



Voices from the Rwanda Tribunal

Official Transcript: Roland Adjovi (Full Interview)



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| Role: | Senior Legal Advisor |
| Country of Origin: | Benin |
| Interview Date: | 13 October 2008 |
| Location: | Arusha, Tanzania |
| Interviewers: | Donald J Horowitz Lisa P. Nathan |
| Videographer: | Max Andrews |
| Interpreter: | None |

Interview Summary

Roland Adjovi compares the structure of the ICTR to other international tribunals and describes the ICTR's broad mandate for establishing peace and reconciliation. Adjovi discusses his early aspirations to improve the ICTR. He reflects on a proud moment in the case of Michel Bagaragaza, a case expected to be transferred to Norway but held back because Norway had failed to implement the Genocide Convention into domestic law. This decision prompted Norway to enact new laws, thus improving its legal system.

The transcript of the interview begins on the following page.

Part 1

- 00:00** Donald J Horowitz: This is Judge Donald Horowitz and I am interviewing Mr. Roland Adjovi. Would you, Mr. Adjovi would you tell us your name again (_), pronouncing it correctly and tell us where you are from?
- 00:17 I'm Roland Adjovi from Benin in West Africa.
- 00:21** DJH: Okay, and Mr. Adjovi, Adjovi, (_), sorry. Your first language is what language?
- 00:30 My first language is French.
- 00:32** DJH: Okay.
- 00:32 I learned English at school and since I joined tri-, the tribunal I have been working in English, so I will try in English but from to time will switch it into French.
- 00:43** DJH: Okay, and that's just fine. And when you do, if you will go a little bit slowly because I can understand some French but I nee-, I ne-, I would need it slow. Thank you.
- 00:51 It will be very slow.
- 00:53** DJH: Okay. Mr. Adjovi, would you tell us a bit about your educational background first?
- 01:01 I did my Law Degree in France what we call DEA, Diplôme d'Études Approfondies. I had a degree in International Law specialized in human right and I did another degree in Political Science applied to Africa.
- 01:21** DJH: Was that also in, in France?
- 01:23 Yes, both are in France.
- 01:25** DJH: Okay, and what year did you graduate from?
- 01:28 Law as well because in the French system you can start law from the beginning . . .
- 01:34** DJH: Yes.
- 01:34 . . . so you don't do anything else. You, you, you start from law from the beginning so . . .
- 01:38** DJH: Mm-hmm.
- 01:38 . . . I did everything in Law.
- 01:40** DJH: And what year did you graduate?
- 01:43 Which year?

- 01:44 DJH: What year, yes.**
- 01:45 '97 for the two degrees.
- 01:49 DJH: Okay. And after that, what did you do in your career?**
- 01:54 After that, I spent one year working on a PhD program. Then, the following year I went to Cote d'Ivoire to teach for one year. I returned back to France and taught for three years before joining the tribunal.
- 02:10 DJH: Okay. Now, the PhD program, what was the subject area there?**
- 02:14 The subject was peace security agreement in Africa but I have never finished it.
- 02:23 DJH: Okay. And then you said you taught for a year in the Cote d'Ivoire, d'Ivoire.**
- 02:26 Yes, I taught for one year at the University of Bouaké in Cote d'Ivoire.
- 02:31 DJH: And what did you teach?**
- 02:33 I taught almost everything; constitutional law, human rights, international law and also using the new technology in legal research.
- 02:45 DJH: Ah. Okay. And you did that for a year. And was that in a law school at the university?**
- 02:51 Yes, it was at the Law Faculty of the University of Bouaké but the students were on strike almost half the year and the professor were not very willing to, to continue so I thought that it (), it was better for me to go back to France instead of staying in a country which was going completely lost.
- 03:11 DJH: Okay, and when you went back to France, you taught for three years, I think you said.**
- 03:15 Yes, for three years. The first year I didn't have a, a contract, a permanent contract. I was occasionally teaching from one university to the other and mainly methodology and legal research with new technology. It's only the second year that I was recruited by a university as a permanent staff so I taught for two years there, then I was recruited by the tribunal.
- 03:41 DJH: And the, and the university you taught at for two years was named what?**
- 03:45 Panthéon-Assas Paris Deux, because the university in Paris, they are several and each one of them have a number. That's Paris number two.
- 03:55 DJH: Okay, all right. And then you were recruited by the, by the tribunal.**

03:59 Yes.

04:00 DJH: Tell me how that came about.

04:04 The story is very simple. I was teaching the jurisprudence of the ad hoc tribunal at the university. I was so critical that the student told me that one day, I should go and work with those tribunal instead of criticizing them all the time. I said, "I will apply and see if they will recruit me. They are not stupid. They will never give me a chance." I was called three months later for an interview and I passed and I'm here.

04:32 DJH: Okay. Let me go back for a minute before we follow up on your career at the tribunal. In 1994 when the events of the R-, in Rwanda occurred, can you remember where you were?

04:52 I was at the university in the suburb of Paris learning law. I was in the second year, end of the se-, the second year.

05:04 DJH: Okay.

05:05 Honestly, I didn't know much about the situation, why it was happening at the beginning. At least in April, I didn't know much but from May, June I start reading about it (), because I have always been interested by what is going on on the continent.

05:25 DJH: Okay. And so when later you were – what, you applied and you were recruited, was this something that was inside of you that you really wanted to do or was it really as you put it – sort of a little dare by your students?

05:45 No, it's, it's something I had in my heart because in my view the law is an instrument to change the way our society is built up, so I have always been thinking of what is the best legal rules, the rules which will better suit for the society I want to live in.

06:14 So for me, working at the tribunal or teaching or working for another organization as far as it's about a rule you choose which you consider as the best for your society. It has always been an objective. I don't know if I'm correct or wrong but that's my life.

06:34 DJH: Okay.

Part 2

00:00 DJH: And when you came to the tribunal, did you come first to Arusha or did you go to Kigali, or elsewhere?

00:06 I was recruited for the Appeals Chamber . . .

