



Voices from the Rwanda Tribunal

Official Transcript: Alex Obote Odora (Full Interview)



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Interviewers: Lisa P. Nathan
John McKay

Videographer: Nell Carden Grey

Interpreter: None

Interview Summary

Alex Obote Odora speaks about the responsibilities of African states in creating peace and stability in the Great Lakes region and across Africa. He talks about the importance of education in upholding human rights and the necessity for justice capacity building. Odora also offers his opinion on the quality of defense counsel, the implications of maintaining the highest international standards, and the need to delink criminal prosecutions from the broader goals of reconciliation.

The transcript of the interview begins on the following page.

Part 1

00:00 Lisa P. Nathan: Okay, my name is Lisa Nathan and I'm with the Information School at the University of Washington. And thank you very much for your time Mr. Obote Odora and I would like to begin by having you say your name and the country you are from, your home country. And your, the title that you have here at the ICTR. So your name, the country and your title.

00:25 My name is Alex Obote Odora. I was born in Uganda but I'm now a citizen of Sweden and I'm the Chief of Appeals in Legal Advisory Division in the Office of the Prosecutor at the ICTR.

00:42 LPN: Thank you. I'm – could you walk me through your timeline at the ICTR; the year you first came and the different roles you have had here, if you have had different roles, walk through the timeline?

00:58 I joined the ICTR in July of 2000 as a Legal Advisor and I spent most of the time drafting indictments and reviewing the jurisprudence of the tribunal trying to work and get out the jurisprudence of the ICTR and ICTY within the Office of the Prosecutor.

01:24 In 2004 I was ap-, appointed Senior Legal Advisor and Special Assistant to the Prosecutor and at, at that level I spent most of the time working with the Prosecutor. And in February of 2008 I was appointed the Chief of Appeals in Legal Advisory Division. That's the post I hold today.

01:51 LPN: Okay, thank you. For a moment I would like to go back in time a little bit. And do you recall, can you describe to me where you were in the spring of 1994?

02:04 In the spring of 1994 I was at Stockholm University where I was doing my Doctorate and at the same time teaching International Humanitarian Law to graduate students; what is normally referred to as Erasmus students.

02:23 LPN: Do you recall when you first heard about the events in Rwanda?

02:28 I started following the events in Rwanda way back in 1990 when the RPF invaded Rwanda. That was a, a topic of common discussions among East Africans in particular and Africans generally who were living in Stockholm at the time. So we followed the process fairly closely.

02:54 LPN: And then in the spring of that year when things came to a head, do you remember hearing about that, those events?

03:05 It, we, we followed very closely both on the, on the news (___) and on local stories newspapers, that in particular the stories that came from Uganda and Kenya where we regularly got the newspapers and at the beginning it was extremely difficult to, to believe and put it in context.

03:26 But when I as an individual began to read about the history of Rwanda then somehow the genocide should have been expected. When one goes through the history of

Rwanda from 1959 and then one sees the killings that took place in-, intermittently over the years then probably it wasn't surprising; by hindsight it wasn't surprising.

03:59 LPN: When did you first become aware or what were some of the first things that you heard about the ICTR's development and when it first came into being, the ICTR?

04:12 Actually in 1993, '94, I was in New York when the discussions was taking place. I forget the name of this lady now from New Zealand. She was a member of the, the New Zealand delegation, which was participating in the discussions leading to the adoption of this document.

04:37 But separately for us who were dealing with international humanitarian law at the time and looking at international criminal law and the only precedent we really had was Nuremberg, we had a completely different approach to the issues.

04:53 Maybe we, we were too legalistic, maybe we did not think so much about the victims as such; we tried to look at, okay, how are these issues going to be handled? But the interests were there and there was a lot of discussions over it.

05:09 LPN: Can you tell me the story of how you came to work here?

05:16 Yes, it is interesting actually. I was in New York and Hans Corell was the Legal Counsel – he is Swedish – and my supervisor at the doctoral level ha-, had known Hans Corell fairly well. So they'd asked me, she had asked me to go and do some research in New York for the paper that I was, I was writing.

05:51 Now when I was in New York then I met the Deputy Prosecutor of the ICTR, Mr. Bernard Muna. And then we were having a general discussions and then he told me, said, "You specialize in international humanitarian law, why don't you come to the, to the ICTR?" Then I, I casually said, "Well, let me think about it."

06:13 Then after two months I think I, I got an offer but it took me some time. I think I hovered over the situation for about a year before I came here.

06:27 LPN: Can you share with me some of the things you were thinking about during that year before you said yes?

06:36 The difficulty was really, really this – trying to think of the aftermath of the genocide in Rwanda itself and coming to work in that environment and trying to relate with the victims and the survivors and all these, how it would mentally impact on an individual.

07:06 One had to reflect very carefully before you decide whether or not to take this particular responsibility. It was not just a job one was going to do; it would leave some impact on you so one had to reflect on it.

07:19 So during that period I'd gone to the University of Swaziland where I, I taught criminal law there. I went there in 1999, okay. So it was from there that I came here because I had quite a number of individuals at the University of Swaziland who thought, said, "Look here, maybe you could, you could go and, could do and, do something helpful;

you could assist there.” So my colleagues from the University of Swaziland actually were responsible for persuading me to, to, to come here.

