



Voices from the Rwanda Tribunal

Official Transcript: William Egbe (Full Interview)



Role:	Senior Trial Attorney
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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.

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Part 1

- 00:00** Robert Utter: For purposes of identification, I'm Robert Utter, U-T-T-E-R. I was a judge for 34 years in the United States courts in the state of Washington. I served as a prosecutor before then and then a trial judge at our highest trial level, Court of Appeals and then Supreme Court for 24 years, some of that as Chief Justice.
- 00:22** RU: It's been an honor to be with judges throughout the world and an honor to be with you as part of this system. I was going to say that when I looked at the photograph on the door, I thought I was entering in a Hollywood studio. It's a marvelous photograph so . . .
- 00:37 Thank you for the compliment.
- 00:38** RU: So with that we will get into the serious business (_____) . . .
- 00:41 All right, thank you.
- 00:43** RU: I thought I'd start and ask how long you've been with the ICTR?
- 00:47 Yeah, this is – I joined the ICTR on the 23rd of June 1997. So I've been here that long. I joined as a trial attorney at the time when the office was actually just beginning to function. And I rose through the ranks both in terms of responsibility and in terms of post titles to where I am today. Today I'm senior trial attorney with responsibilities of a couple of trials, very key trials. I've been through several trials already which have already been decided.
- 01:36 And additionally, I have responsibility today for a very important aspect of the work we are doing and that is S-, what we call the Special Investigations Unit. That deals with the cases or evidence that is coming in regarding offenses that are alleged to have been committed by the other party to the famous Rwanda conflict that is the RPF.
- 02:09 So cumulatively I deal with that and I have hands-on responsibility over two important trials that we are preparing at the moment – that is the trial of Félicien Kabuga and the trial of the military, the soldier Hategekimana.
- 02:29** RU: Tell me if you can about the first one, the Kabuga trial. What's involved in that?
- 02:34 Well, Kabuga is known publicly and internationally to have been the financier of the genocide. He never held any official position both in terms of government or in the community, but his influence cannot be overstated. He was the brother-in-law of the President of the Republic.
- 03:03 He was a very rich businessman. And in terms of every aspect of that trage-, almost every aspect of the Rwanda tragedy where financing is concerned, he was either at the fore-, forefront or not far from the forefront.
- 03:22 So at this critical time when we are looking to close the work of this tribunal, I mean nothing is more important than having to hear the case that the Prosecutor has built up

against someone who is said to have been the one who bankrolled this tra-, tragedy. So in a nutshell that's what I can tell you about the importance of the case that I'm presently working on.

03:53 And as you know he is one of the fugitives. He has not been apprehended. So it's a significant concern for the Office of the Prosecutor especially in relation to how posterity is going to view the legacy that we are leaving behind; that somebody as important as this is actually not tried by this tribunal.

04:18 We can easily draw parallels between someone like Kabuga and Karadžić and Mladić. You know the number of times when our sister tribunal has publicly stated that we will not do justice to the international community or to the victims if we do not end up trying people in this grade.

04:41 So we easily make the same statement when it concerns Kabuga. He is not the only one but I would consider him as one of those who take the front row.

04:52 RU: And the second case you are working on, can you tell me briefly about that?

04:56 The second case is the case of Hategekimana. Well, he was a very important – he is a very important personality in terms of our selection of targets. He was a military commander in Butare in a locality called, called Butare and in the context that he operated upon he had command responsibility over soldiers.

05:23 Now these soldiers, based on the testimony we have heard, were directly responsible for some of the killings in the locality in Butare. And we also have evidence that apart from his direct responsibility, direct superior responsibility over persons who participated in the killings . . .

05:43 . . . in terms of the security committees that were set up which were simply, simply a way of assessing what had been done and what was left to be done, he was always in the center of meetings of the security company; he as well as other high-level members of the government at that time in terms of the prefecture.