00:09 DJH: Okay.

- 00:10 . . . but somehow, I could not join the duty station in The Hague for some internal reason. They prefer someone else; the judge prefer working with someone else so I was transferred to Arusha. I was asked to come to Arusha. I hesitate a lot because at that time, I, I didn't have any plan to return to Africa so quickly.
- 00:37 So I hesitate. Someone I met few years ago in New York, in the co-, corridor we talked, we did discuss for 15 minutes. He called me and say, "Look, I know that you have been offered the job and I know that you are hesitating but I can tell you that if you come in to Arusha, you will not regret so please come." And we are still very good friends today.
- 01:03 DJH: Does he work here at the tribunal?**
- 01:04 Yes, he work here.
- 01:05 DJH: Can you tell us his name?**
- 01:06 Jean-Pele Fomete, Chief of CMS.
- 01:09 DJH: Oh, okay. Well, he's a persuasive man, yes.**
- 01:14 And he has always been persuading me for a lot of things.
- 01:17 DJH: Okay. And what job did you – when did you come at first, where did you go?**
- 01:22 I came in Arusha on 19 February 2003.
- 01:27 DJH: Okay, and what was your job then?**
- 01:32 The first week I didn't have any job. I didn't have any assignment. Then the Registrar assigned me to the Deputy Registrar as his special assistant. In that position, I was not very happy because my legal education was not very used. I was doing most of the time translation and when I translate things and I try to make suggestion as to the legal solution they were not really accepted.
- 02:02 So I start looking for somewhere else to move. And fortunately, we organized the Plenary Session. I was a focal point for the Registry and the Chief of Chamber, I work with him to prepare the plenary and he looked at me. He say, "Did you apply in Chambers?" I say, "Of course but you are not interested so why are you asking?" He said, "Now I'm interested." And two months later I was recruited to join chambers.
- 02:33 DJH: Okay. Who was the Deputy Registrar?**
- 02:38 Lovemore Green Munlo. He's from Malawi.
- 02:42 DJH: Okay. And was, was he followed later by Mr. O'Donnell, or wa-?**

- 02:50 Later he went to s-, the Special Court in Sierra Leone.
- 02:55 DJH: Ah.**
- 02:55 Everard O'Donnell who was Chief of Chamber when I was recruited had been Officer-in-Charge for the Deputy Registrar's Office until he was confirmed in the position.
- 03:06 DJH: Okay, so you, you knew him.**
- 03:09 I know him very well.
- 03:10 DJH: Yes, okay. And what were your duties when you were assigned to Chambers? And wh-, which chambers were you assigned?**
- 03:17 I was assigned to Trial Chamber Three as trial chamber coordinator. At that time we have two type of c-, coordinator – the coordinator and legal officers and they run a team assisting the judge, a team of legal staff. You have the trial chamber coordinator who is in charge of all pending cases before the trial chamber so most of the time working on pre-trial matters and that's it.
- 03:48 And you have a judgment coordinator who's duty is to run the team in view of the judgment to be draft.
- 03:57 DJH: Okay.**
- 03:57 So he usually run the team during the trial and working after the trial during the deliberation to get the judgment done. So I was trial chamber coordinator but I was still involved in judgment drafting team.
- 04:15 And in 2004, if I recollect well, early 2004 the President set up the coordination council, set up what we call a trial committee and I was appointed to that committee which is inter-organ committee, one representative from chamber, one representative from OTP, another one from the Registry and from time to time depending on the needs, we call upon the defense counsel in the case on which we are going to discuss.
- 04:51 And Everard was representing chambers and they appoint me with the agreement of the President as the secretary, the executive of the committee. And in that capacity, I assist the committee and the tribunal to prepare all the cases. We call it "trial readiness." So the committee coordinates the work, preparing the trial, advising the President on when th-, the different case will be ready for trial, and then I have more impact on more cases than I used to have as trial chamber coordinator.
- 05:29 DJH: I have to go back and that's ve-, very interesting and explain a few terms. You said OTP. Tell us what OTP stands for.**

- 05:38 OTP is the Office of the Prosecutor.
- 05:40 DJH: Okay.**
- 05:41 They are in charge of prosecuting the case but in international criminal justice, there is something more. I don't think it's very specific to international criminal justice. Prosecution has an obligation to investigate for each case, but whenever he came across exculpatory information, he has an obligation to disclose it to the defense, to the accused person.
- 06:10 I don't think it's specific to international criminal justice because I think a domestic prosecutor also has a moral ethical obligation whenever he come across anything exculpatory to say "Look, my case, I cannot make it because of this exculpatory evidence." And he will stop. He will tell the decision to stop his case by himself but he doesn't have the obligation to disclose it to the defense in some systems.
- 06:39 So I don't think it's really something specific to our system.
- 06:45 DJH: That's my understanding as well. Okay.**
- 06:49 I'm happy.
- 06:50 DJH: Well, I certainly know that the – in the, in the United States, the prosecutor has a duty to disclose exculpatory evidence to the defense.**
- 07:00 I'm happy to hear it. It's confirmed by . . .
- 07:04 DJH: Okay.**

Part 3

- 00:00 DJH: The, th-, this, I, I need to go back and begin to try to understand the structure. As I understand it, correct me if I'm wrong, there is sort of three parts to the tribunal; there's the Chambers, which are th-, essentially the judges.**
- 00:17 The judges.
- 00:18 DJH: There's the OTP, the Prosecutor or the Pros-, the Office of the Prosecutor . . .**
- 00:22 Mm-hmm, the Office of the Prosecutor.
- 00:23 DJH: . . . and then there's the Registry.**
- 00:24 The Registry.
- 00:25 DJH: Which, sort of, is the managing part.**
- 00:27 Executive.

