



# Voices from the Rwanda Tribunal

## Official Transcript: Everard O'Donnell (Full Interview)



<b>Role:</b>	Deputy Registrar
<b>Country of Origin:</b>	England
<b>Interview Date:</b>	15 October 2008
<b>Location:</b>	Arusha, Tanzania
<b>Interviewer:</b>	Donald J Horowitz
<b>Videographers:</b>	Max Andrews Nell Carden Grey
<b>Interpreter:</b>	None

## Interview Summary

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

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

1 **Part 1**

- 2 00:00 Okay. Well, my name is Everard O'Donnell. And I'm the Deputy Registrar.
- 3 **00:04 Donald J Horowitz: Alright, and I'm Judge Donald Horowitz of the ICTR Information Heritage**  
4 **Project, and I will be interviewing you for a certain period of the time, and then Ms. Nathan**  
5 **will take my place for part of the interview as well. And tell us what the duties of the Deputy**  
6 **Registrar of the ICTR, the International Criminal Tribunal for Rwanda, are.**
- 7 00:36 Okay. Interestingly, he is not the Deputy of the Registrar just. He has his own separate  
8 functions. In any rational organizational structure, somebody who's called the Deputy  
9 Registrar might be expected to be the person who assists the Registrar in all his functions, but  
10 nothing like that here.
- 11 00:59 A Deputy Registrar's job is to look after all the sides of the court function process. The actual  
12 supporting the courts themselves. From the prison, comes under the Deputy registrar, the  
13 language section, translation services, court reporting, archives, court management, defense  
14 teams, the provision of basically all immediate support to the court system.
- 15 01:41 As separate from the administration of the organization as a whole, which goes under a  
16 separate category.
- 17 **01:47 DJH: Explain to me what 'the administration of the organization as a whole' means. It's . . .**
- 18 01:53 Well, in any mission of the United Nations, you're going to have very much the same kind of  
19 support – life support systems.
- 20 **02:01 DJH: Okay.**
- 21 02:02 Payments, finances, travel, shipping – all those sort of materials. They're, they're separated off  
22 from essentially the immediate legal support functions, which comes under me.
- 23 **02:15 DJH: Okay. So you're not directly involved with those other administrative functions. You**  
24 **are, essentially, the court support, or, and the – and those that come with court.**
- 25 02:28 That's right. And I mean, Re-, the Registrar himself is in charge of the administrative support  
26 functions. So that's why I say that I'm off on the side. I don't sit in the hierarchy of the – the  
27 organogram of the tribunal. I don't sit in a line directly beneath the registrar. When he goes  
28 away, of course, then I am meant to fulfill his functions.
- 29 **02:52 DJH: So at this moment, for example, he's not back from somewhere. You're in charge of**  
30 **that as well?**
- 31 02:57 Ostensibly.

- 32 **02:58** **DJH: Okay. Let's go back for a minute – or a few minutes – and ask you a little bit about**  
33 **yourself. Where are you – where are you from, originally?**
- 34 03:09 From England.
- 35 **03:10** **DJH: Okay. And tell us a bit about your education and training and profession.**
- 36 03:16 All right, I was – at the University of Southampton. I did my Bachelors and my Masters in  
37 International Politics there, under Professor Joseph Frankel. And then I read for the Bar and  
38 was called to the Bar in 1976 and I practiced in criminal law, in both defense and prosecution.  
39 I have a rather bizarre little English barrister habit of being a prosecutor one day and a  
40 defense I-, attorney the next.
- 41 03:48 And then, after that, I became a little too specialist in prosecution, so finally I joined a new  
42 professional prosecution service in England and became a, a crime prosecutor, then a senior  
43 crime prosecutor, before I finally made the fundamental mistake of taking an apple from an  
44 American lady in my orchard in Devon, and was subsequently seduced and went to America.
- 45 **04:17** **DJH: And where – and, and where, where did you go in, to in America?**
- 46 04:23 I went to a place that very few peo-, it's sort of a cultural black hole called western North  
47 Carolina in the Appalachian Mountains, where I soon discovered that my curriculum vitae as a  
48 senior crime prosecutor of the west of England did not exactly translate into any known  
49 function.
- 50 04:45 And so, I – after a time, after a time which I devoted to breeding, which I don't think you  
51 probably want to hear a great deal about, I had two children and then we – I joined Legal  
52 Services of North Carolina. And . . .
- 53 **05:03** **DJH: That's civil legal services?**
- 54 05:04 Civil legal services.
- 55 **05:05** **DJH: Yes.**
- 56 05:05 Purely civil. And I proceeded to act as pro bono coordinator, and then I worked on HIV/AIDS  
57 projects in Asheville, and in, in due course was recruited in 2000 to come here.
- 58 **05:22** **DJH: Okay. Just to be clear, because there are a lot of people who are going to be viewing**  
59 **this years from now, and, and from different legal systems – when we talk about civil versus**  
60 **criminal, in the United States, everything that's not criminal is civil. Is that kind of your**  
61 **understanding? How would you define, you did civil legal aid, which was different from the**  
62 **prosecutions you'd been doing?**

- 63 05:48 Yeah. I mean, it involved, essentially, I mean, poverty law. It's a special branch of civil leg-, law,  
64 as you have defined it. And it essentially involves landlord and tenant issues, any issues  
65 involving entitlements and so on.
- 66 06:07 A program, actually, a wonderful program, set up by President Johnson in the war on poverty,  
67 originally, and then rejuvenated by that great liberal, Richard Nixon, and then I think sort of  
68 facing considerable degree of difficulty during the time I was there, of funding.
- 69 06:27 But it was a very, very interesting and mind-expanding experience, because I was able to see  
70 the underbelly of American capitalism, which is an experience that I think everyone should  
71 have, particularly those in America who are in leadership positions.
- 72 **06:46 DJH: Okay. And so, in this you are representing f-, may I say the interests of essentially poor  
73 people.**
- 74 06:59 Yeah.
- 75 **06:59 DJH: Pe-, the underserved, the vulnerable, and so forth. Now, you were not a member of the  
76 – were you a member of the Bar?**
- 77 07:07 No.
- 78 **07:08 DJH: Did you become a member of the Bar?**
- 79 07:09 No, no.
- 80 **07:09 DJH: So were you allowed to do some actual court practice?**
- 81 07:13 No. What we did was basically everything but.
- 82 **07:16 DJH: Okay. (\_\_\_).**
- 83 07:16 So case preparation, case screening, interviewing, going out, field work. And as far as the  
84 HIV/AIDS project was concerned, that again, organizing. And in due course, I became  
85 President of the Western North Carolina AIDS Consortium, which was a sort of – essentially a  
86 consortium of funders for you know, targeting the HIV/AIDS population of North Carolina. At  
87 that time, a very diverse population.
- 88 **07:51 DJH: Mm-hmm. And how many years were you, then, in that area, or in (\_\_\_\_) . . . ?**
- 89 07:56 Seven years.
- 90 **07:57 DJH: Okay. And then you say you were recruited for the UN?**
- 91 08:02 Yeah.

- 92 **08:03** **DJH: How did that come about?**
- 93 08:06 Well, a certain amount of dissatisfaction on my part with being in western North Carolina and  
94 not really practicing an area of law that I was very interested in, although the experience itself  
95 was very valuable, led to my communication with a number of my ex-colleagues in England.
- 96 08:27 And in, in due course an opportunity came up, a particular request had been made by one of  
97 the judges here, a commonwealth judge, that he wanted an English barrister to assist with the  
98 work of the chambers here. And so I was invited to apply, which I then duly did, and was duly  
99 taken on, in, I think, the space of about eight weeks.
- 100 **08:49** **DJH: Okay. And that was in the year 2000, was it?**
- 101 08:52 Yeah.
- 102 **08:53** **DJH: Okay.**
- 103 **Part 2**
- 104 **00:00** **DJH: Let me go back six years, if I may, to 1994. That's a year that has taken on some**  
105 **significance for you, I'm sure. Do you remember, or can you try to remember, what you**  
106 **were doing in 1994, particularly in April when things got particularly difficult? And when you**  
107 **first heard about it – tell us a bit about that experience.**
- 108 00:29 Well, I don't know whether you've ever been to western North Carolina, but it's a pla-, a place  
109 in which not only is it extremely mountainous, but culturally, it's extremely remote from the  
110 rest of America.
- 111 00:43 And apart from Asheville itself, which is a fairly cosmopolitan town, all the area around  
112 Asheville – and I was in, may I say, a, a Fundamentalist Baptist county, a dry county, a county  
113 that probably wouldn't have really been able to know in which direction Europe was.
- 114 01:07 And so, there was remarkably little reporting of what happened in the Third World, and in  
115 particular, Africa. And the first I heard of what was going on in Rwanda was, interestingly  
116 enough, at a poetry slam in Asheville, when someone proceeded to read a poem about the  
117 events that had been unfolding in April. This was early May that I was at this poetry slam.
- 118 01:41 And I was really astonished that anything like this was going on. The guy, the poet, did an  
119 introduction and then read a poem, and so I went up to talk to him afterwards and asked him  
120 what was all this about. And that was – I heard it word of mouth. Then, of course, I found out  
121 all about it thereafter.
- 122 02:00 But it had remarkably little impact upon most Americans. And I don't think, for example, my  
123 wife and her friends in western North Carolina knew anything about it until months after, abo-  
124 , when I, when I started talking to them about it.

- 125 **02:20** **DJH: And that would have still been in '94, or '95?**
- 126 02:22 Yeah.
- 127 **02:24** **DJH: And in the interim years before you left western North Carolina, did you have any**  
128 **special interest or involvement with, with the subject?**
- 129 02:36 Well, as a senior crime prosecutor, one of my areas of interest had been international criminal  
130 law. I'd been concerned with international environmental law. That was one of my particular  
131 professional responsibilities in the United Kingdom. But very little. Most of our work was really  
132 national – of national concern.
- 133 **02:59** **DJH: Okay. So now you had this opportunity in, in 2000 to come to the ICTR. What did you**  
134 **know then about what was going on here – that is, what were you told before you got here?**
- 135 03:17 Well, that's an interesting question, because naively – I mean, I read of course, everything that  
136 I could in the short space of time that I had. And it looked to me as if it was, you know,  
137 remarkably interesting and a unique organization, and one that my background gave me no  
138 particular lead in as to how to approach it.
- 139 03:39 And my request via email to the then Registrar for details of my job description and what I  
140 would be doing didn't meet with any reply. Telephone calls here didn't meet with any  
141 particular information. So I was in a state of somewhat – well, a certain penumbral awareness,  
142 as I set out.
- 143 04:04 But I, I dropped in on my government in England to meet my previous colleagues in the crime  
144 prosecution service, and I met also the people in the foreign office, who had been part of the  
145 process by which I had learned about this job. And I was told then, I was given a sort of  
146 particular perspective upon the tribunal.
- 147 04:29 And there was a cer-, I was led to believe that there was a certain amount of concern about  
148 the lack of progress made by the tribunal at that particular time. The lack of casework, the fact  
149 that only by, by that time, only one full trial had taken place. The fact that the other trials, the  
150 pre-, the pretrial process had, had not really got off the ground. The fact that, of those  
151 arrested, they, it looked as if they were going to be a long time awaiting trial.
- 152 05:02 And a general lack of, I would say, lack of certainty on the part of the United Kingdom  
153 government about the future of the direction of the tribunal. And indeed, one of the  
154 comments made to me as I was leaving was something to the effect of – I'm not going to give  
155 you a quotation, but – that they hoped that the efforts could be directed towards bringing the  
156 tribunal to a close.
- 157 **05:36** **DJH: All right. And, and so – had you been to Africa before?**
- 158 05:41 Never.