06:13 So we believe that that is a significant role he played and when we look at the level of the killings – both in terms of the killings and in terms of his role – we, we think that he is well-placed to be tried in this tribunal as someone of significant responsibility in the genocide.

06:42 RU: Is he in custody now?

06:44 Yes, he is in custody.

06:45 RU: How long has he been in custody?

06:46 He's been in custody . . .

06:48 RU: Approximately?

06:49 Yeah, approximately, I think he is been in custody for about a year or a year and a half. He is one of the persons whom we just recently brought into the custody of the tribunal. Yeah, he's been here for about a year.

07:07 RU: Do you have any idea where Mr. Kabuga might be?

07:12 I do not have a very precise idea of where he is and secondly, even if I did . . .

07:23 RU: You couldn't tell.

07:24 . . . based on the facts that he has demonstrated a remarkable ability to evade capture and sometimes just by a few minutes, it may not be wise for me to actually publish that kind of information at this time.

07:41 RU: I understand that.

07:42 But I can guarantee you that our best efforts are being deployed to see that we actually apprehend him.

07:52 RU: Is there any provision for a trial in absentia for him?

07:57 We have discussed that in this tribunal and we have been looking at the provisions of Rule 61 of the Rules of Procedure and Evidence, which are the closest we have come. We, we can find two trials in absentia.

08:18 And I can tell you confidently that it is one of the options that we are looking at if at some time towards the end of the active life of this tribunal we do not succeed in apprehending him. We have discussed that and we are looking at that as an option.

08:36 RU: You mentioned the active life of this tribunal, how long is that now?

08:41 Well, based on the relevant resolutions of the UN Security Council – I'm talking of 1503, 1534 – we are supposed to end all the cases that are at the level of the court of first instance by December of 2008, we're talking of two months from today, and then the appeals will go until 2010. That is the active life of this tribunal.

09:09 But certainly you are aware that re-, representations have been made to the UN Security Council for an extension of the mandate of this tribunal to cover certain specific cases. That you know are the cases that would not be transferred to Rwanda under Rule 11 bis, and of course the cases of the fugitives.

09:32 If any of the fugitives are caught definitely that would be additional workload for us and it will actually be an argument, supplementary argument for our request for an extension of the life of the tribunal until 2009.

Part 2

00:00 RU: How many fugitives do you anticipate are still there to be apprehended?

00:06 It might be difficult for me to, it's extremely difficult for me to, to place a figure on that.

00:14 RU: Approximately?

00:15 We are – we have approximately – I may not very accurate, 13 to 15 fugitives but your precise question is how many I think we might be able to apprehend.

00:25 RU: Exactly.

00:25 It may be difficult for me to tell you that. It's like you asking me when – it's like you asking me to state when we think we can arrest Kabuga. It's almost impossible to say that. The most I can say is we are very optimistic and we are working. We have a very robust, we have a very robust team that is actually engaged in this exercise. And I am still very optimistic that we would be able to get some of these fugitives if not all.

00:51 RU: You used a figure if I understood of somewhere between 14 to 15 are still out there and waiting apprehension.

00:59 Yeah.

01:00 RU: How do you determine which ones you are going to seek actively to find and arrest?

01:07 No. All the persons who had been categorized as fugitives – I'm talking of that number of 13 to 15 . . .

01:15 RU: Yes.

01:16 . . . are people that we are actively looking for. I would, I would just back up and state the following. The UN Security Council Resolution 1503 . . .

01:16 RU: Yes.

01:30 . . . that sort of asked the Prosecutor to end the life of the tribunal – well, end the cases that has to be tried by 2008 was a judgment call for the Office of the Prosecutor.

01:42 RU: Of course.

01:43 We had to sit down – the Prosecutor had to sit down with his staff to work out a realistic workload.

