Chapter 2
Expert Witnesses and International War Crimes Trials: Making Sense of Large-Scale Violence in Rwanda

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The international prosecution of war crimes—by the Yugoslav and Rwanda Tribunals or the permanent International Criminal Court—generates lengthy, detailed judgments about what happened during times of extreme political and military conflict. These international courts are increasingly expected to provide a careful accounting of the patterns of the conflicts, the nature of the different harms suffered, the circumstances that lead to the violence and the roles of different individuals, armies and militias in creating the conditions in which crimes were committed. In this painstaking work, the courts amass volumes of evidence, witness testimony, documents, videos and photos. The resulting written judgments, many running into hundreds of pages, condense this massive archive into a detailed analysis and accounting of the conflict and violence. The judgments both author a narrative about the causes and contexts of large-scale violence and are part of the record about what happened.

In this chapter, I am interested in international criminal courts as institutions that produce their own narratives about extreme violence. International courts are complex institutions, comprised of different bodies—the registry, trial chambers, the Office of the Prosecutor (OtP)—which act in varied, and sometimes contradictory, ways. Judicial accounts of 'what happened' emerge from this complex and changing space. Within the limits of this chapter, I want to begin the process of examining some of the practices, dynamics and actors that underpin and shape how trial chambers come to understand and produce an account of extreme violence. My focus here is on the Rwanda and, less-so, Yugoslav war crimes tribunals which have been in existence for more than 15 years and have generated their own substantial record through judicial decisions and judgments of the events in these two regions. As institutions of comparative long duration, the Rwanda and Yugoslav Tribunals also have had their own life cycle and knowledge trajectories.

Both institutions have relied upon expert witnesses to provide some of the evidence about the historical, social, political and economic contexts of the conflicts in

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D. Zarkov, M. Glasius (eds.), *Narratives of Justice In and Out of the Courtroom,* Springer Series in Transitional Justice 8, DOI 10.1007/978-3-319-04057-8_2,

the two regions. In this chapter, I consider the role of 'context expert witnesses', as they are sometimes called, in shaping the tribunals' account of what happened. My focus is specifically on the expert testimony of Alison Des Forges, a renowned international human rights activist and Africanist scholar, who testified in 11 cases at the Rwanda Tribunal. I explore the transcripts of her testimony in two Rwanda Tribunal cases, *Prosecutor v. Akayesu*[1] and *Prosecutor v. Bagasora*[2], to explore three themes. First, and as noted above, I am interested in international criminal courts as dynamic, multivocal and multifaceted institutions. Within transitional justice literature, there is a growing interest in international courts as structured by social relations (Kelly and Dembour 2007). Scholars of the sociology of knowledge have similarly emphasized the importance of exploring the 'day-to-day actions and processes through which' knowledge is made in order to understand the 'specific *historical contexts*' and 'multidimensionality' of social action (Camic et al. 2011). This chapter explores the microdynamics *within* the Rwanda Tribunal to highlight some of the people, circumstances and practices that shaped, at least in part, the tribunal's account of 'what happened' in Rwanda in the 1990s.

Second, Alison Des Forges' testimony provides a useful lens for exploring the relationship between expert evidence as a type of knowledge and the Rwanda Tribunal's use of it to author an account of the causes and contexts of large-scale violence. Mary Poovey (1998; see also Hacking 2002; Valverde 2003) has highlighted the relationship between the format of knowledge and the 'available ways of organizing and making sense of the world' (Poovey 1998, p. xv). That is, the ways in which knowledge is presented and represented can tell us something about the world views that are possible at a particular time and place.

