

THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

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International Center for Ethics, Justice and Public Life

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2017

Interviewee: Florence Ndepele Mwachande Mumba

Interviewer: Susana SáCouto [Q]

Date: May 25, 2016

Location: Washington, DC

**Q:** I want to thank you, Judge Mumba, for your willingness to share your time and your thoughts and your reflections with us for the Ad Hoc Tribunals Oral History Project.

**Mumba:** Thank you very much. It's a pleasure for me. And I'm really excited to be here.

**Q:** I'm so excited to begin our conversation. As you know, this is not going to be a journalistic interview, this is more of an oral history interview. So the idea is I will prompt you with some questions — so some questions about your background, and your role vis-à-vis the Ad Hoc Tribunals — but the aim of the interview session is for it to really be narrator driven, for it to be your story. And so the idea is for you to bring forth your memories, your reflections, and your thoughts that seem the most important and relevant to you. There are lots of articles and scholarship about the Ad Hoc Tribunals, and there's certainly your jurisprudence that comes out of the Tribunals. The aim of the Ad Hoc Oral History Project is really to fill the gap with the stories and reflections and memories of the people who were the practitioners and experts, and judges and defense attorneys who were there in the first ten years of the life of the Ad Hoc Tribunals — the time period during which there was institutionalization of the international criminal law project, right? It was the first attempt since Nuremberg to try international crimes at an international level. And so we're looking to talk with prosecutors, judges, but also some of

the staff and people under the radar, like interpreters, and some of the victims and witnesses staff. And we're trying to get reflections from a variety of different folks who worked in the early years of the Tribunals, and who can talk about their memories and reflections.

**Mumba:** The witness ones must be very interesting, the ones with witnesses.

**Q:** Yes, there is actually — we have a link on the Project website to a video clip of one of our interviews with a staff member who worked with the witnesses. So that's the idea, it's about your experience and your reflections around the work and how you got there. So there will be several, four or five topics I want to hit on, but again, just general questions and you should just feel free to expound. So the first has to do with how you got to the Ad Hoc Tribunals, your journey to the Ad Hoc Tribunals. The second set of questions is around your initial impressions upon arrival, and the corollary to that is what were the challenges that you saw and faced when you got there. A sub-set of those questions is about working in an international environment: linguistic and cultural, and legal, different legal systems, the backgrounds of the judges that you worked with, and which, if any, of those brought challenges. And then a little bit about your major cases and what your role was and how you read their impact. About the major cases, we obviously have a lot of literature, but I'm really interested in your perspective and your thoughts on them. And then the last set of questions is about tying the experience of the Ad Hocs both backwards and forwards. So are they a legacy of Nuremberg, and how do the Ad Hocs contribute to the future of international criminal justice? So we're going to do a little bit of reflection back and forth. Those are the main areas.

So I want to go back and start with how you got to the Tribunal, and maybe a little bit about the history that brought you there, that prepared you to take this job, and how you found yourself in the middle of the first international criminal tribunal since Nuremberg.

**Mumba:** Yes. I qualified as a practicing lawyer from the University of Zambia Law School. It was a small law school established about five years before I qualified, and then I sat for my bar exams in Zambia, and I qualified, I was called to the bar in March 1973. After my call to the bar, I started practicing law in the Department of Legal Aid, a government department assisting people who cannot afford private lawyers' fees. So in that department we used to handle all types of cases: criminal cases, family law, contracts, mortgages and things like that. It was like being a "jack of all trades." I worked there for about six years, and then I became the director of the department, so I headed it. So from there, after another three years, I was appointed to the High Court as a judge. And I'm the first woman in Zambia to be appointed a High Court judge, and that was about October 1980; it was quite challenging.

So when I was appointed to the High Court, at that time the judges handled all types of cases, so again you're a jack of all trades: criminal cases, family law, contracts, property law, commerce, banking, all that came into play. So as I worked as a High Court judge, after some two and a half years being alone, two more women were appointed to the High Court bench. At least there were three of us, so I had company. [Laughs] So we went on, the three of us, and then over the years, other women judges were appointed. We were still very few, but at least we made an impact.

So I worked at the High Court bench for some eight years, and then I was promoted to the Office of Ombudsman, Investigator General, outside the judiciary into the mainstream administration investigations wing of government. Again, I was the first woman to be appointed Investigator General. It was an exciting office because we investigated mainly public officials and public institutions in the manner they handled personnel, in the manner they handled the government work, the government projects, things like that. So I went for training on how to investigate public institutions along those lines, administratively. I enjoyed my stay in that office. Together with other African ombudsman institutions, we formed an African Network of Ombudsmen. We encouraged other African countries to establish similar offices, because we found out that an ombudsman's office, in the way it was set up in Zambia and other African countries, allowed government an opportunity to explain policy, and it also allowed the aggrieved people to have their causes investigated without cost to them. The network worked very well. It strengthened democracy, because people had a way of reckoning with their bosses if things did not go well. I enjoyed my work very much.

While I was Ombudsman, I was elected to the United Nations Commission on the Status of Women. I represented Zambia, so I used to go to New York for meetings. Interestingly, whilst serving on the Commission, the issue of rape as a war crime was brought to the table by some NGOs, who were stakeholders. The Commission agreed and tabled a Resolution to the General Assembly for rape to be recognized as a war crime, or if on a large scale, as a crime against humanity. Little did I know what that would lead me to. So, our effort succeeded, the Resolution

was accepted by the General Assembly and rape was included in the Statute of the United Nations International Criminal Tribunal for the former Yugoslavia, (ICTY), as one of the crimes under the Tribunal's jurisdiction. That was the UN Resolution 827 of May 25, 1993.

After eight years on the High Court and then another eight years as Investigator General, that's when the opening to the Tribunals came. The United Nations Secretary General asked member states for judges' nominations for the ICTY And, fortunately for me, my government nominated me. [Laughs]

**Q:** As an Ombudsman with eight years of experience on the High Court.

**Mumba:** Yes. So I was saying to myself, "My, God, I don't know what to do, how could I go there?" And I asked the Deputy Chief Justice then, and he said, "Well, a lawyer can read, can write and can reason. You're going to go there and learn what you don't know and then experience it." So my name was put forward; fortunately, I was supported by many countries, and got elected by the General Assembly. That was 1997. So when the communication came, what was interesting was that there was a radio program from Malawi, and my late husband was listening to it. When we were elected—myself and the Egyptian judge, Judge Amin El Abbasi El Mahdi—there was an announcement on the Malawi radio. So my husband said, "You have been elected!" I said, "What?" He said, "This is a UN job, you have been elected." I said, "No, I don't believe you." So he said, "Okay, they will repeat the news in half an hour," and so I heard it then.