- 159 **05:43** **DJH: Okay.**
- 160 05:42 I was, I have a, a Middle Eastern background as a child, but not . . .
- 161 **05:47** **DJH: Where in the Middle East?**
- 162 05:48 Oh, everywhere. Aden, Iraq, Beirut, everywhere. My father was a Middle Eastern civil  
163 engineer.
- 164 **05:56** **DJH: Ah. Okay. So you came to Arusha?**
- 165 06:00 Yeah.
- 166 **06:01** **DJH: Okay. Did you also – well, let me – when you got to Arusha, did you know what your**  
167 **job was going to be?**
- 168 06:09 No. I presented myself – well, it's always a very alarming experience, particularly in those  
169 days, to arrive at Arusha airport, and you get driven through the darkness, all alone in a bus  
170 and you know, there are road blocks and lights dimly seen, and then you get thrown out in a  
171 hotel. All alone, you have absolutely no clue about where you are or what's, what's  
172 happening.
- 173 06:33 And the next day, I presented myself at the tribunal to be greeted with astonishment as to,  
174 “Who on earth are you?” There was no office for me. I presented myself in due course, I think  
175 on the second day, to the President, President Pillay, and I said, “I'm a new senior legal advisor  
176 in chambers.” And she said, “Oh, are you? Who sent you?” So, it was that kind of experience.

177 **Part 3**

- 178 **00:00** **DJH: When you talk about the President in a lot of cultures, that's not understood. Is that,**  
179 **was that the President judge?**
- 180 00:07 Yes.
- 181 **00:08** **DJH: Okay.**
- 182 00:09 Yes, the, the, the judges, the permanent judges of the tribunal – in those days, there were  
183 only permanent judges – elect from amongst themselves a presiding judge, who's called the  
184 President, and a Vice President.
- 185 **00:21** **DJH: And is there some term of office, either by custom or by regulation or statute?**
- 186 00:28 No, there is a term of office. Each judge has a mandate of four years, and a President has a, a  
187 mandate of two.
- 188 **00:36** **DJH: Okay. And are they renewable?**

- 189 00:41 Yes.
- 190 **00:42 DJH: Both the President and the other terms?**
- 191 00:45 Yes.
- 192 **00:46 DJH: Okay. So the President judge didn't know you were coming?**
- 193 00:52 No, I, I, I mean, I think, I think the, the President, at that time, there was a considerable  
194 conflict between the Presid-, the President and the Registrar, the then Registrar, and there  
195 was a considerable lack of communication between the two poles of the tribunal. If I can  
196 explain . . . ?
- 197 **01:11 DJH: Sure.**
- 198 01:12 As you know, if you've looked at the statute of the two ad hoc tribunals, you'll see that it, it,  
199 it's a, it's essentially a compromise between the mission model and between the way a court  
200 functions. You have the Secretary General's representative, who's the Registrar, and he, in the  
201 statute, is given responsibility for the administration of the tribunal.
- 202 **01:38 DJH: You're talking about the statute which creates this ad hoc tribunal?**
- 203 01:42 Right. It's the one passed by the Security Council, incorporated in the original Security Council  
204 Resolution, which then became our, to some extent, you could say, our constitution.
- 205 **01:51 DJH: Okay.**
- 206 01:51 And . . .
- 207 **01:52 DJH: And i-, so, this is not a court that is formed by treaty between or among nations?**
- 208 01:58 No, not like the ICC. No, I mean, obviously we are a treaty creation in the sense that the  
209 original United Nations charter is the treaty which set up the Security Council. The Security  
210 Council then set up the ad hoc tribunals as subsidiary bodies of itself. So we are, in fact, an  
211 organ of the Security Council.
- 212 **02:17 DJH: And an ad hoc tribunal means what?**
- 213 02:21 It means that it lives, and then it dies. It, it's a temporary court. It's an unusual situation,  
214 because, you know, as you know, in all national courts, we're not used to short-term courts.  
215 The Star Chamber, I can, I can remember, in the United Kingdom's experience, was a short-  
216 term court.
- 217 02:39 Courts set up for specific ex-, events and particular experiences usually are frowned upon, I  
218 think, in jurisprudence. It, it, it smacks a little bit too much of non-routine justice. It smacks of



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

221 **03:04 DJH: Okay. And by ICC . . . ?**

222 03:07 The International Criminal Court in The Hague.

223 **03:09 DJH: Okay. And that was set up by treaty, when?**

224 03:11 It was set up in . . .

225 **03:15 DJH: Approximately.**

226 03:15 . . . it became effective in July 2001, when there were enough signatories to the actual treaty.

227 **03:21 DJH: And so, that came after the two ad hoc tribunals.**

228 03:26 Yes. The two ad hoc tribunals were set up in 1993-4, when you have these two m-, massacre  
229 events in the ex-Yugoslavia and in Rwanda, inaction by the Security Council, general feeling – I  
230 mean, obviously there was action in due course by NATO in the ex-Yugoslavia, but it was felt  
231 to be very much too late in the day.

232 03:57 There was total inaction in Rwanda, withdrawal of the UNAMIR forces. The United Nations  
233 was generally seen to be impotent, and the Security Council in particular impotent.

234 04:09 And so, there was a sense after each of these events, “Well, how can we be seen to be acting,  
235 you know, so that it looks as if we've made some response rather than just wringing our hands  
236 and weeping crocodile tears.” Or real tears. Who knows? I mustn't be too cynical.

237 **04:29 DJH: Okay. So let's get back to where you were talking. You said there were some problems  
238 between the President, the ju-, the judiciary or the, the judges, and, and the Registrar?**

239 04:38 Right. Right. The Secretary General appoints the Registrar, who's an Assistant Secretary  
240 General. And there you have, to some extent, the peak of the pyramid in the United Nations  
241 staffing table. And to all intents and purposes, when you look at the statute, the Registrar  
242 looks as if he's at the apex of the pinnacle.

243 05:01 But then you've got the judges. The judges appointed, they're Under-Secretaries General, so  
244 they, they elect the President from amongst themselves and the President is a person who's  
245 actually meant to be running the scheduling of the court hearings, running the sittings of the  
246 judges, the appointments of the judges – you know, basically handling the whole of the  
247 judicial side of things.

248 05:25 And you've got an obvious area of conflict there. I've spoken to the original architects of the  
249 statutes, and they both have under-, undertaken that this would never b-, have been done, if  
250 it had been done again, had they seen what the result would have been. Because, well, what

- 251 happened was after the rules – the rules under the statute – the, the judges were entitled to  
252 make rules of procedure and evidence . . .
- 253 **05:53 DJH: And there were two statutes, one for the former Yugoslavia, and one for Rwanda.**
- 254 05:56 Yugoslavia, yeah. That's right.
- 255 **05:58 DJH: Were they pretty identical?**
- 256 05:59 Yes. Pretty identical.
- 257 **06:00 DJH: Okay.**
- 258 06:01 There are, there are differences in the definitions of crimes because of the difference in the  
259 nature of the massacres in the former Yugoslavia. We have a, a – basically our basic crimes are  
260 targeted towards internal crimes rather than international crime. So there were special  
261 provisions made for that. But apart from that, basically the statutes are the same.
- 262 06:29 And the Yugoslavian judges had been given a rule-making power under one of the statutory  
263 provisions. And they had met together in plenary even before our creation, and had  
264 developed, about, just over a hundred rules of procedure and evidence.
- 265 06:45 And it was obviously quite early on that the fact that the judges felt that they should be in a  
266 supervisory role over the secretariat side of things, became manifest. Because the judges  
267 passed a rule making it clear that the supervisory function would be performed by the  
268 President over the Registrar. And that is expressed in two of our rules now.
- 269 07:17 We took over the rules, again, from Yugoslavia, and so we have the same supervisory  
270 provisions. So although it doesn't appear in the statute, in two places in the rule, it says the  
271 Registrar shall be supervised by the President.
- 272 07:31 So you can see that there, there was – the judges i-, in effect made it perfectly clear that as far  
273 as they were concerned, and no matter what the statute said, they were going to be  
274 exercising the governance of the tribunal. And it caused conflicts in the early days of the,  
275 certainly this tribunal.
- 276 07:52 Because the Registrar felt that there were certain responsibilities that he had as the senior  
277 staff member responsible to the New York, to the General Assembly, to the Secretary General,  
278 that he could not just do whatever it was that the President wanted him to do.
- 279 08:11 Whereas the President felt that she had a right to say, “I want this, I want, you know, this, and  
280 I want this person recruited,” and so on. “And I want it done now.” And the UN rules, you  
281 know, don't work like that. They work very fairly and they work slowly, it has to be said.
- 282 **08:29 DJH: Are they – and this affected you in, or your initial experience?**

283 08:34 It did. Because when the Registrar told me, "Oh, you're going to be the Chief of the  
284 chambers," I then relayed that information to the President and her immediate response was,  
285 "I don't think so. No, you're not." So . . .

286 **08:50 DJH: So what happened then?**

287 08:51 Well, I made my excuses and left, bowing backwards as you know, showing obeisance. And  
288 went back to the Registrar and the, the, the matter continued i-, in – with a little bit of a,  
289 a delay. In due course, what I – I was able to slowly develop a rapport with the senior judges  
290 and in due, in due course, the conflict between the Registrar and the President was resolved.

291 09:23 The Registrar was removed and replaced by the present Registrar, Adama Dieng, who has  
292 always had a very good working relationship with the judges and with the presiding judge.  
293 Complete change.

294 09:36 And basically, our system, our bipolar system, can only work if there's a close working  
295 professional, and one hopes sometimes friendly, relationship between the two poles. And  
296 that's been the case ever since the appointment of Adama Dieng.

297 **09:55 DJH: And when – and was that in 2000 or 2001?**

298 09:57 2001.

299 **09:58 DJH: Okay. So what did you do in the mean time?**

300 10:01 Just slowly developed, inch by inch, warm relations with people. Diplomacy. Just, in, in, in – so  
301 often in the United Nations, personal relationships matter. And the United Nations in this  
302 particular continent, one would say they matter even more.

303 10:23 So you can't just rely upon your formal function and say, "But this is my position. I therefore  
304 expect you to do this, this, and this." You have to develop relationships here. And that was a  
305 good lesson for me, because previously I had not really been able to work like that.

306 **10:39 DJH: 'kay.**

## 307 **Part 4**

308 **00:00 DJH: So, but, but I'm still I guess a bit confused, and maybe because it was confusing, about**  
309 **what you did those first months? Were you acting without – forget the title for a minute –**  
310 **were you acting as the Chief of chambers, or would, what . . .**

311 00:15 As far as the staff were concerned, yes. The staff of chambers, the legal officers in chambers  
312 had actually wanted a Chief of chambers. They had been very much looking for someone to  
313 give them direction, give them some kind of management.

