-, one of the, the other important contributions.

79 02:20 This tribunal is also providing what I think is an accurate historical record of the events  
80 that took place in Rwanda in 1994 and this is an important historical heritage.

81 02:39 You know, it is important for, for us, for, for Rwandans, for Africa, for the entire world  
82 to know exactly what took place. And insofar as we are in a position to collect  
83 testimonies from, from witnesses, from accused persons, from experts, espe-,  
84 especially you know, political scientists, historians, social scientists who have expert  
85 knowledge of these events, we are amassing and we are, you know, putting in, on  
86 record what I consider to be a very accurate historical record of the events that took  
87 place.

88 03:31 And lastly but not the least, we are providing a very rich body of jurisprudence for other  
89 similar tribunals like the International Criminal Court, the Special Court, and all the  
90 other hybrid tribunals that have been established. I think the ICTR has developed a  
91 remarkable body of jurisprudence which would be extremely useful to all these other  
92 bodies and I, I am proud to be part of, of that, that heritage.

93 04:15 You know, I've been involved in a number of important decisions, you know, landmark  
94 and seminal decisions and so that, to my mind, is also another very important  
95 contribution that I think that I am making, you know, in this particular role that I have.

96 **04:38 RU: That's very helpful.**

### 97 **Part 3**

98 **00:00 RU: You mentioned one of the obligations is to fight impunity. There are, as I**  
99 **understand, literally hundreds of thousands of perpetrators of the genocide in**  
100 **Rwanda. What is the role of this court in the prosecution and hearings and charges,**  
101 **opinions of the court in dealing with those perpetrators and what is the role of other**  
102 **courts like the Rwandan courts for instance?**

103 00:29 Well, this court is primar-, primarily required to handle cases involving those who we  
104 say bear the greatest responsibility for these crimes. And by that, I mean the legislation  
105 or the statute that established the court mandates us to deal with those category, that  
106 category of people.

107 00:59 And by that I mean not necessarily those who actually participated in the, in the crimes  
108 but those who are alleged to have masterminded the crimes or to have been behind,  
109 you know, the, the, the crimes, to have planned it.

- 110 01:21 And so you find that most of the cases involve accusations of conspiracy, you know, to  
111 commit genocide, incitement to genocide and so on. So our role of course is limited to  
112 those people who occupy the, the, the high positions, the big fish so to speak.
- 113 01:49 The Rwandan courts on the other hand are dealing with the vast majority of the alleged  
114 perpetrators, you know, especially those who are alleged to have actually participated  
115 in the commission of the crimes. So that's one big distinction.
- 116 02:15 The, the process here of course is quite different. The – it's a much more – we, we try  
117 to uphold international standards of justice, you know, and we are obligated to adhere  
118 to very high standards of fair trial rights for accused persons, and therefore that  
119 explains why our cases of court takes quite a long time.
- 120 02:54 You know there are many other factors, but that's one big, bi-, big element in this  
121 judicial process, that this tribunal strives to uphold the highest standards of, of justice  
122 for, for all involved.
- 123 **03:15 RU: Do you think the definition of the role of the ICTR was adequate or appropriate?**  
124 **If not, would you change it in some way?**
- 125 03:25 I think it is quite, it is quite satisfactory. As I understand it, the role is to, is to provide  
126 justice to, to the victims; to act as a deterrent, you know, to potential perpetrators; to  
127 dispense justice in the, in this field of international criminal justice; and to bring about  
128 peace in, in Rwanda and in the Great Lakes region, and in Africa generally.
- 129 04:00 Now whether, whether this tribunal would be able to meet these noble objectives is  
130 yet to be determined. I mean history will tell, I think it's probably too early to make a  
131 final judgment on that.
- 132 04:25 I, I, I believe that the work of this tribunal contributes greatly to the issue of deterrence,  
133 you know, especially if the work is publicized and, you know, made available to a large  
134 section of the international community.
- 135 04:50 With regards to bringing about peace in Rwanda, I don't have any empirical evidence to  
136 comment on that. But at least I can say with-, without any fear of con-, contradiction  
137 that we are providing justice, you know, to, to the victims and we are giving, we  
138 provide a platform to, to victims and to the accused persons themselves to be able to  
139 tell their stories.
- 140 05:27 So, so this is as far as I, I, I could speak about the extent to which the tribunal has, has  
141 or is achieving the objectives which it was setup to achieve.

## 142 Part 4

- 143 **00:00 RU: What are your thoughts about reconciliation?**
- 144 00:04 Well, reconciliation is a long-term process. It's not a one on, it's not a, it's not a,  
145 something that happens overnight. And I must admit that the work of the ad hoc

146 tribunals does not provide as much scope for reconciliation as other methods, maybe  
147 such as Truth Commissions or other judicial processes.

148 00:53 For the simple reason that the victim, victim participation in this tribunal is quite  
149 limited. That is a defect which is being remedied by the ICC, the International Criminal  
150 Court, to the extent that victim participation is, is greatly recognized. It provides greater  
151 scope for reconciliation. By and large here, victims come, witnesses come, they testify  
152 and then they go away, you know.

153 01:38 The structure of the tribunal, the ad hoc tribunals, does not provide the kind of forum  
154 or space for reconciliation. So I believe that if we achieve reconciliation, it will be in, in  
155 an indirect form, you know, in the sense that people who come here would feel that  
156 they have received justice and maybe when they go back, they will be willing to put the  
157 past behind them and to reconcile with those who they perceive to have been their  
158 perpetrators.

159 02:31 So the issue of reconciliation is a very complex one, it's a very difficult one. It's also very  
160 difficult to monitor, and I am not aware of any studies that have been done to gauge  
161 the extent to which reconciliation has been achieved, either by the judicial process here  
162 or by even the, the judicial process in Rwanda itself.

163 03:01 The Gacaca Courts for example, claim to, to be a better forum for reconciliation, you  
164 know, because they meet in a very communal setting and the parties, you know, are  
165 encouraged to come forward to confess and, and the community members are  
166 encouraged to forgive them and to live with them, you know. So that process, it is  
167 claimed, provides a better avenue for reconciliation. We don't have that kind of process  
168 here.

169 **03:38 RU: And is that because the design of the international tribunal did not really take**  
170 **into account what needed to be done for the victims?**

171 03:53 To some extent, even though the issue of reconciliation I think is mentioned in our  
172 statute, to some extent I think the structure and the whole judicial process here did not  
173 take that into account. And I think that is why the International Criminal Court has now  
174 taken that particular issue on board and makes specific provisions for victim  
175 participation, you know, at all levels of the judicial process.