**Q:** That's how you learned.

**Mumba:** Yes, that's how I got the news. The news later appeared in our newspapers in Zambia. I couldn't believe it. At the same time, I was excited about it, but more frightened, [laughs] you know. So I went to meet with the Chief Justice who had already been informed officially. Then I started preparing to leave the office. I found out more from the UN about the conditions of service and the other details which were required. And then I looked at my family. Fortunately for me, the first two children were already Grade 12, or O-Level; the the third one was in the process of completing O-levels; and the last baby was also completing the equivalent of Grade 10, just in the middle of high school. I found out about schools in The Netherlands and, eventually, left for The Hague [laughs] in November 1997. I arrived there about the 10th of November to familiarize myself with the place. I was so well received and, eventually, all judges were sworn in: one Judge from Egypt, Judge Amin El Abbassi El Mahdi; the late Judge May from the UK; Judge Shahabuddeen of Guyana; Judge Rafael Nieto-Navia, from Colombia; Judge Almiro Simões Rodrigues, from Portugal; and Judge Wang Tieya, from China. Thereafter, we were appointed to our respective chambers.

I was assigned to Trial Chamber II, with the late Judge Antonio Cassese presiding, and the late Judge Richard May. During the first case Judge Cassese presided over, I was busy learning as we sat. It was intense, because the way the prosecutors framed the indictment was so detailed. It had so many counts, and you had to review it in and out to understand it, and the evidence was *huge*,

so you had to go through all the statements, and things like that. On the application of international law, I had to learn and learn fast, because at the national level we were only applying national law. But then what was interesting was that most of the criminal law principals were similar, except that if you're talking about crimes against humanity, extermination, and genocide, such crimes were on a large scale, systematic and things like that. So it was easy to understand the elements of those crimes that we were handling. So I started with Judge Cassese and Judge May, and then I decided that I wanted to preside, because I found it quite exciting. So my first trial in presiding was — there was only one accused, it was the case of Anto Furundžija. That was the first case I presided over. Before that I had handled a plea of guilt in Dražen Erdemović.

**Q:** Erdemović?

**Mumba:** Our Trial Chamber completed that case but I sat with different judges. And then *Furundžija* (Lašva Valley), was a full trial. It was sad for me, because it was the first case I handled which opened up the truth about the way women were being treated during conflict, you see. This particular victim was in her home, she was arrested and taken for interrogation, so it just hit me. So we went through the trial, we completed it. What was interesting was that the accused had a Serbian lawyer trained in the USA. So he was quite sharp. [Laughs] It was quite exciting. But we managed and closed our case. Unfortunately for us — or maybe fortunately — there was a document, a medical report, which the Prosecutor had just come across. So then they gave it to the defense, and the defense applied to the Trial Chamber to reopen the trial; they

sought to table the medical report. We said, "Okay, the procedures are there, the rules are quite okay," so we reopened, heard the medical doctors, the specialists on the defense side and the prosecution responded. And then we closed the trial and went ahead to draft our judgment. We decided, as a Chamber, that we were going to issue the judgment on the 10th of December, to coincide with the signing of the UN Declaration of Human Rights, so it was exciting. And we did that; we convicted him of the charges against him. What's interesting in this case is that Anto Furundžija himself was only interrogating the victim, Witness A, and then there was somebody else, another soldier who was threatening this lady, raping her and saying all sorts of vile things against her. So because Furundžija was there throughout, and was using those threats to get information from her, he was convicted as a co-perpetrator. So we were able to cover that. And then from there it became history.

I handled other cases. There were three cases that were dealing with mostly sexual assaults against women. It was quite bad — the Serbs ran over the residential areas of mostly Muslims, and arrested quite a number, mostly young girls, and detained them for quite some time, and abused them, used them like slaves, doing the chores and things like that. Some of the younger girls actually went missing, because sometimes they would take them out with other people and, you know, abuse them like they were slaves, and sell them. So there were three of them, the accused, and they all worked in tandem doing all these things, and Dragoljub Kunarac was the senior of the other two. The others were, Radomir Kovać and Zoran Vucović. When we tried them all, we gave them long sentences. Of course, Dragojulg Kunarac got more than the other two, but they were all criminally responsible for what happened. So it started hitting me how

vulnerable women can be in times of armed conflict, anywhere — be they in their homes, they are not safe; be they on the run, they are not safe. It's really, really a serious problem for women; they suffer more, and their families too.

And then with the other cases, [Vidoje] Blagojević, and other accused persons came on the scene, it was similar. And in the other cases also, they were detaining mostly men who didn't want to move out of where they're supposed to move, in Vukovar. Muslims should leave and things like that; the way they were tortured, the way they were ill-treated and killed just like that. One of the cases we dealt with was comprised of a village called Ahmici, where the Muslims were attacked early in the morning so they couldn't even run; those who tried to run were attacked again and killed.

So there was a variety of cases where I could see that, while we have the laws of war, in the heat of passion nobody complies. The aim seems to be each conflicting side wants to kill as many of the other group as possible. And when we dealt with cases bordering on extermination, it was quite sad. But then these other cases we went through, and my experience with the witnesses who used to come, especially the women — those who survived in the *Kunarac* and *Blagojević* and *Furundžija* cases, those who were survivors and came as witnesses, the trauma they went through and the support they needed just [emphatic] to be able to come forward and give evidence.

The Witnesses Unit worked very hard to persuade them. Culturally, most of them came from societies where it was a stigma to be raped, so, they had to be encouraged. They were very brave, I must say, especially the younger girls; they were very brave. They came forward and gave us this evidence. Some of them, like some women who had lost their daughters, would break down, and we would adjourn just to make sure that they could come to — because we needed the evidence. You know the way criminal law is, [laughs] you need the cogent evidence, so we had to really, really be flexible, and get it all on record. But, yeah, it was very sad, very moving. You actually get affected sometimes. And then you go for counseling, or you talk with your fellow judges. But these are the very crimes we want to stop, you see, so that nobody goes through this again.