01:52 Persons who, number one, fell within the category of perpetrators that should be tried here – we did that and that was the process where we arrived at who to be tried and who are fugitives that we need to be tried here. All other cate-, all other persons who did not fall within that category who may have been small-time perpetrators or middle-level perpetrators were not in that category.

02:19 So we are actively pursuing everybody who has been listed today as a fugitive. We have no preference. We're actively prosecuting – pursuing all of them.

02:30 RU: And what factors would you look at to say, "This is a major figure that we will actively pursue"?

- 02:39 Well, among the factors that we consider – and when I say “we” I don’t want to take anything away from the intelligence of the Prosecutor Mr. Jallow, of h-, or of his sense of management because we are at the level where we brainstorm but we actually work within policies defined by the Prosecutor.
- 03:01 One of the, well, important factors that we’re taking into consideration in determining the importance of the target were, number one, the seriousness of the crime in terms of the number of victims. We also consider their role, the position of the individual and his ability to command persons who – or, or his ability to influence the, the, the crimes.
- 03:32 Those were basically two of the, two of the factors we consider and we had no difficulty in arriving at that because the resolution had made it very, very clear . . .
- 03:42 RU: Yes.**
- 03:43 . . . that we should deal with the persons who were the most senior or, or the leaders, for example. Yeah. So basically when we look at the leadership map, we look at the individual.
- 03:56 For example it would have been very – it would be difficult for you to leave out someone like Jean Kambanda if he had not been tried, because he was a Prime Minister. He was in a position of authority. He additionally had the ability to stop crimes if he thought that those crimes – or if he thought that they should – the crime should not be com-, committed.
- 04:18 So basically those are the issues that we were looking at; the role of the individual, the, the nature or the extent of the crimes that were committed either by him or under his authority. We looked at those as essential factors in determining.
- 04:40 RU: And what will happen to those who you feel were perpetrators close to meeting, meeting your criteria but not quite there? Are they referred to Rwandan courts or what is, what’s the process there?**
- 04:54 Well, it will be – it will be certainly a very – an unpleasant situation if we, a tribunal like this that was created by the UN Security Council to deal with those specific cases, people who are actually grave perpetrators of crimes against humanity, genocide, if at the end of the day we are forced by either political reasons or reasons of donor fatigue, we are forced not to go the extra mile to try, try all the people who committed these crimes.
- 05:31 It will be a tragedy. I am not dramatizing it but it will be – it will be something that is undesirable.
- 05:39 Now, it would depend a lot on the Security Council how they decide to deal with the aftermath of this tribunal. Because I believe that the international community is, does not intend to send a contrary message about what impunity, how, how impunity should not be allowed.

- 06:01 If we close the tribunal and there are serious perpetrators who have not been tried, I do not know how many other countries apart from Rwanda will be willing to take over the cases.
- 06:18 But at the end of the day I think the international community has a responsibility to ensure that there are trials of these persons, whether in Rwanda or in any other arrangement that tr-, the Security, the international community will find, will find suitable.
- 06:35 Let me say something additionally because it brings upon idea in my mind that we have discussed in this tribunal and it is about what we have coined here to be the “impunity gap.”
- 06:47 RU: I understand that, yes.**
- 06:50 Imagine that we close the tribunal today. One of the persons you have talked about, a serious perpetrator is arrested in a country that is not willing to try him for the offenses of genocide, crimes against humanity and war crimes. That country relies on the jurisprudence of the ICTR appeals chamber that indicated that there will be no fair trials in Rwanda.
- 07:26 Now, you have a situation where there is someone against whom serious charges are proffered. He cannot be tried in a third country. He cannot be sent to Rwanda either. There is an impunity gap. And those are the things that are really of grave concern to us.
- 07:46 So we are still looking up to the international community to see how they will fashion out a legal instrument or how they’ll come across the hesitations and maybe what I’ll describe as the misperceptions that are out there about the capacity of Rwanda to try the cases that we would not be able to try here.
- 08:13 So that would be something for the international community to, to deal with but I would respond to you upfront that I believe that if we are not allowed to actually go the extra mile and deal with the persons that we have identified as persons bearing serious responsibility for the crimes committed in Rwanda in 1994, if, if, if we are not allowed to do that it will be a very, it will be regrettable.

