



Voices from the Rwanda Tribunal

Official Transcript: William Egbe (Part 7 of 12)



Role:	Senior Trial Attorney
Country of Origin:	Cameroon
Interview Date:	30 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz Batya Friedman
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

William Egbe discusses the ways in which the Office of the Prosecutor (OTP) has evolved during his ten years at the ICTR. He describes the OTP selection processes for determining which perpetrators should face trial. He also compares the sentencing processes at the ICTR with those at other international tribunals such as the ICTY. Egbe identifies the limitations of the ICTR Statute and discusses the impacts of these on the Tribunal's work. He highlights best practices for new international tribunals.

The transcript of Part 7 begins on the following page.

Part 7

- 00:00** Donald J Horowitz: You mentioned – I’m going to move to some other areas and I know that this is not, a place where you can’t go very far but I, I’m, I – you, you said that one of your responsibilities now is the special investigations related to the RPF, which is the Rwandan – RPF stands for what?
- 00:19 The Rwanda Patriot-, Patriotic Front. They are the rulers of Rwanda today.
- 00:25** DJH: Yes, the, the, the political rulers of Rwanda.
- 00:25 Yes, exactly.
- 00:26** DJH: Okay. And you're, you are part of a process which is looking into what to do about allegations that there were some, w-, crimes committed by the RPF or some of their people. Can you tell us, up to the point that you feel comfortable telling us, what that’s about and where that process is?
- 00:51 Well, it is public knowledge that the RPF stopped the genocide. It is also public knowledge that certain violations were committed by some soldiers of the Rwanda Pat-, Patriotic Front. And you can see that in the reports of the UN Security Council.
- 01:15 And I think it ha-, it was clarified in those reports that the crimes committed by the RPF did not amount to genocide, that they were not actually planned. There were several cases of revenge by individual soldiers.
- 01:33 So the fact that crimes were committed by the other party to the conflict is a matter of public knowledge. And I would just tell you that recently I was present to monitor the trials of four soldiers of the RPF that were tried by the government of Rwanda for some crimes that were associated with the sad events of 1994.
- 01:58** DJH: You, you observed trials in Rwanda?
- 02:01 I observed that specific trial.
- 02:03** DJH: Okay.
- 02:03 Yeah. That is the only trial that has had a connection with the work we are doing here, but Rwanda definitely has tried other people who have committed crimes connected to the events in 1994. The nature of my responsibilities are that which I report directly to Mr. Jallow, the Prosecutor . . .
- 02:23** DJH: Who is the Chief Prosecutor, yeah.
- 02:25 . . . who is the Chief Prosecutor. I report directly to him. I write reports to him. I have frequent discussions with him about the state of the, of the evidence in the RPF folder, but he makes the determination as to what should be the outcome of my analysis. He makes that particular determination. There are operational issues that I deal with and then there are policy issues.

- 02:53 DJH: Yes.**
- 02:54 I limit myself to operational issues and he deals with the policy issue. I know it's a burning issue both not, not only now. I had been asked questions before about what is happening with the RPF obviously and I have always referred to the, the, the Prosecutor. He is the one who's responsible for any policy direction that the work that I do will take.
- 03:19 DJH: Okay.**
- 03:21 I deal basically with the operational matters.
- 03:23 DJH: Okay.**
- 03:24 We analyze evidence and then we make reports to him.
- 03:27 DJH: And you don't know when, if e-, when, if ever, wha-, a decision will be made about that but I assume before the end of the tribunal.**
- 03:36 Well, I wouldn't even place a time on that.
- 03:38 DJH: Okay.**
- 03:38 It's all up to Mr. Jallow to determine.
- 03:39 DJH: Of course, of course. Well, I appreciate your giving us that clarification because it has been obviously an issue that has gone on for some years as alleged by a variety of people.**
- 03:50 Exactly.
- 03:52 DJH: There were, when we were on the airplane together and we were talking, you, you, at least I took from some of our conversation that there were some things that you were particularly interested in saying to the heritage of, and to the future, to the people who are going to learn of what's gone on here.**
- 04:19 DJH: And, I have, you know, I wish we had unlimited time because I have a number of other I think very interesting legal questions as well as others. But I want to ask you now i-, if I was a) correct.**
- 04:32 DJH: And if so I want to give you the opportunity to say to people five, ten, 50 years from now, in a v-, who are going to be looking at this in a variety of ways whether they're school children learning about this or they're legal scholars trying to figure out how to do a better job. What is it that you – you've been here a long time.**
- 04:57 Yeah.
- 04:58 DJH: You've seen a lot of changes both procedurally, administratively, probably some considerable improvement in admi-, in administration. For example, and I'm talking too much, but for example the fact that the Prosecutor had to take both Yugoslavia,**

the ex-, former Yugoslavia and Rwanda and now your office is focused on Rwanda only and that probably was a great improvement in terms of efficiency, but what-, whatever. What is it you would like to say to, to all of us, to the future?

05:28 What, what I would like to say to posterity, researchers, young students, professionals is that we have been, we have been part of a tragedy and our biggest desire is that that tragedy is not repeated.

05:56 As a lawyer, we found ourselves in a situation where we were placed in a situation where we had to operate within the context of one of the legs of a tripod. The Security Council res-, resolution that created this tribunal created three objectives that were supposed to be achieved: the trial of persons who committed the crimes, the effort to see that impunity, this is a strong message against the impunity, and the attempt to help Rwanda reconcile.