During my second term at the Tribunal, after I got reelected in 2001, the last two years— that was, 2003 up to 2005— I worked in the Appeals Chamber. So then I was able to handle appeals from the Rwanda Tribunal as well. Again there was another dimension of, you know, the Tutsis, the Hutus, and the cruelty and the killing and extermination, the genocide. It was intense; it was intense. But the good thing is that, looking across the cases from the former Yugoslavia and Rwanda Tribunals, we did encompass quite senior people who were running their governments then, and we held them accountable. So it left a record that, regardless of your status, if you're going to breach international law you are going to answer for it.

I'm grateful to the UN because, really, these were not easy tribunals to set up. There was quite a lot of opposition from even the ruling governments. Even though some of them were not

involved in the crimes, they felt that once the trials started, it will catch up with everybody else, yes. But the UN insisted and we worked very well, tough, but very well. All sorts of comments used to be made, but we said, "Look, as lawyers we are going to look at the law as it is, to look at the evidence as presented, and then write our judgments and deliver them accordingly." And the other thing we were very conscious of, we knew that people were expecting us to set historical records. We said, "In some cases it may be possible. But in a criminal court, you want proof beyond reasonable doubt. And when we acquit, we are not saying, this didn't happen, we are saying the evidence on record was not sufficient." That's the difference between a court of law and a commission of inquiry.

**Q:** That's right; that's so critical.

**Mumba:** Yeah, it's very critical because the accused persons, regardless of how hideous their offenses were, had rights. And the UN human rights standards are very high, I must say. We really made sure the accused had sufficient representation, and that their lawyers were qualified and experienced because that assists judges as well. When an accused person is competently defended it's much easier, even if you have convicted him, because you know every avenue has been sought to try and put up a valid defense. So it was quite satisfying from that angle. And I learned so much from the victims, from the witnesses, and from the accused persons themselves. For some of them, evidence was given that they were acting under orders, they couldn't escape because their lives depended on what they were ordered to do. Of course, yes, sometimes that happens. But then we discussed individual criminal responsibility, which in our jurisdiction did

not offer duress or compulsion as a defense, it was just a mitigating factor. So there was that difference, because in my national system duress may get you off, but in international law, no. Because international law is trying to make sure it covers the bosses, the political bosses, the generals, the foot soldier. And that was interesting because it's a whole kaleidoscope of people and actors. Some of the cases involved fairly junior suspects, but that was not an excuse. The political set-up is there, they work out their policies, they issue the orders, and then others implement those orders. And that was really good because the jurisprudence from Nuremberg was fully elaborated and applied, we brought in the modern thinking, modern warfare, and [emphatic] modern responsibilities. So, we felt that we did our best.

**Q:** This is an extraordinary set of cases that you just described, complex both legally and factually, with the amount of evidence, the witnesses, the trauma that most witnesses who were crime-based witnesses felt and experienced. It's an extraordinary accomplishment, a set of accomplishments for all of the people involved. I'm curious, those first few days, weeks, months on the bench, you were sitting beside the late Judge Cassese, and the late Judge May. How did you feel in those first few weeks and those first few months, you know, in light of this enormous challenge before you? In those first moments, how did you find your way?

**Mumba:** It was quite awesome. There was the late Judge Cassese, with all his experience and all his books. [Laughs] And then there was the late Judge May, with all his experience. And I was saying to myself, "These two are so superior in terms of experience, how am I going to fit in?" But they were so accommodating. And off the bench we could meet and discuss, and they

were very helpful. Because where I felt I needed understanding, they would explain and we would come to an understanding on how the various legal issues were interpreted. Because I was quite inquisitive the first few months, and I felt like I should learn as much as possible. At the international level things may not be that easy, but at least my colleagues were very helpful, and they contributed to my quick understanding and uptake. The fact that I was courageous enough or experienced enough to be able to preside — and yes, even when I was presiding with the two of them, they were still very helpful. So that really, really helped and gave me courage, so to speak, to go ahead.

**Q:** It sounds like you had a really positive bench, a positive experience. I think the other set of questions that I wanted to raise with you relate to people, judges and legal officers coming from different legal systems in a system that was largely, I think, originally based in common law but over time developed some civil law aspects, right? [Mumba: Yes] And so I wonder if you could say a bit about that, as well as cultural or linguistic, not just legal system differences but cultural and linguistic differences among your colleagues, among the litigants. What were the challenges with respect to those issues?

**Mumba:** Yes, speaking of the civil law system, I was fascinated about the way they handled criminal cases, the investigative judge concept compared with the prosecution as we had in the common law system, and how they translate the rights of the accused before the court —whether or not they are sworn in, whether or not they can call witnesses, and how much control a judge must have during the trial. There were some differences between the civil system and the

common law system sometimes in court procedure. But when we were working out the rules, we made sure that the guiding principle should be the rights of the accused married with the interest of justice. And then we would look at the legal issues involved to make sure that neither suffered, and it wasn't easy to balance the interest of the accused and the interest of witnesses.

There was another aspect in the procedure, the civil system — the witnesses, the investigating judges, for instance, in their system would record statements of the witnesses. Now how do you use them? In our common law system, it's oral, it's directed. But we reached that stage where we agreed and compromised and said, "Look, we lose nothing if we record witness statements." If the prosecution and the investigators did that, when the witnesses came into court they were shown the statements and they agreed to confirm whether or not those were their statements, whether those were their signatures. And if that was okay, then the witness was presented to the defense so that the defense could cross-examine. By then, the defense would already have the statements of the witnesses for them to prepare. So that worked very well. It actually shortened the time the trials took. And we lost nothing. The accused were within their rights, the witnesses were protected, and then we moved forward like that.

Of course, for crucial witnesses, they came on the scene so that they could actually explain their role and things like that. And expert witnesses had to come to court and give the evidence orally. But that was one way of marrying the systems. And when it came to sentencing, I learned so much, because the judges from France were saying, "If the crimes were committed within the same period and you have several counts, it's better to give a global sentence." Whereas in the

common law system, especially at the national level, we were used to imposing separate sentences for each count. The sentences would be ordered to run either concurrently or consecutively. So we were able to marry all those subtle differences and we started pronouncing global sentences.