- 00:28 DJH: Executive part of the – administrative and executive.**
- 00:32 But you are committing the same error as the international community.
- 00:36 DJH: Oh tell me the, what the error . . .**
- 00:37 In the statute, you have only three organs. Which – each one of them had a principal; the Prosecutor for OTP, the President for the Chambers of the judges, and the Registrar for the Registry.
- 00:52 DJH: Right.**
- 00:52 And nothing was provided for the defense.
- 00:55 DJH: I understand that, ().**
- 00:56 Defense, in fact, is within the Registry because the Registrar has a mandate to appoint a counsel for the accused person and the tribunal pay for the legal representation of the accused whenever he's indigent. In the case of this tribunal, I think all the accused has been indigent up to now but the defense has not been consider as such as an organ of the tribunal.
- 01:25 While if you look at the Special Court for Sierra Leone, you have an Office for Public Defender, a public counsel for the defense. If you look at the ICC, the International Criminal Court, they have move a little bit forward. Y-, they have one office for Pub-, Office of Public Counsel for Defense, Office of Public Counsel for the Victims, but they also have the Registry running the legal aid program.
- 01:56 DJH: Hm. Can you tell me a little bit more about that? That seems a little strange.**
- 02:02 It's – the way it was designed in the statutes was not clear. This was provided . . .
- 02:09 DJH: In which statute, the . . .?**
- 02:10 The statute of the International Criminal Courts.
- 02:12 DJH: Okay.**
- 02:13 I've . . .
- 02:13 DJH: Which is not what we're doing ().**
- 02:14 No, no, no. It's not here. I think it was provided for in the Rule of Procedure and Evidence of the Regulation of the Court. I don't remember exactly. And the Office of Public Counsel for the Victim and the Office of Public Counsel for the Defense are independent office administratively linked to the Registry.

- 02:35 DJH: Mm-hmm.**
- 02:35 They provide legal assistance to the accused person or to the victims. In the case of the Office of Public Counsel for Victims, they can also represent the victim in the proceedings. The Office of Public Counsel for the Defense, they were not supposed to represent the accused person but it happened that instead of appointing a duty counsel for someone who has just been arrested, the judge decide to, to appoint the principal counsel of the Office of Public Counsel for the Defense.
- 03:07 So in fact they will be doing the defense counsel work while at the tribunal, the tribunal for Rwanda, you have an office which only manage the administrative aspect. They always appoint non-staff member to represent the interest of the accused. While at the International Criminal Court, the principal counsel of the Office of Public Counsel for Defense is a staff member and he can be appointed to represent temporarily an accused person.
- 03:39 DJH: Okay.**
- 03:40 I don't know if it's clear.
- 03:42 DJH: No, I, I am understanding it. I'm not sure the – essentially, what you're – y-, you said I made a mistake. I, I di-, I didn't make a mistake because I understood that there were only three parts and that they needed, they may need to have been four parts.**
- 03:54 Mm-hmm.
- 03:55 DJH: But what, what happened was, as I understand it, the offi-, the, the, the defenders of the accused were administratively connected to the Registry but they're essentially independent contractors, we . . .**
- 04:10 Yes.
- 04:10 DJH: . . . might say in the United States.**
- 04:12 DJH: They're paid for, they're hired and paid for by the Registry but they are – they may be lawyers from various countries, et cetera, et cetera, et cetera.**
- 04:21 Exactly, exactly. You got it right.
- 04:23 DJH: Okay. Now, and how – I, I assume you know this, how does one, how did a defense lawyer get on the list and are there certain standards that are required for the quality of the lawyer or the experience of the lawyer?**
- 04:40 Here at the International Criminal Tribunal for Rwanda, I think the only real condition; there are two I think. One is being admitted to a Bar somewhere in the world or being law

professor attached to a u-, any university in the world. That's the first condition. The second one is that you need to have ten year experience but that has been changed two years ago.

05:10 Instead of ten year, it's now seven years. This, the seven year has specific ant-, interest. It's allowed for those who are legal assistants in these proceedings. At the beginning, after seven year to be able to be appointed as counsel. And I have few case where they start as junior lawyer, as legal assistant in a defense team. They don't need to have ten years experience.

05:42 They had most of the time two, three years. And after four, five years, they can apply to be on the list and as soon as the Registrar approve the application and they are on the list, the accused person can choose them anytime. So you have – I know about three who were legal assistant at the beginning and who are now co-counsel in various cases.

06:09 DJH: Okay. And does the accused have to choose the lawyer or agree to the lawyer?

06:15 Yes, it's – he has to a, to choose or agree. He choose – what's happen, the procedure is that he will be given the list of counsel admitted on the list. He has to choose three of them and the Registrar has a (___), discretionary power to appoint one of the three. Except you can have in some instances, the accused want a specific individual.

06:42 And he will add two other individual who are not available. Okay, and that when the Registry will check the availability of the counsel only one will say "I'm available."

06:55 DJH: Mm-hmm.

06:55 So the Registrar can approve, appoint, assign that person or he can ask the accused person to provide three name of people who are right now available. It depends. So they have a right but not unlimited right to choose the counsel.

07:14 DJH: What if a counsel is chosen for him and he doesn't like the counsel or they don't get along? What happens then?

07:21 I, I, I don't want to guess but I will give some, some precedent.

07:26 DJH: Okay.

07:26 There was one case, Barayagwiza. He – okay, I will make it very short. He succeed to get a decision of release for abuse of process by the prosecution but the Appeals Chamber somehow consider that a motion filed by the prosecution for review was well founded and they granted the motion for review and reconsidered the initial decision of release.

08:02 Barayagwiza immediately decide that he will no longer trust the proceedings, and he refused to communicate with any lawyer. The defense counsel he had at that time

continue the trial up to the end of the prosecution case and he resigned because he thought that without any communication with the accused, without any instruction from him, he could not continue representing his interest.

08:31 But another le-, a-, another counsel was appointed who didn't have any contact with the lawyer, wi-, with the accused and he continue the trial up to the end. During the defense case, he called only one witness, one expert witness. You have another case – just to balance, Rwamakuba, André Rwamakuba. He thought that the proceedings could not be fair and he decides the same not to follow the proceedings, not to participate at all.