176 04:31 And so I would agree to a large extent that the, the framers of the statute did not think  
177 well ahead of what was required in order to achieve reconciliation, you know, through  
178 this process.

179 **04:51 RU: It placed a rather unfair burden, it would appear, on you to include that word in**  
180 **your charge and yet not give you the tools to do the job. Is that a fair observation?**

181 05:02 Well I, I wouldn't go so far as to say so, but I, I think I would like to, to comment that it's  
182 important to recognize that reconciliation is a, it's a complex and long-term process and  
183 it's very difficult to assess.

184 05:25 If you take for example even truth commissions, like the Sou-, South African Truth and  
185 Reconciliation Commission, which has been hailed as one of the, the model truth  
186 commissions, there are many skeptics about whether that process even achieved  
187 reconciliation.

188 **05:44 RU: Yes.**

189 05:45 You see, so I think that we cannot be too hard on the, the framers of our statute  
190 because I think this whole reconciliation process is a very difficult and complex one.

191 **05:59 RU: Is there a tension between justice and reconciliation?**

192 06:05 Well, many people have seen that as, as there being a tension, yeah, but I don't think, I  
193 don't think it should be so. I think they're complementary. Justice is part of the process  
194 of reconciliation; to the extent that you provide justice, it contributes to reconciliation.  
195 And so to me, they're two sides of the same coin.

196 06:45 Reconciliation is also a form of justice. You know, if you're able to bring people  
197 together and reconcile them, you provide justice. So I, I do not see these two concepts  
198 as being directly opposed to each other and I would like to see them as being concepts  
199 which are complementary and can work together.

200 07:18 I think if you look at the Special Court of Sierra Leone for example, you would see that  
201 that judicial process together with the National Reconciliation Commission has sought  
202 to achieve both objectives of justice and reconciliation. So I do see both concepts as  
203 complementary and not opposed to each other.

204 **07:47 RU: If the international community were to draft a charter again for an ad hoc**  
205 **commission, would it appear that the Sierra Leone outline or format is more suitable**  
206 **than the one you have now?**

207 08:02 You mean the statute or the combination of, of the special court plus a truth  
208 commission?

209 **08:08 RU: Both, yes.**

210 08:14 I mean if we look at the statute, I think the ICC statute is an improvement on the statute  
211 of the ad hoc tribunals and the ICC has learned from, a lot from, you know, the  
212 development and the work of the ad hoc tribunals. So I mean one should be looking at,  
213 I would say, the ICC statute and some of the changes that have been made in that  
214 statute to reflect the omissions in the statutes of the ad hoc tribunals.

215 08:56 The Special, the statute for the Special Court is significant in the sense that it combines  
216 the, the, it combines local and international judges. That brings a very important  
217 element to the process. The, the judicial proceedings are taking place in the lo-,  
218 location where the crimes were committed and so the people are directly involved in  
219 the whole process.

220 09:36 So that's also an important element which, which can be considered in any future  
221 establishment. But of course, you know the ad hoc tribunals, the life of the ad hoc  
222 tribunals are coming to an end. So now we have the International Criminal Court and,  
223 and even though you may have national courts, I think in terms of framing a charter for  
224 international justice, I would be looking more to the ICC on any improvement that can  
225 be made on the ICC statute.

## 226 **Part 5**

227 **00:00 RU: As we define justice, there is an old adage that, "Justice delayed is justice**  
228 **denied." Has that been a problem for the hearings here?**

229 00:14 Well I, I'm very reluctant to comment on that because . . .

230 **00:23 RU: If, if you feel uncomfortable with that, we can go to another subject.**

231 00:28 Yeah, well I, I, I could comment partly on it. Whether justice has been delayed here is  
232 difficult to say. It's a relative, delay of justi-, it's a relative term because one has to take  
233 into account the difficulties that this tribunal encountered in the initial stages. The, the,  
234 the whole process or the whole judicial process here is very complicated.

235 01:03 You have, we have to slow down the proceedings because of the contemporaneous tr-,  
236 translation and interpretation. You know into the three languages, Kinyarwanda,  
237 English and French, you know. And we don't have enough court space and not enough  
238 judges. We have to deal with voluminous number of exhibits, documents, so many  
239 witnesses and so on.

240 01:41 So that adds to the delay that has occurred. Ideally we prob-, we would probably have  
241 wanted to finish these cases much earlier, but there are many, many inherent problems  
242 in the system, which contributes to the delay. So I wouldn't say, I'm not in a position to  
243 say there has been unjustified delay. I, I emphasize the word "unjustified" delay.

244 02:14 Because we have had applications for, from accused persons to be discharged on the  
245 grounds of undue delay and in my recollection, those applications have been refused  
246 for good reason, you know. But I believe that another difficulty is the, is the mixture of  
247 the common law and civil law system which we have here. That also it's something that  
248 can be looked, looked at.

249 02:51 There might be something to be said for greater use of the, of the civil law system of  
250 using an investigation, investigating judge to collect the evidence, you know, and that  
251 might expedite the process because you must realize that here, we're dealing with  
252 mass atrocities.

253 03:26 We're dealing with the, we're dealing with numerous events that took place over a long  
254 period of time. Investigation and collection of this evidence is a massive undertaking.

255 03:42 And in my view, it is possible to approach this task in a p-, in a , in a – I think the civil  
256 law system of collecting and this type of evidence might probably expedite the process  
257 better.

258 **04:07 RU: You've had additional problems with extradition of the accused that have raised**  
259 **difficulties that were not part of the fault of the ICTR certainly.**

260 04:18 Well, that's not the fault of the ICTR.

261 **04:21 RU: No, I said they were not the fault of the ICTR at all . . .**

262 04:23 Yeah, yeah. No.

263 **04:24 RU: . . . and unique to this particular series of hearings here.**

264 04:29 Sorry?

265 **04:31 RU: They, they appear to be unique to this particular type of issue that was before**  
266 **the ICTR.**

267 04:37 You know the, the need to extradite.

268 **04:38 RU: Yes, yes.**

269 04:39 Yes, of course. That is, that is a, a problem that is peculiar to the nature of this  
270 particular process. Majority of the, of the alleged, ac-, accused persons were living  
271 outside and in different parts of the world and getting them here is a big, big, big, big,  
272 big difficulty.