The other aspect we learned also from our colleagues from the civil system was the way they view dissenting judgments, and separate opinions. There were arguments that if you dissent, you undermine the efficacy of the judgment. And from the common law system we felt, "Well, it may look like that, but actually it's not correct because in the legal profession, it is the only profession where we agree to disagree." So we always encourage a different point of view, because a judgment can be 80% correct, in my view, but there may be some aspects of the trial, either the procedure or the interpretation, that I may not agree with. So I should be free to express my views, either in a dissenting judgment or in a separate opinion. And that was encouraged because we felt that it is one way of developing this jurisprudence, which was so difficult.

**Q:** Right.

**Mumba:** Yes. So, those are some important areas where we married our differences and found out that actually, at the end of the day, we are the same. [Laughs] Yes. And then culturally, from the witnesses' point of view — it was mostly the Muslims and the stigma of rape, so the witness unit had to work very hard to make them understand that they shouldn't worry about the stigma.

We had to get our cases going so that, in the future, women are protected. And then some of the soldiers would ill-treat women so badly, thinking they'll never come and give evidence because they'll be afraid to be identified. So we introduced, through our rules, protective measures, so that witnesses were given pseudonyms. There was voice distortion, there was facial distortion, and it was sufficient to protect the witnesses. Some of them would be relocated, depending on how serious the impact would be back in their own country. And all those measures helped us to persuade the witnesses to come forward and tell the truth.

So we had all these cultural differences to deal with, because even when a witness was persuaded and came on the scene to give evidence, you could notice the reluctance in getting into details. Then you would be helpful as a bench, encouraging them to come forth and give you the evidence, explaining to them that nobody was blaming them. And then they came forward. For the younger girls, of course, we also explained, "We don't want another young girl like yourself to be a victim in the future, so please help the process." So those issues helped, because then they were made to understand that you don't lose anything if you go and give evidence. You are a victim; it's not your fault.

Then we also realized that there was a need for the Witnesses Unit to get psychological help and medical help for the witnesses, a move which the Tribunal supported. And some of the victims did get that help, so that they could get mental rest and composure in order to move on with their lives. Because some of the witnesses had been detained during the conflict for some time, it wasn't easy to come out of that and then face the world, and be able to pick up your pieces. The

whole working of the Tribunal was very conscious of that, and made sure that there was protection. But the criminal trial side also was just as rigorous, to make sure that the accused, faced the charges against them squarely; they had all the witnesses before them, they could cross-examine no matter what, and the judges controlled the trials all the time. So it worked out well.

**Q:** One of the issues that I'm thinking about, as you're talking — I think it happened in *Kunarac* where one of the lines of defense of an accused was to argue — I think it was Kovać — that one of the witnesses was actually his girlfriend, that there was a voluntary relationship between them, and therefore what she was saying, being a victim of rape and sexual violence, was untrue. This is a situation where the balance is difficult; you want to preserve the right to defense and to cross-examination, but then for a victim who was a true victim of sexual violence to accuse her of lying and of having a voluntary relationship is probably a very difficult thing for a victim to hear. [Mumba: Yes] And it's in those kinds of situations where the role of the court, of the judge, is so critical in terms of striking that balance. How did you manage that? How did you feel? Not so much the decisions, because we can read that, but in terms of how to — ?

**Mumba:** How to go around those emotions, and those provisions, yes. We looked at where was the victim in the first place. The victim used to be in her home, very well looked after, and then the war broke out, and the victim was abducted, or arrested from her lawful home, and then taken to these places, either a school hall or someplace else.

**Q:** Apartments —

**Mumba:** Yes, and apartments, and by soldiers who now became their superiors in terms of whether or not they had any voluntariness in what they did. So in that situation, these were mostly young girls, you are taken by the soldiers whom you are so afraid of, and you know that they've killed some members of your families and you are kept for some time. Of course you get to know them, how they come about and go, but, in our view, because you are detained you can't have voluntary will really. You can't have your will. So it's from that point where you look at these defenses where, "Oh, she was my girlfriend." Then it was a girlfriend under duress, and then these young girls felt that if they go out with these soldiers, or they become friendly, maybe they'll be released. That's what they were looking for.

**Q:** Of course.

**Mumba:** Yes. And yet they didn't find that, actually they were abused more, they were detained more and things like that. So those types of defenses didn't wash with us really, because we looked at the status of the victim, and also we would sometimes ask the soldier, the accused person, "Where did you pick up your girlfriend?" You see, that sort of thing. So in a war situation, you detain people, and even though you are a foot soldier you become a person of authority. So, the voluntariness on the part of the victim is restricted, yes.

**Q:** So that whole set of jurisprudence on coercive circumstances, [Mumba: Yes] has been an enormous contribution to the law in the context of sexual violence as a war crime or a crime against humanity. Those kinds of cases, the development of the argument you just laid out — of the coercive circumstances that you have to look at in the light of those circumstances in the defense argument — is incredibly important. In some ways it is incredibly important also now for domestic jurisdictions that are prosecuting international crimes, or even domestic ordinary crimes. Because this issue of consent and voluntariness and coercive circumstances comes back in many sexual violence cases, in other scenarios. So it's been incredibly helpful.

I think one of the other questions I wanted to get back to is how did your experience at the ICTY, and then later on the appeals bench, compare to your experience as a judge in Zambia? Either in your experience as a High Court judge or as Ombudsman. Was there anything incredibly different or surprising about your experience as a judge on an international tribunal versus your experience in Zambia?

**Mumba:** Yes, when I was on the bench in Zambia, of course having been the first woman, the gallery would always be full, because people wanted to see how I was handling the court.

[Q: Laughing] So I went through that, and of course when you deliver a judgment, the academics would comment on it, or even the people concerned. But because as a judge you are trained that you speak to the community through your judgments, you don't answer back.