09:04 But he had a counsel, David Hooper, he accept to talk to him from time to time so even if he was not in court, the accused was still communicating with the defense counsel and he has been acquitted.

09:19 DJH: Okay.

09:20 You have a recent case, Nshogoza, where he wanted someone, s-, a specific individual who could not be appointed because of difficulty to (_,) reach an agreement between respect lawyer and the Registrar. The Chamber instructs the Registrar to appoint a counsel. The Registrar appoints someone else than the person the accused wanted.

09:48 So you had one hearing where the two counsel were present in court representing the same accused person, and that the, the decision to, to the, the trial chamber instruct the Registrar to withdraw the counsel appointed in the interest of the accused and to appoint the counsel of the choice of the accused.

10:10 I haven't read the decision fully yet so I cannot argue on the reason for the decision. And in fact, the decision was issued today, the 13th October, while the Registrar on Friday has already withdrawn the previous counsel because he finally reached an agreement with the counsel of the choice of the accused.

10:34 DJH: Okay, so the decision may be moot but . . .

10:38 The decision was already rendered so . . .

10:39 DJH: Oh, okay . . .

10:40 . . . it's not a matter of being moot but it's – gave an instruction . . .

10:44 DJH: Sure.

10:44 . . . for something which has already happened.

10:47 DJH: Okay, and it, but it may be precedential.

10:51 It's trial chamber decision.

10:53 **DJH: Okay.**

10:54 So we have to be careful. Yes.

10:59 **DJH: (_____) maybe not, Okay. Yes. Okay.**

11:00 Maybe we will see.

Part 4

00:00 **DJH: What is your job now?**

00:02 My job now, I'm the Senior Legal Officer in Trial Chamber Three. In each trial chamber you have a team of associate legal officer assigned to the judge individually.

00:16 **DJH: Mm-hmm.**

00:17 Each bench has therefore three associate legal officers. They work with a coordinator, a legal officer who supervise them for their work on a case by case basis.

00:29 **DJH: Mm-hmm.**

00:30 Each trial chamber has a senior legal officer supervising all the cases before the trial chamber whatever section it is. So I'm the Senior Legal Officer in Trial Chamber Three.

00:44 **DJH: Okay, and how many judges are assigned to Trial Chamber Three?**

00:48 Each trial chamber have three permanent judges . . .

00:52 **DJH: Okay.**

00:52 . . . then the number of ad litem judges vary depending on the assignment because contrary to the International Criminal Tribunal for the former Yugoslavia, we don't have fixed assignment to the trial chamber here for the ad litem. Depending on the case they are assigned to, they will be allowed to sit on pre-trial matters in the trial chamber in which they are sitting.

01:20 Concretely, in Trial Chamber Three we have three permanent judges.

01:25 **DJH: Who are they?**

01:27 Judge Byron, the president of the tribunal, Judge Khan who is the Vice President of the tribunal and the Presiding Judge of the Trial Chamber Three, and Judge Inés de Roca, Weinberg de Roca from Argentina who is the third permanent judge. And we have six to eight ad litem judge, depending on the case.

- 01:48 DJH: Tell us what an ad li-, (___), let me interrupt you for a minute. What – because people who are going to be watching this may not know what an ad litem judge is. Tell us what that is.**
- 01:57 Initially, when the tribunal was created, all the judge were permanent. They were elected for four years renewable. In early 2000, 2002, the judge, the President requests additional judge saying, “I need more judge on a case by case basis. Instead of electing judges for four years, you could elect people who you’ll appoint for specific case and as soon as the case end, they will go back home.”
- 02:32 So that’s the idea of ad litem judges. They are appointed on a case by case basis for specific cases. But in practice, the way they have been working at this tribunal, it’s my personal view that there is less difference between permanent judge and ad litem, in practice, in the way in which the tribunal function.
- 02:54 You have ad litem judges who have been appointed here since 2003 and who are still here more than four years after, they are still here and their case has not ended yet. The most important difference will be about benefits. They don’t have the same retirement benefits as the permanent judges.
- 03:21 So it has an i-, a financial impact whether you are a permanent judge or an ad litem.
- 03:29 DJH: Okay, but in terms of authority, same.**
- 03:33 Same – there is one exception. An ad litem judge cannot preside over a case. Only a permanent judge can preside over.
- 03:42 DJH: Okay.**
- 03:43 An ad litem judge cannot be elected President of the tribunal, cannot be appointed to the Appeals Chamber.
- 03:49 DJH: Okay.**
- 03:49 Only a permanent judge could.
- 03:51 DJH: Okay. And how many permanent judges are there in the total tribunal?**
- 03:56 We have . . .
- 03:58 DJH: Now.**
- 03:59 . . . 11 who are elected for this tribunal.
- 04:03 DJH: Mm-hmm.**

- 04:03 Two of them are sitting in the Appeals Chamber with judges from the tribunal for the former Yugoslavia. Ad litem judges, I don't want to mislead you. I think we have between ten to f-, to 18 but I'm not sure.
- 04:18 DJH: Okay.**
- 04:19 I have to check my figures.
- 04:20 DJH: Okay. So what are your duties now? What do you do, what do you do?**
- 04:26 I advise the judges with the team of the legal officers.
- 04:30 DJH: Okay.**
- 04:31 Concretely, the way the chamber is organized, we don't have enough legal officers so I have been assigned to a specific case which I'm running with the Associate Legal Officer without any trial chamber coordinator or judgment coordinator in the middle.
- 04:52 DJH: Okay.**
- 04:52 There are other cases where there is a legal officer so I'm – within the team, supervising what everyone is doing and I'm expect to have a better knowledge of the jurisprudence and be able to quickly give indication to the judges as to what are the precedent and how the case has been decide over in the past and have also a, a comparative approach because this work a lot in this new area of law; international criminal law is new.
- 05:30 So we don't have international instrument on all aspect of our proceedings. So sometimes you have to compare various legal system and tell the judge, "This what I found in Germany, in Benin, in South Africa, in Morocco." So you compare different system and you tell them okay, this is what exists. You have a choice. If I w-, I have to choose, this will be my preference but it's always up to the judge to made up their mind.
- 06:02 DJH: Okay, so you're, it sounds like you're both i-, in your particular case both administrative as well as providing legal advice to a judge or some judges.**
- 06:17 Yes, that's correct. I manage this legal staff . . .
- 06:22 DJH: Mm-hmm.**
- 06:22 . . . in my chamber. I'm the first reported officer meaning that to evaluate their performance, the professional performance. I'm the one to evaluate it in consultation with the judges and of course I advise the judges most of the time.
- 06:40 DJH: Okay, so and d-, do you, dr-, do drafts of opinions or drafts of judgments, ()?**
- 06:47 Yes, we draft everything. We draft decision . . .