273 05:10 Of course under our statute, member states of the United Nations under Article 28 are  
274 expected to cooperate with the tribunal, you know, to give assistance to the tribunal in  
275 any, any form, in any way that the tribunal needs assistance.

276 05:28 So that, that also does help us in, in, does facilitate our work to, to quite a, a great  
277 extent, you know, and we have succeeded in, you know, getting transfer of accused  
278 persons to this location substantially. It hasn't posed, hasn't posed a difficulty.

## 279 **Part 6**

280 **00:00 RU: Much of the historic record of the acts of this tribunal will be found in the written**  
281 **materials, but is there anything that will not be in the written materials that you feel**  
282 **is important for the people looking at this tribunal and its work 20, 50, 100 years now,**  
283 **that you can comment on?**

284 00:21 Well I guess the memoirs of, of the people who have worked in this tribunal . . .

285 **00:28 RU: Yes.**

286 00:28 . . . would be invaluable. The memoirs of the judges, the prosecutors, I mean  
287 everybody. A lot of those are not on record. A lot of our deliberations are confidential.

288 Well, some ( ) may not be confidential but they are not in the public domain. Notes,  
289 ( ), ju-, judge's notes are, are not in the public domain.

290 01:02 And I think in the future, some of these, this information, like judge's notes, and some  
291 of the deliberations which can be made public would be of invaluable assistance to the  
292 international community.

293 **01:24 RU: One of the reasons we're doing this project is to add a human touch to the dry**  
294 **records that are there, and it's one reason we so appreciate your cooperation and**  
295 **participation in, in this process. They're not, they're not easy things to describe but . .**  
296 **.**

297 01:42 Yeah.

298 **01:42 RU: . . . we appreciate the time that you've given us.**

299 **01:47 RU: What would you like to tell the people in terms of the process between the**  
300 **judges? Without disclosing directly what is said, is there anything unique in the**  
301 **deliberation, deliberative process that's different from what, what you had in your**  
302 **home country?**

303 02:05 No, I don't think it's different. I, I think the judges here and also at home try to achieve  
304 consensus and that's the primary objective, to achieve consensus. As you know, three  
305 judges sit on each case and in the appeal, you know, five judges. In extreme and  
306 exceptional cases, you know judges may dissent but that's a rare phenomenon.

307 02:44 But I think one of the hallmarks of the process here is the, the, the attempt to achieve  
308 consensus and there's free expression of opinions and ( ), confidentiality in our  
309 deliberations to enable judges to express their views openly. And that, that's a very  
310 important element in our deliberations among the judges as well as among the legal  
311 officers who may sit in on deliberations.

312 03:22 But the – I do not see much difference between the deliberative process here and what  
313 I'm used to in my country.

314 **03:37 RU: Collegiality, I take it, has been present ( )?**

315 03:40 Very much so, very much so. Yeah.

316 **03:43 RU: With three or five judges, that is commendable. I, I sat on a court with nine**  
317 **judges; it was often difficult to maintain that collegiality I must confess, so**  
318 **congratulations.**

319 03:57 Thank you.

## 320 Part 7

321 **00:00 RU: What is your understanding of the reaction of the Rwandans to the process of the**  
322 **ICTR?**

323 00:13 Well, my understanding of the process is that I think, I think it's a mi-, it's mixed. I think  
324 – I believe that there are many Rwandans who are quite satisfied to see that justice is  
325 being done here, that people who held high office have been arrested and brought  
326 before this tribunal.

327 00:54 I believe also on the negative side that there is a perception that the cases take too  
328 long, when you consider the number of years the tribunal has been in existence and the  
329 number of people that have been tried and convicted or acquitted.

330 01:21 Recently, I have the perception that Rwandans have not been happy with some of our  
331 11bis decisions and the 11bis decisions are applications to refer the trial of some  
332 accused persons to Rwanda. There has, there have been about four or five of those  
333 applications; all of them have been refused.

334 01:53 And I have a feeling that the Rwandans are not happy with those decisions. I've read,  
335 I've read commentaries about the dissatisfaction with those decisions. So, that's my  
336 overall assessment of the impression of Rwandans to this tribunal. But I think, I think by  
337 and large, the tribunal is highly respected and approved of. You know, the work of the  
338 tribunal is highly respected.

339 02:40 As I said, the only issue has been the, the delay and the refusal of, the refusal to refer  
340 some of the cases to the Rwandan courts for trial.

341 **03:03 RU: Do you think the Rwandans would have been more satisfied, had the tribunal**  
342 **hearings been located in Rwanda?**

343 03:11 I think the, well, I, the, the authorities definitely would have preferred . . .

344 **03:17 RU: Yes.**

345 03:18 . . . the, that these ca-, some of these cases are referred to the Rwandan courts. I can't,  
346 I can't say whether the mass, the general mass of people would prefer it that way. I, I  
347 don't have any information on that. That would depend on whether the, whether  
348 people generally in Rwanda have faith in the Rwandan judicial system, you know, and I  
349 have no information on that . . .

350 **03:57 RU: Of course.**

351 03:57 . . . so I can't comment on that. But I think the p-, the authorities would have preferred  
352 that the, the cases are referred to the Rwandan courts ( ), and have openly expressed  
353 disappointment about those decisions.

354 **04:16 RU: What about the hearings of the ICTR itself? Do you think that people would have**  
355 **felt more closely connected to the ICTR if these hearings had been held by the**  
356 **tribunal in Rwanda?**

357 04:33 Well, absolutely I think if we were sitting in Rwanda people would have been more  
358 involved. They would be able to come to court and it would be closer to them and  
359 yeah. But I think the tribunal has an outreach system.

360 04:55 Most of our proceedings are beamed by satellite and, and the records are public  
361 records; they could be obtained in, in Rwanda. And there are radio transmission of  
362 proceedings in Rwanda.

363 05:14 And there have been a few NGOs who have also gone into the various communities to  
364 show the proceedings of this tribunal, to get people more familiar with what is going on  
365 here. But I think the ideal would have been courts like in Sierra Leone where . . .

366 **05:37 RU: Yes.**

367 05:38 . . . the trial takes place where the alleged crimes took place, but I think there are good  
368 reasons why that was not possible in this case.