Finally, I argue in this chapter that some expert witnesses, Des Forges in particular, were more influential than is sometimes credited by tribunal insiders. Des Forges' testimony, I argue, had a significant impact in individual cases, particularly in the early stages of the Rwanda Tribunal. Her evidence provided a compelling framework within which the genocide was understood and provided the basis for the legal determination that the crime of genocide was even applicable. Her evidence was additionally influential in subsequent cases by shaping, in part, the way defence challenges to the dominant narrative of the genocide unfolded. I explore some aspects of this dynamic through a discussion of Des Forges' evidence in *Bagasora*. The transcripts of her evidence in this case also reveal a changing Rwanda Tribunal that was evolving as an institution with its own personalities and cultures. The resulting judgment in *Bagasora*, I argue, reveals a court that was both more knowledgeable about Rwanda while less confident in its ability to know the causes and contexts of the 1994 genocide.

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[1] ICTR-96-4-T (Trial Chamber), 2 September 1998.

[2] *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, ICTR 98-41-T (Trial Chamber), 18 December 2008.

This chapter is based on a series of interviews and documentary analysis of both the Yugoslav and Rwanda Tribunals, but with a much more focused look at the International Criminal Tribunal for Rwanda (ICTR).[3] My arguments here are sometimes comparative, particularly in the first two sections of the chapter, where I trace the meta-narrative about the conflicts that shaped, in part, the establishment of the two tribunals in the 1990s. In other respects, this chapter provides a close reading only of the Rwanda Tribunal and only of certain cases heard at that institution. Legal arenas are curious knowledge-producing sites. Each case provides its own context in which decisions are made about what knowledge will be considered authoritative (Valverde 2003, Chap. 1). At the same time, certain institutional norms, practices and cultures are constituted and travel from one case (or 'trial chamber' in the ICTR/Y context) to another through legal precedents and the movement of people (i.e. judges at the ICTR often heard more than one case at the same time) (Eltringham 2011). In a further complication, some of the trials at both tribunals, but the ICTR in particular, took years to complete and generated their own cultures, contexts and courtroom dynamics. My discussion here is thus rooted, as much as possible, in the particular circumstances of individual cases. But, as I discuss below, the dynamics in one trial chamber can and do have impacts on other cases.

This chapter is not about the Rwanda genocide. It is much more narrowly a consideration of the knowledge practices of the international tribunal tasked with prosecuting crimes committed during the genocide. Underlying this study is a concern with the ways in which the causes and contexts of large-scale violence, such as the Rwanda genocide, are understood in 'official' knowledge-producing sites. The complexities of the Rwandan genocide and the politics around how the genocide is talked about and understood have been the subject of extensive, sophisticated analysis, (See e.g. Eltringham 2004; Hintjens 2008; Pottier 2002) a review of which is beyond the limits of this chapter. This scholarship, and the concerns expressed about the reduction of complex violence to simple causal explanations, influenced my thinking in this chapter. But my concerns with the simplification of complex forms of violence should not be interpreted as in any way denying the scale and the devastation of the violence in Rwanda in the 1990s including the 1994 genocide.

This chapter begins with a brief explanation of expert evidence and its role in international crimes prosecutions.

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[3] Funded by the Social Sciences and Humanities Research Council, Canada grant number 410-2007-2043. Interviews with 13 'context' expert witnesses, various prosecution and defence counsel, staff of the Office of the Prosecutor and Registry and incidentally, two judges were conducted, most but not all, on the record. The individuals interviewed were connected to one or both of the tribunals. Transcripts of expert witness oral testimony, primarily from the Rwanda Tribunal, were then analysed. Finally, the written judgments of the Rwanda Tribunal were analysed in terms of their use of expert witness testimony.

The Place of Experts in International Criminal Trials

Expert evidence is the oral and written testimony of 'a person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute'.[4] In criminal trials, expert evidence is generally thought of as coming from the forensic sciences: DNA testing, fingerprints, lie detectors and the like. The expert in DNA, for example, might testify before a criminal court that the DNA found on the weapon matched the DNA sample taken from the defendant.

International criminal courts also rely on expert evidence of this type and might include, for example, forensic anthropologists who testify about the state of bodies recovered from a mass grave or an expert on typewriters who can testify that a document likely was produced by a certain brand of typewriter (and hence linked to a particular political or military office). But, expert evidence can also come from the social sciences and humanities, though this form of expertise tends to receive much less scholarly attention.