07:55 LPN: I see, because they felt that you might do some good here.

07:58 That, that was the view.

08:01 LPN: So when you did come to work, did you, here at the ICTR, did you have some goals in mind of what you wanted to accomplish here?

08:12 You know, one can only probably address that issue by hindsight, because when you arrive in the tribunal here, the sheer volume of work, and the documents that you go through and the discussions that you have, that’s the last thing that comes on your mind.

08:33 Because, for example, we have lawyers from civil law countries, from common law countries and we have got lawyers from Islamic countries where the, the, the concepts are a little bit different. So you find sometimes you spend a lot more time on understanding these different legal concepts, okay?

08:54 And then of course the way witnesses themselves are treated, are interviewed and how the evidence are collected, analyzed and then used for drafting indictment. So it is difficult to say, “I want to achieve this immediately,” okay?

09:11 But you know, like what we are doing, you know that you need to draft a good indictment because with a good indictment you are able to present a good case. And if you are going to lose a case it should not be that you didn’t do your best – otherwise you let down the victims.

09:34 If you have done your best and you still do not win a case, that is different because while winning a case is important, that is not the ultimate goal. One has got to present a clear reasonable case and then let the judges decide.

09:53 And that is to me – later on, as I stayed longer with the tribunal, I began to realize that maybe the most important thing I should participate in is to develop the jurisprudence of the tribunal.

10:09 Because at the time we started, there was very little to go on and when we see progressively the work we have done, sometimes you see that the early judgments are not as good as they should be and I think people recognize that.

10:26 And increasingly with each judgment, with each trial, the standards has gone higher and higher. I think now we have reached a much better threshold where one now has some jurisprudence and you can say, “Well, I contributed in this area.”

10:43 LPN: Thank you.

Part 2

- 00:00** LPN: Before – because you have been working here for a number of years and have different experiences in your roles here at the Office of the Prosecutor, is there something in your reflections as you look back at that time, that you would wish to share before we go any further; something that you have on your mind that you would like to share about your experiences or things that you’ve learned here, reflections, a story?
- 00:31 Well, it is difficult because the bulk of the work that I did with the, wi-, with the Prosecutor as Senior Legal Advisor and Special Assistant to, to the Prosecutor, they are very interesting in the sense that we have the opportunity to really what I would call test our Article 28, that is Cooperation with States.
- 01:04 We meet a number of senior government officials including presidents, attorney generals and discuss these other issues of cooperation. In the African context, the issue is not cooperation, lack of cooperation as such, when it comes to fugitives and transfer of cases; I think the issue is financial.
- 01:28 You see, the expenses of conducting a case is not very easily appreciated. When a, a country accepts to prosecute one individual, many of the witnesses who are Rwandans who fled the country are all over the world. You have to get witnesses from Canada, from Australia, from Europe and other parts of Africa, and that country must be able to finance all this and that costs a lot of money.
- 02:05 So the political will, in most cases, are there. Usually when you discuss with government officials, you notice that they are very easily willing to say, “Okay we can do something.” But once their Minister of Finance make the calculation that, “Okay this will cost so much,” then things change.
- 02:27 That, that, that has been really what I’ve seen and some people have construed this as lack of cooperation; I see it differently. In areas that do not involve financial responsibilities there have been very good cooperation across the board. Maybe that’s what I can say at the moment, yeah.
- 02:49** LPN: Okay, I have a follow-up question. If you were involved in the creation of another tribunal, another ad hoc tribunal such as this – we all hope that doesn’t have to happen but if it does, do you see something that could be put in place in the infrastructure, the way in its mandate that could help address that problem, the financial problem for the individual states?
- 03:20 It is difficult. I don’t have an answer at the moment. What I can say is that with regard to the structure of the, of the tribunals themselves, you know, when the ICTR and ICTY were established, the first officials to be appointed were the judges and I think that was a mistake.
- 03:49 I think the first people to be appointed should have been the Prosecutor who would then be in charge of investigators, and then get lawyers and others later because

without investigators you do not have the material to provide an indictment even to send in for confirmation.

04:08 The result is that for very many years the judges were sitting waiting for cases to begin and the same mistake was done with the ICC; they get the judges appointed first and once the judges are appointed the assumption is that the court is ready. So people begin, the time, so the time begins to run when the judges are appointed. So they will say for the last four years nothing is happening.

04:35 Actually a lot is happening in the sense that if investigations were the first to go to the field, they will collect informations, they would assess this; by the time they are ready to draft the indictment for judges to confirm the indictment that is when judges would be appointed.

04:52 The other problem which is a bit technical is the drafting of rules of procedure and evidence. This responsibility has been given to the judges and it is the judges also who interpret these rules, who amend these rules, and sometimes within the concepts of national justice it is a little bit difficult to understand, okay?

05:18 In other national legislation it is the, the parliament or congress that passes the law, okay, that amends the law, it is not the judiciary. So some of these things should be reflected on.

