



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 10 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 10 begins on the following page.

Part 10

- 00:00 **Donald J Horowitz: I only have two more questions. And by the way, I, I must say thank you for your candor and I appreciate it very much. We all do. What is – if, again we'll go back to designing a tribunal. If you, if – we hope there would not be, no need for one, but if we look at the world . . .**
- 00:24 Yeah. You can't be sure.
- 00:28 **DJH: I, it's what's going on in Congo now and Darfur and so forth, and . . . if you were designing a tribunal for the future, what other suggestions would you make so that it would do a better job? And that's not to criticize this one; we can always find ways to do a better job. Sounds to me like you've thought about, about it.**
- 00:49 Not really, but one, one sure thing I would do is that I would find a way of incorporating a certain amount of investigative capacity in the judicial complement. We, we sit as judges but we can't, there is nothing we can find out unless it is brought to us by somebody else. That is limiting when you are thinking about an, an offense like genocide.
- 01:26 Common law of course is, assum-, assumes that judges do nothing other than wait there and be told by parties what it is and so on and so forth. Civil law doesn't do that and I think civil law is better law for investigating genocide than common law. I think there ought to be something that – a judge who thinks he's being deceived ought to be able to do something to avoid being deceived by, by testimony.
- 01:59 But as it is now we, you can't, you can – you just hope that somebody else who amongst the players will bring testimony to counter the testimony which you feel strongly is probably not correct and if you had the correct testimony the position would have been different.
- 02:20 I think it's in doing offenses or investigating offenses such as genocide or such as international crimes against humanity the, the determining body ought to have capacity, a certain limited amount of capacity to find out or to uncover some certain facts for itself.
- 02:45 Don't ask me how I would do it but I think I would find a way in which I can incorporate an investigative capacity for courts; courts to be able to demand that this and that and that be looked at and be, be advised, and so on and so forth. Yes I think something like that. The, the way that some of the, the tribunals, investigative tribunals that are set up have capacity to do.
- 03:20 So that is one thing I would put into the new, in, into the new tribunal. As I said, I would also have an institutional approach to judicial orientation, orientation of judges and orientation of other legal staff that operates. And probably – what are the other features that I would want to change?

- 03:59 This may be just this tribunal. This tribunal, this tribunal has not got a team spirit. It's, it's not exactly one institution. It is in fact several institutions. I am not sure that that separation is necessarily helpful in the judicial determination. I think the individualism that is in this, to be found in this tribunal is probably, it derogates from performance rather than helps performance.
- 04:47 If you ask me now ten questions about what happens in another trial, you will be, I will be lucky to answer one or two. Even to answer the names of the accused persons in other trials except the ones I'm doing. That is probably inevitable but I think there ought to be more congeni-, con-, . . .
- 05:13 DJH: Collegiality.**
- 05:13 . . . collegiality in our work than there is, there is now. And I think that if I was designing a tribunal I would make sure that there is some capacity for developing that collegiality, so that the team spirit is better utilized than it is at this tribunal.
- 05:32 DJH: In, in a certain way what you're also saying I think is you, you, you're trying to understand the context, the, the more universal context in which you are operating within the cases that are assigned to you.**
- 05:44 DJH: So, you have a sense of the court itself and the, your colleagues and what they are doing, so that maybe that can give you greater perspective or et cetera, et cetera. Now I hope I'm not putting words in your mouth?**
- 05:56 It's more or less that. And, like now, we, we never as a tribunal for instance ever do a postmortem of any trial.
- 06:09 DJH: Huh. Okay.**
- 06:10 Right. If I was running this place or any place, I would say when the trial is finished and it's all gone and so on and so forth, judges who remain. Judges who were there – those who did it and those who didn't do it – ought to be able to look at it and say, "Now what is it we didn't do right here?"
- 06:28 What is it, what did this, what is the appeal court saying when it says we are doing this and that and that?" As a group. And then you interact and you, you do mental cross-fertilization and so on and so forth – things that can help (), both to develop the spirit of the team, and also to improve the quality of, of the work. Because if I do a mistake now, hopefully the appeal court will pick it up some time.
- 07:01 Sometimes, not always; they don't always pick up those mistakes but sometimes they do. And that I will see it and I know what they – I will ask myself what I think they said. But if, if, if we were sitting together with all the judges and looking at the appeal, appeal chamber's decision on Muhimana, it then becomes easy to see that we did this and did that and did that and did that.

- 07:33 The, the concept is fully appreciated. There are some decisions that I see here which come from the appeal court and I say to myself, "If I had this judge with me, I would ask him a few questions about why I think this can't be the correct position."
- 07:50 But there is no opportunity to do that until I become a professor of law in some university and I do critical analysis of judicial decisions of the appeal chamber of the International Criminal Tribunal for Rwanda. That may be in the year 2025.
- 08:12 DJH: Maybe sooner.**
- 08:14 RU: God willing.**
- 08:15 DJH: God willing is right.**
- 08:16 God willing.
- 08:17 DJH: I would, I would like, I would like to see some of that.**