At the Yugoslav and Rwanda Tribunals, experts with backgrounds in anthropology, history, political science, law and sociology testified in multiple cases about the social, political, historical contexts that lead to, and then shaped, the outbreak of armed conflict and violence in these two regions. This expert evidence—often referred to as 'context' or 'linkage' evidence—was primarily driven by two factors relating to the structure and objectives of international war crimes trials established in the 1990s.

The first factor is the definition of the crimes prosecuted by the courts, particularly genocide and crimes against humanity, which require evidence of ethnic, racial or religious social groups and the historical context of social relations between groups. A crime against humanity is a criminal act—torture, killing, rape—committed as part of, and in furtherance of, a larger attack against a population. The Rwanda Tribunal statute goes further than the Yugoslav Tribunal to specify that the attack must be against a population identified by 'national, political, ethnic, racial or religious grounds'. Genocide similarly is the commission of certain acts with the intent of destroying a 'national, ethnical, racial or religious' group. Evidence is thus needed to establish both the existence of distinct groups or populations and their relations overtime (to explain, for example, why a particular act should be understood as part of a larger attack against a group). For example, in the Rwanda Tribunal decision in *Akayesu* (discussed in more detail below), the Court heard lengthy evidence about how the conception of 'Tutsi' and 'Hutu' as distinct groups within Rwandan society was historically and socially constructed and then hierarchically ordered in colonial and post-colonial Rwanda. In *Akayesu*, the Rwanda Tribunal had the difficult task of determining if Hutu and Tutsi were distinct groups within the meaning of the crime of genocide which is limited to 'national, ethnical, racial or religious groups'.[5] Further,

[4] Quoted in *Prosecutor v. Perišić*, IT-04-81 (Trial Chamber), Decision on the Defence Motion to Exclude the Expert Reports of Robert Donia, 27 October 2008, Para. 6.

[5] For a critique of the tribunal's reasoning that Tutsi and Hutu were 'stable and permanent' groups in Rwanda in 1994, see (Nigel Eltringham 2004, Chap. 1).

the court heard evidence about the history of post-colonial Rwanda, where acts of violence were committed against Rwandan Tutsi and Hutu at different historical junctures. This historical context was offered to demonstrate that in different periods of political uncertainty, ethnically inflected violence was orchestrated by Rwandan elites to consolidate their hold on power.

The second major driver for context expert evidence is the tribunals' focus on prosecuting the *leaders* said to be responsible for large-scale violence. Other legal processes within the affected regions, such as local criminal trials or 'traditional' justice measures, are meant to address the 'foot soldiers' or ordinary citizens who engaged in violence and atrocity. While both tribunals have prosecuted some defendants who might be seen as comparatively minor figures, both institutions have dedicated most of their resources in the pursuit of complex, often lengthy 'leadership trials', against individuals like Slobodan Milošević, Radovan Karadžić, Ferdinand Nahimana and Théoneste Bagasora, who were seen as the intellectual, political and military leaders in the regions.

The leadership focus of the tribunals necessitates expert evidence first to demonstrate that the accused were indeed leaders, something that might not be apparent from their formal title, and second, to establish a link between the 'leader', who may be distant from the physical locations of violence, and the atrocities committed 'on the ground'.

Context expert witnesses have attracted some controversy within the tribunals. Some lawyers and judges I interviewed felt these experts complicated and distracted the proceedings from the more central focus on prosecuting and defending individual accused. This view resonates within some transitional justice scholarship that has portrayed the production of a historical accounting of 'what happened' as incompatible with the narrower criminal trial structure and focus on individual guilt. Some scholars have suggested that war crimes trials are too prone to political interference (over which version of history will be authored), (Arendt 1963) or too limited as legal venues, with the rigid rules of evidence narrowly focused on guilt or innocence, to produce a thick accounting of the causes and circumstances of large-scale conflict and atrocity (Eltringham 2009; Petrovic 2009; Simpson 2007).