05:34 The rules have been good in the sense that the judges came with lots of experience from both, from the, the, the two major judicial systems. So we have got a hybrid of the rules of procedure – that is very helpful. But at the conceptual level it is difficult to appreciate that the person who makes the rules, amends the rules also interprets the rules so maybe that could be done differently next time around.

06:03 LPN: As far as the ICTR functions, can you think of any things that surprised you when you arrived here about how the court works?

06:21 Well, I think not so much how the courts worked but how the first case of a guilty plea was handled; that is the case of Kambanda. You know, there are certain charges that it is difficult to find an individual guilty on all those counts.

06:54 For example, when one is charged with genocide and in the alternative, complicity in genocide, okay, usually it is either or, you don't convict on both. Well, Kambanda pleaded guilty on both and the guilty plea was accepted by the, by both the trial chamber and the appeals chamber.

07:25 There is also the question of the elements of the crime of conspiracy where there should be an agreement between, you know, two or more persons or at least there should be circumstantial evidence leading to that type of agreement, okay? In the guilty plea, those elements don't come out; in other words the allegation did not disclose a crime – but he also pleaded guilty to that, okay? That surprised me.

- 07:59 Another thing that surprised me in one aspect of the, the guilty plea is when you find an accused pleading guilty to complicity by omission, okay, that again is concept-, conceptually, you know, difficult to appreciate.
- 08:19 And there ought to have been a little bit more of the legal arguments in these areas before certain specific conclusion can be reached, in particular when we are developing important jurisprudence that can be used elsewhere.
- 08:37 So what I would say is that some of the things that surprised me here is how certain legal issues were conceptually handled. The, the one that surprised me the most, of course, is how we've, the off-, the, the, the tribunal have treated the crime of complicity in genocide and complicity as a mode of liability.
- 09:02 So while complicity in genocide is a crime, some courts have treated that as a mode of liability. And yet when you look at the statute, that is a specific crime under Article 23 paragraph, sub-paragraph E and modes of liability of complicity under Article 61 is different from a crime and somehow the juris-, some jurisprudence have treated these as if the mode of liability and the crime are one and the same thing. That has surprised me.
- 09:46 **LPN: So there's a few different lines I'd like to follow up on there but I also want to leave time for my colleague John McKay.**

Part 3

- 00:00 **LPN: So one thing that I would like to return to is – at the beginning you were talking about in hindsight the, the events in 1994 in Rwanda should not have been a surprise if you look at the full history starting in 1959, perhaps even earlier to the events leading up to that.**
- 00:24 **LPN: They might not have been a surprise. And I noticed a book on your bookshelf as well talking about the genocide and is there a way that it might have been prevented.**
- 00:35 **LPN: You are now sitting here to help in the prosecution of the perpetrators and the planners of the crimes committed in 1994, but as a human being, do you see any steps that may have been taken before that actually happened that might have prevented the genocide in hindsight?**
- 00:58 Probably yes and no. One thing is, the people and governments of this region should have done something instead of waiting for the international community.
- 01:15 People from Uganda, Kenya and Tanzania know the history of Rwanda very well. And in Uganda the Rwandan nationals had lived there for a very long time and the same in Tanzania and the same in Kenya. So the normal discourse were there and the tensions that were building were there.

- 01:39 The fact that at intervals mass killings had been taking, had been taking place in both Rwanda and Burundi, okay, that should have, you know, alerted people to note something serious happening again.
- 01:57 But again, because there's been a series of impunity in this re-, region; in Uganda, for example, we have got this very bad period under Idi Amin where so many people were killed and not a single person was ever prosecuted for it. Even Idi Amin, after the change of government, he was, he was never extradited to be, be prosecuted.
- 02:20 In Kenya there was this what they call the, the tribal clashes, okay? Even be-, even before the, the, the genocide in 1991, '92, '93, okay, a lot of killing took place there and there were no serious prosecution that took place. Tanzania has been the only safe area in this re-, this region, okay?
- 02:43 So, unfortunately some of this violence was probably wrongly treated as part of the political process. If it wasn't treated like that something ought to have been done.
- 02:57 Now the, the genocide having been committed, I think the people in this region should try to address two things really urgently. One is to try and include in their syllabuses for educational program at a very early age, okay, teaching that allow individuals to value human lives and to respect human lives and to have () people recognize that you can get lots of disagreements, but you should solve that not by killing one another but by talking and trying to resolve these issues.
- 03:35 Secondly they should ad-, address these cultural differences if any because in Rwanda in particular, while they talk of Hutu and Tutsis, the mixed marriages that followed, there were basically very few Hutus or Tutsis left so this tribal distinction by and large became artificial and historical.
- 04:00 And I think people should be encouraged to gradually move out of a tribe as a means of identifying an individual and this may take some time but the process should begin and should be encouraged.
- 04:15 Otherwise with the tensions that continue in this region, one cannot be very happy if one recognize-, sees the, the tension that is still in the Democratic Republic of the Congo. It is still there, okay?
- 04:29 So – we also see the recent tension in Kenya that () in a lot of killing and Kenya had, and Tanzania had been considered the two most stable countries in, in, in East Africa. And that is not so now.
- 04:45 So one has got to address some of these issues. So that I think that the crisis in, in Rwanda should also be used as a basis to discuss the political context of the entire region and to see how they can use that discussions to address the problems in the DRC, to address the tensions in Kenya, to address the tensions in Northern Uganda and to ad-, to address the tension in Tanzania where there is a, a, a political problem between Zanzibar and th-, and the Tanzania Mainland.