- 314 **00:27** **DJH: Had there not been one before?**
- 315 00:30 There had been some time before, but there'd been a long hiatus, a long gap. And that had,  
316 that had caused a certain amount of dissatisfaction, and directionlessness amongst the legal  
317 staff.
- 318 00:45 So, you know, getting people, going around, talking to them, getting them back together.  
319 Devising a c-, a continuing legal education program, having meetings, giving them a sense of  
320 corporate identity. By this process, I was able to start to function as a Chief of chambers.
- 321 **01:03** **DJH: And tell me what the functions of the Chief of chambers are.**
- 322 01:07 Well, the Chief of chambers basically operates as the immediate manager of all the, all the  
323 legal staff who work directly for the judges. And then he also acts as the interface between  
324 the judge's chambers and the rest of the tribunal in the sense of making demands upon the  
325 resources of the tribunal and then also bringing back, information back into – and feeding it  
326 into the judiciary and the immediate legal staff.
- 327 01:38 That's officially it. In fact, what you found was that the, the most intimate relationship that  
328 exists is between a judge – we had nine judges at that time. Well, nine here and then two in  
329 The Hague as part of the appeals chamber.
- 330 01:56 And each judge has an associate legal officer, usually a very young lawyer, fresh out of law  
331 school or with only a couple of years of working experience. Usually very highly qualified,  
332 academically, who work on drafting the decisions, advising the judge, legal research, and so on  
333 and then finally drafting the judgments.
- 334 02:18 Now that, when I came here, that was a very personal relationship between each judge and  
335 the associate legal officer – actually, the judges had been selecting directly their own associate  
336 legal officers.
- 337 02:29 This had been a cause of conflict in itself with the Secretariat and with the Registry, because of  
338 course, that's not how one recruits inside the United Nations. One recruits by some general,  
339 transparent procedure. And it was quite funny, if I can just give you an anecdote to illustrate  
340 the kind of thing that was going on.
- 341 02:49 One judge called me in. This judge is no longer here, (\_\_\_). Called me in, and said, "I want this  
342 person," and handed me a CV. And I looked at it, and this particular person came from a  
343 country with which I am familiar, and didn't appear to have a very high level of legal  
344 qualifications. And I inquired as to why this particular person was wanted by this particular  
345 judge.
- 346 03:15 The judge said, "Oh, he, because he comes from that particular country." And it wasn't the  
347 judge's country; it was a completely – a far away, different continent. And I said, "Oh, I see.

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

350 03:34 And so, that was the kind of way in which recruitment was done. And in fact, that, as it  
351 happened, that particular person was recruited and did very well here. In due course, he got  
352 legally qualified under our aegis and has now left.

353 03:50 But I mean, that's an indication of, of the kind of ways in which judicial recruitment t-,  
354 recruitment of judicial assistants tended to be done. And it's, it was not effective, because it  
355 produced results that were sometimes bizarre and sometimes not entirely transparent. Well,  
356 never transparent.

357 04:09 So I tried to introduce transparent systems. Also, giving the judges their desire, because it's a  
358 very intimate relationship between a judge and what, in America, you would call their legal  
359 clerk. And therefore the judge must have a major say in it.

360 04:26 But you also have to ensure certain other characteristics of recruitment, such as geographical-  
361 cultural balance, excellence, minimum qualifications, all those things are adhered to. So that  
362 was something I was able to do, slowly, slowly, slowly.

363 **04:42 DJH: Okay.**

364 04:46 Oh, can I mention one other thing?

365 **04:47 DJH: Of course.**

366 04:48 Although I'm technically, was, as Chief of chambers, meant to be directly supervising all these  
367 staff, what you found was that the legal officer was supervised directly by the judge and you  
368 had very little role. Insofar as we had other legal staff working in chambers, that, that  
369 relationship was a lot easier.

370 05:08 But any time you felt that there was a non-functioning member of the legal assistants staff,  
371 somebody working directly for a judge and you wanted to do something about it, what you  
372 immediately found was that the legal assistant was able to handle the situation ( ) through  
373 the judge.

374 05:26 And so you were unable to touch the situation at all. In other words, you had, what you had  
375 was a series of little no-go areas. You, you couldn't touch ( ), the, the protected person  
376 working with the judge.

377 05:38 So in fact, there are a lot of informal networks which you, which you cannot tell by looking at  
378 an organogram of the organization. And that, that situation is relayed right away throughout  
379 the organization.

380 05:50 So I just thought I'd throw that in, to say that sometimes calling yourself Chief of chambers  
381 was often, one felt, an honorary position rather than a very effective position.

382 **06:00 DJH: How long were you Chief of chambers?**

383 06:02 Until 2005.

384 **06:06 DJH: So, five years? Okay.**

385 06:07 Yeah. October 2005.

386 **06:09 DJH: Or four and a half, something. Yeah.**

387 06:10 No, it was – it was full five years.

388 **06:12 DJH: Okay.**

## 389 **Part 5**

390 **00:00 DJH: And when you got there and you know, broadly, what did you find that you felt you**  
391 **really needed to do? You had had a number of comments from friends of yours before you**  
392 **took the job about, you know, shutting it down.**

393 **00:17 DJH: And I guess I'd be interested in your impressions about what you found and what you**  
394 **thought you need-, you needed to and could do. And in fact, did, perhaps.**

395 00:26 Well, yeah. Well, no, I was able to play an assisting role. But there were already people here  
396 who were aware of the fact that there were certain fundamental structural problems that had  
397 to be addressed. In particular, I would say that President Pillay was aware, but in particular I  
398 would, I would identify the role of Judge Møse who was the Vice President when I arrived.

399 00:54 He was very clearly aware that matters had to come to a head, matters had to change. The  
400 principle problem was this – you, here you have almost, in fact, at that time, very restricted  
401 courtroom facilities. You had three trial chambers with three judges, so that's nine judges. But  
402 they were all sharing fairly limited facilities.

403 01:27 You had the Prosecutor who controlled the tap of the cases – turned it on and off – deciding  
404 how many people she wanted to arrest, how she was going to present the indictments, how  
405 they would go before the judges, and what crimes were going to be presented to the judiciary.

406 01:53 And it was perfectly clear to anyone who came, particularly to me, coming in from the outside,  
407 but Judge Møse was already on top of the issue, that the Prosecutor's ambition to arrest well  
408 over 100 people, given the throughput, the capacity in terms of hours per week, per month,  
409 per year, of the judges working with the facilities we had, the tribunal would last for two  
410 decades, at least. And that was manifestly, politically unacceptable.

- 411 02:27 And something had to be done. The Prosecutor had to change. When I arrived, the Prosecutor  
412 was Carla Del Ponte, a wonderful woman who one would be very anxious to go in on a frontal  
413 beach assault in Iwo Jima with her, with her holding a Kalashnikov. I mean a very brave and a  
414 very, very strong wo-, woman, a strong leader.
- 415 **02:53 DJH: Where was she from?**
- 416 02:54 She was from Italy and had cut her judicial teeth fighting the mafia and with, with great  
417 success, according to her press conferences. And she had definitely got a very strong approach  
418 to prosecution here.
- 419 03:16 But of course, she divided her responsibilities with, between pro-, prosecuting at The Hague  
420 and prosecuting here. And what she tended to do was to arrive here a bit like the Queen of  
421 Hearts, arriving, giving orders, developing, meeting people, and then disappearing very fast.  
422 And . . . yeah.
- 423 **03:35 DJH: Let me stop you for just a moment. You said she was prosecuting at The Hague and  
424 here? So she wasn't just assigned to this court, she was assigned to both ad hoc courts?**
- 425 03:45 Yes.
- 426 **03:45 DJH: Okay.**
- 427 03:46 Yeah. Originally, when the Security Council set up the Rwanda tribunal, they felt that it was  
428 important to ensure harmony, to some extent, of both the prosecutorial policy and the  
429 jurisprudence. So they produced a common prosecutor and a common-, a commonality  
430 between the appeals chambers. So, in other words, the appeals chamber at The Hague with a  
431 couple of additions became our appeals chamber.
- 432 **04:13 DJH: Okay. Why don't you go back? You were saying she arrived like the Queen of Hearts  
433 and then . . . ?**
- 434 04:18 Yeah, there were a few sort of "Off with your head" moments, and then she would disappear  
435 off back to The Hague and there was a certain amount of concern as to whether management  
436 here was – in the prosecution – was actually as long-term visionary as it should be.
- 437 04:40 Because a part of the issue was, well, you know, "We want to arrest all these people. They're  
438 all guilty of genocide to some extent, and so therefore I want, I want them all." And the  
439 response to, "No, you can't have them all," was "I am going to have them all."
- 440 04:57 So you know, to some extent, when you're dealing with that style of leadership, it's a  
441 remarkably good style of leadership, but when it comes to actually trying to run a rational  
442 organization, there are other considerations have to be brought into effect.

- 443 05:15 So we had, if I conflate the story a bit – because it could go on an awful long time. There was a  
444 meeting of all the judges of both tribunals in Dublin under the auspices of the Dublin  
445 government and under Trinity College Dublin, at which we met Hans Corell, the legal counsel  
446 as was then of the Secretary General.
- 447 05:44 And at which these issues were thrashed out – how are we going to put the ad hoc into these  
448 tribunals? How are we going to eventually address ourselves to closing it down? And one  
449 obvious message that came out between, in the work of the judges, was basically with the  
450 resources we have at the moment, and the tap going at the rate it-, it's going, flowing at the  
451 rate it's going from the Prosecutor, we have got a problem terminating these tribunals.
- 452 06:20 So therefore, we need to address both the tap and the resources. Increase the resources and  
453 restrict the tap. That's, if I can summarize it, more or less, that's what went on behind the  
454 scenes. Do – I think you're going to be talking to Judge Møse – talk to him about it, because he  
455 was the, very instrumental in developing the, the way forward from Dublin.
- 456 06:41 So as a result of that, the completion strategy documents started to be pre-, planned and  
457 prepared. And it, it was fairly traumatic, because, certainly here, it was necessary for the  
458 Prosecutor to understand that it was impossible to have that particular number of persons  
459 arrested and dealt with.
- 460 07:06 And in due course, after a few Iwo Jima moments, if I can put it like that, we did eventually  
461 have, the prosecution addressing itself, to a considerably, considerably, fewer numbers of  
462 indictments.
- 463 **07:27 DJH: Okay. So that was the, one of the first parts of the job that you were involved with.**
- 464 07:33 Yeah . . . Yes. I was in support of the President there.
- 465 **07:37 DJH: Okay.**
- 466 07:37 And of course, at the same time we also had to increase our resources. And eventually, that  
467 message was sold to New York. They did increase our resources. We increased the courtroom  
468 capacity, we increased the judges, we added ad litem judges, another nine to our capacity, so  
469 we had 18 judges, so that we could sit two subsections of each trial chamber.
- 470 08:02 And so on. And we then ra-, we actually started to sit in shifts. Morning shifts, afternoon  
471 shifts. We elongated the work time of the tribunal and so on.
- 472 **08:13 DJH: Got things moving.**
- 473 08:14 Got things moving. We doubled, more than doubled the number of legal staff in chambers;  
474 we, we, we increased our staff enormously. So it was, it was a difficult message for New York  
475 to grasp, that in effect, if you wanted to close down this institution, you've got to increase the  
476 resources to increase the throughput to get it closed.