More recently, Richard Wilson (2011), in an extensive study of the use and production of history in contemporary international criminal courts, has concluded that historical evidence, and the production of a record, is now a regular feature of war crimes prosecutions, required by legal elements of the crimes prosecuted and made possible by the large amount of documentary, witness and expert evidence compiled by the courts. Not only do contemporary international courts routinely engage in 'historical forays', he argues, the resulting accounts of history could even be seen as 'reputable' (Wilson 2005).

The remaining discussion in this chapter builds in part on Wilson's conclusions that the production of a historical record is now a recognized feature of contemporary war crimes trials. But while Wilson may be correct that the Yugoslav Tribunal, at least, is producing 'reputable' accounts of the conflicts, this begs the question: which accounts of what happened become reputable and at what junctures? In the next section, I argue that context expert evidence at the two tribunals was driven in part

by a meta-narrative about the causes of the conflicts in Rwanda and Yugoslavia that prevailed in the 1990s. That narrative, I suggest, depicted the conflict and genocide in Rwanda as elite-orchestrated, ethnically directed violence, designed to create the conditions to secure or maintain power.

Making Sense of Violence

In the mid-late 1990s, when both tribunals were beginning their work, there was a growing consensus in some international policy and scholarly circles that the conflicts in these two regions were problematically portrayed as resulting from tribal, atavistic hatreds that were beyond rational explanation or effective intervention. Scholars and policy practitioners began emphasizing the conflicts as constructed, elite driven, modern and intentional.[6] Robert Hayden, a US-based scholar of the Balkan region and two-time expert witness at the Yugoslav Tribunal, describes Western state and institutional responses to the war in Yugoslavia as 'informed by a particular teleology—in which the demise of Yugoslavia was an aberration, a disaster caused by evil politicians, whose culpability needs to be shown so that normalcy can be obtained' (Hayden 1999). Scott Straus (2006), writing on the Rwanda genocide, refers to a 'new consensus' about Rwanda that emerged in scholarly and activist work in the 1990s. 'Rather than seeing the violence as chaotic frenzy, as state failure, or an explosion of atavistic animosities, scholars and human rights activists alike stress the violence was modern, systematic and intentional'.

The 'new consensus', as Strauss calls it, emerged partly in response to simplistic characterisations by Western media and some political leaders of the conflicts as 'ethnic' or 'tribal' violence. Warren Christopher, then secretary of state in the USA, described the violence in the Yugoslav regions in 1993 as a 'problem from hell': 'The hatred between all three groups . . . is almost unbelievable. It's almost terrifying, and it's centuries old'.[7] Christopher's phrase—'a problem from hell'—became the title of Samantha Power's Pulitzer prize-winning book which was a strongly argued *tour de force* about US government failure to officially recognize and respond to genocide and mass violence in various non-US locations, including Yugoslavia and Rwanda. For Samantha Power, Christopher's comment reflected a US government strategy to absolve itself of responsibility by characterizing the violence in Yugoslavia as an 'amoral mess', centuries-old grievances that were beyond US intervention (Power 2002, p. 306).

Against the powerful trope of 'tribal violence', the new consensus was, on one level, an attempt to insert complexity and responsibility (not only of local leaders

[6] See e.g. (African Rights 1995; Des Forges 1998; Malcolm 1998). The discussion in this section is narrowly focused on what I see as a meta-narrative about these conflicts as elite orchestrated. A close reading of the vast scholarly literature that provides detailed analyses of the contexts of the violence in these two regions is beyond the scope of this chapter.

[7] Interview with Warren Christopher, *Face the Nation*, CBS, March 28, 1993, cited in Power 2002, p. 306.

but also Western decision-makers) into the discussions about mass atrocity. As some scholars have noted, however, the responsibility called for in analyses like Power's is narrowly focused on international/US responsibility to *save* the regions from violence (Orford 2003). Other scholars have noted that 'elite responsibility' explanations for some contemporary conflicts can generate their own distorting policy prescriptions that fail to take account of the complex, multi-level contexts within which violence has unfolded (Autesserre 2010; Kalyvas 2006).