- 05:23 All these are potential areas of conflict and should be addressed. Of course they are not at the magnitude of, of the Rwandan crisis, they are not at that level, but all big crises start in a very small way and if they are allowed to fester it can create problems.
- 05:40 LPN: And you see education as being a way to begin addressing?**
- 05:44 Education is really the key and not just education, we should be very clear of the type of syllabuses that we put forward for teaching the young generation to recognize, th-, and (___), to recognize that there are ways of solving problems other than conflict.
- 06:02 LPN: So you were talking about the responsibility of the countries in the Great Lakes Region and, and placing some responsibility on them for addressing what was going on in Rwanda before the genocide happened. Can you speak to the decision to place the ICTR here in Tanzania?**
- 06:22 LPN: There's been critique on, from the Rwandan government who thinks the ICTR should have been located there; others may think that it might have saved more money if it was located in The Hague. Can you speak to that decision? And would you think that in the future, if there is another tribunal such as this, where would you suggest it be held?**
- 06:48 You see, when people are getting out of extreme tensions like in Rwanda, one cannot simply assume that overnight people will begin to see themselves as being colleagues and members of the same community, of the same country. So putting the tribunal in Rwanda at that time would have I think exacerbated the tensions.
- 07:22 I don't think the management of the court process would have been easy. I do not even know whether the anger of the general public could have been contained if soon after the genocide some of these key individuals were now being flown into Rwanda and being put in jail. I don't know whether the government would have provided enough security to stop the general public from actually storming the place and lynching these people.
- 07:57 That's a real possibility because when you get to know Rwanda very well you find that there are individuals who did not only lose the entire members of their family, but a whole community, a whole village is destroyed. And you cannot imagine the anger of these individuals, how they would react. I think they needed a cooling down period, okay?
- 08:23 Now after 14 years I believe trial can be held in Rwanda now; pe-, they are fairly calm, they have, they have been able to address this, to reflect on this and also they have read what outsiders say about the conflict in Rwanda. There is now a basis upon which they can objectively try and look at those issues. But to have put the tribunal there in 1994 – my personal view is that would have been a great mistake.
- 08:50 Secondly, people have talked about saving the costs of the tribunal or that the tribunal is very expensive. What they've not told me is which genocide prosecutions are they comparing the ICTR with? If there was a tribunal that was engaged in prosecuting

genocide and they found that that tribunal was cheaper compared to the ICTR, I would understand.

09:22 Why I'm saying this is simply – look at the complexities of investigating genocide. Look at the involvement of the different persons in the prosecution of genocide, the defense of genocide, and the judges, and then look at the witnesses, the factual witnesses, the expert witnesses, they come from all over the world, okay?

09:52 And this cannot be cheap, they cannot be easy. If you have got lawyers in private practice who charge two, 300 dollars per hour, okay? And then you find that these lawyers are coming here as defense counsel or in the prosecution division and they are not charging that per hour or they are not being paid per hour, then you recognize that maybe the rate is not as high as people are trying to believe.

10:21 And of course in private practice or at the national level, governments do not spend a lot of money on transportation of witnesses, on protection of witnesses, on relocation of witnesses, okay? Here, it's almost the norm.

10:37 So there's a lot of money that are spent in these areas that at the national level, governments don't generally spend a lot of money on it. And that becomes accumulative.

10:50 And then again the level of the judges at the national level, they are not paid at the level of the Undersecretary General of the United Nations. And all the judges are at the level of the Undersecretary General of the United Nations. So one cannot say that okay, they should be paid less to serve the cause of the tribunal.

11:12 So there are a lot of other factors and, and, and variables that are really not con-, not considered. I would love if some people should be asked which institutions they use to compare the tribunal. I would be very interested to know.

Part 4

00:00 **John McKay: Good morning and thank you. I'm John McKay, professor at Seattle University Law School and former United States Attorney and Federal Prosecutor in the United States and it's my privilege to follow up on my colleague, Lisa Nathan.**

00:17 **JM: As, as Lisa explained, these interviews are for very general consumption and not just lawyers. But I, I can't help but ask you a few questions about, about the law because you, of course, are the Chief of Appeals here and there are some fascinating new legal theories and international law that have come now from this, from this tribunal.**

00:40 **JM: And I'm wondering if you can, in general terms to, to, to people everywhere, not just to lawyers, tell us what you think the significance is of some of the, the new theories that, that have come out of this tribunal. For example, in media law and, and in genocide itself as a crime, rape as genocide – can you, we're interested in your, your perspective on the significance of these developments.**