06:50 DJH: Okay.

06:51 . . . under the supervision of the judges. In some instances, they will ask us to draft just a legal research memorandum . . .

06:59 DJH: Yes.

06:59 . . . or giving them an opinion on a legal issue and they will consider the opinion, the argument put forward and made up their mind. And we draft also the judgment for them.

07:11 DJH: Okay.

Part 5

00:02 DJH: You've been here now for five years.

00:07 Less. Because . . .

00:08 DJH: You said you came in 2003.

00:10 I came in 2003 but I left in 2006 . . .

00:14 DJH: Ah.

00:14 . . . spend one year and half at the International Criminal Court.

00:19 DJH: In the, in The Hague.

00:20 In The Hague and I came back end of December 2007.

00:25 DJH: Okay.

00:26 So I'm here for almost five years.

00:28 DJH: Okay. You are I'm sure very familiar with the statute which created the ICTR, the International Criminal Tribunal for Rwanda.

00:37 I hope so.

00:39 DJH: Okay. What is your understanding of what that statute tells the court to do?

00:50 The statute creates a tribunal to decide upon case brought by the prosecution after confirmation by the judges. It's a tribunal, a criminal tribunal. Simple.

01:04 DJH: Mm-hmm.

- 01:05 But there was something additional which everyone could not see the impact on the mandate of the tribunal. There was a provision about reconciliation in Rwanda, peace and security.
- 01:24 The Security Council, when they create the tribunal it was on the basis of Chapter 7 of the United Nation Charter. That chapter can be used if there is a threat to the peace and the security – so the objective, the political objective was that this tribunal will assist in achieving peace and security in Rwanda and in the region.
- 01:52 Now the major question is how a criminal tribunal can achieve it. There are various way. One in my view could be in sentencing and this is only my personal opinion. If you sentence someone for a time of imprisonment which allows him to think about what he did, (), the consequence for the society and the day he’s out of the jail he could behave differently.
- 02:32 While he’s in jail, his sons, his grandsons come to him and he could tell them, “(), at our time we did it wrong.” He would have contributed to the reconciliation to some extent. If he’s in jail for the remainder of his life, he will – he probably will be bitter, bitter everyday a little more. He has no expectation to get out.
- 03:04 So that may be a way of achieving the mandate of the tribunal as to the reconciliation but this is just a thought in my mind. It has never been expressed as such in the jurisprudence.
- 03:21 DJH: What has been expressed as such in the jurisprudence about that particular mandate?**
- 03:29 I don’t recall of anything being expressed . . .
- 03:32 DJH: Mm-hmm.**
- 03:32 . . . about that particular aspect of the mandate. You may have at least one case where a reference could have been made to it; Rutaganera. He pleaded guilty and was sentenced to six year but it will be difficult and to my recollection, even if a reference was made to reconciliation in Rwanda, no serious argument was made to show how this aspect of the mandate has affect the sentence.
- 04:09 So it’s a mere statement than a consequence from the mandate to say, “Because of the reconciliation, he’s sentenced to six year and the Chamber expect that blah blah blah.” I can’t recollect any such detail analysis in that judgment.
- 04:37 DJH: And I think you said there has been no other analysis in any judgment to your knowledge.**
- 04:43 To my knowledge, no other. So this is only personal opinion.

- 04:47** DJH: Okay, well, you're an advisor and it comes from the person to a certain extent. I had a question and i-, and – oh, yes. What do you think reconciliation meant in that statute? And, and maybe not just your own opinion but if you've, if, if there's been some expression by the court or by any of the courts . . .
- 05:19 I, I, I don't recollect any expression by the court at all on that aspect but if you look at the story of Rwanda, how they came to the establishment of the tribunal – there was a political crisis and what's happened concretely is that a group of politician used part of the society against another part. The part discriminate is mainly the Tutsi but you have also the moderate Tut-, the moderate Hutu who were exterminate and killed.
- 05:57 So you have a part of this society used to kill the other parts. Reconciliation has an obvious meaning— making sure that these people can still live together tomorrow and forgive to each other. What's happened in Rwanda, you have neighbors who kill their neighbors with whom they have been in harmony or in s-, a sort of harmony before.
- 06:30 You have family member killing other family member. You have something completely – a destroyed so-, society when one man turn against the other. Reconciliation in such society is making sure that they can still live together and forgive to each other. So to my understanding, that was what reconciliation would have meant for the case of Rwanda; making sure that Rwandan can still live together even if they are Tutsi, Hutu or Twa.
- 07:06 But this is not only a story about Rwanda. This affect everyone not only Rwanda. There are at the heart of the crisis but it affect all human being. When you talk about crime against hu-, humanity, it's something which affect the human being in its dignity, so all of us are affected and if the tribunal could assist all of us to reconcil-, r-, to reconcile with each other, why not? It will be a good achievement but that's still part of the ideal of our society.

Part 6

- 00:00** DJH: You've been working, and you continue to work at this tribunal. Do you see the possibility in the tribunal as it is currently structured to accomplish some degree of both justice and – well, let's talk about justice first and then reconciliation, or you can talk about both as you wish.
- 00:30 Again, this is more my personal . . .
- 00:33** DJH: Understood.
- 00:35 . . . understanding. If you do justice, for sure you will reach easily the reconciliation because you have done what is good.
- 00:50** DJH: Mm-hmm.