477 **08:33** DJH: When you say New York, you mean UN headquarters?

478 08:36 Yeah.

479 **08:36** DJH: Okay.

## 480 Part 6

481 **00:02** DJH: The way things were going when you arrived, it soun-, and you were talking about this  
482 thing will go on for two decades to, et cetera, et cetera. I, I'm thinking back to, you know, a  
483 basic principle of, you know, speedy justice and, or at least having justice exist within a  
484 decade of – or you know, the, the conclusion of something occur within a reasonable period  
485 of time from when the person was apprehended or the, or the crime was committed.

486 00:32 May I just ask you, within a decade of what? A decade of arrest or decade of the events?

487 **00:37** DJH: Well, I, I don't know.

488 00:39 You let it, you let it drift.

489 **00:40** DJH: Yes. Okay. What, I guess the, the point I'm making is . . .

490 00:44 I know the point you're making.

491 **00:45** DJH: . . . the, the question, yeah, good. What is it?

492 00:50 Yes. Well, I, if I am to be suit-, suitably defensive.

493 **00:54** DJH: (\_\_\_\_\_) . . . I, no, I'm not, I'm not really thinking of, I'm thinking about, you know, the  
494 mission of the court and your sense of what the court – and, and that's really kind of where I  
495 was going to get.

496 **01:06** DJH: I was going to get away from some of the, of the processes for at least a bit and, and,  
497 and ask you what your understanding was of the mission of the court itself? Whether by the  
498 statute or by, you know, what was at least accepted or by the judges or – and the, and the  
499 various peo-, (\_\_\_) the authorities.

500 01:26 Alright. That's a slightly different question but it, it, it links back.

501 **01:30** DJH: Right.

502 01:31 The mission of the court, if you read the original resolution, you see that the principal purpose  
503 of the tribunal was to effect individual justice against the perpetrators of the genocide in  
504 Rwanda during the a-, actual year 1994, not outside it, in Rwanda and neighboring states. So  
505 that was the, the actual geographical component of the mission and the temporal component  
506 of the mission.

- 507 02:03 But there was an added statement that – because of course this was the Security Council using  
508 its Chapter 7 powers which of course are peacekeeping powers and quite sincerely I think  
509 members of the Security Council – although academics regard this as debatable and you're  
510 referred to the literature – the Security Council felt that setting up a judicial institution would  
511 bring reconciliation to the Great Lakes region, and . . .
- 512 **02:34 DJH: That being Rwanda, Burundi, Uganda . . .**
- 513 02:37 Yes, yes. The whole, the whole of the area around the Lake Victoria, and . . .
- 514 **02:42 DJH: Okay.**
- 515 02:44 So the mission was therefore expressly a peacekeeping mission. Now, one of the interesting  
516 things about that mission is that it was therefore, you have this interesting situation where the  
517 tribunal is set up for political purposes by a political body and it's set up to deal with  
518 politicians and the witnesses come from a very politically intense area and there's still a  
519 conflict between two parties in which you are trying one party.
- 520 03:18 And so the whole thing is intensely political. Nevertheless, the purpose as far as the Security  
521 Council was concerned was to bring reconciliation and by doing, the, the obvious logic, the,  
522 the nexus between the judicial process and the peacekeeping process was clearly that if you  
523 punish the principal perpetrators of the genocide, then not only do, you do two things – You  
524 tell the story. You tell the story in a definitive way.
- 525 03:49 Objective people come from all over the planet with no axe to grind, with no tribal component  
526 to their prejudices. They come perhaps ignorant of the tribal issues, of the dynamics of  
527 Rwanda. You bring them from Russia. You bring them from India, Pakistan, Norway, Sri Lanka,  
528 wherever. And you plant them down and you give them a set of facts, which are in fact  
529 historical facts.
- 530 **04:16 DJH: Now, you're talking about the judges.**
- 531 04:17 Yes.
- 532 **04:18 DJH: You, these people who you just brought, okay.**
- 533 04:18 The judges, the judges.
- 534 **04:20 DJH: Okay.**
- 535 04:22 And not only do they judge whether X killed Y, Z, A, B, C, they also have to come to various  
536 conclusions about historical facts that took place around those individual events. So you're  
537 giving a historical account, a narrative, a historical narrative in each judgment and you're  
538 giving it from an objective standpoint – although not a historians' standpoint, a, a lawyers'  
539 standpoint and we can return to that another time.

- 540 04:59 Secondly, you are holding perpetrators responsible who would never have come to justice had  
541 you not set up a court. This is one interesting thing – it was a message that I don't think had  
542 got home in Rwanda when I was here. I, several times I went over to Rwanda and they were  
543 completely, I thought, completely disillusioned with the tribunal.
- 544 05:26 The ordinary people didn't know what was going on there. They thought it was a waste of  
545 resources, which should be spent in other ways. They weren't aware of who'd been arrested  
546 and so on; total ignorance over there. And that was our fault. We hadn't sold ourselves.
- 547 05:43 But the interesting thing is that if Rwanda had been just simply asking the world community  
548 for rendition – sorry, that's a bad word to use these days, it now has overtones – for  
549 extradition of fugitives, firstly, they would have had to have been tracking the fugitives  
550 wherever they had gone, under whatever aliases they had gone, whatever continents they  
551 had gone.
- 552 06:08 They would have to co-, be, have a continuous tracking process that would work all the way  
553 through the extradition process until finally arrest took place and then the formal extradition  
554 process started. And that was not happening. The Rwandan state was not in a position where  
555 it could engage in international extradition of the principals in, behind the genocide.
- 556 06:30 So unless you'd set up a tribunal of some kind or some kind of institution with a, a police  
557 force, an undercover CID that could track globally, give hush money, go spy – e-, essentially a  
558 Secret Service, to go all over the continent to track these Rwandan génocidaires, then you  
559 would never have caught these principal individuals. And that message had not been sold to  
560 Rwanda.
- 561 07:01 So that was the first thing we started to do, was to say, "Look, none of these people," – now I  
562 don't want to give names because most of the, of them are under trial at the moment, unless,  
563 unless what I'm saying comes out in years to come but, but there are people being tried now  
564 who are of course innocent until proven guilty.
- 565 07:25 But let me, for example, choose names of those convicted, supposing you, Akayesu hiding in  
566 some foreign country under an assumed name, in disguise. Though he was pr-, in, in charge, a  
567 Mayor of a particular commune in which he'd encouraged rape as a form of genocide,  
568 famously, "Now you know what a Tutsi woman tastes like" is one of his phrases, to, as he  
569 encouraged the, the, the, the Hu-, the Hutu Interahamwe to go out hunting women and rape  
570 them before killing them.
- 571 08:05 Now, those individuals would never have been brought to justice had we not set up an  
572 institution like this. So part of the, the, the link between the peacekeeping mission and our  
573 existence is capturing those who would never have been caught. And in fact what we ended  
574 up doing was capturing virtually the whole of the interim government in 1994.

- 575 08:29 And again I have to be a little careful because the interim government by virtue of being a  
576 government does not mean all its members are guilty of genocide. Although many people  
577 have argued otherwise, that is not the legal position. We don't have guilt by association, guilt  
578 by organizational membership.
- 579 08:48 You had something similar to it Nuremberg. Members of the SS for example would have been  
580 regarded as having been guilty of certain offenses by virtue of that membership. This is not  
581 the situation in Rwanda.
- 582 **09:03 Note: Gap in Interview (Approx. 5 minutes in duration.) Gaps occurred due to interruptions**  
583 **during the interview, technical issues, or corrupted data files.**
- 584 09:12 What essentially we had done was to arrest everyone from the Prime Minister, from all the  
585 ministers downwards, the chiefs of civil society, the senior clergy who were responsible  
586 because of course the role of the Catholic Church was also somewhat regrettable in some of  
587 this, and the military leaders and all the – basically all the people, the principals at the top of  
588 what took place in 1994 were arrested. Very few have so far escaped.
- 589 09:48 So you have a whole government inside the prison here and interestingly enough they still  
590 function almost like a government. They issued a communiqué the day before yesterday,  
591 which landed on my desk yesterday, in which they proceed to defend the Republic of France  
592 against the allegations that the French were involved in the genocide. So they're actually still  
593 issuing communiqués as a government even though they are sitting in Arusha.
- 594 **10:17 DJH: In the detention center.**
- 595 10:18 In the detention center; very delightful situation. Anyway, the point is that you bring, you  
596 show Rwanda in due course. And once we did our outreach, we have a wonderful outreach  
597 program that was set up and, and funded by European Union which proceeded to tell the  
598 Rwandans more about what was going on here, who was being tried.
- 599 10:48 And slowly I think the message has got out. Certainly amongst the elites in Rwanda, everyone I  
600 think is now fairly familiar and our relations with Rwanda have warmed as a result of that,  
601 generally.
- 602 11:04 And so I, I think the people there know those responsible for the, the, the killings, have been  
603 and are getting justice, but of course justice for a lot of the victims may not be living in a  
604 prison, in a situation of comparative luxury in African prisons. And we still have a certain  
605 amount of criticism of our penal regime.
- 606 **11:36 DJH: Why don't you tell me what that, what that is?**
- 607 11:40 Well, we – to set up our prison we took over a corner of the lo-, local Tanzanian prison. And  
608 we then set it up according to international standards, as you would expect from the United  
609 Nations. And it has individual cells. It has recreational facilities, research facilities so the

- 610 people could work on their cases, computers, exercise gym, a chef feeding them food. And  
611 therefore it's a fairly enlightened regime in penal terms.
- 612 12:21 If you move 50 yards to the right as you look at the UN det-, detention facility, you enter the  
613 Tanzanian prison which are a series of block houses in which – and I make no criticism of the  
614 Tanzanian government; this is a fairly typical regime in Africa because of lack of resources and  
615 of difficulties in using plant and machinery effectively.
- 616 12:50 You have hundreds of people all trying to use a very narrow space. In Rwanda itself for  
617 example, I feel a little more comfortable talking about Rwanda, the, the, it was estimated that  
618 each prisoner has about 40 centimeters of sleeping space – tremendous overcrowding  
619 amongst the ordinary prisoners in this part of the world, and very little in the way of food,  
620 good food, very little in the way of recreational facilities.
- 621 13:24 It's obvious that our prisoners, although they are in some ways (\_\_\_), some of them, those  
622 who've been found guilty, are guilty of the most heinous crimes in the calendar of human  
623 crime. Nevertheless, they are treated probably better than the person who stole something in  
624 the local market.