- 01:09 Let me start with one area that is really very significant but has generally been neglected even in legal discourse – that is the mode of liability which we refer to here as Joint Criminal Enterprise. And Joint Criminal Enterprise is very unpopular with the defense. They actually call it “Just convict everybody” for JCE, Joint Criminal Enterprise.
- 01:38 What that presupposes is that where two or more people come together to plan a crime, first under Joint Criminal, Joint Criminal Enterprise Category 1, they will all be guilty if the Prosecut-, Prosecutor can prove shared intent.
- 02:03 Under JCE 2, what we call the “concentration camp example,” these individuals can be responsible if one of them or any one of them who – any person who is not in that group was, for example, in charge of a camp where a lot of people were mistreated, tortured, abused, they would be held responsible.
- 02:33 And under JCE 3, they would be criminally responsible for the foreseeable consequences of their act. Now, we have – he attended to use JCE 3. I give one example. Where a person, two or more person agree to commit genocide and in the process of committing gen-, genocide, a person who is not one of them, in the process of committing genocide goes and commits rape, this individual will also be liable for that rape.
- 03:15 And the defense are uncomfortable with these because they’ve tried to compare this with the vicarious liability in civil law which is really not that, so an attempt has been made. This theory started developing from Tadić, that came on forward.
- 03:31 So this is, I think, is a very, a very important development in international criminal justice system, generally, by creating this mode of liability which is not expressly provided for in Article 6 of the ICTR statute and Article 7 of the ICTY. It is not express provided for but the judges read it in the, in the article. So that’s, this is an important development and if it i-, it is used at the national level, it can assist the prosecution very much.
- 04:02 And when it comes to the issue of rape, for example, in the context of genocide, that has been a very good development starting with the Akayesu, but we should also recognize that there has been some drawback with later legislation.
- 04:26 So that while Akayesu was very, very good, later decisions are chipping off aspect of that and I think the prosecutio-, the, the prosecutions and legal commentators should actually be vigilant and constantly review the jurisprudence that is developing. People have limited themselves to Akayesu. They have not look at the current progressive development, which is reducing the importance of Akayesu decision on rape.
- 04:56 Another important thing we’ve had is in relation to war crimes. That is the establishment of a nexus. Many of the acquittals that we have had in the ICTR here on war crimes had been on the ground that the prosecution did not prove the existence of a nexus. That is the facts with, w-, with which the accused is alleged to have committed and the armed conflict.

- 05:29 The Rwandan situation was that while the Rwandan Armed Forces and the RPF were fighting against each other, the evidence show that the RPF and the FAR really did not directly engage themselves very much. The killing was basically the killing of the civilians, which was part of genocide or crimes against humanity.
- 05:51 Now, the responsibility of the Prosecutor was to prove that those killings were in fact connected with armed conflict if they want to get a conviction for armed conflict. Until the Rutaganda judgment, we had not been very successful, but I think now that has – since then, a series of decisions have come that have clearly expanded on the law and explained the law very well.
- 06:19 And, another part which has also been very important is the concept of commission. The appeals chamber have now interpreted the law to include the, the commission by the instrumentality of others. In other words, the accused need not have committed a crime personally, but he can commit that crime through the instrumentality of others.
- 06:46 That is a little bit of an expansion of the, the, the concept of commission. Some individuals are uncomfortable with it. Almost on every appeal that we get, there is a ground dealing with commission that fortunately are, if I can put it that way, we have been able to successfully, you know, put our point of view which the appeals chamber has appreciated and that is currently the law. And if these were used at a national level, I think it would really assist prosecution very much.
- 07:21 JM: Do you expect that some, some countries that do take transfer of cases may possibly adopt those theories within those countries?**
- 07:30 That is my hope. My hope is that when other countries are dealing with cases where the crimes are committed in Rwanda, they should be able to look at the ICTR jurisprudence and treat it as persuasive, as useful. I, I do not want to, to say that it is, i-, i-, it is binding on them as such, but my personal position is that under Article 28 of the ICTR statute, that should actually be binding.
- 08:07 Because when a decision is taken by Security Council under Chapter 7, it is a binding decision. And we are working under Chapter 7 of the UN Charter which means that our decision should in effect be binding.
- 08:20 But as to whether different jurisdictions will take that reading and today's binding is a different matter. Some courts are, are not very keen to be seen to be – to international law being imposed on their, on their jurisprudence, the national court. So that may be some areas of further discourse.
- 08:41 JM: This will become more important as we see the transfer of some remaining cases to individual countries who are willing to prosecute cases from the genocide.**
- 08:52 Actually, even before that, you should know that we have had a, a series of, of, of cooperation with Canada for example, with Belgium for example, where, and, and with Britain, where they've got these other cases, so that when we provide them with materials we also, in our covering note we indicate, you know, the legal basis upon

which we have done this or done the other. And of course they are free to accept or to reject it but most of the time they treat as persuasive and over time, I think it will be accepted.