So when I went on the international bench it was somewhat similar. It wasn't common to see an African woman presiding, yes. So the gallery would be unusually full, and what was

good from my experience was that I started noticing that more and more women were coming, not only in the gallery but also as practitioners to defend and to prosecute. So I felt that, okay, my work as a female judge contributed to getting more women to practice as prosecutors, defense counsels, and also to practice in the other areas of the litigation, the criminal cases. So that was good. It was quite interesting because, off the bench, when we would sometimes meet with judges from The Netherlands, or other European countries, we would be talking as women, but for me that was eye opening. "Oh, am I making a difference? I hope positively." [Laughs]

And from a national level, being the first one, it wasn't so easy to convince people that you would reach the same level of understanding in criminal law, and understanding of the justice system, so you really had to read twice as much, and study and do your research twice as much. At the international level it was the same, because coming from different countries we understand each other differently. And then coming from Zambia, not many of my fellow judges understood that we had a university in Zambia and a law school in Zambia, and I would be asked whether I was at Harvard, or Yale, or Oxford. And I would say, "Professors from those law schools came to Zambia," and that's what exactly happened because our government was able to negotiate, so we got more or less the same standard of learning.

And then when it came to practicing, there were really few differences; we could understand each other on how to approach different legal issues. So my own experiences, personal experiences were good. And then I was a married woman by the time I was appointed a High Court judge in Zambia, so my husband was the first Zambian husband to have a wife who was a

High Court judge. It wasn't easy for him but he used to laugh at that, yes. But he wasn't afraid of my robes. [Laughs]

**Q:** That's great.

**Mumba:** Yeah, so anyway it went on, so when we moved to The Hague he also came because he had already retired. He would be asked, how do you feel about this, and he was used to it. "Yes, she's doing her job. But there are limits, when she's a wife she can't cross that." It was great, yeah. But one of my children — sometimes if things didn't go right, then she would say, "Aha, what did the accused do to you?" [Laughs] You know, family circles and things like that. But otherwise it went on like that. It was quite interesting, I learned so much, especially about the way you approach international cases from whichever point of view. So when I look at the cases that are going on in the International Criminal Court I'm quite happy that at least most of the jurisprudence is there. Of course, they are breaking new ground in some areas, which is interesting and good. But the two Tribunals really set the standards very rigorously. So the record is quite good. And now that the Tribunals are going into the phase where they are more or less completing their work, I think there is a lot that is quite valuable to jurisprudence.

**Q:** Absolutely, I think their jurisprudence is a treasure trove of thinking on these issues. In the High Court in Zambia, did you sit as a bench of more than one judge, or when you heard cases was it as a single judge?

**Mumba:** In Zambia we sit as a single judge, at the High Court level. Now on the Court of Appeal, that's where you start having a bench of three. And now they have a Court of Appeal, but it was the Supreme Court Chamber, before the Court of Appeal was established, so the minimum bench would be three. And if there were an election petition, then it would be five. If there were a constitutional issue, then there'd be seven or more judges. Otherwise at the High Court level, regardless of the case you were handling, you were alone. We don't have a jury system in Zambia.

**Q:** Before you went to the ICTY, your experience was mostly on the High Court? Did you serve on the Supreme Court as well?

**Mumba:** No, no, just as I was leaving, that's when I was appointed to the Supreme Court, but I hadn't started yet. I was appointed in June then I had to go in October.

**Q:** Got it. So was there anything particularly challenging or interesting or different about sitting as a single judge versus sitting on a panel of judges in a tribunal?

**Mumba:** Yes, yes, it was quite different. Because you understood, even if you were presiding, that you had to give room to your fellow judges to ask questions. And that even if any of the two were asking a question you thought may not be right, you had to pretend that's okay, and only at adjournment could you go and discuss. Yes, so you always had to give room, and also when preparing your diary, you always had to agree. So it taught you to work as a team, and it also

taught you to respect your colleagues' opinions. So it was also a good experience at that level. When you're a High Court judge, you are like the boss, and you are dictating what happens. So when you are on the bench of three at that level, you also learn to work as a team. It was a new experience for me, but very enriching. Because I wouldn't ask a question of a witness, and then my colleague would ask and I'd say, "Oh, yeah, I didn't see that point of view." [Laughs] So it was very helpful to be three, actually.

**Q:** There was a kind of feedback.

**Mumba:** Yes, yes, it was very helpful.

**SS:** So the segue you gave me earlier was something I was thinking about when we talked a little bit about the major cases, really groundbreaking landmark cases — *Furundžija* and *Kunarac*, certainly in the area of sexual and gender-based violence. Were there other cases that stick out as particularly important in your tenure at the ICTY, and if so why? I mean, the ones that you spoke about clearly are ones that left a mark. [Laughter] But were there any other cases, major cases that you worked on, either at the trial level or later at the appeals chamber level?

**Mumba:** Yes, there were cases that involved senior army officials, Amir Kubura and Enver Hadžihasanović. Command responsibility, those were interesting cases because they taught me — because in the army, generally, you are told that you obey commands, no questions. And then

if you are given an assignment — of course this is a war situation — you ask yourself, "How much is the responsibility of the commander, or whoever, over the soldiers that he's responsible for and what they do on the ground?" And these were cases that brought out the responsibility, the command responsibility; you don't only wait for formal reports, you look out as to what is happening where you sent your soldiers or your platoon. If there are newspaper reports, radio bulletins, things like that, which are happening which could have put you on inquiry then [emphatic] liability may follow if no action was taken to prevent or stop war crimes being committed. So you don't only sit, wait for official reports, but you also make inquiries to be sure that what actually is going on, on the ground with the people you're responsible for, is going on according to law. So the chain of command mattered, and your responsibility mattered, and when I used to read these cases and the evidence I could see that there seemed to be more emphasis on responsibility, command responsibility, because you are looking after this whole number of soldiers, and they can do more damage than you as an individual can do. So the responsibility is much higher. And then you could see when the prosecution is prosecuting those cases how difficult it can be to connect the commander, or whatever his title is, to what is happening on the ground. That's very interesting, because most of the defense would say, "they didn't know," "those were not the orders," and things like that. But then you are the one in charge. So at least I could see that, although in the army they say you obey and things like that, you better be careful about what sort of orders; and then after that about what is actually happening on the ground, because it's your responsibility. Even in those formal professional military sectors, there is an aspect of individual responsibility that is really important. This trial was before another Chamber.

**Q:** So that's a good segue to our next set of topics. When you talk about command responsibility I think of Nuremberg, I think of the IMTFE [International Military Tribunal for the Far East], the Far East Tribunal. And I think of the fact that in those, certainly in the IMTFE, there were convictions for civilian and military leaders under this concept of command responsibility, with the Yamashita standard. So what do you think — do the Ad Hoc Tribunals carry the legacy of Nuremberg? How do they connect with Nuremberg and how would they move that legacy forward if at all?