Part 3

- 00:01 RU: What solution would you recommend?**
- 00:07 My recommendation would be firstly, to go back to the Security Council and revise Res-, Resolution 1503. Because if we are allowed – if we go by the original spirit which was to set up a tribunal of this nature that would be a serious, that would send a serious message against impunity. If we go back and revise that very idea, I think it would be a wonderful way to start to look at dealing with this aspect.

- 00:46 Failing that, I think the Security Council or the international community should look at creating another court. A variation w-, variation of that would be to vary the mandate of the ICC and let them take over the work that we would not have been able to accomplish.
- 01:09 Either you create – if it’s too costly to create another structure of this nature, then find a way of varying the mandate of the ICC that is on the ground and give them the jurisdiction over the balance of these crimes.
- 01:26 That would be a way, that would be a way in my, in my view that would be a way to, to, to move on and maintain the legacy of this tribunal. Because the legacy I believe can continue to be preserved even if that legacy is not being directed by the ICTR; so long as it is under the control of international justice I think it will still be meaningful.
- 01:49 RU: Impunity as a principle has been one of your major concerns, hasn’t it? You don’t think someone who’s committed the crime should be allowed to go free without at least an appearance before a court. Do you think the pra-, the solutions that you have recommended are practical and will be adopted?**
- 02:11 I, I can only express an opinion as an individual and in the context of discussion between you and I. I do not decide policy.
- 02:21 RU: Of course.**
- 02:22 And I can say that the idea that I have just discussed with you is an idea that we have brainstormed on in this office on several occasions, but I think it takes much more than just brainstorming on these ideas within this office to have the international community, the Security Council move in that direction. It takes a lot more.
- 02:42 And let me state that a couple of weeks back we had the UN Security Council inform our working group here in this tribunal to discuss a couple of issues, a broad range of issues including the issues that we are talking about here. And I would tell you that I had, I had an un-mistaking in understanding from the discussions we had with them that we have actually come to the end of the life of this tribunal.
- 03:19 I recall the statement of the representative of South Africa, which was that –which was, I could just summarize that, that when we set up this tribunal, Rwanda did not have the capacity. That situation is different today.
- 03:39 RU: Yes.**
- 03:41 Even in terms of what remains to be done to build up the capacity of Rwanda there are countries going into bilateral arrangements with Rwanda today to see to what extent they can assist them.
- 03:58 What does that tell you? It tells you very, very clearly that we have run our cour-, our course. We’ve run our course . . .
- 04:07 RU: Yes.**

04:08 . . . and it's time to stop wishing too much. Let's see how we can direct our energies. Let's see how we can deal with the balance of what has to be done today. Put our heads together and see if it is the time to hand the baton over, but just be concerned about how effectively it would be done rather than continuing to insist that we are the ones who must do it. So, that was . . .

04:37 RU: That's a hard . . . a hard position to arrive at, isn't it?

04:41 That's, that's, that's what I understand and that is my reading of where we are moving.

04:49 RU: I'm in a difficult position. I have a number of other questions I would love to discuss with you but I have two other questioners here who are equally eager to do that. So let me surrender my spot now.

05:00 Okay.

05:01 Donald J Horowitz: Bob, is there anything important that you'd like to just conclude with before I take over? Feel free, I don't want to stop you.

Part 4

00:00 RU: Two questions.

00:01 DJH: (_____) . . .

00:03 Go ahead.

00:04 RU: (____) . . . What has been the most satisfying part of this job for you?

00:07 Oh. The most, the most, the most satisfying part of this job for me is the fact that I feel that I have contributed to something very important, something groundbreaking. I left my country in 1997 and joined the tribunal. On a personal level I was looking for something different. I was looking for challenges.