## 625 Part 7

- 626 **00:00 DJH: And when you determined, and I mean by you, I don't mean you, you personally but**  
627 **when it was determined to cut down on the number of people who were going to be**  
628 **prosecuted which you discussed earlier, what happened to the 100 or so people that you are**  
629 **not going to prosecute? Did they stay here? Were they sent somewhere else? What?**
- 630 00:29 Well, they fell into different categories, and the Prosecutor, I'm sure, would be only too happy  
631 to give you more information about those. But basically there were some against whom it was  
632 felt that the process of continued tracking was unnecessary. There were others whom the, the  
633 tracking was continued and the files were handed over to the Rwandan government for them  
634 to take action.
- 635 00:56 There were others for whom tracking continues and whom the Prosecutor would like to arrest  
636 and bring here for eventual trial here or referral to other states for trial. And, I th-, I believe  
637 there were 15 of those. I think we're down to about 12 of those now. And then, even within  
638 that group of, of 15, there were, there were five "must haves" and ten, you know, "would  
639 likes."
- 640 01:25 So there were different categories according to their level of seniority. The Prosecutor I'm  
641 sure will be only too happy to open the doors to tell you all about that.
- 642 **01:34 DJH: Were there some who – you already had custody of and then determined you wouldn't**  
643 **prosecute here for reasons of whatever?**
- 644 01:45 Yes.

- 645 **01:45** **DJH: And, and then you transferred them somewhere else.**
- 646 01:47 Yes. This is again a matter for the Prosecutor to talk about, because I'm not privy to the  
647 process by which the Prosecutor came to that decision.
- 648 **01:54** **DJH: Yeah, I'm not asking why but I'm asking what happened to them.**
- 649 01:57 All right, there were, the Prosecutor announced on several occasions, there were referral  
650 cases. There were some who were going, he was going to refer to other states who had  
651 expressed a willingness to prosecute those cases.
- 652 02:16 And then there were others who the Rwandan government had expressed a, a willingness to  
653 prosecute. In fact, the Rwandan government would have been happy to prosecute them all.  
654 But the-, there were some who the Prosecutor identified as being suitable for referral to  
655 Rwanda.
- 656 02:34 Mr. Munyakazi was the first live individual whom we had in our detention facility to receive  
657 that honor of an application to refer to Rwanda and the Prosecutor ch-, chose also some  
658 fugitives as well, fugitives from justice for, for referral of the indictments to Rwanda.
- 659 02:58 There were then referrals to other countries. There, there was a referral to Belgium, a referral  
660 to Norway. The same person after that referral was rejected was subject of an attempt to  
661 refer to Holland; that also was rejected by the Dutch and he is back here now.
- 662 03:22 So in, in essence part of the completion strategy was to refer cases the Prosecutor felt were  
663 suitable to other jurisdictions, national jurisdictions.
- 664 **03:32** **DJH: Mm-hmm. And those people, for example, th-, those who, few or however many that**  
665 **were sent to Rwanda would presumably be detained in the kinds of facilities you described**  
666 **the Rwandans have, as contrasted with the detention facilities here.**
- 667 03:52 No.
- 668 **03:52** **DJH: No?**
- 669 03:53 No, as a result of the efforts of the Prosecutor and the Registrar, a model prison facility was  
670 developed for receiving referral cases from here and with funding from the international  
671 donors, the international standard prison was, has been built.
- 672 **04:16** **DJH: Okay, in, in Kigali presumably, in or near Kigali.**
- 673 04:19 Near.
- 674 **04:20** **DJH: Yeah, near Kigali. All right, and have any of those been tried by the Rwandan courts?**

675 04:27 None of the referrals to Rwanda have taken place. The judges of – there were three attempts  
676 by the Prosecutor to refer and all – well, all three were rejected by the trials chamber, trial  
677 chambers for different reasons. And the appeals chamber has now just yesterday – no, no,  
678 just end of last week – come to a decision supporting the trial chambers’ finding that referral  
679 to Rwanda was not going to take place because there was lack of certainty of a fair trial, in  
680 effect.

681 05:07 The prison conditions, prison – there were cert-, certain aspects of the penal law were also an  
682 issue; uncertainty about whether it was possible that people referred to Rwanda might have  
683 to serve imprisonment for life if they were found guilty, in isolation.

684 **05:24 DJH: Mm-hmm.**

685 05:25 That was one area. It was a bit – it was, was ambiguity in the Rwandan law. But it, under one  
686 reading, it would be possible for people referred to end their days in, and outliving the whole  
687 of their life in isolation, and that was felt not to be commensurate with the international  
688 standards.

689 05:44 The principal concern of all three trial chambers dealing with these referrals was the  
690 independence of the judiciary. The appeals chamber to some extent qualified the findings on  
691 that and, or in the, in the present finding, but supported the trial chamber in respect of the,  
692 running the defense cases.

693 06:12 How could you – what happens is when we run defense cases here, we bring witnesses.  
694 Whoever the defendant wants as a witness we have to bring. Or we get them to testify via  
695 video link, if they’re too frightened to come to Africa.

696 06:28 Most of the Rwandan ex-génocidaires or Rwandan Hutus are, are in the diaspora throughout  
697 the globe. A lot of them are wanted by the Rwandan government for crimes. And so we tend  
698 to bring them here under anonymity, under pseudonyms, under secrecy. And we let them give  
699 evidence under pseudonyms and then we send them away.

700 07:02 And the idea is that they will not then be able to be prejudiced by their appearance here, by,  
701 for example, being arrested by the Rwandan government and its agents. The question arose in  
702 the referral cases well, “How are you going to get génocidaires or alleged génocidaires, people  
703 who had blood on their hands according to the Rwandan government, to fly into Rwanda to  
704 give evidence on behalf of these referral cases?”

705 07:33 And it was felt that that obviously could not take place and manifestly, and I can remember  
706 some conferences in Rwanda where people were shouting at me from the back of the room.  
707 Some journalists were saying, “How can we let génocidaires come here and then put them on  
708 planes and leave them and wave goodbye to them in Kigali?”

709 07:51 It’s a very real issue. Well, how could they, emotionally? And it’s just a very difficult situation.  
710 So the question is well, can they all give evidence by video link? Well, then you have the

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

714 **08:18 DJH: So . . .**

715 08:19 More than you ever wanted to know about referral.

716 **08:21 DJH: No, no. Not at all because it, it also addresses another question which – and, and we**  
717 **can wander a bit.**

## 718 **Part 8**

719 **00:00 DJH: And the question is, you know, frequently we think justice should be visible to the, to**  
720 **the victims, you know, and not at a great distance from them because at least in that way,**  
721 **the argument is that the victims will feel, some call it reconciliation with their own suffering,**  
722 **call it feeling that justice was done and they could actually see it done. And, and that's**  
723 **frequently a good thing in terms of getting on with life.**

724 00:32 Yeah.

725 **00:33 DJH: But that was not done here and some people must have thought about that. And so**  
726 **what you were just talking about bears to some extent on that question. I would ask you**  
727 **your thoughts on, on, on that question and perhaps some of the other issues that were**  
728 **raised vis-à-vis that.**

729 **00:55 DJH: I know you, you talked earlier about developing an outreach program to at least**  
730 **provide information to the Rwandan, the Rwandan people. So is that coherent to, to you**  
731 **and can you respond to that?**

732 01:15 I always say that whenever a judge speaks it's always coherent. But I shall try and extract from  
733 it . . .

734 **01:21 DJH: That's not, that's not, that's not always quite the case, but . . .**

735 01:26 Yeah, I think it's a tremendous shame that these trials did not take place close to where the  
736 victims are and where the crimes took place, tremendous shame. And I think it's one of the  
737 issues that has dogged us in terms of our effectiveness. Having said that, when you go back to  
738 1995, 1996, just think of the situation then.

739 01:57 The Security Council had to, and the, and the Secretariat had to put in place a trial system that  
740 was going to be able to operate in a fairly dispassionate, f-, free li-, environment in which  
741 defense were going to be able to act freely as well as prosecution. I know they considered  
742 Nairobi originally when they were trying to locate a place.



- 743 02:27 And it, but it was felt that really the situation, although the infrastructure was better, the  
744 political situation in Kenya was not such as to make it a very neutral ground. And so Arusha  
745 was chosen although dusty and a town with no infrastructure, no computers, no roads,  
746 nothing. Was not really the best place in hind-, in hindsight, because it took a long time to get  
747 things going.
- 748 02:59 And it, what it does mean is we have to hire this aircraft, you know, which has almost been on  
749 permanent hire throughout the, the, the life of the tribunal. Lifting witnesses with – and a  
750 so-called anonymity wi-, with pseudonyms out from Kigali airport, bringing them, flying them  
751 into Tanzania, putting them up here in safe houses or in hotels, giving them enough money to  
752 survive and then lifting them back and inserting them back into their communities.
- 753 03:28 Apparently, although, you know, officially not, with the community not even knowing that  
754 they've been giving evidence in Arusha, you know, (\_\_\_\_\_). It, it's unfortunate but you know,  
755 it's obvious, it's to some extent impractical.
- 756 03:43 And it's, it's fairly widespread experience that, you know, the white Toyota car which is, even  
757 with no markings, is obviously a UN vehicle appearing somewhere in a rural community to pick  
758 up X. Or there, or the time the vehicle appears, X is away from the village, you know.
- 759 04:04 I mean, it's very difficult for people giving evidence here. Certainly I think this is more  
760 important in the early days of the tribunal. Now, our witness protection system is, you know, a  
761 lot more sophisticated but even so, people are known. We've had a situation few months ago  
762 where witnesses who were meant to be anonymous had been denounced by a survivors'  
763 organization in Rwanda for giving evidence for the defense.
- 764 04:39 And they were denounced and they were told they would no longer have the benefits of  
765 getting survivors' benefits and so on. And when they complained to the witness protection  
766 officer, the witness protection officer in Rwanda, who is not part of us, the Rwandan  
767 protection, the government protection officer cooperates within the Procureur General's  
768 Office, proceeded to denounce them herself for being snakes in the grass and for betraying  
769 their colleagues.
- 770 05:12 So you can see the enormous difficulties. And so choosing a neutral territory was necessary  
771 from the point of view of getting both sides heard. And one thing you see, the, the, when I  
772 came here, people always used to say, "Oh this was just a . . ." – I mean the, the, to some  
773 extent our, our guests in the detention facilities still say that it's a political tribunal and so on  
774 and so on.
- 775 05:39 But – and a victor's tribunal, you know, the old thing about the Nuremberg slander you know,  
776 is thrown at us. We try the Hutus. We don't try the Tutsis. But if you look at the way we  
777 function, we give the defense every opportunity. We give them equal facilities. We treat them  
778 in every way – we, we privilege them.