For my purposes, an understanding of violence as elite orchestrated (rather than mindless group violence) suggests an epistemological claim that has important implications for international criminal prosecutions. If the conflicts are understood as caused by rational, calculating individuals, then what happened in Rwanda and Yugoslavia 'was not tribalism run amok; it was genocide' (Straus 2006, p. 33) or, other, related, international crimes. The dominant conception of the conflicts as stemming from criminal actions of individual political, military and social elites makes it possible to conceive of international criminal prosecutions as a justifiable international response to large-scale violence.

The understanding of large-scale violence as resulting from cynically contrived, local, elite-orchestrated ethnic conflict, I suggest, exerted a powerful conceptual pull in the early days of the tribunals. The lawyers, judges, clerks hired to work at the tribunals were drawn from various regions across the globe and almost none of them had any working knowledge of the conflict regions or even the local languages. Faced with the enormity of prosecuting the most serious of international crimes—genocide and crimes against humanity—the judges and lawyers sought a framework within which they could explain what had happened. 'What they [International Criminal Tribunal for the former Yugoslavia (ICTY) judges] pretty much all feel is a need for a vehicle to frame the alien world they are being asked to render judgments on', according to Robert Donia, a 14-time expert witness at the Yugoslav Tribunal.[8] Navanethem Pillay, former judge and eventual president of the Rwanda Tribunal, described the approach of judges in the first Rwanda Tribunal case of *Akayesu* in similar terms: 'We judges agreed that you can't avoid this question of history of Rwanda, otherwise it's just one ethnic group killing another ethnic group with no reason why. History is necessary for an understanding of why the conflict occurred. Our first judgment—*Akayesu*—did this' (Quoted in Wilson 2011, p. 72).

The prosecutors Robert Donia encountered at the Yugoslav Tribunal were not looking for just any kind of historical narrative, he found, but 'one that could be inserted in indictments, could impute motivations of actors as rational rather than crazed and wild. In general, make some sense'.[9] Making 'sense', for both Donia and Judge Pillay, is rooted in a dichotomous way of conceiving the violence; as tribal or atavistic hatred on the one hand or intentional elite orchestration on the other. Within the logic of this dichotomy, the tribunals' focus on elite responsibility is not seen as a 'version' of what happened but simply as common sense; a laudable rejection of the 'ancient ethnic hatreds' characterization.

[8] Author interview with Robert Donia, 8 December 2010.

[9] Author interview with Robert Donia, 8 December 2010.

The context experts who testified in the first 5 or so years at the tribunals, but the Rwanda Tribunal in particular, provided the judges and the prosecutors with the means to construct such an explanatory framework. The most often cited expert witnesses in the first few years of the tribunals were from Europe or North America, with doctoral degrees in topics related to the regions (in various disciplines: history, political science, sociology, anthropology, law), who had a grasp of the local languages, knew the history, culture and political contexts and had done (often considerable) field research in the regions.[10] These experts were able to explain the regions to the lawyers and judges in ways that provided a framework within which the tribunal personnel could 'make sense' of what happened.

In the following section, I explore this 'framing' role for expert context evidence in the first case before the Rwanda Tribunal—*Prosecutor v Akayesu*, which resulted in the first conviction for genocide by that court in 1998. In this discussion, I focus on the expert evidence of Alison Des Forges, the woman who would become the most frequently appearing expert witness at the tribunal and an internationally celebrated expert on the Rwanda genocide. Her evidence, I suggest, had a significant impact in that first case in framing the judges and prosecutors' understanding of what happened and shaping, in turn, how defendants in subsequent cases responded.