**Mumba:** They do, they carry that legacy quite a lot. Because even when you are writing a judgment, you do a lot research on those cases to see how a given set of facts was interpreted according to the law as it was then. And then you say to yourselves, "Today is the modern era, and this is the way the armies are fighting, or the armies fought." You still find similarities in that the criminal responsibility aspect of it is more or less the same. It may vary in terms of level of responsibility or the level of damage done, and also the level of education sometimes comes in. And also what type of weapons are being used, are they allowed, are they not allowed? Do they do a lot of damage? Things like that. So you find that the cases from the ICTY built up on that, and that today, when you look at the jurisprudence, there is no escape, actually. No matter what type of weaponry you may have, what type of information you may have, in any war situation or armed conflict situation you can be caught up.

**Q:** So the other tribunal that we were just talking about before we started our conversation is the Extraordinary Chambers in the Courts of Cambodia. This interview really has to do with the Ad Hoc Tribunals, but my question is related to your experience on the Tribunals and how that experience reflects or is part of your experience in the Extraordinary Chambers. It's a different court, it's a hybrid court; it was established very differently from the ICTY. But you now sit as a judge on that court, and so my question is what do you think you bring from your experience at the ICTY to that court? Both your personal experience and also this sort of legacy, this sort of jurisprudential landmark — you know, the decisions that you worked on. What comes with you to your new position? Without having to talk about cases in particular, obviously.

**Mumba:** Yes. Yes. Especially the definitions of crimes like extermination, genocide, and crimes against humanity. The war in Cambodia covered more or less the whole country, and the atrocities that are being investigated and being prosecuted were large scale, so to speak. So you are looking at that, and if you look at the enforcement of movements of people and that sort of thing, you're trying to say, "Okay, this was the population, and this was the level of movement of people, and from the evidence these are the victims." You are looking at what I would call the balance of scales — would this be extermination, is it on a large scale? Or would it be single cases of murder? When you come to crimes against humanity, if you are looking at forced disappearances, inhumane activities where these cases are on a large scale, and you have to compare that with the population and the extent of suffering, so that you're not only thinking of, "It must be thousands." No, you relate that to the scale of how many people were actually victimized, and how serious was the victimization? And in the detention camps, how many

people? Because some of the statistics are there, actually on record, some have come from the witnesses. So you learn how to weigh the criminality according to the situation you find in a given case. The previous experience from the Yugoslav Tribunal, the Rwandan Tribunal, helps, yes. So that accused persons may not escape because you feel, "Oh, there were only a few people." Very much depends on the witnesses who were themselves victims and are able to give credible evidence.

**Q:** What do you think is the legacy of these tribunals more generally for the future of the international criminal justice, the legacy of the Ad Hoc Tribunals? Where do you think this field is going? And how does it relate to the work of the Ad Hoc Tribunals?

**Mumba:** I think the legacy will be mainly that we are shaping the way political leaders should rule their people regardless, in a developed or developing country. It's really about political leadership, how do you exercise political authority? There must be restraint. Yes, you've been elected into power, but the power is not absolute. And you are also bringing on the scene the concerns of international law through the international community, because the UN, so to speak, is the mouthpiece for the international community. So the UN and its Charters, Conventions and other international instruments, those pieces of legislation — we've seen them as dormant, but they become very much alive if you contravene them as a political leader. So you get to know all these treaties: on torture, or other agreements that would be bilateral or universal, and then they become alive because they're looking at you as the head of state or as a government. In your governance system, how much are you putting in so that the leadership is aware that they don't

have absolute power, that they cannot contravene international law, they cannot kill their people or mistreat them in any manner they feel like, or say, "Okay, these are internal politics, we are sovereign." There is no sovereignty that encompasses criminality in international law, there is no such thing. You are no absolute ruler because your power is not absolute.

And also it helps us towards global justice, because the UN is establishing these tribunals in different regions of the world. The ECCC is in the Asian region, so it is also bringing to the core the idea that legal values are the same regardless of who the people are, what their level of development is, and things like that. So the values of human rights are being encapsulated in these judgments, in the definition, which the tribunals are always giving out in their judgments. It's quite interesting because it's like a spiral — you are all caught up in this, this is the international standard, and this is what you have to comply with, regardless of how you came to rule your people.

**Q:** Do you see that reflected in the work of the permanent International Criminal Court? By that I mean the contribution of the ICC to the same goal that you have just talked about, you know, the safeguarding of human dignity and human rights?

**Mumba:** Yes. Although at the moment they seem to have cases mainly from Africa. But within those cases the legal value, the legal issues that are being examined and discussed, and encapsulated in the judgments, are so important. You see, I can compare that to some of the cases at the Tribunal for the former Yugoslavia dealing with the lower level actors. It's the legal issues that are important, not necessarily the status of the accused. So the ICC is also relying on

the jurisprudence of the Tribunals, so you're actually unifying the values of global justice. Yes, I see that coming out all the time. There may be some new avenues, because sometimes circumstances or factual matters on the ground may be different, but they can also be incorporated within the same legal values protected by the Statute.

**Q:** An extraordinary journey that we started in Zambia, and we end with the ICC. I wanted to turn it over to you and ask you if there's anything you wanted to add that we haven't already covered about your experience at the Ad Hocs, whether before, during or after.

**Mumba:** Yes, I believe that the international community through the United Nations so far has done a tremendous job. Because it's not easy to have funding for these international tribunals, the expense is huge. The administrative justice is expensive even at the national level, worse still at the international level. So when the United Nations is setting up any tribunal or court anywhere, the nations must be ready to support and contribute, so that the judges, the prosecutors, the defense counsel work in a free atmosphere, they are not constrained by budgetary issues. Because justice is not cheap, and you don't want to cut corners. If you start cutting corners, the victim will be the accused persons, and you don't want that to happen, because you believe that they have their rights and they must be respected regardless of whatever they did. Even if they are convicted, they must still be respected in the way you sentence them. Yes.

