

Official Transcript: Charles Adeogun-Phillips (Part 7 of 9)



Role:	Prosecutor
Country of Origin:	Nigeria/Great Britain
Interview Date:	6 November 2008
Location:	Arusha, Tanzania
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.

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Part 7

- 00:00** Robert Utter: You've read my mind on the reconciliation issue.
- 00:02 Oh, absolutely.
- 00:03** RU: Le-, let me ask if perhaps the use of multiple defendants in a trial is a handicap to more expeditious justice.
- 00:14 That was going to be my next drawback.
- 00:15** RU: Mm-hmm. We're even then.
- 00:16 The, the, the fourth, the fourth, the fourth point, the fourth point was going to be the, the, the w-, our charging strategy.
- 00:23** RU: Yes.
- 00:24 The, the charging strategy has to change. I have been involved in both joint trials and, and, and single trials and I, when we look at the, at both, it's clear that unless there is evidence and strong evidence of defendants acting in concert or one of a conspiracy, there will be no useful purpose served in proceeding on joint trials.
- 00:54 In my, in my days in the UK, we would have eight or ten defendants in the dock at the same time. But that was based on a stronger case of conspiracy where we could use one witness to, to, to implicate all . . .
- 01:13** RU: Yes.
- 01:13 . . . rather than call ten witnesses to implicate one for one, one minor aspect. But in, in this, in, in this environment, it hasn't worked very well. In the early days, one of our prosecutors, Louise Arbour, wanted so much to replicate what had happened at Nuremberg and she, she, I was actually in the office in 1998 as legal adviser, and in the sense that I hadn't actually addressed this issue in your, to your colleague's question and she'd asked what positions I had held in the office.
- 01:44 I, I, I worked as a legal adviser for one year in my Kigali days before I came across to Arusha as prosecution counsel. And when, when I worked as legal adviser, I was involved in the formative years of the indictment drafting process. With Louise Arbour, we once drafted an indictment that was rejected, thankfully, (___), with the benefit of hindsight, that implicated 27 people, Bagosora and 27 others.
- 02:12 It was what we call the global indictment. It was an indictment that she had a concept in, in, in her mind to replicate Nuremberg, to charge those who had the greatest responsibility, in other words the entire cabinet . . .
- 02:25** RU: (___), mm-hmm.

- 02:26 . . . the entire military command and the political figures in a single indictment and charge them with conspiracy to commit genocide and other, other, other enumerated acts of genocide.
- 02:41 In rejecting that motion to amend indictment or the motion for joinder, a Pakistani judge in those days called Judge Khan, an extremely brilliant man, went through a myriad of reasons and said, “First of all, how are we going to accommodate 27 accused persons in the court rooms here? Where are their lawyers going to sit? Each accused person has two counsels and two investigators.”
- 03:10 “Would the infrastructure present in Arusha accommodate?” He dealt with all the practical issues and then he dealt with the legal issues and said, “Well, delaying effect on the trial.” God forbid, one accused person falls ill, so what? It's, the whole process . . .
- 03:27 RU: () stops, exactly.**
- 03:28 . . . is halted for 27 others. And he, i-, it's an interesting decision to, to, to read because he went through both the legal and the practical difficulties of actually joining 27 people in one case in the context of international crimes. () thought this wasn't feasible.
- 03:46 We then went back to the drawing board and that indictment is what became five cases today. The Mil One case, the Mil Two case, the Gov One case, the Gov Two case, and one other case. They would have been joined in one single trial, and that would have, I mean we would have been here . . . Butare has been going on for seven years or eight years – it's only got six accused persons in it. You can imagine if we had 27 people sitting in the dock in Arusha. It wouldn't have worked.
- 04:17 With an inquisitorial approach by the way . . .
- 04:20 RU: Yes.**
- 04:21 . . . it may have been different and that may have been what Arbour was thinking . . .
- 04:25 RU: Mm-hmm.**
- 04:26 . . . based on her mixed experience . . .
- 04:28 RU: () of course, yes.**
- 04:29 . . . in Canada. At the back of her mind, she may have been thinking, alright, maybe this is – we, we can do this But that would have worked if we had a purely inquisitorial structure, because then, it would be the invest-, inve-, investigating judge that would take charge of the process and it would all be dealt with on paper and that may have worked, but not, not in an adversarial system. So in the sense that who is doing it right, well who is doing it differently? Sierra Leone is doing it differently.

- 04:59 They have joinders too but they're joinders that are based on actual conspiracies of people acting in concert, where they can use minimum witnesses to, to, to achieve convictions. I think Cambodia is (___) it right. I've been out there, my, my, my colleague who co-heads the, the prosecution there is Robert Petit. I worked with Robert Petit in Kigali in, in 1997 and '98 and I know Robert very well, he's Canadian. And I've spoken to Robert in relation to their approach.
- 05:34 Cambodia certainly has its drawbacks in, in , i-, in the sense that, one sense that there's an element of friction between the government and the, the UN part of it. But in se-, in, in, in terms of the structure of the court for crimes that are being prosecuted several years after the events, I, I, I think the structure they have is going to expedite the proceedings. So we have Sierra Leone which is a good example. We have, we have, we have Cambodia as well.
- 06:03 But the ICTR's main success it's in, has been in i-, in i-, in its ability to actually apprehend the high level criminals which, which up until recently, Yugoslav didn't, the Yugoslav tribunal didn't succeed in doing it. So they all have their pros and cons. In terms of if you're, if you're looking for the example of, the best example of international cooperation, it's the ICTR. By 1997 or '98, the ICTR had almost the entire cabinet in custody.
- 06:38 In one, in one operation in Nairobi, the NAKI Operation, nine or ten people were arrested including the prime minister and several members of his cabinet. So in, in that sense, when you cross reference to the fact that Milosevic was only apprehended or surrendered to the ICTY after so much diplomatic wrangling and then now Karadžić, y-, you, you, you get the sense that in terms of, the best example of international cooperation has come from here, clearly.
- 07:08 RU: Been helpful. I have a confession to make, I (___) my confession. I was once a prosecutor as well so . . .**
- 07:15 Most judges . . .
- 07:16 RU: . . . so I hear what you're saying with some sympathy.**