Framing Genocide: Prosecutor v. Akayesu

When the Rwanda Tribunal was established in 1994, the OtP turned for assistance to three Rwanda experts: Alison Des Forges, a US-based, long-time scholar of Rwanda who, at the time of the genocide, was working closely as a volunteer (later as an employee) with the organization that would become Human Rights Watch, André Guichaoua, Professor of Sociology at Université des Sciences et Technologie de Lille, France and Filip Reyntjens, Professor of African Law and Politics at the University of Antwerp, Belgium. These three acted as advisors and provided training to the OtP. In the early days of the tribunal, the three would meet with the OtP in various locations, even at Reyntjens' home in Antwerp, where the prosecutors would, as Reyntjens' described it, 'pick their brains' about Rwanda and the genocide.[11]

In 1994, when the genocide in Rwanda unfolded, few scholars or diplomats were familiar with the country and Des Forges, Guichaoua and Reyntjens constituted a sizeable part of the scholarly community undertaking research on Rwanda.[12] Filip

[10] At the Yugoslavia Tribunal, some of the experts who testified in the early cases included: Robert Hayden, a professor of Anthropology at the University of Pittsburgh, Pennsylvania, in the USA, who testified for the defence, James Gow, Professor of International Peace and Security, at King's College, London, UK, for the Prosecution and of course Robert Donia, who was working with Merrill Lynch in the USA when he began testifying for the Prosecution in 1997. Some of the experts who testified at the Rwanda Tribunal are discussed below.

[11] Author interview with Filip Reyntjens, 5 August 2010.

[12] Other notable (international) scholars of the region included J.P. Chretien, who testified as an expert in the Media trial, Gérard Prunier, who authored his own, well-regarded account of the 1994

Reyntjens[13] describes the researchers working on Rwanda as a 'very small community', who, in the days immediately following the genocide, saw their role primarily as activists: 'trying to save people, lobby the international community, et cetera'. This small research community, Reyntjens notes, 'implicitly' divided the research labour of studying the genocide among themselves. Reyntjens settled on an intensive study of the 3 days following the downing of President Habyarimana's plane on 6 April 1994, seen as the start of the genocide (Reyntjens 1995), while Des Forges, along with a team of researchers from Human Rights Watch, undertook a massive study of the genocide itself (Des Forges 1998). All three—Reyntjens, Des Forges and Guichaoua—became an important resource for the OtP with each testifying in numerous cases (with Reyntjens also testifying once for the Defence).[14]

Of the three, Alison Des Forges testified the most often, giving evidence in 11 ICTR cases, as well as appearing in numerous legal proceedings in national courts (Switzerland, Canada and Belgium, for example) involving the Rwanda genocide and several immigration cases (in Canada and Belgium).[15] At the time of her death in 2009 in a plane crash in New York State, Des Forges was a leading figure in human rights circles, in part because of her commitment to testifying about the Rwanda genocide.[16] Des Forges' study of the genocide, published as *Leave None to Tell the Story*, became seen by lawyers and experts at the tribunal as the ICTR's 'bible'.[17] It won the Raphael Lemkin award by the Association of Genocide Scholars and was listed as one of best books of the year by the Los Angeles Times. Des Forges herself was named a MacArthur Fellow and given a 'Genius Grant' in 2000.[18]

Alison Des Forges was the prosecutor's main expert witness in the first ICTR case of *Prosecutor v Akayesu* and she was on the witness stand for 8 days in 1997. The transcripts of her evidence[19] suggest a very positive interaction between her and the three judges who comprised the trial chamber: the presiding judge, Laïty Kama,

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genocide (Prunier 1995) and has appeared as an expert witness before the International Criminal Court, Catharine and D Newbury and Johan Pottier.

[13] *Prosecutor v. Bagasora*, transcript, 15 Sept 2004, pp. 10–11.

[14] *Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, Élie Ndayambaje, ICTR-98-42*. Reyntjens testified on behalf of Kanyabashi.

[15] *Prosecutor v. Nahimana* et al., transcript, 20 May 2002, p. 8.

[16] For an array of tributes to Alison Des Forges, see: http://www.hrw.org/en/news/2009/02/13/human-rights-watch-mourns-loss-alison-des-forges. Des Forges held a PhD in History from Yale University and her dissertation was on early Rwanda history, published posthumously as *Defeat is the Only Bad News: Rwanda under Musinga, 1896–1931* (University of Wisconsin, US, 2011).

