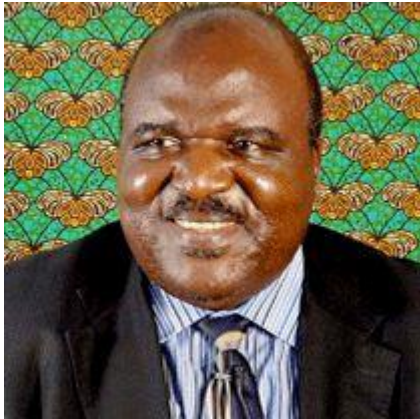




Voices from the Rwanda Tribunal

Official Transcript: Alfred Kwende (Part 4 of 6)



Role:	Acting Chief of Investigations
Country of Origin:	Cameroon
Interview Date:	28 October 2008
Location:	Kigali, Rwanda
Interviewer:	Lisa P. Nathan
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Alfred Kwende contrasts investigating small-scale crimes in domestic jurisdictions with the unique challenges of investigating crimes against humanity and acts of genocide in Rwanda. He explains the process of selecting ICTR cases and how the investigation process has evolved over time. Kwende discusses his frustrations at the lack of properly trained investigators selected by the ICTR at its inception. He also reviews the difficulties associated with capturing and arresting accused individuals and ensuring cooperation from other states.

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Part 4

- 00:01** Lisa P. Nathan: **Could you speak, you were talking about in your previous career you were at the national level in Cameroon. So when you started here, the international venue and a crime scene that takes part across a whole country with people who then fled internationally; so you were, when, and now, I, even still I believe, a large portion of your job has now become, not just investigator but negotiator. Could you speak to that and these negotiations with countries that you now undergo to some degree?**
- 00:46 Yes. Well, most of our targets, most of our fugitives have been arrested, but we still have, at the beginning of the last year, we do have 18 left. So at the beginning – yeah, we had 18 left and they, they screen them down anyway because, as I said earlier, in 2003 the Security Council came up with Resolution 1503 and said, “Hey, the tribunal ends, on, all investigations, initial investigations must end by December 2004. All trials, at first instance, must end in 2008. And of cou-, of course, all appeals by 2010.”
- 01:39 So by 2010 you should shut the doors and go off. In 2004 when we stopped the investigation, stopping investigation actually didn’t, didn’t mean stopping investigations per se but stopping investigation of new cases. We had to complete the work that was, that was the backlog of work and the Prosecutor took the step of convening our working, workshop somewhere in Arusha, in Kenya and Ambo-, Amboseli and we reviewed the workload.
- 02:20 We reviewed the cases that were outstanding. We reviewed the files and determined which ones we could keep and how far we had advanced with investigations and what were the possibilities of getting material to indict. The list was still quite long, pretty long but they had to cut it down, cut it down in two sheets.
- 02:47 There were those whom, on whom we were investigating but on whom we didn’t have, we had not gone too far. No indictments were done. The Prosecutor decided that those cases could be handed over to Rwanda because it is their duty to investigate. He hadn’t yet taken a position doing, there was no indictments, there was no warrant for arrest () anybody so those were still in the initial stages. Those ones were take off.
- 03:14 On all those that we had sufficiently progressed with investigations and there was a possibility of getting an indictment, those ones were retained and some, of course, have remain indicted but not arrested.
- 03:33 The challenge of getting an arrest or identifying those people is the most enormous thing. You can imagine today, this year, this year makes it 18 years since genocide took place. We’ve been on the ground since ’96, ’97, effectively since ’97 and this operation NA-, NAKE East I mentioned earlier took place in ’97.
- 03:58 A lot of people were arrested, about ten people in Kenya. I would give you a striking example of one person who was missed on that occasion and who to this day has not been arrested. And yet at the time, the investigators and the team knew where he was.

He's been, he was able to beat the Kenyan police, I would say, because we don't have the power of arrest but we provide (_____) evidence.

04:29 Of course, we've come to know with time that he was tipped off by somebody and that has been one trend. So here we are with a fugitive whose location we know, with a country which cooperates the tribunal but in that particular one case, would not cooperate or at least gives the impression of cooperating but it's a double language because its own structures and elements do not plead in favor of that particular case.

05:07 It's a case we can mention easily because it's the only case that's been cited at, at United Nations and the Security Council, Félicien Kabuga. Then you have others who've used all techniques possible to dissimulate themselves, to change their names, to change, I don't know, we've done, we've not known whether any have gone through the process of a disguise or do any surgery, not yet, but they've changed names, taken names of others, taken names of dead people, taken names of brothers and they are virtually on the move every day.

05:50 And we're supposed to go after them. The ICTR doesn't have a law enforcement branch to do an arrest so we rely on countries cooperating to do the arrest. Article 28 of the statute creating a tribunal calls on every country to cooperate with the tribunal.

