



Voices from the Rwanda Tribunal

Official Transcript: Charles Adeogun-Phillips (Part 5 of 9)



Role:	Prosecutor
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Interviewers:	Lisa P. Nathan Robert Utter
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Charles Adeogun-Phillips discusses the impact of the UN's requirement for broad regional, linguistic and racial representation at the Tribunal, which influences recruitment policies. He further emphasizes the need for practitioners, and especially judges, to understand the cultural context of Rwanda when considering evidence. Adeogun-Phillips reflects on the treatment of victims and witnesses in Court, on the merits and shortcomings of adversarial and inquisitorial legal approaches, and the need to involve Rwandans in the justice process.

The transcript of Part 5 begins on the following page.

Part 5

- 00:00** Robert Utter: My great pleasure to be with you sir.
- 00:02 It's a pleasure to be here too.
- 00:03** **RU: My name is Robert Utter. I was a former Chief Justice of our Supreme Court in Washington State.**
- 00:09 It's very nice to meet you.
- 00:10** **RU: And served there for 24 years.**
- 00:12 Wonderful.
- 00:13** **RU: I was a judge for ten years before that at various levels . . .**
- 00:16 Wow.
- 00:17** **RU: . . . but, and I've done, as you noticed on my card, some arbitration mediation since then, which I believe firmly in, because I've seen the non-predictability of what happens in our formal legal system.**
- 00:30 Yes.
- 00:30** **RU: But this has been a great privilege for me to participate here and learn more about the human side of what occurred. My questions will not primarily be directed to the legal issues . . .**
- 00:42 Sure.
- 00:42** **RU: . . . but more to the human issues because people can see in the written record what occurred.**
- 00:47 Absolutely.
- 00:49** **RU: But the human part of it is what makes the difference . . .**
- 00:51 Absolutely.
- 00:52** **RU: . . . what happens. I thought I'd start by asking you what you would say to future tribunals and future judges who serve in a similar situation, that might not appear in the written record. What kind of advice could you give, let's start with tribunals, to make them more effective, more victim sensitive?**
- 01:13 Well, I, I started off with one, one of the, the, the m-, the issues that I find most central, with the benefit of hindsight of course, which is what I . . . the, the, the ability to involve, to involve the, the, the locals in the formative years of investigation, which is what this tribunal lacked of course. I'm not so sure that the Yugoslav tribunal suffered from that but certainly the Sierra Leonean tribunal improved on that . . .

- 01:43 . . . because it, it, the, the tr-, Sie-, Sierra Leonean tribunal was the first example of the truly hybrid tribunal in the sense that it was a, it was derived as a result of a cooperation between the government of Sierra Leone and the United Nations. And it had a sizeable element of local involvement which, which must have made all the difference to the initial investigations and indeed the prosecution of the crimes they were, they, they, they had to face, which is essentially what we lacked here.
- 02:17 I don't think there was any Rwandan involvement in the work that we did, the initial, certainly not in the initial investigations. And in the prosecutions, I don't think we started employing Rwandan nationals in the Prosecutor's office until at least eight years into the life of this tribunal.
- 02:38 And you can, you can imagine what the, the, the practical effect of that is, in, in, in the sense that w-, we may have, we may have based many of our trials on erroneous theories and stra-, strategies, not out of negligence but out of ignorance . . .
- 02:54 RU: Yes.**
- 02:55 . . . and not being able to understand the, the intricacies of what really may have taken place. But as I said in the case of Rwanda, it's not a criticism in the sense that you can also understand why they were not able to do that much earlier, because it, it was, the UN rules in some cases may conflict with the, the, the need for e-, ex-, expedient investigations in the sense that you are not allowed to discriminate between sides.
- 03:24 And it would have been difficult to be able to ask potential employees, "Well, what's your ethnic group?" to be able to decipher whether or not they, they, they were on the right or wrong side or whether or not they themselves had been involved in any atrocities. So, one understands why that may not have taken place in the, in the, in the earlier days of, of, of our work, but certainly there's everything to be said for, for having a sizeable amount of local involvement.
- 03:57 The, the, the only other thing that I would talk about is to have a very straightforward but logical strategy and theory, case theory. One of the initial drawbacks of the prosecutions of the genocide was a lack of a unified case theory, and, and that is a problem which, which directly emanates from the lack of involvement of locals.
- 04:35 It's one of the worst things you can do as a prosecutor, to, to base your strategy on a theory that is not unified. Why does that happen; in the sense that the prosecutor's office of most international tribunals are divided into various trial teams.
- 04:55 The risk of operating in that manner is that it is easy for each trial team to imagine that they're prosecuting a different genocide. So, you would often find Team A proceeding on this theory, Team B proceeding on this theory, but at some stage, people have to understand that there was only one genocide in Rwanda.
- 05:21 And even though we're divided into 20 trial teams, each, each, each headed by a senior counsel, it is one case, it is one theory, it's one genocide over three months, taking place in one country. Why does that happen? That happens because lawyers by their

very nature are egocentric. Lawyers like to take charge and each lawyer wants to distinguish himself and flourish.

05:46 **RU: Unlike judges.**

05:47 Well . . . perhaps.

05:49 **RU: We'll talk about that later.**

05:51 Well we, we've, we've had, we've had a different experience then.

05:52 **RU: Yes.**

05:53 We'll come, we'll come to that later. But in essence, lawyers tend to want to take charge and no one lawyer, rightly or wrongly, wants to confer necessarily with his colleague. What we found in the practical result of that is that various trial teams at some stage in the formative years may have adopted conflicting theories to what is essentially one case. So a unified case theory certainly would help; local content, a unified case theory.

06:23 The, the, the other drawback in my experience of working here is getting the right personnel on board from the onset. The tribunals are structured around the formation and the setup of the General Assembly. This is not the UN General Assembly and the UN has a habit of structuring its offices around the member states. Well, it's all well and good if you want to have diversity, but this is a court and we have serious work to do.

07:00 It shouldn't really matter if every lawyer in their office is Canadian, if they can get the job done. There is no point proceeding to replicate the UN General Assembly in a law office if only that's going to cause conflict. If I can't speak to my colleague, who has a civil law background, and I speak French and he speaks Italian, what's that going to achieve?

07:25 If he can't understand where I'm coming from and he can't draft a brief in my language and I can't understand what he's drafted in his language, how are we going to get the job done? The practical effect of that is just delays. If we have everyone from Burundi, as long as they get the job done, it shouldn't really matter. Your qualifications should matter more than your nationality.

07:52 I think that again, the need to sort of replicate the, the, the UN General Assembly and to have diversity in, in, in the organization may have led or may have slowed down this. And I, I will suggest that yes, it is, it is right to have diversity but have the right people on the job and it doesn't reall-, it shouldn't really matter if everyone is European or African or whatever; get the job done. So that would be another, another advice that I, I would have in, in retrospect.