369 **05:50 RU: And the presence of say a Rwandan on the tribunal itself, was that something**  
370 **that you believe might have improved the confidence of the Rwandan people in the**  
371 **tribunal?**

372 06:03 The what?

373 **06:04 RU: Would have improved the confidence of the Rwandan people.**

374 06:07 What would have improved the confidence?

375 **06:08 RU: The presence of a Rwandan as part of the international tribunal.**

376 06:13 The presence of Rwandans on the tribunal?

377 **06:15 RU: Yes, yes.**

378 06:19 Well I mean I have to speculate on that because that, that's hypothetical. I don't . . .

379 **06:26 RU: Of course it is.**

380 06:28 But I guess it depends on w-, who, who was on the tribunal . . .

381 **06:38 RU: Of course.**

382 06:38 . . . you know. I don't know to what extent the ethnic factor would have come into play.  
383 I mean even if there are Rwandans on the tribunal, how would the selection be made  
384 and how acceptable would that selection be to Rwandans? I mean this is purely  
385 hypothetical and it's difficult for me to comment on.

386 **07:05 RU: That's a fair comment.**

387 07:06 (\_\_\_\_\_) . . .

388 **Part 8**

389 **00:00** Donald J Horowitz: I'd like to first go for a moment to the ch-, the referral of cases to  
390 Rwanda. And you, you'd said that the, the rationale was good and appropriate, and,  
391 and I'm not arguing that point. But I would like, if you could – w-, when they were  
392 denied, the, the requests for transfer – what were the published or, or public ra-,  
393 reasons given for the denial, if there were?

394 00:25 You mean the reasons given in the decisions?

395 **00:28** DJH: Yes.

396 00:29 Well, we've had about four of those cases and each decision has given different  
397 reasons.

398 **00:41** DJH: Okay.

399 00:43 But one reason that runs through, a common thread that runs through all the decisions,  
400 is the fear that witnesses for the accused who live outside Rwanda would not feel safe  
401 or would not be willing to go to Rwanda and testify, and therefore that would affect the  
402 fair trial rights of the accused.

403 01:18 That is one reason that runs through all the decisions. In some of the cases, there have  
404 been other reasons, and the appeals chamber has heard an appeal from one of the  
405 decisions but that particular ground, namely that there is the likelihood that witnesses  
406 for the accused persons might be reluctant to travel to Rwanda to testify on behalf of  
407 the accused, is one that was upheld by the appeals chamber.

408 **02:04** DJH: Thank you. Now as I remember your background, this is the first time you've  
409 actually been a judge. Is that correct?

410 02:15 Well, yes and no.

411 **02:18** DJH: Okay, tell me about that.

412 02:23 In my previous work as head of the Human Rights Commi-, Commission and an, and  
413 then the Ombudsman, I'm n-, I wasn't a judge in the strict sense of the word but I  
414 conducted hearings, high-level hearings at which public officials like ministers, you  
415 know, or your equivalent of secretaries of state, appeared before us and were, were  
416 represented by counsel.

417 03:04 And so we conducted hearings and had to, to abide by the principles of (\_\_\_\_) justice  
418 which entailed, you know, all the elements of a full-blown hearing and then writing a  
419 decision, you know, to determine the merits of the case.

420 03:27 So yes, in the conventional sense, I haven't, I wasn't a judge before I came here, but to  
421 occupy that position in my country, you have to qualify to be a court of appeal judge.

- 422 03:44 And, and also the nature of the work involves – part of the work involves adjudication  
423 and application of, you know, legal principles and legal concepts.
- 424 **03:59 DJH: Okay, and that clarifies it very well for us. Thank you because essentially, while  
425 you didn't have the official title, you performed judicial functions.**
- 426 04:06 Yeah, well, yes.
- 427 **04:08 DJH: Sounds like pretty full judicial functions . . .**
- 428 04:10 Yes.
- 429 **04:11 DJH: . . . for some substan-, some number of years. Can you gi-, tell us approximately .  
430 . . ?**
- 431 04:16 Well, from 1993 to 2004 when I came here, so they're, they're sort of quasi-judicial  
432 functions. We had powers to summon witnesses, to, to, to require the production of  
433 documents, ( ) compel the attendance of witnesses and testify under oath, and, and  
434 all the parties were represented by counsel and so it was very much like a judicial  
435 process.
- 436 **04:50 DJH: The reason I ask that question, and I, and I'm really happy to have had a fuller  
437 an-, a full answer bec-, is because obviously, and you will know this, the change from  
438 being a lawyer to being a judge, while it doesn't sound like much, you have to, you're  
439 performing such a different function and you have to learn a lot about yourself and  
440 what moves you and so forth, the personal part of that.**
- 441 **05:13 DJH: And I was going to ask you about the tra-, you know, your own personal  
442 transformation particularly as you were – I don't want to say dropped in, but you,  
443 you became a judge in a court that was hearing rather unusual kinds of cases and put  
444 an enormous responsibility on you.**
- 445 **05:31 DJH: Did you – was there some personal transformation you felt you went through  
446 when you moved from the previous job to this job?**
- 447 05:41 I don't think so because as I said, in my previous job, I was handling cases involving high  
448 public officials.
- 449 **05:48 DJH: Sure.**
- 450 05:50 The, the very high-level people that, that come before us here. We, we heard, we hear-,  
451 we heard complaints against ministers and in fact I, I did hear one complaint against my  
452 own president before I left, you know.
- 453 **06:10 DJH: You mean the president of your country?**
- 454 06:12 Yes, and that was an allegation brought by the minority member of parliament, alleging  
455 conflict of interest and abuse of office. And so, you know, I'll be used to, to hearing  
456 cases involving high public officials.

457 **06:33** **DJH: In, in the hearings of those cases, you made a d-, presumably made a decision as**  
458 **to, “Was there a conflict of interest,” or et cetera, et cetera. Did you decide the**  
459 **penalty as well?**

460 06:44 Well, actually, our decisions were not binding. They were in the form of  
461 recommendations. And (\_\_\_\_) . . .

462 **06:54** **DJH: Did you recommend penalties then?**

463 06:55 Yeah we do, we do recommend – for example, we might recommend dismissal, we  
464 might recommend payment of compensation and so on. But even though they were  
465 recommendations, if the recommendations were not complied with, my institution had  
466 power to go to court to enforce them.

467 **07:15** **DJH: Okay.**

468 07:16 So we would take the case to court and would seek a judgment of the court enforcing  
469 our decision or recommendation. So then that sets in motion another process.