06:14 Unfortunately, most of the countries don't do so on initiative because their duty to go out to look for the persons and see where they are on their territories and cause the arrest. They don't do it and so our tracking team has to go out to locate these people.

06:32 Now, they may have reasons for not doing it, I wouldn't want to blame anybody fully. Some of them lack resources; some of them say they have other interests than looking after fugitives. Others cite their own legislation and (___), erroneously I would say. But now we are forced to go in the process of reminding those states from time to time.

06:59 We don't just go anywhere. We, we – to reduce the movement and to be focused, what we do is the tracking team does the work upfront, tries to locate these people and once we know where they are, the Prosecutor's office or the Prosecutor himself takes upon himself to address indictments of those persons located in that area and warrants for arrest to the governments and seek their cooperation.

07:32 We have learned from experience that if these things are sent by the post and they arrive, they (___), they land on the table and they're shelved. So a human body has to move along with the mails.

07:47 And the duty which the Prosecutor takes upon himself or most often sends us, my colleague here and myself and sometimes he leads the delegation, is to go to each country to the sensitive departments and most generally it's the Department of Justice in the internal security or Minister of Interior which supervises the police and law enforcements and of course, down even to the operatives who are in charge of investigations.

- 08:19 There's criminal investigation departments or whatever the case may be, so we try as much as possible to deliver this (____) and sensitize the authorities on what we expect of them and remind them of the role they're supposed to play to get these people arrested.
- 08:43 Quite often they're attentive but most often we have to remind them. Some evoke the issue and question of extradition. There again is a weakness, because they misconstrue or misunderstand or want to rely fully without researching the role they are supposed to play. As members of the United Nations, the decision taken by Security Council is binding on all of them, and it says they should arrest and transfer. It shouldn't say should arrest and extradite.
- 09:28 So we have oc-, on many occasions again to explain to some of the eminent jurists that we are not talking of two different jurisdictions; we're talking of one competent jurisdiction for the tribunal, which is the territory of every country member of the United Nations. So once someone's arrested in any country and has to be taken to the tribunal, is moving him from one part of the jurisdiction to another part of the same jurisdiction which sometimes has been difficult to convey but we don't st-, stop at that.
- 10:15 The prosecutor has taken it upon himself to send people through, send his, his own lawyers to explain to the different jurisdictions concerned. Some are very becoming, some are not becoming but at the end of the day we prevail because the transfers are done. Presently, for instance, some was arrested in Germany. It's taken one year. It's gone through the national processes but at the end of the day, he's been transferred.
- 10:44 Most of it may not even be dependent on the country, it's defense lawyers, the lawyers of the, of the accused, the fugitives, who want to use all instruments possible to deter the transfer of those persons to the competent jurisdiction of the ICTR. But the cooperation has been going. In some cases we meet with success, in some we do not but many institutions are helping us.
- 11:14 The Americans under a special program known as the Rewards For Justice Program, has put in place a bounty of 5,000,000 dollars which is not for one (___) fugitive, for the number of fugitives we have. 18 of them we had at the beginning. We paid, we've paid progressively to, depending on the complexity or the com-, the difficulty of location and the quality of information received from each source, that paid a portion of that bounty but the American War Crimes Office is helping in that area with this, with this bounty, Rewards For Justice Program.
- 11:59 So from that area we count on their cooperation and using their office to sensitize and even to open a way for us to meet with certain authorities. Of recent really we were in Washington to visit the office itself. Even there we saw, we also met with the Department of Justice and of recent we've been going around most of the countries within this region where we think the fugitives are.
- 12:31 Now in some cases really, cooperation – they may be willing, I must say they're not cooperative so far, but the fugitives choose a zone, a location, which is difficult to

access, which is a war zone. Like in the Congo, we know of a few fugitives who are in Eastern Congo but as you may follow the news today, there is still war in Eastern Congo, there's a rebellion in Eastern Congo and these people find themselves within the structure of fronts FDLR which is also seeking certain rights in Rwanda, and they don't want to come home. So this is also an area of difficulty for us.

13:23 With the case I mentioned earlier, you have some people who've lived in certain areas who use corruption really to maintain themselves where they are, so it's difficult to get them. We find some who are actually well drilled in relationship. They create easy relations and they can move away.

13:44 Some even are where they are and in hiding – we can't get them, but they locate their families in the West. As refugees they gain status and they hope that someday when all this, when probably the tribunal is closed, those families will move over in the process of regrouping families, and probably escape from the arm of justice but we don't seem deterred by that.

14:12 We think that we shall put into practice or use as much as possible of the resources and the time and techniques we've gained to get as many of them arrested before the tribunal closes down.