[17] Author interview with Filip Reyntjens, 5 August 2010.

[18] *Prosecutor v. Nahimana* et al., transcript, 20 May 2002, p. 7.

[19] Court reporters are present in every courtroom and record everything that is said in court each day by judges, lawyers, witnesses and translators. The daily transcripts, in English, French, and usually the other working languages of the court, are mostly available from the tribunal websites. My analysis in the following discussion is based on a review of transcripts, court decisions and judgments and interviews with other expert witnesses but not Alison Des Forges whom I was unable to interview for this research.

from Senegal, Lennart Aspegren, from Sweden and Navanethem Pillay, from South Africa.

In the blended common and civil law procedures at the tribunal, judges can and do ask follow-up questions. In *Akayesu*, the judges asked wide-ranging, open-ended questions about a myriad of things, from the meaning of ethnic identity as a sociological term[20] to very specific questions about Rwandan history and the events leading to the genocide.[21] At one point, the presiding judge even commented to Des Forges about the large number of questions asked of her: 'Madam, I hope you will understand that we are taking a lot of your time because your testimony is particularly of great importance. You know very well Rwanda, as well as its history. And also the judges will be benefiting from your knowledge . . . I hope that we will not be accused of asking too many questions'.[22]

Des Forges' role at this point in the tribunal's life cycle was largely educative. The transcripts of her testimony read like a series of erudite mini lectures delivered to the trial chamber. While she was cross-examined by defence counsel for many days, her mini lectures unfolded with little challenge or interruption.[23] The prosecution's questions, like the judges', were also wide-ranging covering topics not limited to the matters raised by the indictment. At one point, the prosecutor asked Des Forges about the conduct of the Muslim community during the genocide, a subject not related to the charges against the defendant, Jean-Paul Akayesu. 'As you know', the prosecutor explained, 'this process, in as much as it is a trial, is also a process for keeping accurate records for posterity'.[24]

The written judgment in *Akayesu* relies significantly on Des Forges' evidence, particularly in establishing the history and context leading up to the 1994 genocide. The second section of the judgment, entitled 'Historical Context of the Events in Rwanda in 1994', contains 33 paragraphs summarizing Rwandan history from the start of German colonial rule in 1897 and concluding with a brief overview of the events in April 1994, which the trial chamber then explores in more detail later in the judgment (ruling that a genocide did occur). Alison Des Forges is the only witness specifically referenced as an authority for the chambers' summary of Rwandan history.

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[20] Judge Aspegren, for example, asked on the first day of Des Forges' testimony, 'Doctor, when you say what we would now call ethnic groups, what are you referring to?' (*Prosecutor v. Akayesu*, transcript, 11 Feb 1997, p. 32). He then followed this question, with a second: 'Now, when, since you are speaking about Rwanda, which groups are you thinking of?' (p. 33) And, then, finally, he gets to the crux of the issue 'Second question, are these to be considered as ethnic groups, really . . . ?' (33).

[21] For example, Judge Laity-Kama asked about the ethnic composition of the RPF invading army in October 1990, and then followed that up with questions about contemporary language usage in Rwanda (see e.g. *Prosecutor v. Akayesu*, transcript, 12 Feb 1997, pp. 124–125).

[22] *Prosecutor v. Akayesu*, transcript, 12 Feb 1997, pp. 105–106.

[23] This 'lecturing' role for context experts is found also in the early stages of the Yugoslavia Tribunal. Robert Donia describes first two testimonies at the ICTY, in 1997 and 1999, as an 'extended lecture of the region' (Interview with author, 2010).

[24] *Prosecutor v. Akayesu*, transcript, 24 May 1997, p. 135.

http://www.springer.com/978-3-319-04056-1

Narratives of Justice In and Out of the Courtroom
Former Yugoslavia and Beyond
Zarkov, D.; Glasius, M. (Eds.)
2014, XVII, 188 p. 6 illus. in color., Hardcover
ISBN: 978-3-319-04056-1