00:38 When I joined the tribunal I had moments when I felt that I had actually been asking for too much because we joined the tribunal at, tribunal at a time when the jurisprudence was not clear. We did not have the capacity to do what we had to do. We were under enormous pressure . . . from the international community to deliver results.

01:01 At the time when Akayesu was sent to trial – 1998 – we were just going there, all of us were at this, we, were at, we, we felt that we were actually experimenting with something. If I see how far we have come between then and today, I feel proud that I have been part of something that is historical.

01:26 I remember one of the things that took off from the Akayesu case, even though it was the first, just at the beginning, was Akayesu was one of the early cases that defined the parameters of the issue of responsibility for war crimes. Remember the issue of command responsibility.

- 01:52 Prior to Akayesu it was difficult to imagine how you can allege the theory of command responsibility in a civilian setting. We went beyond that. Through that we went again to Rutaganda that now interpreted the entire concept and required the tribunal now to look at the purpose of command responsibility broadly rather than in the strict military sense of a superior and a subordinate.
- 02:23 Beyond then we went right across the board breaking the grounds. You remember the decision of Akayesu in terms of sexual violence and rape, how that now becomes an embodiment of genocide. I feel proud that I'm part of this. I feel extremely proud that I'm part of this.
- 02:42 Throughout our lives in this tribunal we went into another mode which was also dictated by the completion strategy emphasis on guilty pleas. We certainly got criticisms, but I found that a very challenging experience as well.
- 03:02 So I, on a very personal level, I think I have come of this tribunal with, with a lot, with a lot. I'm richer in terms of knowledge of international humanitarian law. I feel as an individual that I have contributed to something significant.
- 03:20 And I keep telling myself what happened to Rwanda in 1994 could have happened in my own country. We came close to that. We came very close to that with the, with, with, with a regional radio station that was spewing the same kind of hate messages that RTLM was spewing out and which contributed significantly to the genocide.
- 03:43 So today I can go back to my home and proudly speak to the evils of the press where the press is manipulated by politicians who have a very narrow view of humanity, where nothing counts but just propelling themselves to power, and they see the press as an instrument that they can use. It is dangerous. And now that we have examples to show what the consequences can be, I feel I'm proud.
- 04:15 And I will tell you that I was part of the media trial, the trial of Fer-, Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze and Ruggiu, the only non-Rwandese who was involved in that as a journalist.
- 04:30 I was in the center of th-, that trial and I think I contributed significantly. Not only in terms of the result but in terms of the general impact of what this tribunal has done to, to, to the people of Rwanda and to the elaboration of certain principles in international humanitarian law when it comes to genocide, when it comes to incitement in terms of the relationship between hate crime and direct incitement to killings. So it's been a rich experience.
- 05:05 And I would also add that on a personal level I've had the, the, I've had the wonderful opportunity to work with beautiful people, challenging people, people who devoted themselves entirely to the tasks that we had in this tribunal. And of course the leadership as you know – if there, if a trial attorney like me leading significant trials am able to succeed, it is because I was enabled by the top people of this tribunal.

05:37 I mean it's right across the, right across the board it's been a very rich experience with me and I take away personal satisfaction as I, as we come to the end of our work in this tribunal.

05:49 RU: Thank you and congratulations.

05:50 Thank you, judge.

05:52 RU: Let me at this point leave my last question to my friend Don Horowitz which is, "What is the most frustrating part?" Thank you so much.

Part 5

00:00 DJH: All right. Mr. Egbe, I'm Don Horowitz and we – Judge Don Horowitz – and in fact we met before in an airplane a few days ago.

00:09 Yes, we did. We did, yeah.

00:09 DJH: We were both coming from Rwanda.

00:11 Yeah, we did.

00:13 DJH: Before I go into the further, some further discussions, I'd like to get a little bit more of your background.

