



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 4 of 11)



Role:	Judge
Country of Origin:	Kenya
Interview Date:	4 November 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Lee Muthoga compares the cases of Casimir Bizimungu and Mikaeli Muhimana, reflecting on the difficulties of determining the guilt of implicit political action as opposed to explicit individual action. Muthoga discusses the unique challenges posed by a hybrid jurisprudential system, stressing the need for judges to have investigatory capacity as typical of civil law systems. He calls for mandatory induction courses for new Tribunal personnel and notes that many staff may require counseling as a result of their work.

The transcript of Part 4 begins on the following page.

Part 4

- 00:00** **Robert Utter:** As we talk to other persons about the work of the tribunal, some of them from Rwanda, some from here, there are some themes that seem to re-occur; I'm talking about concerns they have about performance of the tribunal – delay, cost, location of the tribunal. Do you see any of those as factors involving the search for justice in these cases?
- 00:32 Let me – I have lived through this tribunal . . .
- 00:35** **RU: Yes.**
- 00:36 . . . the last five years. And as an East African, I have, I have been conscious of its existence and aware of the work it's doing all the way from its formation. There are people who have said this tribunal was a mistake because it has spent so much resources and has only done so little work, looking at the whole size of the genocide trials.
- 01:08 But I think myself that the correct argument is not that – the correct reading of it is not that this tribunal has not been useful. The correct tribunal is this – one, determination of international crimes, crimes committed in far, far places, crimes investigated (_____) and crimes such as genocide which is a crime which involves everybody, either as a victim or as a, or as a perpetrator.
- 01:48 There is no one in Rwandan society of 1994 who can properly say, "I was not involved in this genocide." Everyone was involved either because he or others related to him suffered or were killed or lost their lives there. Or because he and others went out to kill others, or because services and other things were made un-, unavailable and not receivable because of it, went through hunger and all those. So it is a crime which involves them.
- 02:27 Now resolving those disputes that arise from that must mean that it is something that cannot be done as quickly as resolving other private disputes might be done.
- 02:42 And two, when you are investigating these crimes, the investigation is being carried out by foreigners; by people who were not, who, who were not part of it or who are not in that cultural background – it, that also delays time.
- 03:02 The location of this tribunal, I do not, I do not expect it could have been located in Rwanda. I think I agree with the arguments that were put forward in rejecting the possibility of, of locating it in Rwanda. Because I do not see how it could have been located in Rwanda and managed to s-, to be seen, to be seen as anything other than a victor's court.
- 03:32 I am almost certain that if it had been located in Rwanda, everybody would have been looking at it as the victor's court. Because to, for it to function it would have required the support of the then gover-, or the gov-, the government in Rwanda which was the section of the Rwandan society that, that prevailed in the conflict. And, therefore, its

respectability as an international tribunal would definitely have been seriously undermined.

- 04:04 Two, I do not also see how it would have been possible even to secure the kind of witnesses that we secure and give them the independence and the freedom they need to be able to tell us what actually happened. I don't see that it could happen.
- 04:22 Now anybody who tries to compare us with the Gacaca courts or even with the Rwandan criminal justice system is making a comparison which is not appropriate. It's not comparing, comparing like for like. It is completely – we are completely different animals.
- 04:45 Gacaca proceedings are designed not so much to inflict criminal sanctions but to bring about reconciliation and understanding between the communities. And that is why they are, they are totally informal, they are easy going, they accept apologies, regrets and all that, and forgiveness, and all that. It is part of their system.
- 05:11 And they are necessary too for obtaining reconciliation in a society which has suffered, suffered genocide. We are not such a, a tribunal; we have rules of, of conduct, we have rules that govern what we do and we are judged at a scale much different from Gacaca. We are supposed to function and to carry out our function in accordance with international standards of administration of criminal justice.
- 05:41 Which if you ask the Gacaca judges to do the same, they would take the rest of this century to carry out the, the determinations that they have carried out. So we doing a task, we are carrying out, undertaking a task which, to be undertaken correctly, has got to be undertaken deliberately, slowly, and so on and so forth.
- 06:10 Secondly, this tribunal was established from zero. It did not exist as, as such. It is, it had to be brought together, gather people from all over the place, create personnel, create physical facilities.
- 06:28 It was situated here in Tanzania away from international communication system and took years to find, even to fine tune and provide the necessary technological support that a tribunal would require.
- 06:44 So its start (), its starting was slow, understandably slow. And I think, I'm not sure, but I think the first trials were, took place in 2001. So, and of course that investigation, that whole period of investigation was inevitable. It is possible also that it could have moved much, much faster if more resources were allocated to it.
- 07:15 When I came here there were three trial chambers, trial court rooms, which means that only three cases could proceed at the same time. And they were all proceeding back to back so that some are sitting in the morning, others in the afternoon, and so on so forth.
- 07:36 And since then, I think the government of Sweden and the United Kingdom – is it Sweden or Norway? Either Sweden or Norway and the United Kingdom provided some

funds for establishment of a courtro-, courtroom number four, which then made it possible for, for more courts to take part.

- 08:00 The program of ad litem judges did, did not start until 2003 when it was possible now to virtually double the, the number of judges available, with certain regulations which require that a court be presided over by a permanent judge, and so on and so forth.
- 08:26 So that the ability for the court to function as quickly as people looking from outside there might want, it has not been there. We have not always been judged by those who know all about us. I think we have been judged more by people who don't know enough about us to judge us fairly.
- 08:50 So, yes, we have been criticized. Yes, some of that criticism is valid, a lot of it is not valid or is made from inadequate information, or sometimes even misleading information. And again some of it depends on who is making the criticism.
- 09:17 **RU: I have so many more things I'd love to talk to you about but the day is long, my fellow friend and judge has some other questions . . .**
- 09:26 **Donald J Horowitz: Thank you.**
- 09:27 **RU: . . . and so what I would suggest is perhaps we stand, take a maybe five minute break.**