470 **07:30** **DJH: Okay.**

## 471 **Part 9**

472 **00:00** **DJH: You said to – in the first part of the interview that one of the things you were**  
473 **pleased about, if I can state that, is that you took part in some landmark decisions**  
474 **that enriched the jurisprudence, international law jurisprudence.**

475 **00:19** **DJH: And I’m interested in hearing from you some description of one or more of those**  
476 **that I, I gather are now public records. But again, why you’re pleased with those or**  
477 **why you feel good about participating in those. Perhaps you could point out one or**  
478 **two examples.**

479 00:37 Well, I took part in the first case in this tribunal which had to determine whether it was  
480 proper for the prosecution to prepare their witnesses before they testify. And we held  
481 that there was nothing wrong with the process of preparing witnesses, provided they  
482 don’t coach them, you see. We drew a distinction between coaching witnesses and  
483 preparing them to testify. That decision was affirmed on appeal.

484 01:36 But the interesting part of this is that the ICC has given a decision contrary to ours, you  
485 see. And – but I think that our decision has been upheld by our sister tribunal, but there  
486 are decisions also by the ICTY, our sister tribunal, which has adopted our approach and  
487 our position.

488 02:07 And so that, that is, to my mind, is a very important landmark, you know, decision as to,  
489 as to the limits to which counsel, pr-, especially prosecuting counsel, can go in  
490 preparing a witness to testify, you know.

491 02:29 One of the – the first case I also did . . .

492 **02:32** **DJH: May, may I st- . . .**

493 02:33 Yes, yeah . . .

494 **02:33** **DJH: . . . before you – I want you to go on, but I . . .**

495 02:35 Yes.

496 **02:36** **DJH: . . . when you say ICTY again, I, I need to ask you, that’s the International**  
497 **Criminal Tribunal for Yugoslavia?**

498 02:42 Yes, for Yugoslavia.

499 **02:43** **DJH: And, and that’s the other ad hoc tribunal? Yeah.**

500 02:45 Yes, tribunal, yeah. Our sister tribunal, yeah.

501 **02:46** **DJH: Yes, right, and it was, it was these two tribunals, the ICTY and the ICTR, which**  
502 **you feel has influenced the for-, the statute of the formation of ICC . . .**

503 02:59 Yes . . .

504 **03:00** **DJH: . . . in, in a better way, I mean. Yeah, okay.**

505 03:01 Yes. I think so, I think so.

506 **03:03** **DJH: I wanted to be clear that that was your view and I think that comes across. Did**  
507 **you in this case that you just described – and by you I mean the court . . .**

508 03:13 Yes, yes.

509 **03:15** **DJH: . . . provide some definitions or guidelines as to what’s coaching and what’s**  
510 **preparing?**

511 03:20 Yes I did. I think we did. We did provide guidelines. I mean, for example, if – you know,  
512 we’re dealing with events that took place 14 years ago, witnesses may have made  
513 statements so long ago, you need to remind them of what they had, statements they  
514 had made and if there’re, you know, contradictions give them an opportunity to, to see.

515 04:03 Telling them about the whole process, the whole court process and preparing them for  
516 the court process and getting them to know the modalities of the judicial process. All  
517 these are matters which we thought were harmless.

518 04:18 But coaching the witness and trying to tell them what to say and what not to say, or  
519 trying to change their testimony, of course that we, we, we decided was unacceptable,  
520 you know.

521 04:32 In other words, coaching. You know, trying to, to, to mold the testimony of a witness.  
522 Yeah. I think that’s where we drew the limit, you know.

523 **04:46** **DJH: Alright, I think we understand that and, and, and your reasons for feeling good**  
524 **about that.**

525 04:52 I think . . .

526 **04:52** **DJH: You were trying to talk about another case.**

527 04:54 Yeah, well I think, the other case I believe also was – the first case I did here was a case  
528 which involved several counts of rape. And we had occasion to discuss the elements of  
529 rape, and the, the legal position is still unclear. The first case that discussed the  
530 definition of rape in this tribunal was the Akayesu case; that’s a very landmark case and  
531 gave a very broad definition of rape.

532 05:44 Subsequent cases gave a much narrower definition; a more traditional definition which  
533 included sexual penetration and so on. And so we had an opportunity in that case to  
534 look at the . . .

535 **06:00** **DJH: In which case?**

536 06:01 In the case I’m, I was involved in which was called the Muhimana . . .

537 **06:06** **DJH: Muhimana?**

538 06:07 . . . Muhimana case.

539 **06:08** **DJH: Okay.**

540 06:09 Yeah. And I think we were more in favor of the broader definition which was developed  
541 in the Akayesu case. And so that, that debate of course still goes on because, you know,  
542 there were one or two appeal judgment cases which had approved of the narrower  
543 definition.

544 06:45 So that, that was a very interesting case and I, I think the debate on that issue is still  
545 quite alive but I think we had the opportunity to express our views about this important  
546 issue.

547 **07:01** **DJH: Let me, if I can – I want to make sure I understand and be clear, there’s (\_\_\_),**  
548 **rape as the crime itself and then rape as a cr-, as a part or as a, a crime against**  
549 **humanity . . .**

550 07:14 A crime against humanity, yeah.

551 **07:16** **DJH: . . . and was the definitional discussion about rape as a, as par-, as a crime**  
552 **against humanity or rape itself, or both?**

553 07:24 Rape as a crime against humanity.

554 **07:26** **DJH: Okay.**

555 07:27 But I’m, I was talking about the element of the crime.

