

Official Transcript: Roland Amoussouga (Part 12 of 13)



Role:	Spokesperson for the Tribunal
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Interviewers:	Batya Friedman Donald J Horowitz Ronald Slye Robert Utter
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Roland Amoussouga discusses his extensive history working for the UN and with the Rwanda Tribunal. As Chief of External Relations he describes the function and operation of the strategic planning section of the Tribunal and reflects on the difficulty of working in Kigali immediately following the genocide. He highlights the need to train and prepare staff members sent to work in post-conflict situations, and emphasizes the need to create training manuals for humanitarian workers placed in conflict situations in the future.

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Part 12

00:00 **Robert Utter: The appeals court as I understand rejected the referral of cases back to the Rwandan courts, is that correct?**

00:09 Yes it's correct.

00:10 **RU: And what were the reasons for that?**

00:13 There are three reasons and I will invite you to try to get those decisions. The first chamber – some of the chambers, they, they grounded their decisions separately. But the commonality of the grounds that they retained were as follows: One believes that the institution of a single judge trying genocide case is weak and cannot resist pressures from the political body given the previous interference of the political body into the judiciary matters.

00:50 And they cited the example of Barayagwiza when the government put pressure on there. So, on that ground they believe one single judge cannot resist the pressure from the politicians if we transfer the cases to them. Second, they also grounded the decision on the fact that the sentencing structure of the Rwandan law does not provide for guarantee of the basic rights of convicted people.

01:28 By, by putting into the provision the fact that if you happen the maximum sentence to be applicable to ICTR transferees will be life sentence which you shall serve in solitary confinement. In the view of the chamber, this does not respect the basic covenant governing human rights, basic human right. That is not acceptable.

01:57 Thirdly, they also believe that the Rwandan are a, a – let me gather back my thought. The second one is the solitary. They also believe that witnesses cannot for the defense come and testify freely and depart and testify in the same commissions as prosecutors' witnesses who happen to be on the ground. They will not enjoy equal conditions because most of the defense people come from abroad and they are people who are asylum seekers or who have refugee status.

02:53 If they go back to Rwanda they are deemed to have abandoned their refugee status. And lastly, they believe that the law itself does not guarantee full proof of due process; that they need to fine-tune the law. So when it went before the appeals chamber, the appeals chamber dismissed two grounds and retained two.

03:28 The fact that the trial chamber believed that the institution of a single judge will not be adequate to guarantee the fairness and to resist basically the pressure of the political body, the appeals chamber was of the view that the chamber did not have sufficient evidence to support that findings.

03:55 Therefore they dismissed that ground and they sh-, tell the trial chamber that there is no statutory provision under international law that compel any countries to have more than one judge to try genocide cases. They understood the objections of the chamber

that they were not convinced that the chamber has enough ground to base its decision on that.

04:32 They also rejected the issues relating to the law by saying that of course the law can be amended at any given time. But the two grounds that led them to believe strongly that Rwanda is not at this time in a position to receive cases have to deal with first the solitary confinement provision that is an infringement upon the basic fundamental human rights.

05:08 Because if you happen to be sentenced to life and having to serve it in solitary confinement is inhuman and degrading treatment. Certainly in the USA it's acceptable for people like those like they have in Guantanamo and for certain crimes when you're sentenced to maximum security prisons. You may end up being alone in solitary confinement even serving your life sentence.

05:40 But that is not – it can be viewed as grave violation of fundamental human rights. You cannot afford that. So the court is of the opinion citing authorities from the European Court of Law, various authorities to say that no, Rwanda as long as this provision is there is not capable of offering this. No matter – because Rwanda has even advanced to the trial ch-, to the appeals chamber that they are ready to change that provision.

06:19 The court say, "At this stage you have not changed it and we cannot take for face value what you are saying." The second ground is the witnesses. They said the witnesses Rwanda cannot guarantee that the defense witnesses will enjoy the same conditions. And that the witness protection program is not yet in a state where one can arguably believe that it will be enough to support fairness and due process.

06:58 So on those grounds, the appeals chamber confirmed the decision of the lower court not to move in that direction by sending people to Rwanda.

07:12 RU: So as commendable as your institutional building program is, it would still not cure the defects that the appeal chamber has found.

07:22 You know as my mother would say, you cannot cook better than the lady who teach you how to cook. We have taught them, but they have not yet reach the level where they can claim to be equally competent as mama, because they have their own way of cooking and they have not completely adopted our cooking method.

07:54 And as long as that is there, it will be difficult. If they agree to move and agree to do things mama way, then mama will approve it. Because any time they will have any provision that will enter into conflict with international law, or with the covenants guaranteeing the basic human rights, they will be struck down immediately.

08:25 Although they believe that they're making great exception already, for them they don't do things that way. Because of us they abolished death penalty. Because of us they say, "We're not going to apply this," all these concession just to receive those people. But we are not fooled. How – we are not going to be there behind them all the time.

- 08:51 So one solution out of it for Rwanda would have been for them to agree to go Sierra Leone way by having hybrid court whereby they can have you as one of the judges. They can have a panel of three; one Rwandese and two foreigners as they have it in the common law – Commonwealth system where you can have one.
- 09:22 If you see – if you take the case of Kenya; the recommendation of the Waki report over the electoral violence was to establish an international criminal court of Kenya; a tribunal for Kenya composed of three. A chamber will be composed of three people; one Kenyan and two members of the commonwealth system. Now Rwanda is joining the commonwealth so they can use that by amending the law and providing that.
- 09:54 But they believe strongly that they're capable, they're strong enough to handle all that by themselves and this is unfortunately a clear cut rejection of that accession that you are not yet ready. So put your house in order better and align yourself with the international covenant, with the international standard, with everything and give all the guarantees and then we can consider you as being ready. And it's not easy.
- 10:30 RU: No.**
- 10:30 It's not easy, it's not easy at all.