Part 5

- 00:00 JM: I wanted to ask you about your views, without, without naming any names. You've been here since 2000. Could you comment in general on the quality from, from your view of defense counsel?**
- 00:14 I don't want to talk specifically about defense counsel. I just want to talk about lawyers before the tribunal, whether defense or the prosecution. My experience is actually this – we have got two categories of lawyers.
- 00:32 We have got very young lawyers who have completed their Master's Degrees or Doctorate Degrees either in international humanitarian law or international criminal law. They are very conversant with the law. This is what they studied. This is what they know. But, because they are young and they're fresh from universities, they're generally at the, the junior level.
- 01:00 Then, you have got very experienced lawyer who probably never studied international law or never studied international humanitarian law but they-, they've been in practice in their national jurisdiction for very many years. They are therefore very senior lawyer with very good court work experience, okay. And they know all these other things but they lack the basic law. They've got to learn the law on the job.
- 01:31 That is why sometimes when you read certain motions, okay, you have difficulties. With the OTP, they are better off in the sense that they've got a series of these young lawyers who can also do research and there are also some other medium lawyer who have done this other field. So, they've got a bigger room for discourse.
- 01:59 In the defense, they've got fewer lawyers of that caliber so they tend to rely more on the experience that they gained in their national jurisdiction, which sometimes is not the same as experience at the international level.
- 02:17 But, with their experience, they learn faster which means that the defense lawyers who have been here over time, they've improved. They have – so they, they do it much, much better.
- 02:35 That's why I don't want to say defense or the prosecution because if you go through the judgments, you see that the chambers criticize both parties, okay? So, we make our mistakes and we improve from our mistakes, and our policy here is that we should not repeat the mistakes that have been made. We should try and make new mistakes.
- 02:57 JM: Can you, can you comment generally on the relationship between the Office of the Prosecutor and defense counsel? You know, when I practiced as a, as a prosecutor, in some jurisdictions the relationships were not so good with the defense counsel. In others, in general, the relationships were good. So, can you tell me about**

just conflict, if any, between defense counsel and the prosecutor during your time here?

- 03:23 My personal relations with the defense counsels are very good. There are some – my, my friends, you know we have dinner together. We discuss issues together and there is no big deal about it.
- 03:36 There is one small area, which I do not want to call it a conflict. I just want to put it how some defense counsel present the theory of their cases and how they think they can defend their client, and some of these has caused problems. Where a defense counsel goes and pursues political argument, then that to me is a problem, okay?
- 04:07 In the sense that the basis for the prosecution is the indictment – the allegations inside the indictment. And it w-, it will not help the prosecution, sorry, the defense rather, to spend time saying that, “Why did you, why did you not indict X or Y or Z?” Okay?
- 04:26 That (___) is not before the court. I actually, I actu-, I keep on telling them the example. I say, “Look, if a person is charged with stealing a car, he’s not going to court and say, ‘Hey, my neighbor also stole a car the other day. Why don’t you prosecute him?’ That is not a defense.”
- 04:48 So, the def-, the, the defense here should focus on defending their clients based on the indictment, but some of this has not been done. As a result, there, sometimes there’ve been very bad exchange in chamber, be-, before chambers where others bordered on insult, okay.
- 05:11 So, tho-, tho-, those are there but it, but it is rare. It is rare. These, these are exception. It-, but, over (___) we have had defense lawyers who are very courteous even in questions where they are dealing with rape and sexual violence, they have been very polite when cross-examining witnesses and it has been perfect.

Part 6

- 00:00 **JM: There has been some – I, I know you must be aware that some in Rwanda believe that the, that the process here doesn’t take into account really the, the survivors and, and the people of Rwanda who are in, in, still in pain and turmoil from the genocide.**
- 00:19 **JM: One of the criticisms I have heard is that, is that the, the whole process here is better than any that could be given in Rwanda or another country. In other words, why are the worst of the planners and the perpetrators of the genocide given, you know, excellent defense counsel, comfortable cells, three meals a day, access to computers and to television? Would you, would you care to comment on that?**
- 00:49 I see where the criticism is coming from. I’ve got a two-pronged answer for that. The first part is, well, I agree up to a point in the sense that the international criminal justice system is very poor at providing audience or access to victims. The ICC has tried but very limited forum for participation of victims in criminal trial.

- 01:26 I think in future, we should create a situation where victims do not only come to give evidence – they are part, they should be parties to the proceedings. And I think the ICC is going towards the right way in trying to create conditions where victims do participate in criminal proceedings.
- 01:49 Where I disagree is that when you try to get, to set a good standard for respect for human rights, it is important that other countries that fall below that standard should improve and meet that standard.
- 02:08 Because here we are trying to lead the way forward. (___) the best way to do criminal prosecutions are these – before somebody is convicted, he’s presumed to be innocent and should therefore be treated within all the normal respect for human rights standards.
- 02:25 Similarly, the standard in Rwanda should be made to rise to the level where these people should be treated well. That is why, when it came to the death penalty for example, when we argued with, with, with Rwanda to remove the death penalty for the cases that would be transferred to Rwanda, they, they did not only do that – they removed it across the board.
- 02:48 And I think that helped raise the standard of judicial system inside Rwanda itself. So we should use this high standard as a signpost, as a road map – that this is the correct way to go. And I do not see any criticism for that really. Maybe I’m being very naïve but I thought it’s the right way to go – to set good standards and let every country strive to meet the standard and that will be fine.