- 556 **07:29** **DJH: Yes. Of the crime against humanity? Rape as a . . . yeah.**
- 557 07:32 Yes. Yes.
- 558 **07:33** **DJH: And, but the, the element of, the crime of rape itself, that, was that part of that**  
559 **discussion too? In other words, I presume somebody could be, in the same case**  
560 **perhaps, ac-, accused of rape and then a crime against humanity of which rape was**  
561 **the el-, was an or the element.**
- 562 07:55 Well, I mean the crimes we deal with here are genocide, crimes against humanity, war  
563 crimes, so when we're talking about rape, we're talking about rape as a crime against  
564 humanity, you know, which is sort-of rape committed in a consistent and widespread  
565 manner. You know, so that's the context in which we, we're talking about rape.
- 566 **08:17** **DJH: Right. The reason I ask this is obviously people will be looking at the . . .**
- 567 08:20 Yeah, okay.
- 568 **08:21** **DJH: . . . this tape, trying to understand it.**
- 569 08:22 Yeah, yes.
- 570 **08:24** **DJH: Any other decisions that you would like to bring to our attention which you**  
571 **participated in?**
- 572 08:31 There are quite a few, you know, interlocutory decisions I can't, I can't put my finger  
573 on, on some of them but I could – if, if I had the time, I would provide you with some of  
574 those decisions here.
- 575 **08:50** **DJH: You, you're, you're invited to do that at a later point . . .**
- 576 08:52 Okay. Alright, yeah.
- 577 **08:53** **DJH: . . . and we would, we would be happy to have that.**
- 578 08:55 Alright.
- 579 **08:55** **DJH: I had read something about a, a discussion in a case – and a case – involving the**  
580 **difference between incitement and aiding and abetting or s-, or am I correct in that,**  
581 **or, or . . . and, and that you had written about i-, in, in some way and I was trying to**  
582 **understand, for us and for legal scholars, that issue. Do you know whi-, which I'm**  
583 **referring to?**
- 584 09:25 I think I do. I think that's in the Karemera case.
- 585 **09:29** **DJH: I think that's correct, yeah.**
- 586 09:33 I think . . .
- 587 **09:36** **DJH: Is it a crime in itself or is it an element to the crime . . . yes.**

588 09:38 Yeah I think that was the discussion. Well, I, I, I can't go into the details of that now. I'll  
589 have to look at it and then talk about it at a later time, yeah.

590 **09:51 DJH: Okay.**

591 09:51 But I, I do recall that I did write a dissenting opinion on that issue.

## 592 **Part 10**

593 **00:05 DJH: You, you've said a number of things about the court being a platform for victims**  
594 **and providing justice to victims and when I ask this, I'm not arguing the point. I'm just**  
595 **...**

596 **00:17 DJH: I wa-, would like to perhaps ask you to provide some – I don't know whether I'd**  
597 **call them examples or explanation of your thinking – on how, on how the court, the c-**  
598 **, this court process does that or, or is that? Those were the words I think you, you**  
599 **stated and I'm, I'm interested in that.**

600 00:39 Well, I think that to the extent that victims and witnesses, but particularly victims, have  
601 an opportunity to come and express their feelings about what they went through  
602 during the, the, the genocide, it has a therapeutic effect. It, it, it has a restorative and  
603 healing effect for them.

604 **01:13 DJH: Personally.**

605 01:14 Yeah, personally. And the fact that they're able to do this in public, on the international  
606 stage, you know, I think gives them a lot of satisfaction and it's part of the healing  
607 process, so far as those victims are concerned.

608 01:32 At least they know that, that their stories are being heard on a platform such as this,  
609 that, that people do care about what happened to them, you know, and that something  
610 is being done about, about, about it, and that there, there are institutions that are  
611 interested in doing something about the events that took place.

612 **02:06 DJH: Have you yourself or as a court member been to Rwanda? Do you have those**  
613 **opportunities or create those opportunities?**

614 02:14 Actually, we just came back about two weeks ago on a site visit. We went to look at  
615 some of the sites with, with . . .

616 **02:24 DJH: Where, where, where the crimes were alleged to have been committed? Okay.**

617 02:26 Yes, yes, yes.

618 **02:29 DJH: Go ahead, would you describe – can you describe that for us?**

619 02:32 (\_\_\_\_\_), well, we, we yeah, we . . .

620 **02:32** **DJH: I don't mean, I don't, I don't mean describe in terms of the specific case but**  
621 **what, what you generally did and why you did it.**

622 02:37 Yeah, we, we went to, to, to look at the sites where the crimes were alleged to have  
623 taken place, to give us a better understanding of the evidence and to see whether that  
624 would help us understand the cases, the evidence better. That is the primary purpose,  
625 of course, of going. And the, both, both parties were present, the prosecution and the  
626 defense. You know.

627 **03:05** **DJH: Were you allowed to ask questions, to clarify what you were seeing?**

628 03:10 No, the parties will have an opportunity to make submissions on the visit sometime in  
629 December.

630 **03:20** **DJH: Okay. You don't have to answer this but do you think it helped you, to be able to**  
631 **see the pl-, the, the sites?**

632 03:28 (\_\_\_\_), that I can't answer . . .

633 **03:30** **DJH: Okay. Alright, very good.**

634 03:32 . . . because that's something that we'll have to make a finding on, yeah.

635 **03:35** **DJH: Okay. Ha-, had you been to Rwanda before?**

636 03:38 I had, I had. In 2003, I went for a conference in Rwanda. At that time, I had not been  
637 appointed to the tribunal.

638 **03:53** **DJH: Do you remember where you were in 1994 and what you were doing when,**  
639 **when this began?**

640 03:59 In 1994 I was in private practice in Ghana.

641 **04:03** **DJH: And do you remember w-, what, what you first heard about it?**

642 04:07 Well, I must say I don't recall hearing about it in 1994. I may have heard about it  
643 sometime later. You know, I have no recollection of those events at the time.

644 **04:22** **DJH: Okay. I don't want to get into any pre-, pre-knowledge in a way but I – one of**  
645 **the jobs of a judge is sentencing and in, in this case, when somebody has been found**  
646 **guilty, it's a major, major crime.**

647 **04:47** **DJH: And my question to you is, not again to be specific to an individual case, but can**  
648 **you tell us about some of the – how shall I say – principles of sentencing that you and**  
649 **or the court take into account?**

650 **05:05** **DJH: And it's a different sort of thing than – I've sentenced murderers and, and, and**  
651 **so forth but not on the scale to, of which these people have been sentenced – and I**