- 779 06:06 We, and you know, will do anything we can to ensure a fair trial. And I think our, our detainees  
780 individually, when they are not in their sort of group mode, they all agree that they are  
781 actually – we, we do a tremendous job in getting their witnesses here or getting them heard if  
782 necessary by video link.
- 783 06:31 And we get them the best lawyers we can get. We spend, we are often criticized for spending  
784 too much money on defense lawyers but we have some superb defense lawyers who, if you  
785 compare them with the prosecution lawyers, I don't think they – I have to be a little bit careful  
786 here – I don't think they necessarily fall below the standard of the prosecution lawyers.
- 787 **06:55 DJH: Well done. Another piece of it and it's perhaps more practical than anything else is, as  
788 a judge myself, I know that sometimes it's important for me to see the area where  
789 something's happened and obviously it's a bit impractical to get a court to get on an  
790 airplane and . . .**
- 791 07:22 No, we do it.
- 792 **07:23 DJH: You do it.**
- 793 07:24 Yeah.
- 794 **07:24 DJH: Do you do it regularly?**
- 795 07:25 We've got some judges who've just been there.
- 796 **07:26 DJH: I under-, I understood that. I was talking about . . .**
- 797 07:28 Yeah, no, they do it regularly. Not every, not in ev-, every case but pretty well in most case –  
798 now, most cases.
- 799 **07:35 DJH: Mm-hmm. Okay.**
- 800 07:37 And it, it has to be encouraged. Expensive as it is, it has to be encouraged.
- 801 **07:42 DJH: Okay. And apparently there was a decision made not to, as the years went by and  
802 perhaps things settled down a bit in terms of emotion, not to do, not to move the court or  
803 not to have at least a body of trials done by the UN in Rwanda or, or near Rwanda. Am I  
804 correct?**
- 805 08:10 That is absolutely correct and I regret that. I mean, I think at one point we did hope that we  
806 could try the, do some of the prosecution cases in Rwanda and then bring the trial here and  
807 do the defense case here. But it was overtaken by events, essentially. By the time we got to  
808 the point where we could have done that, most of the multi-accused cases, which are very  
809 long and convoluted were heading to the defense phase anyway.
- 810 **08:39 DJH: 'kay. Okay. You have a, a – the court has a presence in Kigali . . .**

- 811 08:49 Yes.
- 812 **08:50 DJH: . . . and what is that presence?**
- 813 08:52 Well, we have a – well, we, it's a very small presence now but it used to be quite big. Basically,  
814 the prosecution have their presence there. They are the people who look for the witnesses,  
815 look into the evidence they have, basically run case investigation and then case support once  
816 the trial's ongoing.
- 817 09:19 Issues come up in evidence, they immediately phone through to the prosecution  
818 representatives in Kigali, get an investigator to go and check this, this and this because this has  
819 come up in evidence and so they go and check it and then it's fed back into the trial.
- 820 09:34 And then also we have other staff whose job it is to facilitate the running of the defense cases,  
821 the defense investigators, defense counsel, going around Rwanda, getting into the prisons,  
822 going into the communities to get their witnesses.
- 823 09:49 And then we've also got our witness protection staff whose job it is after the witnesses are  
824 finished here to ensure that they are looked after, that they don't have any prejudice, that, if  
825 they have needs, they have medical needs, we set up a clinic for treating medical conditions of  
826 the witnesses and we look after them basically. The idea being – you see, because if we look  
827 after our génocidaires here, we look after our guys here.
- 828 10:17 And considerable numbers of them have ill-, certain illnesses, infect-, infective illnesses which  
829 could be life threatening and we give them drugs, modern drugs which are not available to  
830 everyone in Africa. So there's another interesting ethical situation. We are feeding highly  
831 sophisticated drugs to keep our alleged criminals and our found criminals alive.
- 832 10:46 And we have witnesses in Rwanda, and maybe even victims who were infected with certain  
833 diseases by some of these self-same people or their, their acolytes and their, their, their foot  
834 soldiers, who died because of those diseases already because they ha-, didn't have treatment.  
835 And then we have witnesses who come here with those same diseases.
- 836 11:09 And I don't need to ink in all the details, I hope, but for example if you are a female witness of  
837 a rape or a rape wi-, victim and you come here and you have an infectious disease that you  
838 caught while you were raped in 1994 and you know that the individuals who ultimately were  
839 responsible are receiving highly sophisticated drugs to keep them alive, but that you are not  
840 receiving any treatment, what kind of justice is that?
- 841 11:37 So we set up a, a system to ensure that those sophisticated drugs were given to our witnesses  
842 in that position.
- 843 **11:44 DJH: And victims, or at least . . . ?**

844 11:45 Not victims, you see in general, no. We did work, in fact we have an officer whose job it was to  
845 try and encourage the NGOs to get those drugs available and they've done tremendous work.  
846 And we-, through the NGOs in Kigali where we have ensured and we h-, we're getting the  
847 victims organizations we worked with to get those treatments out, out there.

848 **12:06 DJH: Mm-hmm.**

849 12:07 But, you know, how, hundreds of thousands of people – no, not hundreds, hundreds or  
850 thousands of people lost their lives before that took place.

## 851 **Part 9**

852 **00:00 DJH: One of the things we – we got onto some issues versus the specifics of your job. We**  
853 **went from some of the things that you've been actually working on in your current job**  
854 **versus when, when we were talking earlier about your being Chief of chambers and, and,**  
855 **you know, moving things along.**

856 **00:24 DJH: So let me come back to that and I, I suspect we're going to, somewhere soon, have to,**  
857 **have to take a more permanent break for today and then perhaps we'll come back another**  
858 **time and, you know, finish up some of the things that would be good to talk about.**

859 **00:47 DJH: In, in the process, again going back between 2000 and 2005, apparently things began to**  
860 **move along. You got more resources. You got some additional judges and so forth, and the**  
861 **judges were ad litem. Can you just tell us quickly what that means?**

862 01:09 Well, ad litem judges were essentially the, had the same qualifications as the permanent  
863 judges under the statute but the idea was we didn't want to pay them pensions. We didn't  
864 want to pay them all the benefits. That would have made it a very expensive option. Part of  
865 the way it was sold to the General Assembly, our funding body, was that this is going to be a  
866 sort of quick easy option.

867 01:35 We'll bring them in for a maximum of three years to do specific trials, often much shorter than  
868 three years, and then we'll send them out. Unfortunately, they were, as a result of another  
869 whole series of processes in which we lost judges from long running trials, we were, we – the  
870 judges passed a law allowing su-, substitute judges for judges who were already sitting in the  
871 middle of trials.

872 02:07 And so some of the ad litem judges were put into long running trials. For example, Judge  
873 Bossa when she arrived, was put into the Butare trial; one of the Olympic record breaking  
874 trials of all time, and you know, long ago I think exceeded her three-year limit and is you know  
875 sitting (\_\_\_).

876 02:28 And so that in, in essence has meant that the ad litem judges have had to have, be given more  
877 benefits and some of these are still, the issues are still being looked at by the President and by  
878 the judges.

- 879 02:42 The idea was that, you know, we, we just needed to be able to put judges – you know, when  
880 you're trying to run a court, as you yourself know, you want to put judges in for particular  
881 cases and then pull them out. You want the flexibility. With nine permanent judges all (\_\_\_), all  
882 sitting in individual cases, you've lost that flexibility.
- 883 02:59 So you had a pool, what you had with ad litem judges, you've got a pool of judges you can call  
884 upon and they're elected by the General Assembly and the President picks from the top.  
885 Whoever gets the most votes comes in first, gets slotted into this trial then slotted into that  
886 trial and then is meant to go away but most of them haven't gone away.
- 887 03:17 Ask Judge Short about it when you talk to him. He's an ad litem judge who, you know, ended  
888 up sitting on two trials and ha-, indeed had to drop out of one trial because of his health. And  
889 it's, it's a very difficult situation. They're not so ad litem at all.
- 890 **03:33 DJH: Mm-hmm, mm-hmm. It's – I'm, I'm sort of figuring that out, yeah, and, and we'll be**  
891 **talking with Ju-, Judge, Judge Short . . .**
- 892 03:41 Yeah.
- 893 **03:42 DJH: . . . sometime next week. All right, and, so why don't you sum up for us if you, if you**  
894 **would, your period as Chief of chambers. What other issues were there and what was done**  
895 **about them? (\_\_\_), you know, of any significance.**
- 896 04:01 Well, I think the introduction of professionalism in the legal work of chambers – that was a  
897 very definite necessity and with a, a wonderful person called Suzanne Chenault we devised a  
898 continuing legal education program, which the judges have also participated in, and judgment  
899 writing seminars. Originally, the judges felt that they, you know, shouldn't really be trained  
900 but I think that that original ethos has given way to a more modest attitude.
- 901 04:33 So we've tried to improve our jurisprudence. We've tried to improve the, w-, the style. We've  
902 tried to improve a number of things about our output. I'm not sure we've actually overall  
903 improved our jurisprudence. Certainly looking at the appeals chamber's recent treatment of  
904 our trial chamber judgments, I would say we've got a long way to go.
- 905 **05:01 DJH: Okay.**
- 906 05:02 It's a bit late now.
- 907 **05:04 DJH: It's a, and, and a couple of your judges are actually on the appeals chamber.**
- 908 05:08 Yes.
- 909 **05:09 DJH: How, how does that, that work? And I don't mean just the, the connection between**  
910 **your judges, the judges here and appeal chamber. The appeal chamber is what it, what it is**

911 – it, it handles appeals from decisions made by the court here or the Yugoslav court, I  
912 presume.

913 05:28 Yeah.

914 **05:31 DJH: What's the mixture of judges? Is it not just judges from here that decide about the**  
915 **cases from here?**

916 05:37 No. Basically, it's up to the presiding judge of the appeals chamber, who's the President of  
917 ICTY, to move the judges around as he wishes and he, he can assign any number of judges  
918 from the ICTY, or rather five, to our appeals chamber and then they mix and match with our  
919 two, but our two sit on ICTY cases as well so it's, it's totally flexible.

920 **06:03 DJH: Okay.**

921 06:04 One of the more bizarre situations is that the appeals chamber judges come down here for  
922 our plenary sessions, which amend our rules and pass our rules. And therefore we've got an  
923 interesting situation where the appeals chamber judges who are actually going to be passing  
924 upon the lawfulness or not of the provisions of our rules are the people who also participated  
925 in the passing of those rules.

926 06:33 One, let me just give an interesting example. When we effected the substitution rule for  
927 judges, it was fairly novel at the time for us. I don't know, I mean, there aren't many  
928 jurisdictions which allow you to substitute judges in the middle of a trial, who have not  
929 participated or listened to the evidence but who have to familiarize themselves with the  
930 transcript and records and watch any of the video that they wish to do so.

931 07:03 And then certify they are familiar with the proceedings and then jump in and replace the  
932 previous judge. Unusual situation and one that could have been addressed in an appeal but  
933 since our appeals judges took part in the passing of the rule that allowed it, of course, to some  
934 extent the position of the appeals chamber as a, a long stop, as a protection of the rule is  
935 removed. So you can see that there's a certain amount of structural exoticism in the way we  
936 do things here.

## 937 Part 10

938 **00:00 DJH: And that brings me to another question that you had talked earlier about the**  
939 **Prosecutor and that she or the office itself served both the ICTY, the Yugoslav, former**  
940 **Yugoslavia and the Rwanda tribunal. Did that change at any time?**

941 00:24 Yes. Excuse me. There was a conflict with Rwanda over the RPF cases. The prosecution of  
942 individuals, Tutsi individuals who've been part of the invading army that stopped the  
943 genocide, and were essentially run by General Kagame as he then was, who is now President.  
944 (\_\_\_) . . .

