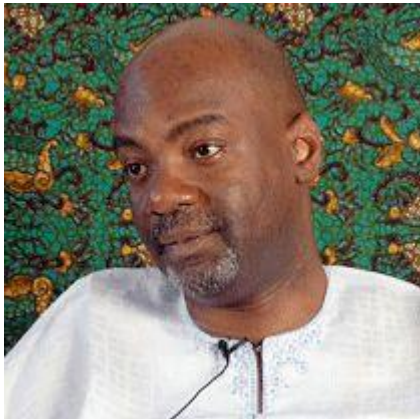




Voices from the Rwanda Tribunal

Official Transcript: Charles Adeogun-Phillips (Part 6 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 6

- 00:00** **Robert Utter: And who would be the person wise enough to put this together?**
- 00:04 The people who decide or pass resolutions to establish courts. I think, and when you look at the, the issues that we're having to deal with in relation to the completion strategy, you would understand very quickly that the people who administer the tribunals do not actually understand for the most part what lawyers do.
- 00:35 When – and, and digressing a little bit, when, when, when the, the General Assembly or the Security Council encourage you to wind up your proceedings, one gets the impression that somewhere, they think that that's the end. It's like a UN mission. We all pack up and go and we dismantle and we go, but this is a court.
- 00:53 We have people serving jail terms and someone has to administer those, those tariffs. People will come up for a release; there will be issues on appeal based on new evidence that would arise. There has to be some sort of structure, some sort of tribunal that would exist in perpetuity.
- 01:16 And I wasn't so sure that those issues were foremost on their minds when, when, when they passed all sorts of resolutions and, and, and encouraged us to do all sorts of things, and you would find as you talk to members of the Security Council and, and diplomats that they, they're actually surprised when you say this.
- 01:35 Say, "Oh right," so yeah, I say, "So what happens when someone comes up for, for release? Who supervises the, the, the prison terms and who or how do we deal with cases that, that arise on appeal?" So it, it's interesting. I mean one, one just has to, to, to suggest that as we go along, there is a body out there that is, is experienced in, in, in establishing international tribunals.
- 02:02 That said, one has to bear in mind that the ICTR and the ICTY are indeed unique exper-, experiments that will never be repeated; they will never be. We would never find institutions like this again. First of all, they've cost too much money, they've gone on for so long, they're extremely elaborate in their, in their setup. And more importantly, the crimes that the ICTY and the ICTR have had to deal with will never in our lifetime reoccur.
- 02:36 I, I, I can almost guarantee it. I can't imagine anyone in this world sitting back to allow the magnitude of what took place in Rwanda to reoccur. You can see the response to Congo in the last week. In, in, within five days, we've had five diplomatic missions from the U.S., the foreign minister of France, and the British foreign minister all coming to Kigali and saying, "We have to solve this problem."
- 03:01 Therefore, it is going, it is, to my mind personally, it is unlikely that the world would sit back and allow what happened in Rwanda to happen. So in terms of the scale of the atrocities, I can't imagine us ever having to confront this sort of crime. So the crimes themself-, in their selves are unique, either here or in Bosnia.

