



Voices from the Rwanda Tribunal

Official Transcript: Christine Graham (Part 10 of 13)



Role:	Senior Appeals Counsel
Country of Origin:	Sweden
Interview Date:	29 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Christine Graham discusses the considerable length of ICTR cases, due in part to the unusual nature of the crimes and to an initial lack of infrastructure. She reflects that judicial systems usually are built over hundreds of years, yet the ICTR was tasked with building a justice system in roughly a decade. She observes that while the Tribunal contributes to reconciliation by providing a judicial response to the genocide, the mandate for reconciliation had little influence on the judicial procedures.

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Part 10

- 00:02 **Donald J Horowitz: The statute that sets up the court provides not only for a judicial process of guilt or innocence but says something about reconciliation and I am interested in your view of what that may mean and how it may affect what the prosecutor does.**
- 00:32 Well, (___), it's a difficult concept and I would say that all judicial system or all judicial criminal system has an element reconciliation in a sense that it would be difficult for any society to live peacefully if there wasn't a judicial, a judicial system that settled disagreement between parties because that's basically what it's about.
- 01:03 Of course in, at the statute, it's e-, it's explicit. I'm not so sure if as trial lawyers whether it affects us in – if we act differently than you would do in any other, acting in any other jurisdiction. You know, you have – the question is always, you know, do we – are we bringing in reconciliation? Is what we do on a day to day basis change things on the ground 'cause, because of the nature of the conflict, can any judicial measure overcome it or assist the reconciliation? I'm not so sure.
- 01:48 **DJH: Well, and, a very legitimate statement. I, what I was getting at as well was does it or has it affected the evidence you might want to present or the con-, or your conduct as a prosecutor this concept of reconciliation which is in the statute? And if it's no, it's no. And if it's yes, I'm interested in whether it might have . . .**
- 02:16 I can't say, I can't think of an example.
- 02:18 **DJH: Okay. Let me suggest something and see if you (___) . . .**
- 02:22 Yeah.
- 02:24 **DJH: . . . one of the people we interviewed said that perhaps, or he, he or she thought that it broadened the scope of evidence that was al-, that was allowed, that certain evi-, that. I'm going to need more . . .**
- 02:42 **Max Andrews: We have to take a little break now.**
- 02:44 **DJH: Okay.**
- 02:44 Mm-hmm.
- 02:45 **DJH: (___) I may need more. That in other words, that certain evidence might be allowed in, not that it necessarily leads to guilt or innocence but it may be somewhat relevant to the concept, or to reconciliation. Has that been an experience of yours?**
- 03:04 Maybe if he or she meant in, in the w-, in the sense that you're building on a historic record or that the judges may feel more generous in terms of admissibility because the evidence

needs to reflect not just the case against the accused but I, I don't really think that – I'm not so sure I believe that's a good practice. I mean, there's other ways I think you can do that. I, I'm not, I'm not convinced that the courtroom is the area for that.

03:39 **DJH: Okay, and my question, that you've given us a (_____) on that, but do you have any, any experience that that may have oc-, actually occurred, in other words the evidence has been around and – and, and I don't mean to push you (____) unduly.**

03:53 Yeah, no, no, no. No, no, not at all. I haven't really thought of it that way. I would say that at times evidence goes in that I can't see how it would assist the judges in, in, in determining the case. I would have thought that it's more – that's rather – the reason for that is more like it's easy to let it in and disregard it in the end of the day than having a big fight about it.

04:18 I'm not so sure they are motivated by reconciliation. I certainly as a prosecutor wouldn't seek to have other evidence admitted just because I want to show reconcil-, you know, because I think it goes to reconciliation, but maybe I'm narrow minded that way.

04:30 **DJH: I don't . . .**

04:31 Yeah, I don't know either.

04:32 **DJH: Are, are there, are, are there certain kinds of evidence that you find, your experience tells you are more compelling to the convincing of the court than others?**

04:46 I've seen so much more deliberation in my home jurisdiction than I have, obviously have here so I'm not – maybe I'm off in terms of what the judges here feel are compelling since we even don't have a judgment on my first trial . . .

05:01 **DJH: Right. (____).**

05:02 . . . but I would say that any direct evidence from victims is compelling.

05:10 **DJH: Okay. What kind of evidence do you find to be, or do you think (____), is least effective?**

05:17 Triple hearsay.

05:18 **DJH: Okay, even though hearsay itself is allowed. Okay. (____). Okay. (____).**

05:21 Yeah, but I don't think it's very good to spend much time with it.

05:25 **DJH: Now you've talked about expert witnesses.**

05:26 Yeah.

05:28 **DJH: What, what are expert witnesses used for in these cases?**

- 05:34 Well, when – for many years, the prosecutors sought to have judicial notice of the existence of the genocide. It was repeatedly denied by the chambers and many times, expert evidence, before we actually got a decision from chambers, the Appeals Chambers saying, “Yes, you can take judicial notice of the existence of the genocide against the Tutsi population in 1994.”
- 06:01 Before that, much of the expert evidence that was led concerned the fact that it was a genocide. For instance, when we started our trial in Military One for a couple of years we couldn’t even use the ‘genocide’ in court, the word ‘genocide’ in court, without the defense jumping up and screaming, “Oh, there has been no proof that there has been a genocide and blah blah blah.”
- 06:23 So I think it has, I think probably expert evidence is used less now once that decision has been taken by the Appeal Chambers because then you can focus on the acts and conducts of your accused. You don’t have to lead so much evidence to show that people were being killed all over Rwa-, Rwanda as from 7th April onwards.
- 06:47 **DJH: And I would think that that would make the case move a little more quickly.**
- 06:50 I would think so too.
- 06:52 **DJH: Yeah.**
- 06:52 Yeah.