- 945 **00:50** **DJH: RPF, RPF stands for what? Sorry.**
- 946 00:55 Po-, basically the popular front, Rwandan Popular Front.
- 947 **00:58** **DJH: Okay. Okay.**
- 948 01:00 They'd invaded from Uganda . . .
- 949 **01:02** **DJH: Right.**
- 950 01:02 . . . and were officered to a large extent by English-speaking Tutsis under English-speaking  
951 General Kagame as (\_\_\_\_) part of the general cultural issues that overlay the tribal situation  
952 in Rwanda.
- 953 01:19 And they – it is alleged that during the course of the invasion and during the course of the  
954 pacification process, the RPF engaged in killings, mass killings of Hutus. And therefore the  
955 question has always been raised by those we have in the UNDF, by their defense counsel and  
956 by the Hutu diaspora, “Why haven’t we prosecuted the RPF people who committed massacres  
957 of thousands of, of Hutus?”
- 958 01:55 And this has been, you know, long been you know a bone of contentions; the Prosecutor  
959 hadn’t done that. Prosecutor’s position was always, “Well, I’m investigating. I’ll, I’ll, I’ll look  
960 into it and I’ll tell you later.” And Carla del Ponte in fact reinvigorated the investigation of the  
961 RPF cases and this definitely did upset certain individuals who might have had something to  
962 lose as a result of that.
- 963 02:32 And it caused political problems for Carla del Ponte and she has always said that the reason  
964 why she was removed as Prosecutor of this institution was because of her – the vigor with  
965 which she was pursuing the RPF cases. But in fact there’d been considerable dissatisfaction,  
966 and I can vouch for that, with her dual role as . . .
- 967 02:54 The question really was whether the prosecution was being given its full attention in this  
968 institution as it was being given in the ICTY. And certainly I think the completion strategy issue  
969 was one of the issues where that came to the fore most. And so I think the issue was on the  
970 table whether, whatever the situation with Rwanda.
- 971 **03:16** **DJH: Mm-hmm. And when was – who decided and what (\_\_\_\_) . . .**
- 972 03:20 The Security Council decided to remove her.
- 973 **03:24** **DJH: And not just re-, remove her but actually set two offices, in other words. Am I correct in**  
974 **that?**
- 975 03:29 Yes, they appointed a new Prosecutor, Hassan Bubacar Jallow.
- 976 **03:35** **DJH: And that person is the Prosecutor only for the Rwandan court.**

- 977 03:39 Absolutely.
- 978 **03:40 DJH: And then there was a separate one . . .**
- 979 03:42 For Yugoslavia.
- 980 **03:43 DJH: (\_\_\_\_) that for, for the Yugoslavia.**
- 981 03:44 Yeah.
- 982 **03:44 DJH: And when did that, that happen? What year, approximately?**
- 983 03:50 I've forgotten.
- 984 **03:51 DJH: Okay. A-, was it after you took your current role?**
- 985 03:56 No, no. I was still Chief of chambers. So it'd be about . . .
- 986 **03:58 DJH: Okay, so sometime before 2005. Okay.**
- 987 04:00 . . . 2004, '05 (\_\_\_\_). I'm sorry. I (\_\_\_\_).
- 988 **04:02 DJH: All right.**
- 989 **Part 11**
- 990 **00:00 DJH: We're, we're reaching sort of the last, last 15 minutes we can give to this today and I'm**
- 991 **going to switch over to something ( ) very much be interested in about yourself and your**
- 992 **role, whatever it's been, whichever role you've had. What would you tell us is that which**
- 993 **you've done which, or been part of, that you're most proud of?**
- 994 00:30 Keeping it going.
- 995 **00:32 DJH: Yes. All right.**
- 996 00:36 No, I think supporting the judges, trying to assist them make a go of it. I mean they are the
- 997 ones whose job it is to keep it going. There have been times when we've had crises; you know,
- 998 endless crises, you know, people having problems under pressure. I'm not talking about
- 999 judges here. I'm talking about legal officers.
- 1000 01:06 And you know you've always got to be ready to put out fires. I think just keeping the whole
- 1001 thing going, just using diplomacy, getting people to continue talking when they wanted to
- 1002 walk off away from each other. We've had, you know, over 80 different nationalities all trying
- 1003 to work here on one system.



- 1004 01:23 And you've got division between the Francophones and the Anglophones. You've got the civil,  
1005 c-, common law distinction. You've got people who sometimes don't want to understand each  
1006 other.
- 1007 01:35 You've got all kinds of areas where conflict can arise, daily they arise. And I think more or less  
1008 getting one's verbal WD-40 out and running around and spraying it and, and just keeping the  
1009 thing going is, is what I would say, is, is the principal achievement. There are, I can think of  
1010 many failures. I can think of many things that . . .
- 1011 **02:05 DJH: That was my next question. What, you know, what are those things where you wish**  
1012 **you or, or the – or th-, that which you were involved with would have done better?**
- 1013 02:14 I think the quality of the jurisprudence. That has, that's the thing that saddens me most; not  
1014 being able to get the judges to agree to devote themselves to improving, as a corporate  
1015 group, our jurisprudence.
- 1016 **02:33 DJH: What, what do you mean by the jurisprudence? I mean, that's a word that lawyers**  
1017 **themselves are sometimes imprecise about and we're going to be talking, you're talking**  
1018 **right now to . . .**
- 1019 02:43 Yeah.
- 1020 **02:43 DJH: . . . people who are not lawyers.**
- 1021 02:47 International criminal law is actually pretty easy. It's not difficult. There are actual answers to  
1022 actual problems. There are fairly clear legal answers to most of the issues that arise in our  
1023 daily, day to day work. And our judges arrive relatively innocent, if I can put it in that way. I  
1024 mean no disrespect to them. It's very few judges who arrive here with a knowledge of  
1025 international criminal law.
- 1026 03:24 And they bring with them the wisdom of their years on the bench, their knowledge of their  
1027 own national law. And a lot of them continue to believe that's enough to deal with any issue  
1028 that arises. But the truth is that we have now a body, a corpus of law relating to grave crimes,  
1029 to procedural issues that is actually out there and it's easy to know. It takes effort.
- 1030 03:54 But it, I mean one of the great publishing boondoggles of the last ten years has been  
1031 enormous quantities of textbooks issued on international criminal law and I would say three-  
1032 quarters of them are miserable, terrible, but there are some really good ones which are, you  
1033 know, decisive, clear, comprehensive and if only it were possible to ensure that our  
1034 jurisprudence, ( ), by which I mean our judgments, were written in a way that just dealt with  
1035 the law as it is, as we have now developed it.
- 1036 04:33 We spent – if you look at the two tribunals and the other hybrid tribunals, we must have spent  
1037 now nearly 40 judge years, if you put them all together – you know, eight years, ten years, and

1038 so on, you add it all together. How is it then that we can still make some of the most  
1039 fundamental errors in our judgments and that really does, I think is one of my great failures.

1040 **05:00 DJH: Why yours?**

1041 05:01 Well, I suppose if I had been more forceful, more like Carla del Ponte, I would have been able  
1042 to lead all the judges into the promised land. But it's, it's just not been like that. They, they are  
1043 very much individualists. They still bring their own views to the table. They're not going to be  
1044 led. They're not going to be – this sounds disrespectful. I don't mean to be.

1045 05:30 But they don't feel that the knowledge they have, for example, of French jurisprudence or of  
1046 the common law jurisprudence is to be thrown out, and other issues – the whole question of  
1047 the doctrine of precedent for example. I mean we've had civil law judges who simply refused  
1048 to follow precedent. Point blank, "I don't care what, you know, is being said by the appeals  
1049 chamber. I'm not going to do it. This is my view." This, it's a s-, fundamental principle. You  
1050 know, what can you do?

1051 **06:01 DJH: And you have here some sort of combination of the civil and the common law. (\_\_\_\_\_).**

1052 06:07 Yeah, I mean the, the, the difficulty for the civil law is, is that it's common law triumphant . . .

1053 **06:12 DJH: Mm-hmm.**

1054 06:13 . . . you know, by and large.

1055 **06:14 DJH: Mm-hmm, mm-hmm.**

## 1056 **Part 12**

1057 **00:00 DJH: Well, I don't want to necessarily camp on failures but you used the word in plural. Is**  
1058 **there something else you'd like to . . .**

1059 00:08 Oh lots, lots. I, I wish that we were cheaper and leaner. I would wish that we had not become  
1060 so enormous and expensive. I think we could have had a structure that was totally different.  
1061 We could have, instead of following this enormously bloated mission model which is what we  
1062 have here where we have everything happening in-house, we could have just had a core of  
1063 judges, a core of lawyers, basic administrators and then had everything else contracted out.

1064 00:43 You know, it would have been half the price. I wish we could have done a lot of our work in  
1065 Rwanda. I wish we were more victim-oriented in our punishment system. I wish we were more  
1066 punitive.

1067 **01:06 DJH: How do you mean?**

1068 01:07 Well, we're talking about the gravest crimes that mankind can commit and human, the human  
1069 race has known. We're talking about the, the murder of between 800,000 and 1,000,000

1070 people who were murdered after horrendous torture. Torture was part of the process; it was  
1071 never clean killing.

1072 01:32 The Rwandan victims themselves wanted to use their last resources, their last shillings, their  
1073 last goods to try and beg the Interahamwe to shoot them and their families rather than to  
1074 start hacking away at them as they did.

1075 01:49 But no, the Interahamwe burned them alive, used sharpened hoes and machetes to cut their  
1076 Achilles' tendon and then left them w-, you know, crawling around so they could come back  
1077 over at their leisure and slaughter them slowly by cutting off their limbs.

1078 02:08 It was just absolutely horrendous. It was worse than any Hieronymus Bosch vision of hell.  
1079 There's never been – I mean, you know, you and I know about Auschwitz and we know about  
1080 Belsen and so on. We know about all the shootings in the Eastern Command and so on.

1081 02:29 And nothing, even as horrifying as that, nothing prepares you for the ferocious bestiality of  
1082 the way in which these slaughters took place in Rwanda. And by, by and large people don't  
1083 dwell on it.

1084 02:49 And it was (\_\_\_), one of the greatest pieces of child slaughter in human history as well. I  
1085 mean about 400,000 children were killed and when you find – you talk to the Interahamwe,  
1086 you know, why were so many children killed. Because the whole point was they were killed  
1087 easily, quickly.

1088 03:06 They run around in circles screaming, so they just club them and no problem. Easy. And then  
1089 the old people and – eventually in the Bisesero hills they had – the hills were just covered with  
1090 nothing but refugee Tutsis and so they went back day after day leisurely and they would just  
1091 torture and torture.

1092 03:22 They would – I mean, there's one woman who's, who, who was, Mika Muhimana, who's our  
1093 Lecter Hannibal, was convicted of killing. Her name will live forever and she and her – she was  
1094 pregnant. She was just an ordinary farmer, a poor farmer but a Hutu, or a Tutsi. And Mika gets  
1095 – comes there for his daily blood and they've dragged her out of hiding out of the bushes and  
1096 she's got (\_\_\_), pregnant.

1097 03:59 He cuts her apron, pulls out the fetus to see whether the fetus will live, you know like that,  
1098 then throws the fetus down, then they cut her arms and legs off and they put sticks in her so  
1099 she's flopping around. You know, I mean it's just absolutely unbelievable.