- 03:20 In terms of the cost, I would very much doubt that the world would ever see tribunals that will be funded from the regular budget of the United Nations. You only need to look at Cambodia and Sierra Leone and East Timor to see that. It would never happen. They would be funded by donations from interested parties. They would never have the sort of funding that they've had from the, from the regular budget. So all in all, these are very unique experi-, experiments that would probably never, ever be repeated.
- 03:56 RU: Is there some place where it's been done right in your estimation?**
- 04:00 Sierra Leone.
- 04:02 RU: Sierra Leone.**
- 04:03 Well this, this, (___), my, my criticisms by no means suggest that these, that this, this experiments haven't worked. They were, they were the formative tribunals after Nuremberg. Some, (____) . . .
- 04:15 RU: The word 'ad hoc' has been used.**
- 04:17 They're ad hoc.
- 04:18 RU: It describes it.**
- 04:19 Absolutely. They had to st-, we, we had to start somewhere.
- 04:21 RU: Mm-hmm.**
- 04:22 And they have created the basis for the permanent International Criminal Court of The Hague. The law has been developed here. I always say that this is the genocide court. The Yugoslav tribunal is not the genocide court; it's a war crimes court.
- 04:37 This is where the law of inter-, of genocide has been developed, so the-, they've been extremely successful in their own right. In other respects, they've had serious drawbacks, but in terms of the jurisprudence and she's asked me about practical experiences dealing with rape victims, the, the, the practical difficulties of preparing a rape victim for, for her testimony and having to deal with cultural issues – it's all been developed here.
- 05:07 The issues that serve as negative, as far as these tribunals are concerned, concern the framework of the operations. Is it logical for these tribunals to proceed on a hybrid of rules? Should they be more inquisitorial in their approach for example, not because of the tribunal but (___), but because of the nature of the crimes that they seek to investigate.
- 05:35 If you're investigating and prosecuting crimes that are large scale crimes, that have taken place several years before the institutions were, were established, should we not consider a more inquisitorial approach? Like in Cambodia, where there's an

investigating magistrate that compiles his own dossier and he takes charge of the situation.

05:56 Questions such as, “Is an adversarial approach more relevant to international crimes?” Those are things that we can derive from the work of the ICTR and the ICTY. So in that sense they’re extremely successful because we’re able to actually judge – look at Milosevic for example. Milosevic died during his trial based on the adversarial system. The length of the proceedings . . .

06:23 RU: God was the ultimate judge.

06:24 Exactly.

06:25 RU: Yes.

06:25 Absolutely. Absolutely.

06:27 RU: The suggestion I’ve heard is that the civil system may well work better.

06:32 I agree.

06:32 RU: I hear you saying that.

06:33 And I agree; having done this for ten years, I agree. I, I didn’t know anything about the civil system before I came here . . .

06:38 RU: Yes, yes.

06:39 . . . but I’ve seen it work and I, I’ve spoken and I’ve researched it, and I think in the context of such broad, large scale crimes, the inquisitorial system may be a lot more relevant to the work that we do here, disclosure issues, disclosure of exculpatory material. They just, in the, in the, in the present case in Government One, one of the accused persons is unwell.

07:08 The trial has been going on for several years. The latest prognosis is that he wouldn’t return to court in six months and that’s just an estimate. Now, the trial is at, it, it’s, it’s just basically halted.

07:24 RU: Yes.

07:25 Now, would an inquisitorial approach have been different in that case? I don’t know enough about the civil system, what would they have done in that case, it may be different. It’s all dealt with on paper I understand.

07:37 So the ability for an accused person to insist to be present throughout the trial, either his own trial or that of his co-accused may or may not impact on, on, on that system. Those are the lessons we’ve learned from the work we’ve done here, and in that sense, these institutions have been extremely successful. Who’s done it right? Well, I wouldn’t use the word right or wrong; I would use the word different.

- 08:03 Sierra Leone has adopted a mixed system with a local content, but then Sierra Leone is different in the sense that S-, the Sierra Leonean tribunal is located in the jurisdictions . . .
- 08:17 **RU: (____), of course.**
- 08:18 . . . where the crimes were committed, another drawback of the Rwandan tribunal. We are so far removed from the victims of these crimes that they don't even understand what goes on here. I go to Rwanda, I have Rwandan friends. Half the time when they see me: "What's going on there?" Which is sad.
- 08:39 Outreach or no outreach, it's a, it's a different ball game when you can walk into a court room and follow the trial of someone who raped your sister or killed your father. It has to have a healing effect and aid to reconciliation. The fact that the tribunals are situated away from the location, the locus, must, must have some, some, some negative bearing on their success.