- 00:50 Because I look at justice as something correct, something right. If that's what the tribunal succeed in doing, I think re-, reconciliation is at the bottom end.
- 01:05 How can the tribunal do justice? In my view it's very simple. We have to admit first that a tribunal cannot reach the exact truth – what happened exactly in all the cases. But the tribunal has an obligation to manage to be as close as that, as possible to that reality.
- 01:29 DJH: Mm-hmm.**
- 01:30 If everyone at the tribunal is doing his work professionally, ethically, I'm sure we will reach result which has not been biased by anyone, and that result in itself is already a kind of justice. And it's already good for our society.
- 01:50 It's only if we work in a way that we achieve other interest than that justice that we will be running far from justice and therefore from reconciliation. But this is – I'm going in abstraction and I don't know if it's clear.
- 02:11 DJH: Well, do you think – () we've heard obviously we've read and you've read and we've heard criticism of the tribunal particularly, you know, about what the, the involvement of the Rwandans and the effects upon the Rwandans themselves. Do you think that the tribunal has been at all successful in giving a sense of justice to the Rwandans? That's a generalization, ().**
- 02:47 I don't know for Rwandan.
- 02:49 DJH: Okay.**
- 02:51 But as I said, what happened in Rwanda is not only about Rwanda.
- 02:56 DJH: Okay.**
- 02:56 So I can talk for myself . . .
- 02:58 DJH: Okay.**
- 02:58 . . . how do I feel? There are still things we can criticize in the achievement of the tribunal. Both legally and human being aspect, socially, looking at the achievement but for sure there are good things about the fact that the tribunal has been established.
- 03:25 The genocide convention has now an international interpretation . . .
- 03:32 DJH: Mm-hmm.**
- 03:33 . . . which gave a lot of sense to a document signed in '98 and you could see, for instance you have in the Bagaragaza case, a referral to Norway. I love this case and I always mention it. The prosecution negotiate with Norway and they agreed to receive a case for trial.

- 03:58 The trial chamber deny the application because Norway, even though they ratified the convention in 19-, in '49 I think, they never adopt a domestic instrument to implement it so the Geneva-, the genocide convention didn't have any legal consequence in the domestic criminal system.
- 04:27 The chamber denies it. The prosecution challenge it. The appeal chamber confirm it. And last year, there was a bill before the Norwegian parliament to implement the Geneva-, the genocide convention. Isn't that great? It's, it's marvelous. And I like that case because one could think spontaneously that they tribunal will only have an influence on third world countries, on country where human right are not respected.
- 04:58 While you have a European country well fixed in its legal system respecting human right to some extent and still, the judge of the tribunal disagree, criticize something in that system and the politician took action . . .
- 05:17 DJH: Mm-hmm.**
- 05:18 . . . to adopt a law implementing the genocide convention.
- 05:23 You have other aspect of the achievement of the tribunal which could be criticized. I'll give one case. Take for instance a plea bargaining. You have, I will not refer to any specific case for obvious reasons, but you have the accused and the prosecution negotiating to agreed on certain facts.
- 05:47 It's obvious for, it's a matter of common sense that the accused will always minimize its role, his role. Will the results of such bargaining do justice to the victims, to our society? Let's say if the agreement is that we remove one killing, what's happened to the victim of that killing? How will the victim feel about the outcome?
- 06:22 So the question is to what extent the judge has control over such bargaining? The jurisprudence has not been clear up to now but there is one precedent, which I like, but it's not from this tribunal; the International Criminal Tribunal for the former Yugoslavia where the party pled "aiding and abetting in a joint criminal enterprise."
- 06:48 And the judge said, "Look, the fact you have correspond to a participation in a joint criminal enterprise, not to aiding and abetting so we dismiss your application, the guilty plea agreement." The party went. They redrafted and they came back and say, "Okay, we agree to a participation in a joint criminal enterprise."
- 07:12 So, to some extent, the judge could control the procedure but does it happen in all cases where we have a guilty plea? I have a personal doubt but it's something one could check and see to what extent the judge has control over what the party had agreed on.
- 07:33 DJH: Okay.**

Part 7

- 00:00 **Lisa P. Nathan: So at the very beginning of the conversation you mentioned that when you were teaching in the international law area and your students said you critique these tribunals so much . . .**
- 00:12 **Note: Gap in interview (Approx. 1 minute in duration) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.**
- 00:20 **LPN: So I'm asking about when you first were thinking and you were, when you were teaching international law and you were critiquing the very, the tribunals that were going on at that time which included this one at the ICTR and your students said, "You critique so much, why don't you go work in one?" Can you remember one of the critiques?**
- 00:42 One of the critiques I had was that these tribunals are not using the method, the legal reasoning method in international law properly. It's really simple. Whenever you have a legal issue to address, you look into the conventions, into the customary international law, into general principle of international law and sometimes to the doctrine.
- 01:15 Recently in 2006, I criticized a decision where the judge rely only on the treaties, the conventions and the customary international law saying there is no legal basis in those two sources of international law therefore, the motion cannot be granted. And I say, "Come on, stop it there because you should also look into the general principle of international law."
- 01:44 This was a very specific issue about Rwamakuba. He has been in jail for eight years and acquitted. And he asked for compensation. And the judge is saying there is no legal basis for us to grant compensation to someone who stay in our jail, in our detention center for eight years because there is no provision in any treaty in the world and there is no basis in the customary international law.
- 02:16 While in the same decision, they admit in a footnote that there are ten country in the world where such compensation system exist. There is a presumption of prejudice and you are granted a compensation. And for me, it was a major error in the legal reasoning because you could use those ten countries as a basis of the general principle of international law.
- 02:47 And my first thought was, "(_____), the day you commit a crime make sure that those judge are not on the bench," because I need someone else to try me who will have the courage to say there is no basis in the text we have but still, there is a moral principle; something you cannot explain but it's just obvious that someone who spent eight years in a jail has a right to compensation. And I still believe in it.