Part 7

- 00:00 **JM: We were just talking about an issue that I wanted to, to ask you about which is the various levels, if you will, of the perpetrators of the genocide. We’ve seen them characterized as planners, as aiders and abettors, and then as, as sort of so called lower-level génocidaires – those tend to be people who have been handled in different ways by the Rwandan government.**
- 00:30 **JM: There have been through the Rwandan courts and through the traditional Rwandan courts, and many, many through the local process which they call the Gacaca Courts.**
- 00:42 **JM: How do you distinguish, if you, if you could tell us, and what do you think the significance is between, you know, the so-called planners and perpetrators, the, and those who might be seen as the smaller participants? What do you think the important differences would be, if any?**
- 00:59 I think my starting point is to look at the structure in Rwanda and the institutions in Rwanda. If you take the church, for example, which enjoyed a lot of respect among the Rwandan community. So, any member of the clergy who even aids and abets only, to me it is – he is much as responsible as the planners themselves because he is in a position of responsibilities.

- 01:30 That is why within the courts here, part of my argument has been that whereas good conduct is a mitigating circumstances, I treat it as aggravating circumstance in the case of Rwanda because if you are a good person, you're a highly respected person, then people will listen to you.
- 01:54 And these good people, those respected people, were the people who issued orders or directs were aided and abetted. If they were not respected people, no one would've listen to them. That is my line of argument, so I treat it as, you know, (____) circumstances.
- 02:12 And then you have got the ministers, the government officials, the, the army commanders. Those, they are fairly obvious, you can see them. But then, you have got the conseillers, the, the, (____) lower people who actually go from village to vi-, village mobilizing the local people and tell them that, "So and so lives there, so and so goes there, or go and put the roadblock there." Okay?
- 02:41 The-, these people, in my view, are as responsible as the planners themselves. That's why here, you see that those who have been prosecuted actually range from the prime minister to a, a conseiller.
- 02:56 And the policy of the Prosecutor has also been to try and not stigmatize only one area of Rwanda. As a result, there has been some geographical spread, so you try and ensure that in the prosecution of these persons, almost every area is represented.
- 03:18 The difficulty there is that in some area where there are a lot more persons, you may decide to, to drop one or two so that you get somebody from the other area. And those who are dropped, you are not leaving them. You then line them up for Rule 11bis, so that they are transferred and they are prosecuted somewhere.
- 03:39 JM: If you had a wish for how many individuals could have been prosecuted through ICTR, would you have wished for more? Would you have wished for less? Who, would you think that it is just about the right number when you consider the thousands and thousands of persons who participated in the genocide and the relative few numbers who've been prosecuted here?**
- 04:05 I don't think I would have wished for more. I think the number we have, my personal view, is that it's sufficient because I see the role of the tribunal as setting standards, as developing jurisprudence and then allowing the other member states to follow it up.
- 04:24 That is why if I can digress a little bit, what I see as the, the, the success of the tribunal, for example – in Africa now, even leaders who violate human rights, they talk in the language of human rights. So, they are beginning to realize that if you violate human rights, you are in trouble. So, as a result, even President Bashir talks in the context of hu-, respecting human rights.
- 04:53 I think that's a significant change in that some of the impact that, that we have here and I don't think prosecuting more people would have made any difference. The moment a clear standard and guideline is set, we hope that this will not only provide

good precedence, but will also make those in position of leadership begin to recognize that crime or committing genocide doesn't pay. Wherever they go, they will be found. And that in a way could help create a new culture of, of, of fighting impunity.

Part 8

- 00:00 JM: I want to ask you a question now about what this experience has meant to you personally. You've been, you are a distinguished lawyer. You have been a teacher. You have argued before the highest tribunals of many countries of the world.**
- 00:17 JM: What has it, what has it meant to you to be here doing this work on this subject, the subject of this incredible thing that happened in 1994? Can you tell us what it means to you as a lawyer and as a person, and has it changed you?**
- 00:37 Let me start – as a lawyer, I now see more clearly the limitations of the law. There are certain things that law cannot address. I also see the style of drafting legislation. If we want people to understand the law and not limit it to lawyers only, I think the drafting style should change.
- 01:12 It should be simple. It should be clear and I also believe that law should be taught in schools just like we teach geography, history or any languages. You don't have to wait until you reach college or university to start learning law. Law is a social science. It should be used to address these social problems on a daily basis.
- 01:41 As a result, we have to demystify the law. As of now, very few people understand the law. I've seen in the courtroom when we are arguing our cases, the victims or witnesses sit there. They don't follow the argument. We can spend one whole afternoon trying to draw some fine legal distinction that doesn't make sense to the, to, to, to the witnesses.
- 02:14 When you begin to argue as to whether or not an indictment is defective, and therefore you have not cured an indictment. And then they say that, "Okay, the killing of these 200 people in this particular camp, we know it happened. We know the evidence are there, but the pleading was so poor that the accused was not properly informed so he could not prepare his defense."
- 02:42 On a common sense situation, one would have said, "Okay, now the accused has been informed. Should we adjourn for three months, for six months? Let him go and prepare himself. Let him come and address the killing of these 200 people." But the law doesn't do that, so you see these different aspects of limitations.
- 03:06 JM: Let, let me ask you, I don't want to interrupt you but I want, I – you, you prepared indictments when you first came here.**
- 03:11 Yes.