06:47 We were part of the justice arm, but if through the dynamics of the work we did we helped to reconcile Rwanda, it is a great thing. If through the dynamics we sent a message that, "Impunity no more," it is well and good.

07:10 We have been criticized. We have been criticized for being expensive. We have been criticized for being slow. But all I would say to posterity is do not judge our success by the number of persons whom we tried. Judge our success by the quality of justice that was administered here, by the message, specific message that we sent and by the jurisprudence that we created.

07:43 These are issues that we, I would like as a practitioner to, to say loudly and proudly for posterity that, "Here is where we were. We found ourselves in this part of history. This is what we did." But remember, the Security Council resolution itself that created us was a limiting factor, so when you judge us do not judge us within a context that is broader than the equipment that we were given to work with.

08:17 For example, the atrocities in Rwanda started to be committed long before the temporal jurisdiction of the tribunal. Our tem-, temporal jurisdiction started from the 1st of January 1994 to the 31st of December 1994. But how do you create, how do you solve, how do you solve a, a, a cancer by dealing with the symptoms? There is no way. There is no way that you would have dealt with this limited period and expect to actually satisfy the people of, of Rwanda or the international community.

08:56 DJH: So let me, let me . . .

08:57 Yeah . . . yeah.

08:57 DJH: I want you to go on but I want to just, because there are people who are watching this who are not lawyers.

09:02 Yes.

- 09:02** DJH: And I want to explain. When you talked about the temporal jurisdiction, in other words the acts for which you must prosecute were limited, or w-, allowed to prosecute, were limited to January 1, 1994 to December 31, 1994. And things that went before that may have had a connection with it or afterward, you were not allowed to prosecute for those crimes.
- 09:27 Yes, yes . . .
- 09:28** DJH: Okay.
- 09:28 Yeah. We were not allowed to prosecute for those . . .
- 09:30** DJH: Okay.
- 09:31 . . . for the crimes that were committed before the, before the 1st of January 1994.
- 09:36** DJH: Okay.
- 09:37 But I will say that with a caveat . . .
- 09:39** DJH: Okay.
- 09:39 . . . because as we continued to develop jurisprudence there were certain exceptions to that.
- 09:43** DJH: Ah, good.
- 09:44 For example in cases of conspiracy. Both inter-, international criminal law actually allows that certain elements, for example e-, elements of planning and preparation that predate the acts within the temporal jurisdiction could be imported into the process of the trial.
- 10:04 But even then it was clear that you could only import those acts of preparation that predated the temporal jurisdiction as a means of understanding the actual culpable acts within the temporal jurisdiction.
- 10:18 But that was a little, that was just a little waiver for the crime of conspiracy to commit genocide which needs planning. But for all other crimes like incitement you could not go beyond the temporal jurisdiction – crimes against humanity, murder even on a large scale, genocide – you could not do that. So right from the beginning we were limited by our statute.
- 10:41 And it is unique in the sense that this limitation was only in respect of the Rwanda tribunal. The ICTY had a broader temporal jurisdiction. So questions were raised as to why you would decide to limit Rwanda in that manner and allow the ICTY a broader, as we say in French, champ d'action. It was a – so, so coming back to what we are saying about the legacy.
- 11:10** DJH: Yes.

- 11:11 How I am looking at it.
- 11:12 **DJH: Yes.**
- 11:13 Scholars will find the time to read the statute of the tribunal. Scholars will find the time to deal with how we developed certain issues in international humanitarian law. They will look at some of the decisions that were rendered, groundbreaking decisions.
- 11:31 I remember during the, a couple of years back during the trial of, during the arrest of General Pinochet in England . . .
- 11:40 **DJH: Yes.**
- 11:41 . . . a reference was made by the House of Lords to the, to the, some jurisprudence of the ICTR, Kambanda. It was about the issue of sovereign immunity. A reference was made to the fact that Kambanda was in trial here.
- 11:55 So in a limited and in an intellectual way I am very, very confident that we'll be remembered with all our limitations, we will be remembered. And more importantly for the people of Rwanda, it was better we did something, however imperfect they may think it was, than to do nothing.
- 12:13 And today the message is actually resonating when senior leaders of the genocide are coming in. Some are even pleading guilty and actually explaining what happened, because at the end of the day also we are creating a record of the history of the genocide.
- 12:33 When we, through our processes, are able to get people who committed significant crimes or held s-, held senior positions coming to make a clean breast of it, it is helping also in the reconciliation.
- 12:47 Kambanda's guilty plea was actually very revealing. It was very revealing. It's a pity that at some point he stopped cooperation with the tribunal, which is not unconnected to the fact that he was disappointed by his sentence.
- 13:06 But if he had actually continued to cooperate with the tribunal we would have ended a lot of these tribunals – sorry, a lot of the trials we have ongoing today because all the cabinet ministers who are denying responsibility for certain crimes today would be, would find it much more difficult to do that if Kambanda, after his guilty plea, came to testify for the prosecution to say for example, "Pauline, you and I were in the cabinet meeting. This is what was agreed."
- 13:37 But today with the absence of that kind of testimony from Kambanda you can find some explanation why some trials of key leaders, members of government are just going on and on and on and on and on and on.
- 13:50 So posterity will remember us with all our limitations. I do remember that no system can be without criticism. In Nuremberg there were trials and the criticism that resounded until today, which to some extent is even attributed to us, is this

catchphrase of “victor’s justice.” So no system can be perfect, but I think we have done our own contribution and it’s time to pass the baton on.