1100 04:14 And those individuals are sitting here in our prison getting luxury food and, you know, (\_\_\_),  
1101 we're just giving them – we're about to inaugurate a new exercise ground for them this, this  
1102 week. I'm going there to watch a volleyball game between the staff and no doubt Mika will be  
1103 there.

1104 04:35 And I find that very, very disturbing that – it does not accord with my perception of what  
1105 justice is. My perception of justice may be out of date and very primitive but I don't believe  
1106 that this process gives the world any more justice.

## 1107 Part 13

1108 **00:00 DJH: Let me step back for a minute. Before we go on to your definition of, of justice at this**  
1109 **point, which I really would like to hear, you were describing a, a case or the facts of a case.**  
1110 **What was the name of that case, (\_\_\_), the allegation, the perpetrator, the, the person**  
1111 **convicted?**

1112 00:21 Mika Muhimana.

1113 **00:23 DJH: Okay, and, and he was convicted in the trial, in the trial chambers. Is that correct?**

1114 00:32 Yes, he had received several life sentences . . .

1115 **00:35 DJH: Okay.**

1116 00:36 . . . for a number of grave crimes, including individual murders as well as participation in the  
1117 general genocide.

1118 **00:50 DJH: Okay. Was there an appeal?**

1119 00:53 Yes, the appeal. There was always an appeal in these cases.

1120 **00:58 DJH: Okay. And what was the outcome of the appeal?**

1121 01:02 Well, he still had his life sentence affirmed but some of the individual counts were quashed.

1122 **01:15 DJH: By the appeals court.**

1123 01:16 By the appeals chamber.

1124 **01:18 DJH: And why was that?**

1125 01:19 Well, I was describing to you a case of Pascasie Mukaremera who was this Tutsi farmer who  
1126 was pulled out and tortured and had her baby ripped out of her stomach and . . .

1127 **01:37 DJH: (\_\_\_) . . .**

1128 01:39 . . . and we would never have known about that if it hadn't been for just one witness who was  
1129 hiding in the bushes 20 meters away. Otherwise it would be an anonymous death, you know,  
1130 like so many of the hundreds of thousands of deaths, just anonymous.

1131 01:56 But just one person happened to be hiding in a bush unseen and was able to give evidence  
1132 about what Mika did to her and to her baby. And he was convicted of that murder and . . .

1133 **02:13 DJH: Individual murder.**

1134 02:15 Individual murder. When it got to the appeals chamber, unfortunately, the prosecution had  
1135 not amended the original indictment before trial. They had originally alleged that another  
1136 named individual had committed the crime, I think in the presence of Mika.

1137 02:40 And it was felt that even though there had been some notice where the time of the service of  
1138 the statement of the witness that, of what the allegation was going to be, but nevertheless,  
1139 the d-, indictment was sufficiently defective so that the indictment, the conviction had to be  
1140 quashed.

1141 **03:01 DJH: Of that particular case?**

1142 03:02 Of that particular case.

1143 **03:03 DJH: With that particular woman and those particular facts you described?**

1144 03:06 Yeah, yeah.

1145 **03:08 DJH: And . . .**

1146 03:09 And another where there was a rape charge also, quashed in which the e-, evidence was said  
1147 by the appeals chamber to have been ambiguous. What happened was that some young girls,  
1148 teenage girls were taken into a, a room by Mika Muhimana and another perpetrator and the  
1149 witness gave evidence about what their, their screams and about them saying, "Why are you  
1150 doing these things to us? Why, why are you doing this?"

1151 03:43 And then it was obvious that they had been raped and then they were killed, th-, when they  
1152 came out and it was felt that the – there was ambiguity because they could have been talking  
1153 to the other person in that room, not Mika.

1154 **04:04 DJH: So that was quashed.**

1155 04:05 Al-, albeit that presumably Mika was a willing participant in something. Nevertheless, I make  
1156 no criticism but that was the, the finding of the appeals chamber and therefore that allegation  
1157 was also quashed.

1158 **04:22 DJH: What was the reaction, if any, of the staff here at the UN when or some of the staff at  
1159 the UN?**

1160 04:30 Well, I well remember when Pascasie's – the facts of Pascasie's case were being read out in  
1161 the, in the trial chamber. That was a very strange moment for me because Judge Khan, who is  
1162 from Pakistan, was the presiding judge in the trial chamber and she was sentencing Mika

1163 Muhimana for his crimes. And he was standing in front of her, in front of the glassed-in public  
1164 gallery and Mika has always had a smile playing around his face.

1165 05:08 He, he never s-, never really – the smile never left him. And Judge Khan was reading out the  
1166 facts about how he had taken a knife and cut open her belly and pulled out the baby and then  
1167 they had chopped her limbs off and stuck sticks in her stumps and stuff like that – and she was  
1168 just reading it out.

1169 05:29 And there's the smile still playing around Mika's face. And I saw behind Mika in the public  
1170 gallery two staff members in fact were watching, two women, secretaries. One is the  
1171 President's secretary actually, an Ethi-, they're both Ethiopians. And they were just totally  
1172 overcome by what they were hearing and they were both holding on to each other like this  
1173 and weeping.

1174 05:59 And it was astonishing to watch Mika smiling and them crying behind him as the judge was  
1175 reading out what he had done to Pascasie, the unspeakable things he had done. And it was  
1176 like almost like a Pieta, you're watching this and I was actually sitting watching all of this in the  
1177 judge's lounge upstairs on the camera, on, on the, the monitor.

1178 06:26 And I could actually hear sniffles and the noise of weeping around me and there were the  
1179 other judges in there watching, and staff members. And it was clear that everyone was  
1180 overcome by what they were watching, including me.

1181 06:43 And it somehow seemed to me – it was kind of one of those moments where you, you say  
1182 maybe international justice is, is right and it is worth it. Because you – here we have this  
1183 anonymous farming woman who nobody would have known about except by the sheer  
1184 accident of somebody hiding in a bush.

1185 07:02 And you then had all these people who come from all over the planet, don't know anything,  
1186 you know. They're, they're, they're, as I said earlier, almost innocent in their ignorance, and  
1187 they come and they hear these facts and they are moved and they, they mourn.

1188 07:21 They mourn for her, this anonymous woman although we know her name, Pascasie  
1189 Mukaremera. And high and low, whoever they are, they're all mourning her. And they, they –  
1190 it does her homage. It does her death homage. It may be something of a conceit to say that  
1191 this justifies the whole operation but to me, it somehow felt one of those moments where you  
1192 say, "Yes, yes this, this, this international justice works."

1193 07:50 Unfortunately, of course when we got to the appeals chamber and the appeals chamber in, in  
1194 their wisdom and they rightly so, I mean, I say as a matter of law they were no doubt correct,  
1195 quashed the finding, the count, not on the facts but on the law, on a technicality, against  
1196 Mika. And presumably they wouldn't have been so ready to do that if he didn't face lots of  
1197 other life sentences as well.

1198 08:20 Then presumably, you know, they would have probably bent over backwards to find some  
1199 alternative. But anyway, he was acquitted of that and of the rape and I guess there was a – I, I  
1200 had a sense of outrage. For a moment, my loyalty carapace dissolved a bit and I felt angry and  
1201 I know a lot of other people, other people did feel that.

1202 08:47 But again when you look at it dispassionately after 30 minutes, you, you say, “Yes, yes that is  
1203 international justice. That is fairness.” You know, if you were (\_\_\_), you had just allowed your  
1204 emotions to run these trials and not law, then he would have been convicted of everything,  
1205 for what, for what it’s worth.

1206 09:07 But there is a dispassionate component that says, “You have to fulfill this condition, this  
1207 condition, this condition. Only if those conditions are fulfilled can you find this person guilty.  
1208 No matter what the emotions, that is what the result is going to be.”

1209 09:23 So it told me both that we are doing right. We have recorded Pascasie Mukaremera’s story for  
1210 the rest of time. Wherever digital media survive, people will know that witness’s, that witness  
1211 will be able to speak – perhaps through your project.

1212 09:40 You will have that witness’s testimony about what happened to Pascasie. You will have the  
1213 sentence and you will have the appeal. You will have the story of Pascasie Mukaremera  
1214 forever. It will never die. When you and I have been forgotten, Pascasie Mukaremera's story  
1215 presumably will remain.

1216 09:57 And so even if it was quashed, the story, the history of that particular event, in that particular  
1217 small event to a small farmer in a small part of an anonymous piece of land, will live on and  
1218 nobody will be able to gainsay that particular event. The, the judges found, all the judges,  
1219 even the appeals judges, they didn’t doubt the facts for a moment. So that, that was the story  
1220 of Pascasie Mukaremera.

## 1221 Part 14

1222 00:00 **DJH: And what follows is the last question today and perhaps you’ve answered it at least in**  
1223 **part already. What is your definition of justice, as to what this court ha-, has, should be**  
1224 **doing?**

1225 00:16 Oh, so easy a question.

1226 00:17 **DJH: Yes.**

1227 00:18 Thank you. I think here, I would like – I’m probably – you see, I come from a different time. I  
1228 sometimes feel I’m a bit of a dinosaur. I come from a different generation. I was born just  
1229 after the Second World War but I was, I was sentient during the Eichmann trial and during the  
1230 subsequent trials.

- 1231 00:46 My sense of justice with crimes like this requires more than the perceptions of kindness and,  
1232 and enlightened penal provisions that we apply to these kind of crimes. I'm afraid I am one of  
1233 the last, apparently one of the last capital punishment enthusiasts left on earth. Even Rwanda  
1234 has now ba-, abolished the capital punishment provisions.
- 1235 01:21 But I think you want a justice system – when you look at the actual crime in all its horror – I  
1236 think you want a result that is in some way commensurate, so that you don't feel when you  
1237 watch it that the scales of justice are being unbalanced.
- 1238 01:41 And to me, when you treat people like this who committed the most unspeakable crimes and  
1239 inflicted the most horrible extended pain on my fellow human beings, then I want – I think  
1240 there is, the justice has left the world if you don't treat them extremely harshly in turn.
- 1241 02:03 But you do it dispassionately. And you invent a system that reflects in some way the cruelty. It  
1242 may not mean just hanging people. And I, I confess this is very much – I'm out on a limb here.  
1243 This is not U-, even United Nations. I would be high-, highly disapproved of by my masters and  
1244 no doubt disapproved of and disciplined because I step totally out of place, but to me these  
1245 crimes deserve unique punishments.
- 1246 02:35 And if I, if I could think of a punishment that would work for somebody like this, I would think  
1247 of a punishment that would leave them alive but with a continuing consciousness, a never, a  
1248 never failing reminder every day and every second of their lives that remain, of what they did.
- 1249 02:57 So they, they could sleep. One would never deprive people of sleep if their consciences allow  
1250 them to sleep but their, all their daily waking should be a reminder in one form or another of  
1251 what they did to who, whether it be on screen or whether even the remains of the people  
1252 they inflicted their tortures and killings on be in some ways present and close to them for the  
1253 rest of their lives. Something like that.
- 1254 03:34 **DJH: Thank you for today. Thank you very much.**