



Voices from the Rwanda Tribunal

Official Transcript: Hassan Jallow (Part 8 of 15)



Role:	Chief Prosecutor
Country of Origin:	The Gambia
Interview Date:	5 November 2008, 6 November 2008
Location:	Arusha, Tanzania
Interviewers:	Lisa P. Nathan Donald J Horowitz Batya Friedman
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Hassan Jallow emphasizes the need for extra-legal responses to post-conflict reconciliation and calls for the involvement of local communities in the justice process. He discusses the challenges of prosecuting gender violence and its role as an act of genocide. Jallow refutes the notion that the Court has delivered 'victor's justice', drawing attention to an investigation into war crimes committed by RPF forces. He suggests that the process of holding leaders accountable is feasible at the international level.

The transcript of Part 8 begins on the following page.

Part 8

- 00:00 Donald J Horowitz: Is there anything that has happened here that has really surprised you in your experience here? Both either – either personally or professionally.**
- 00:09 Oh, well, I . . . it's difficult to think of something that has surprised me. Unfortunately I, I well, I mean you may have sort of, for instance, decisions which may have been made by the judges which have surprised me sometimes.
- 00:30 I mean . . . we, we've had a situation last week for instance where, where a witness comes in to court – a witness who had testified before in 2004 for the prosecution after giving a statement in 1996 to the Prosecutor – comes back in 2008 to recant that statement and the testimony.
- 01:01 So he had given a statement in nin-, 1996, he'd come in in 2004 and sworn under oath and testified in line with that statement, then in 2004 he comes in and, and on oath again recants his statement and then he's allowed to walk away. He's perjured himself.
- 01:20 And when you try to get the, the court to, to, to order his detention pending a, his indictment investigation, they seem to take the view they don't have the authority to do that.
- 01:33 And, and I think the court has an inherent authority to protect its integrity and to deal with people who commit these offenses in the face of the court itself, in the face of the court itself; to deal with them in order to make sure that, that the process is, is respected, so that's, that's been a recent surprise but it, it may well not recur, I hope.
- 01:55 DJH: Well, yeah, and, and what, what we're seeing is there's a development of the jurisprudence of the court and this court has developed with, with the help of, of, of the lawyers a significant amount of jurisprudence that can be used in future. This is another one of those areas perhaps. Whether it's jurisprudence or what, something to look at for future tribunals.**
- 02:17 Sometimes I, I, I – of course, I think the, the trials we have to make sure they are al-, always fair.
- 02:25 DJH: Of course.**
- 02:26 There has to be a fair trial for each accused. But there's a tendency sometimes for over-caution on, on the part of judges. And, and an incident like this is something we can, we, we could hold the court up to ridicule that somebody can come in to the (___) of the court, commit an offense in the face of the court and go away.
- 02:50 You know, i-, i-, if it does continue to happen, then it, it could cause difficulties and set really bad precedence as well.
- 02:59 DJH: Is there anything that you've done or been part of doing here that you're particularly proud of?**

- 03:08 I, I, let's say, I'm happy to have been here and, and to contribute in a little way to, to what's going on now. It's, it's – we have a good team here in the OTP and, and it's a team which has remained very stable over the years. We haven't lost many people, who've been going away.
- 03:27 Many of the people who are here are here not for any material gain as such, or less for material gain but because they're committed very much to, to, to ensuring that justice is done and so they've tended to stay through, through many difficulties, so I'm happy to be proud, part of that team and to lead the team.
- 03:45 DJH: Anything that you're disappointed that you have not been able to do or, or not done as well as you would've liked? I don't mean just you personally but your office.**
- 03:52 Yeah, yeah, yeah. The, there are two areas I think one would like to, to look at. One is in terms of number of indictees. It would have been good if we could have really indicted a lot more people and prosecuted a lot more people than we actually have.
- 04:11 There are many, many persons, suspects walking around in outside Rwanda here who have serious allegations hanging against them, whom we are not able to prosecute because of the completion strategy, because of the fact that we have to close down as an ad hoc tribunal.
- 04:29 And for them, a way has to be found to deal with them. A way has to be found to deal with them, and this is connected with second issue, which is the transfer of cases to Rwanda. A, an important part of the completion strategy was and is that we should try and transfer some of our cases to national jurisdictions for, for, for trial, including Rwanda.
- 04:54 So far, we have not been able to do that. We have not been able to obtain a court order because the judges' assessment is that fair trial may not be possible in Rwanda at the moment in resp-, for those accused persons.
- 05:08 They are concerned about witness protection issues, about, generally about the ability of the defense to, to operate effectively in Rwanda. But Rwanda, it has agreed to still review its laws and its practices and try and improve on them in order for us to, to succeed with the, possibly with a, with a second round of applications for, for referral.
- 05:30 The, the, the referral regime is important for us. It's important for Rwanda, it's important for other countries.
- 05:38 If it succeeds, it will take a big burden off the tribunal and enable us to complete well; complete well in the sense that then we can actually even transfer the fugitives' cases to Rwanda and then a mechanism can be set up to continue to search for them and send them to Rwanda.
- 05:58 If there are no transfers made to Rwanda and we want to close down, that issue will be left hanging. The, the issue of how to deal with the fugitives will be left hanging and it is, it is being considered that maybe then they could be dealt with by the residual

mechanism which will come in after, after we close, but that's not a very neat way, I think, of ending.

06:20 It's best if we ended with those cases being referred to Rwanda. The referral is also important for Rwanda because it's a stamp of approval but beyond the stamp of approval I think it's also, it, it's also a, a, an acknowledgment that Rwanda needs to be involved in the process as the country where this tragedy occurs.

06:43 The referral is also important for other countries and for dealing with those other people whom we have not indicted and we, we whom we have not indicted because we are closing down. If we manage to get a referral to Rwanda, other countries where some of these suspects may be located can extradite them to Rwanda and, and have them tried there.

07:06 If the, if the referral doesn't succeed what you'll have probably then is, in c-, in, in, for instance, in the UK and, and other countries, you'll have genocide suspects residing there who cannot be prosecuted for jurisdictional reasons in those countries and who cannot be extradited to Rwanda because of the perception that there is no fair trial.

07:29 And then you have this gap in impunity, a gap in accountability rather. You know, th-, and they'll, they'll, they'll just be walking around. So it's, it's, it's those two areas I hope, I, I wish that we could see some, some progress being made.

07:45 **DJH: Is there a, a mechanism by which your office and the chambers and the defense can work together? Is that a possibility to try to figure things out together? Collaborate if you will . . .**

07:58 The defense . . .

07:59 **DJH: Yeah, I, I understand. Yeah.**

08:00 The, the, the defense – no, probably. They'll oppose any transfer to Rwanda. The judges, we can't involve them because they are the ones who decide.

08:08 **DJH: Sure.**

08:08 But the OTP and Rwanda work together on this and what we do is the judges will communicate in their decisions what their concerns are. And then we sit with Rwanda and, and figure out how do we address, how do we overcome these concerns which have been identified by, by, by the judges?