- 03:12** JM: And so you saw the worst evidence of the most horrible crimes. It must have affected you as a person, as someone who has a family who, who, who grew up in, in East Africa. Tell us, tell us how that has affected you as a person.
- 03:30 Yeah, this is the second aspect I was going to, to, to tell you, because you see, when I first went to Rwanda, one of our colleagues was renting a house. Unfortunately, one time when they were clearing the place, they actually found some re-, remains of dead bodies in the, in the bedroom, okay?
- 04:05 What I did, I stayed in the hotel, unti-. There was a building called Prima 2-, Prima 2000. Probably you were there. You, you, you saw it when you went to Kigali, okay? When it was finished, I said, "Okay, I want an apartment here. It should be on the third, fourth or fifth floor. So that should be as far away from the ground as possible." Because you don't know what is down there.
- 04:33 Another thing is this – when you go into a restaurant and somebody is serving you, you don't know whether this guy is an Interahamwe, you don't know whether he is a victim. You don't know whether he is what. He's just there, okay?
- 04:47 So, you go in, in the office. You look at the evidence. If we take the figure, the figure that, the lower figure that 800,000 people were killed in Rwanda and at each roadblock you find that these people were beaten, were clubbed. So you've reached a situation where about three, four, to five people who were involved in killing one person.
- 05:17 If you multiply that by 800,000, you are somewhere between 20 to, to 30% of the population of Rwanda that was involved in the genocide. You are therefore dealing with a criminal population. How do you relate with this?
- 05:39 And then you've got people who also work there. So, you have got to mentally separate yourself from the human relationship and the work you do because if you carry your work in your head and you go into a social gathering, you may not even shake anybody's hand – because you reach the conclusion that everybody you're talking to probably killed somebody, or aided and abetted in some form of way.
- 06:06 And then you also begin to wonder, "How did they survive with all these killings? Did they survive because they were part of the killers?" Because if you were a victim, probably you wouldn't have survived. And then some of them, when you look after the genocide, they, they look so young. So, how much younger were they when the crimes were taken place? So, how young were the perpetrators?

Part 9

- 00:00** JM: Do you, do you have a desire for the impact of the ICTR for the Rwandan people? What you just described is almost an, seems like an unsolvable situation until we are two or three generations from now, but do you have a hope for how the ICTR would add to this elusive question of reconciliation, or, or help them in any way?

- 00:24 You see, as a lawyer, I find understanding the concept of reconciliation very difficult. You p-, you as a prosecutor, you go and look what you call the best possible evidence. That's actually the worst thing that somebody did, okay. And you present that in the courtroom using these same witnesses to whom those all very bad things were done to them. They assist you through your trial and the fellow gets convicted.
- 01:01 Then you want to turn around and say, "Please go and reconcile with this guy," okay? I don't know whether one tries seriously to put themselves in the shoes of these individuals when one is preaching reconciliation.
- 01:16 I think reconciliation need, needs time and it needs to be delinked from criminal prosecution. The two cannot go together. Somehow, the statute tells us that they should go together and they've not told us practically, how can it be done? That's the difficulty.
- 01:36 That's why some people appreciate Gacaca because Gacaca is not a criminal prosecution process. It is a political process where somebody admits responsibility and then somebody is re-absorbed into the community. And they should not confuse that with criminal prosecution because it is not. It is a political process.
- 02:00 And I don't think the, the, the tribunals are institutions that are best suited for reconciliation because the nature of the work of a prosecutor is not reconciliation. I think that, that they demand too much from a prosecutor to collect all the worst evidence, get a conviction and then turn around and say, "Oh, let us forget the past." It's very difficult.
- 02:26 JM: Well, thank you. I just want to ask you as, as a final question if there is anything else that you feel you want to communicate really to the world about your experience here, or any thoughts that you have? Is there anything we haven't asked you that you feel you should say?**
- 02:47 Well, the only thing I really try to emphasize is that there are these organizations in, in Rwanda called AVEGA and IBUKA, IBUKA. These are the organizations of survivors. I think that is a new phenomenon in the international legal justice system and at times have not been made to look at the issues from the position of the victims as a community – something I would compare with class action cases, okay?
- 03:28 And if some thought was made into that and then they got some proper legal advice and managerial capacities, okay, they would perform much better and a much more positive and proactive role.
- 03:49 But people have tried to see IBUKA as people who are survivors and they're trying to coach witnesses. They're trying to do this, okay. Maybe some of their members do. I don't know, but we should look at the concept where victims come together and said, "This is our position."
- 04:09 JM: Okay.**

04:09 And I think they should be heard.

04:10 JM: Thank you very much Dr. Alex Obote Odora. I'm John McKay, professor from Seattle, Seattle University Law School. Thank you.

04:17 Thank you very much.