- 652            **wonder how different or how much the same it is for judges in your position, after**  
653            **the conviction?**
- 654    05:25        I think the principles are very similar worldwide. I can just mention to namely the  
655                    gravity of the offense and whether there're mitigating circumstances, you know, which  
656                    will then affect the, the punishment. Those are the two important factors, which I could  
657                    mention right now – you know, the gravity of the charges against, for which the  
658                    accused has been con-, convicted.
- 659    06:08        Whether there are mitigating circumstances and that would vary from case to case, and  
660                    whether there is expression of remorse and factors such as, such as those.
- 661    **06:27        DJH: You mentioned the stresses of the job and you mentioned a number of specific**  
662                    **stre-, stresses such as delays and, and, you know, and various things like that. To the**  
663                    **extent you can or are willing, can you tell us about some of the other stresses?**
- 664    **06:48        DJH: And particularly, you know, you hear a lot of difficult stuff and, and, and difficult**  
665                    **facts, and how it, it may affect you over a period of years personally, without again**  
666                    **treading, treading on some areas that, that you shouldn't be treading on.**
- 667    07:09        I think the main stress is physical, you know, sitting long hours in court over a period of  
668                    time; that takes a toll on your health. You sitting in fixed, a fixed position for hours and  
669                    you do so consistently in the morning and in the afternoon four or five days a week. So  
670                    it's both physical and emotional.
- 671    07:44        You, you, your powers of concentration ha-, have to be at a very high level. You have to  
672                    be attentive throughout this period because as testimony goes on there might be  
673                    objections and you have to be prepared there and then to give rulings on these  
674                    objections, so you have to be alert and ten-, and attentive and that imposes, of course,  
675                    a stress on the mind. So it's both physical and it's both emotional.
- 676    08:20        And, you know, I think that it can have a negative effect on your physical and mental  
677                    health. Actually I had to withdraw from this case I mentioned, Karemera, because it was  
678                    having a negative impact on my health. Because I was involved in that case which is a,  
679                    it's a big case, a multi-accused case and another big case, another multi-accused case  
680                    and the sittings were back to back, you know.
- 681    09:08        F-, f-, as soon as I completed one case, I moved on to the others. So there wasn't much  
682                    interval between the two cases, and it was affecting my health so I had to withdraw  
683                    from that case. So yeah, it does definitely – the work is definitely stressful. I mean in  
684                    national courts, we don't sit this long.
- 685    **09:35        DJH: I'm aware of that. Did, did you withdraw from the other c-, case as well at that**  
686                    **time and take, take a break for yourself or, or, or de-, delay that case somewhat so**  
687                    **that you could sort of restore yourself?**

688 09:50 No, I didn't, I didn't withdraw from the other case. I withdrew from that one particular  
689 case which had not advanced as much as the other case, you see. So I continued with  
690 the other case which had, which had reached a more advanced stage and (\_\_\_), so I  
691 didn't really have to take any period of rest but it was the combination of the two that  
692 was stressful. Yeah. Yeah.

693 10:15 DJH: Understood. Yes.

## 694 Part 11

695 00:00 DJH: Given the nature of what's going on in the world, it, it seems that it's possible  
696 there will be future tribunals or there may be future tribunals. If you, if there were  
697 and you were the architect or at least a major consultant to the formation of such  
698 tribunals, what would you suggest?

699 00:25 DJH: And you have complete breadth of, of this – that would hopefully improve the  
700 operation, efficiency and so forth, and perhaps the quality and outcome of the work,  
701 if you were starting from scratch based on your experience and what you've learned?  
702 That's a big question, but . . .

703 00:51 Well yeah, that's, that's a very wide question, yeah.

704 00:54 DJH: Yes. Do, do as you will with it. Okay.

705 00:57 Yeah, that's a very difficult question. As I said earlier, I think the statute of the ICC is a  
706 starting point, you know. It has improved on our statute in many ways.

707 01:17 DJH: Can I ask you to, you know, recognizing you don't have the statute in front of  
708 you, but give us some of the things that you think are, are salient and important that  
709 have improved?

710 01:28 For example, victim participation in the process. The definition of some of the concepts  
711 of the crimes – I can't be specific at the moment but I think that there has been  
712 improvement in some of the definition, especially of the, like – I, I, I can't really put my  
713 finger on any specific but I, I remember I have read some elements which have  
714 improved, you know, on, on the definition.

715 02:16 DJH: I'm sorry to put you on the spot this way.

716 02:16 I would have to, I'll have to, I have to be very careful here. I'll have to sort of go back  
717 and take a look . . .

718 02:22 DJH: Sure.

719 02:23 . . . but one that comes straight to mind is the victim participation but I can't think of  
720 others yet. Yeah.

721 02:32 DJH: I interrupted you then, okay, so you were, you were talking about the  
722 improvements made by the statutes, and, and . . .

723 02:39 And I think also I mentioned earlier the common law and civil law . . .

724 **02:52 DJH: Yes.**

725 02:52 . . . process, you know.

726 **02:54 DJH: Maybe you could explain again. We don't, a lot of people watching this, who will**  
727 **be watching this, are not lawyers. Perhaps you could give us just a, you know, two**  
728 **minute primer on the difference between . . .**

729 03:07 Well the major difference is that in the common law system . . .

730 **03:11 DJH: Which is Anglo-American, right.**

731 03:13 Anglo-American, the, the judge is an umpire so to speak, an impartial referee. And he  
732 or she sits as a referee between these opposing sides, the prosecution and the defense.  
733 The judge does not get into the arena of conflict. The judge does not get involved in  
734 investigation of the case.

735 03:46 The prosecution has the responsibility to do all the prosecution – all the investigation –  
736 and bring the evidence before the court and the defense will also do its own  
737 investigation. And then the two sides battle it out and the judge determines the di-, the  
738 dispute, the various disputes in the course of the trial, you know.

739 04:17 On the other hand, the, the civil law system, the major difference is that you have an  
740 investigating judge who conducts the investigation and collects the evidence, you  
741 know. There, there, there, there may be other differences in terms of cross  
742 examination and, and so on but that's the major difference, that you have an  
743 investigating judge who is responsible for collection of the evidence.

744 04:55 And I did, I did mention that that process might expedite hearing of cases at the  
745 international level be-, because here we're dealing with mass atrocities, events, so  
746 many different events that took place over a long period of time and it might be more  
747 efficient if you had an investigating judge who collects all the evidence and then  
748 present the evidence for both parties, you know.

749 **05:44 DJH: Then who would decide the case? Other judges, I take it?**

750 05:48 Yes.

751 **05:49 DJH: Not, not the investigating judge.**

752 05:51 No, not the investigating judge, but I-, yeah, I would prefer that another judge would,  
753 would, would determine the case. But then the process of collection of the evidence  
754 could be more efficiently done by the investigating judge.

755 06:10 And I think less resources would be used, less time would be spent, and even if the  
756 parties needed to do supplementary investigation, that could be done but the bulk of

757 the work would have been done by an investigating judge and it will be, it will not be  
758 necessary to, to duplicate efforts by, by both sides.