So the other aspect that is important is when the accused persons are convicted and sentenced, I think the international community should also look critically at where these sentences are served,

so that there is equality of treatment of convicted persons. Don't send some convicted persons where they will be under torture again, because the conditions of the prisons are so poor, and where they will be radicalized sometimes, and not assisted to see that the condemnation is not personal, it's the conduct. And that they can come out of prison and go back to society and be positive people and contribute. So that aspect needs to be worked on, because we are dealing with human beings. And as I always say, all of us are potential criminals; it depends on the circumstances and the time. So those who are being prosecuted today, tomorrow, if they serve their sentences, they have every right to go back to society and contribute. All you remain with is a record, and then that's it. The UN needs to look into that together with the international community. It's the international community which actually gives these assignments to themselves through the UN offices, so we do need to look at that and see how far we're going, how well that aspect of punishment can be straightened and looked at so that there is equality in the way the prisoners are treated.

**Q:** One other question that occurred to me was, as we move through the completion phase of the Ad Hocs — and also some of the hybrids, like the Extraordinary Chambers in the Courts of Cambodia and the Special Court for Sierra Leone — we end up in the international criminal law field having two, maybe opposite, sides of the spectrum. One is the permanent International Criminal Court, a continuation of an international body, but now a permanent potential jurisdiction around the world, a hundred and twenty-three or twenty-four states parties, not universal yet, but with a global jurisdiction. And then the other side of the spectrum, and it's related to the ICC, is this idea of the domestic prosecutions of serious international crimes. Of

course, the ICC operates on this principle of complementarity and not primacy, as the Ad Hocs did; it is a court of last resort, so it's not intended to really hear any of these types of cases unless states with jurisdiction are unable or unwilling to try them themselves. It's not to say that there aren't other mechanisms that are hybrid or hybrid-like; you have the Special Tribunal for Lebanon, you have the Bosnia War Crimes Section inside Sarajevo, inside the country, you have [Hissène] Habré being tried in Senegal for crimes committed in Chad.

So you have a whole architecture. You have different mechanisms, but essentially we're moving more and more to this — to opposite sides of the spectrum where you have a permanent International Criminal Court, and then I would say justice processes that are close, or closer to home, right? [Mumba: Yes, yes.] So what do you think the legacy of the Ad Hoc Tribunals is in the context of this new architecture, to the extent that we are unlikely to see another Ad Hoc in the same way, partly because of the budget and resources — they are issues that you talked about — partly because the political climate is different. You never say never, but it's unlikely, I think, that we'll see an ad hoc in the same form of establishment that the ICTY and ICTR were created under, Security Council Chapter VII Resolution authority. So if that's not likely, and maybe even if it is, what do you think is the impact of the Ad Hoc Tribunals on this new architecture of international justice, which is either Hague-based or closer to home?

**Mumba:** Closer to home. Actually, in Africa, a good number of lawyers acquainted with international law, those who are practitioners, are actually working with the African Union to set up and to strengthen our regional court. Because we already have the African Court on Human

and Peoples' Rights, we are working behind the scenes to establish an international crimes chamber within the Court. Because we believe — like the Europeans have the European Court of Human Rights and we have looked at the way European Union established the War Crime Chamber within the Balkans — we believe that we can also have an international and war crimes chamber within the same court sitting in Arusha, and have judges who can be sitting on an ad hoc basis as soon as we have suspects charged with those crimes. So that work is going on behind the scenes.

And I also worked with the South American group, they have an Inter-American Commission on Human Rights and the Inter-American Court on Human Rights, they are also working along those lines. Because we believe that if you get international justice closer to home, it's even better, it doesn't isolate the accused, the family can always be there and give support, and also the nation or nations in which these international crimes were committed will be there for the people to learn what is it that the international community is against. So it will be easier for them to witness the trial, it will be closer to home, it will be less expensive than flying people from Africa to The Hague, or from wherever. So we are moving towards that generally, and if at the regional level we can have these courts, then slowly we will work towards the national level. It will be — it's quite interesting. I did learn last year that Uganda already has an International Crimes Division in the penal court, and we are hoping that other African countries, other African jurisdictions will do the same, because then you can contain your people and all those who commit crimes against your nationals. The way forward is universal jurisdiction, provided you

set up the standards and you have the qualified personnel, and you have the judicial system that can accommodate that.

But what is interesting is that when I was working at the Tribunal for the former Yugoslavia, as soon as we started getting more and more cases there was a group of international lawyers, some of whom had practiced in the Office of the Prosecutor — who were working out — I think there is an association now of those who are prepared to assist countries at the national level to set up these types of jurisdictions and rule of procedure. The Office of Prosecutor, to train lawyers. There is that organization, so I'm sure national governments will be very ready to have that advantage, so that you become complete as a nation, you can try anybody who commits atrocities in your country, or your national if he commits international crimes elsewhere. So that way, slowly, individual countries are working on that.

So the legacy of the regional courts, it's closer to home. It may not be in my country, but I can go to Arusha and watch the trials that are going on there, and I can see that actually it's possible to have this type of prosecution in Zambia. And then the lawyers can discuss and persuade their national governments to take up and move forward with international criminal law, because it's essential, it will always be necessary. When we look at international criminal law, we are only looking at the war situation. There are so many other international crimes that have nothing to do with armed conflict. So if you encompass them all, then you slowly, slowly will put everybody on their guard; sovereignty will be not absolute. [Q: Exactly] Yeah, you have to comply with global justice standards.

**Q:** Of course that raises the issue of willingness of governments to —

**Mumba:** Of course, yes. To accommodate —

**Q:** Yes, and to do genuine investigation and prosecution of anybody within their government

[Mumba: Yes. Yes] who may be accused or maybe there's allegations or —

**Mumba:** Yes, you are right, yes. Because once we raise those international crimes, someone may think, "Aha, you're after the president." That's not the case. It can be anybody. Yeah, you have to tread very carefully and be persuasive, and that sort of thing. It will take a while but I can see it coming because, like I said, Uganda already has that, and I'm sure other countries also are working towards that. Yes, some good things come to a nation slowly through generations, but as long as the first step is taken, then you know there is hope.

**Q:** It's been such an extraordinary journey, Judge Mumba. I wanted to quickly, just in the last five minutes that we have— I didn't want to interrupt you as you were talking about the early questions. But I am curious. You are the first woman judge on a High Court, you are one of the few women graduating from your law school class. What motivated you to get into the law, to get into this field and make such a contribution? We talked also about being a role model on the bench at the ICTY and in Zambia for other women. It's an extraordinary opportunity and contribution. What motivated you to begin this journey?