- 03:18 LPN: So returning to your critique of how the, they're not using the legal reasoning in them – has your view or critique changed at all? Your view of any of your critiques changed since?**
- 03:32 There are few instance. I, I – one is about the definition of a group as victim of genocide. One of my critiques wa-, w- was that Tutsi and Hutu could not be defined as ethnic group because how – what is the limit? What are the criteria for an ethnic group? If you say it's language, Tutsi and Hutu have the same language. If you say it's religion, they are adoring the same gods.
- 04:07 So what will be the basis for you to consider Tutsi or Hutu as separate ethnic group? It's something easy everyone has been doing and repeating all over the time. In some cases in Trial Chamber Three, I don't s-, I don't think that it's only because I had that opinion but the judge agree that the genocide convention has to be interpreted in a way that it correspond to our world now.
- 04:39 If you look into Gacumbitsi judgment, the j-, the judge clearly state ethnic or racial it's difficult to see what is ethnic, what is racial. But what we look for is a permanent and stable group. In this society, we have two, three groups and they recognize each other as separate groups.
- 05:07 We've (_____), if your dad is a Tutsi, you are a Tutsi. If your mom is Hutu it doesn't matter. Only the dad matters. Those principle allow the judge to say, "Look, in the Rwandan society, there were stable groups; Tutsi and Hutu. Any of these groups is protected by the genocide convention whether you call it ethnic or a racial group."
- 05:41 So it's something I'm happy about but I can't say that all the judgment has adopted the same approach to the interpretation so that's something I'm happy about and I'm still happy about it.

Part 8

- 00:00 LPN: So when you did come here to the tribunal, did you have a goal or a set of goals in your work here?**
- 00:07 Improve everything; make sure that nobody else will be criticizing the jurisprudence. But I'm the first one to continue criticizing it. No, I had a goal to do my best and have some decisions I could be happy about and some development I could be happy about. Even if my advice is not always considered, I still have impression that it has been taken into account, it could change a footnote in the decision, that's already a step to the next one, up to when we reach something everyone will be happy about but I don't think () it's in this one.
- 00:48 LPN: Is there a specific example of something you feel proud of?**

- 00:52 The decision in Bagaragaza denying the application for referral to Norway. I was in the team.
- 01:03 LPN: Can you say any more about that?**
- 01:06 It was a challenging case because as I state, it's easy to think that an international tribunal could request a third world country to improve its legal system. Saying it for a European country, a well-established old and everything, it's more difficult. And the judge have been able to say it in few words. They didn't need ten page. The argument on that issue was about one paragraph of 20 line; clear, straight and its move forward.
- 01:51 So I was very happy about it and the team also, we work. We were about – instead of four or five usually, we were about six or seven. All of us have different views with the judges and we enjoy drafting this decision and I think up to now we are still happy when we look back at it.
- 02:17 LPN: So now I have a harder question. Is there something that you don't feel so proud of?**
- 02:24 Yes. There are few things. I could mention only one; the fact that Rwamakuba never got any compensation for the eight year he spent in jail – that's difficult for me.
- 02:41 LPN: So if there was, if there's something that you could change, if you look back, is there something that you wish you had done there or?**
- 02:49 I wish I was a judge. Simple.
- 02:56 LPN: So, the other thing that I would like to touch on is clearly you are a scholar of international law so you think a lot about how this, this particular court is structured. You have experience, direct experience of the ICC, the International Criminal Court. Say there's another ad hoc court created, what would be a suggestion or a few suggestions you would have for that court?**
- 03:30 I will advise them to recruit the best lawyer in the previous tribunal because the jurisprudence created in-, by international criminal jurisdiction right now, few people are well-acquainted with that jurisprudence. And it deal with lot of matters – if you take someone who is not well involved in that jurisprudence, you will run into the risk of repeating some of the errors.
- 04:08 I have been to the International Criminal Court but I'm sorry to say it, they are not getting the best even when the recruit me. So it's something which is now affecting the way in which they work. Just take one case. Look at the Lubanga case. There is a provision in the International Criminal Court statutes, Article 54 providing for the prosecution to sign agreement with various sources to gather information which will stay confidential.

- 04:43 But there was a phraseology in that provision saying this information, this evidence prosecution will be gathering will just be used to gather more evidence. So the idea behind is that you use confidential evidence which you cannot disclose to get similar evidence which you could disclose.
- 05:11 But what the prosecution has been doing is signing agreements keeping everything confidential and coming to court telling the judges, "I have some information, some evidence which are potentially exculpatory," but they don't want to disclose them because they signed an a-, an agreement. It's, it's completely outrageous.
- 05:32 Look at it, you say, but how can you dare think that you can have exculpatory evidence which you refuse to disclose, and you don't want to show it to the judge for them to be able to look at it and say, "Oh we agree. This is exculpatory." You say, "No, Judge. You are not allowed to see it." Where are we going when the prosecution behaves in such a manner?
- 05:58 So, but they recruit people from the other tribunal. In my view, these are not the best lawyer they could have. That's the reason why they run into such trouble. And the consequence has been strict. The trial chamber say, "Look, we can no longer guarantee a fair trial to the accused. He has to be released." The cases before the trial, the Appeals Chamber now, we'll see what the Appeals Chamber will decide.
- 06:28 So that's one instance where a new international criminal court created has not been able to take advantage of the lessons from the other. When they will recruit the best lawyer and look into the way those tribunal have been working, I'm sure the-, they will gain something more and advance our world.

Part 9

- 00:00 **LPN: So is there anything that you would like to add, something that you came in today or something that came up while we were talking that you would like to share?**
- 00:15 As I mentioned about Rwamakuba, every day I have been thinking whenever I do anything about the case if I was the accused – will I be happy with this result? Will I look at it as something fair? And that's something really important for me. The day I think the results I will be suggesting – if I was the accused I will not consider it as fair – I will have to cons-, to reconsider my opinion.
- 00:50 And I hope that everyone working in this new environment has the same moral approach to our work. Everything you are doing on a daily basis could impact on the freedom of someone. What do you do to make sure that if it was you in the position of the accused, you will still consider this process as, as fair as possible? So I hope if everyone could do it I'm sure we'll do a little bit better than we have done in the past.