759 **06:38 DJH: Now you previously said to us and I know you believe this, that one of the jobs**  
760 **of a tribunal is to make sure that the rights of the accused are carefully – what’s the**  
761 **word . . .**

762 06:51 Respected.

763 **06:52 DJH: . . . respected. I come from an Anglo-American system so I don’t understand the**  
764 **civil co-, civil law.**

765 07:01 Well, I come from an Anglo-American, Anglo-Saxon, you know, system, a common law  
766 system as well, so I’m not extremely familiar with the civil law system, mind you I have,  
767 I have a broad, I have a knowledge, a sort of broad knowledge of the civil law system.

768 **07:17 DJH: But there's the devotion to protecting the rights of the accused as well as, you**  
769 **know, finding, finding guilt. And my question is, how, how do you see that the rights**  
770 **of the accused can be preserved and respected in, in the civil code, in what you just**  
771 **described as the, the, the civil code system – the, the, the judge who's deci-, who’s**  
772 **collecting the evidence and presenting it for both parties?**

773 07:43 Well, because I think that, you know, it would avoid duplication of efforts because the  
774 prosecution and defense go on missions to do virtually the same work and in terms of  
775 resources, in terms of time spent, it would probably be more pra-, it will be less  
776 expensive if you had an investigating judge carrying out all these missions and then  
777 compiling the evidence and presenting it to both parties.

778 **08:25 DJH: I guess the question that comes up for me is how does one maintain the**  
779 **impartiality aspect of that? With, with a, an investigating judge, a judge who’s doing I**  
780 **guess what to me sounds li-, like prosecutorial work. But perhaps that’s just my lack**  
781 **of knowledge of that system. How does, how does . . . ?**

782 08:44 Well, I, I'm not, I w-, I, I don’t claim to be extremely conversant with the civil law  
783 process but even assuming that the investigating judge sits on the case, I think it is  
784 possible for the investigating judge to have an open mind because he collects the  
785 evidence and presents it to both parties and both parties can use it the way they see fit.

786 09:18 On the other hand, it may be possible for a system whereby another judge sits on the  
787 case but is provided with the evidence collected by the investigating judge. That  
788 evidence is made available to the new judge as well as the . . .

789 **09:38 DJH: Both parties.**

790 09:39 . . . both parties. That in my, in my view would be a more efficient system – could be a  
791 more efficient system, of course, depending on the, the, the competence, the capacity  
792 and thoroughness of the investigating judge.

## Part 12

- 793
- 794 **00:00** **DJH: I don't know if this is my last question but it-, if it isn't, it's the very close to the**
- 795 **last question. And, although I'll ask my colleague if he has anything else he'd like me**
- 796 **to ask.**
- 797 **00:12** **DJH: But I'm – if you're now speaking to the future, as we are, is there something that**
- 798 **you would like to say, like to say to the future as you speak here from your vantage**
- 799 **point or from what you've learned over the course of your career and also in the**
- 800 **process of being a judge in this court?**
- 801 **00:37** **DJH: What would you like to tell your grandchildren and your great grandchildren**
- 802 **when they look and they say, "That was my grandfather"?**
- 803 00:46 Well, you know, sitting here, I, I wish we did not have conflicts and I wish there was less
- 804 need for institutions like ours to resolve the issues that we are confronted with,
- 805 particularly in Africa where we're confronted with conflicts in, in, in various parts, you
- 806 know. We have the Darfur situation, we have the Ugandan situation, we have the
- 807 Democratic of Congo, Republic, Democratic Republic of Congo.
- 808 01:36 So we have all these trouble spots. And my desire, my hope would be that, you know,
- 809 that humanity can learn to live more peacefully with each other, or can learn to
- 810 dialogue and resolve differences without resorting to violence and make it necessary
- 811 for such institutions to be set up. Because they hinder development; they set us back
- 812 many, many years and that is my biggest concern as an African.
- 813 02:27 That is one of my regrets or lamentations. And I would hope that there would be a
- 814 cessation of these conflicts and that – which would inure to the benefit of our people. I
- 815 also hope that we could develop our judicial systems better to be able to deal with
- 816 these conflicts when they do occur.
- 817 03:12 As I said earlier, I think we have to find a way of expediting the judicial process on the
- 818 international level because accused persons are guaranteed fair and speedy trials; it's,
- 819 it's a, it's a human right.
- 820 03:40 By many standards, international justice does provide fair trial, but there are many who
- 821 would question whether it provides a speedy trial for the accused persons, and that's
- 822 an area I think that we ought to focus on and find ways of improving the quality of
- 823 international justice especially the, the, the length of time it takes to, to determine the
- 824 cases.
- 825 04:22 I mean take, take Milošević case which is always cited as an example of – Milošević was
- 826 on trial for I think four or five years and I don't think he even started to open his case
- 827 and he died. And there are many people who have regrets about the fact that that case
- 828 could not be completed, for justice to be done and to be seen to be done.

829 04:54 But there are, I must acknowledge the inherent difficulties in the administration of  
830 international justice, but we must find ways of improving the system, especially the  
831 length of time it takes, you know, and the, the amount of resources that are, are, are  
832 spent, especially human and financial resources that are put into this, this whole  
833 exercise. I think that's a study which I would very much like to be involved in.

834 **05:37 DJH: As you, as you speak and I hear you very well and you've talked about, you**  
835 **know, the rights of the accused to a speedy trial – and with which I of course have no**  
836 **disagreement. But it seems to me at the same time that the victims would also like a**  
837 **speedy trial so that they can get that behind them and . . .**

838 05:55 Absolutely. Absolutely. Yeah, yeah.

839 **05:57 DJH: . . . and begin to reconcile with their own pain and suffering.**

840 06:00 I agree with you. When I talk about speedy trial, I do agree that it's for both the victims  
841 and the accused persons, you know. You're right, I mean sometimes we, we focus more  
842 on the accused persons but I think the victims also are very important. They want to,  
843 they want to see an end to, to this, this trauma hanging over their heads, you know.

844 06:25 They want to bring the whole process to closure and so they can start their lives all over  
845 again, you know. So yes, I mean speedy trials are important for both accused persons  
846 and the victims, and, and for us of course also, who would like to complete this process  
847 and go back to our normal duties.

848 **06:52 DJH: Let me just take one minute and I'll check with my colleague and, because I think**  
849 **we're done. Judge Short, thank you so very much for sharing with us.**

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