**Mumba:** It was quite interesting, because when I was completing my O-Levels, I really didn't have any profession in mind. But our class teacher at Chipembi Girls Secondary School did say — the university was open in Zambia, it was still new, we just had the university established, but the university was open. So he was giving us advice to go there, spend a year, by the end of one year you will know what you are going to do. So, okay, I qualified, I went there, in my mind I wanted to study theology, I was very interested in religion, in theology. So when I went there at the university, I was disappointed, the University did not offer theology. And I said, "Now, what can I study?" I was not interested in sciences, medical studies and all, so I went to the Humanities section, and started finding out. I felt that, okay, I had enough geography, I had enough history, I had enough of everything I studied at Chipembi. So I wanted to do something new at the university.

And then I came across the law school, and I saw a few people lined up there. So I went there to find out what was happening. "Well, there's a law school, what does it involve?" And then I got to know what was going on, and I said, "Okay, this looks new, maybe I can." And then during that period our — one of our judges, Justice Lombe Chibesakunda was the first Zambian woman to study law, and to qualify as a lawyer. She appeared in a newspaper as a Zambian woman studying law in the UK. So when I saw this law school, and I recalled that, I said, "Ah, it's possible, so I can study law." In front of me there were two other women who were senior, one in the third year, I think one in the second year. So I went along in that group, so that's how I got into law school. I was warned by my friends that some boys were failing. I told them that I

would go along with those who were passing. Fortunately my parents supported me, and they were able to pay for my expenses, and that's how I got in, by curiosity, and then interest later.

[Laughs]

**Q:** It's interesting that you mentioned the judge who was, again, an example that this was possible.

**Mumba:** Yeah, yeah, yeah. It was possible for a woman to qualify as a lawyer, Judge Lombe Chibesakunda was the Head Girl at Chibembi school, so she was somebody I knew before. So, I went there, and I was being teased by the men, my fellow students.

**SS:** Fellow law students?

**Mumba:** Yes, yes.

**Q:** Really?

**Mumba:** Oh, yes, they would say, "Who is going to accept you as a lawyer? Who is going to believe you if you are defending anybody?" Because at that time, our culture was like the usual — you know, women at the low level, teaching, nursing, that sort of thing. So it wasn't yet common to accept a woman as a lawyer. Because even after I qualified and started working in March 1973, I faced a lot of bias. When I started work, my senior would escort me to prison and

demonstrated how to get instructions from clients. [Laughs] Yeah, I went through all those embarrassing questions and things like that, because of course it was new, and nobody, especially the men, were really willing to accept a woman as their defense counsel. So I really had to work extra hard, and then when it came to appearing in court, I first started appearing before magistrates. Even then there were some magistrates who were not really accommodating, but one has to go through that.

**Q:** And how did you handle that? I mean these are extraordinary challenges.

**Mumba:** Yes, they were extraordinary, so many challenges, and to imagine that I was actually much younger then, yes. So sometimes I would have a nasty experience, and then I'd go back crying to my senior to explain what happened, and they would comfort me, saying, "Yes, even for us men, we do face such judges, or such magistrates, so you just have to make sure you've prepared your case and you've prepared your client and you are ready." Yep. I will say this, when I was in law school one of my lecturers — I was sitting in front, so if I didn't explain something the way he wanted it, then he would tease me. "This is not Chipembi School," [Laughs] meaning my former secondary school. And I would get it, okay, fine, the lecturer was strict.

Yeah, I went through all these mazes, and also when I was appointed to the High Court, only to find that the facilities for women judges were not there. [Laughs] Yes! So now I had to chart this way, talking to the Registrar, talking to the Chief Justice, because most of the ladies there were

administrators and secretaries, some of them would say, "This is the first time we had a woman judge. So now, we have to have this facility," and that sort of thing. Embarrassing, but you have to go through it, yeah, until it worked. It wasn't easy. But it worked. And then my children would also not be used to reading about me in the newspaper. They would ask, "Ah, mommy, this is what you're doing? Everybody is asking about this, how do you have a mother who works in court...?" [Laughter] It's interesting, because it was fairly new. But now it's okay, it's no longer strange to see woman judges.

**Q:** I have a daughter and a son, but younger, seven and nine. My nine-year-old is my daughter. And it reminds me of the enormous persistence, resilience, and courage that it takes to deal with some of those challenges, which you certainly exhibited in your career as you navigated those challenges of being "first on the bench."

**Mumba:** Yeah, yeah, it was quite telling. And being careful who you mix with when invited to a social event or things like that. Our ethics are such that you have to be careful where you go, because some people will know you're a judge and they want to be close to you, and perhaps discuss their cases. So you really were guarded, yeah, in the way you carried out your social aspects of life. And that affected your family as well, including the husband as well, so you don't want any member of your family to be in conflict with the law because it could be quite embarrassing. So there were some responsibilities that fell on the family. I'm happy to say we managed. At first, people were, "Oh, I can't go and do this?" "Oh, yeah, yeah, please." [Laughs] But it worked well, and here we are. Now I'm a grandmother.

**Q:** Are you? How many grandchildren do you have?

**Mumba:** I have seven grandchildren. [Q: Wow!] Yes!

**Q:** That's wonderful. It's a different responsibility.

**Mumba:** Responsibility, yes, it is, yes.

**Q:** And maybe a little bit easier. [Laughter]

**Mumba:** It's quite a challenge, and — I'm glad because a number of young girls who want to go into law, who are yet in secondary school, they tend — if they come across me, they want to find out, "What was it like?" And I'm able to share, and also to encourage them, that if you see any career, you have to study. For any career, you have to study and really work hard, and get on top of things. And when you get admitted to the bar, take on cases, and don't be afraid of making mistakes, because when you take on cases they will teach you to think on your feet. And when you are new the bench is sort of accommodating, so you learn the hard way, everybody does. So it's a question of being committed, making sure you prepare your cases; that is important. Even if you don't get the judgment you thought you would get, you will feel satisfied if you did your best.

**Q:** Exactly, that's an important message for young lawyers to hear. Thank you so very much again, for your time, your reflections, and your memories. It's been a wonderful conversation and I appreciate it.

**Mumba:** Thank you. Thank you very much for having me. This is a platform I have enjoyed sharing with other people. I do hope that it will be a positive influence. Thank you very much.

**[END]**

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