- 01:27 LPN: What of the accused that don't feel that what they did was wrong?**
- 01:36 It's a human being (____) – I don't think that everyone of us understands what is wrong in the same way and sometime it could also be cultural. My, my simple answer will be I hope that at the end of each case, the accused could see something right in what the judge are saying about his behavior. Say, "Look, I have seen what you have done but this is not acceptable for our society."
- 02:17 If he accept it at the end, I think the judge will be very happy.
- 02:27 DJH: If you don't mind, I just have one, one question, just to – I have just one question to follow up. And Lisa Nathan asked you a number of questions about the – if there was a new court being formed what would your suggestion be? And you've talked about getting the best lawyers and that that would be a big help.**
- 02:55 DJH: Is there something structural, in other words would you – if you, if you were designing the statute or you're designing the structure of the court, what would you do if anything to, that would improve the operation of the court and its ability to get to justice and perhaps get there a bit more efficiently?**
- 03:19 Accountability. You have to make sure that each staff member is accountable. If a prosecution, a counsel for the prosecution team has done something completely wrong, he has to be punished and know that this is not allowed because you may have impression in some instance that everything you are doing is just noble, no one will ever punish you.
- 03:51 I gave the case of Lubanga. That's a major strategical and legal error from the prosecution. Accountability – have anyone been punished for its sanction? Said, "This was not correct, you should have not done it." Nobody up to now. You have another case. A staff member was fired and an administrative committee within the tribunal, I'm not talking about the tribunal for Rwanda, consider that the person should not be fired because there was an apprehension of bias but also interest of the person firing in the process, process.
- 04:38 But still, the staff member was fired and he planned, he launched an a – he challenged the termination of hi-, his contract before the administrative tribunal and he was granted 250,000 Euro for compensation. Meaning that the decision of someone working within the organ or within the institution has affect the financial status of the organization. Accountability.
- 05:17 Is anything done to prevent this to happen in the future? If nothing is done, I could say, "Oh, I can do whatever I want. I will never be sanctioned." And then we run into a risk in a situation where nobody is ever sanctioned for anything so you get people doing things carelessly.

Part 10

- 00:00 **DJH: 'Kay. One other question. Earlier, you were talking about the defen-, the defense. Would you structure it differently than this tribunal did and rather, you know, do it another way?**
- 00:19 I don't think that that's a major problem for the tribunal.
- 00:25 **DJH: 'Kay.**
- 00:26 Whether they are independent and attached to the Registrar or whether there is a specific organ for it, you just need professionals who knows their job and can do it properly and you need means, financial, to support them and give them what they need to defend the accused person properly.
- 00:52 Whether they are staff member or not, I can't see any serious problem in that so I will not change it. I will just make sure that the work is done properly.
- 01:03 **DJH: And, and, you also mentioned that in another tribunal, I think ICC but maybe I'm wrong, there was an office for victims.**
- 01:12 Yes.
- 01:13 **DJH: Tell us about what you think about that.**
- 01:15 I, I, I work in that office when I was at the International Criminal Court. This is something new for the international criminal courts in international criminal justice because at the ad hoc tribunal and at the Special Court for Sierra Leone, you have a prosecution and the defense. That's all.
- 01:35 While at the International Criminal Court, you could have the victim participating in the proceedings. That's innovative because you have what we call in civil law system a kind of third party – partie civile – involved. It's not exactly the same because for the International Criminal Court, the victim cannot be at the origin of a case.
- 02:07 It has to come from the prosecution with the confirmation of the indictment and so on. What I was not completely comfortable with is that you have a provision in the statute for the victim to participate but nobody has a clear understanding of what those victims will be doing in the course of the procedure.
- 02:33 Take one case. You take Lubanga. There were four victims who were – okay first, for a victim to participate he has to be recognized as a victim by a chamber. Then he has to be authorized to participate in the proceedings, and concretely the Appeals Chamber has considered that it's on a case-by-case basis. Not a case as an accused person, but on issue basis.

- 03:04 If the accused asked for release, the victim who has already been recognized as victim, will seek leave to make observation on that application. If it was denied by the trial chamber let's say and the accused lodge an appeal, he, the victim has to ask again for leave before the Appeals Chamber to make further observation.
- 03:30 If you look at the Lubanga case for the confirmation of the indi-, of the document containing the charges of it, of indictment, four victims were granted the right to participate in the hearing but the decision states clearly that they don't have to put any question to any witness. Any question they want to put, they have to put it to the bench and the bench will decide whether the question should go to the witness or not.
- 03:57 And it's funny. You have one instance where the, the, (___), the single witness called by the prosecution was recalling the way in which she took statement for various victims and it seems to one of the legal representative of the victim that one person the witness refer to was a relative of the victim so the legal representative asked for the floor to ask a question.
- 04:30 So the judge say, "What is your question?" So the lawyer put the question to the judge, "I want just to check whether the person they are referring to is a man or a la-, a lady" or just something simple. The judge looked at the party and say, "What is your view?" Defense objects saying, "There is no reason that this question should be put to the witness."
- 04:54 Prosecution say, "Oh you know, you can put it but I can't see any grounds. We'll not get any result." This took 15 minute discussion. The chamber adjourned and said after the break we'll give a decision. The witness heard the question already. So what – and then when we came back, the judge asked the witness to say, "Yes or no."
- 05:20 So you have victims, you allow them to participate but they are more like stand by, and you watch what is going on instead of really participating. So as far as people don't have a clear understanding of what the victims will be doing in the criminal trial, I think it's not worth, but still, let's be happy about it and expect that things will improve.
- 05:47 DJH: 'Kay. Mr. Adjovi, thank you very much for your help . . .**
- 05:56 Thank you.
- 05:56 DJH: . . . cooperation and learning.**
- 05:58 Thank you very much.
- 05:59 DJH: Okay.**