00:21 Yeah.

00:21 DJH: One of the things you recently mentioned is problems that had existed in your country.

00:25 Mm-hmm.

00:27 DJH: What is your country?

00:29 Okay. I, I am, I am a Cameroonian.

00:32 DJH: Yes.

00:32 Yes. I come from the English part of the country. You know Cameroon is, it's, it's one of those countries like Canada that have an English and French component in the, in the population. We also have bi-jural system and we are essentially bilingual, we operate in our systems. So I come from Cameroon and prior, I am still a magistrate in Cameroon. I joined the magistracy in 1980, so I'm actually in the court now for 28 years.

01:13 DJH: Okay.

01:14 Yes. And during that period, I was a prosecutor and I was a judge. And yeah, basically I, I practiced in both parts of the tradition at the English speaking part of the country and the French speaking part of the country. And, yeah.

01:32 DJH: So you are familiar with both the common law and the civil law.

- 01:34 And the English civil law. That's right.
- 01:36 DJH: Okay.**
- 01:37 That's right. That's right.
- 01:39 DJH: And of course here in the tribunal we have discovered there's sort of a hybrid system.**
- 01:43 Yes.
- 01:44 DJH: And you're fortunate enough to know, to know both. Some of, some of the attorneys who worked both on the defense side and on the prosecution side have had just one of, of, of those. Ha-, has there been any training in the office to assist newer attorneys relative to, to the juri-, to the format or, or the, the code from which it comes?**
- 02:10 Yeah. What usually happens is when new attorneys are hired and they come on board in the Office of the Prosecutor there is a period where they, they go through an induction process. That induction basically assists them to settle down.
- 02:28 DJH: Mm-hmm.**
- 02:28 Settle down and understand what the essential workings of the office are. Now, for practicing attorneys who are either of the English common law – well with English common law there is not much of a differen-, a, a difficulty but for attorneys who come from the French civil law background, a, a few of them especially at the lower level are usually integrated into teams where you have a mixture of attorneys both of the civil law and of the common law extraction.
- 03:00 We all work under the, the co-, under the statute, provisions of the statute, under Rules of Procedures and Evidence. In fact that is what defines how we approach issues. That is what defines how we prepare basic documents for, for trial. In terms of the ability of an individual counsel to learn the mechanics, that is an issue between the team and the judges.
- 03:34 We have as you understand the system here where you can have on a panel judges of the civil law and judges of the common law. So it tells you that both the civil law and the common law are in play but one thing you must remember is – and I can, I can quote a very concrete example which is the case of the late Judge Kama, who was the first President of this tribunal, who actually presided over the Akayesu case, who actually presided over the A-, Akaye-, -kayesu case.
- 04:08 Before I . . .
- 04:08 DJH: That's, that's fam-, famous for defining rape in certain respects as a, a crime against humanity and a genocide.**
- 04:16 Yes. Ye-, yes – no. I, I think I, I made a mistake. Not the Akayesu case.

- 04:20** DJH: Okay.
- 04:21 The, the Kambanda case.
- 04:22** DJH: Okay.
- 04:22 Sorry, I made a mistake.
- 04:23** DJH: Right.
- 04:24 This is about the Kambanda case. If you remember, Kambanda was the Prime Minister of Rwanda at the time of genocide.
- 04:31** DJH: Yes.
- 04:31 I'm saying, I'm giving you this specific example to show you how sometimes the influence of the civil law and the influence of the common law can actually have a significant position in the outcome of a trial. Now, when Kambanda was represented by an English-speaking lawyer, he pleaded guilty. When it came to what we call in my jurisdiction allocutus of plea.
- 05:07** DJH: Allocution.
- 05:08 Okay. We – in my jurisdiction we call it allocutus, allocution.
- 05:11** DJH: Yes. ().
- 05:12 When it comes to pleading, well, asking for leniency or pleading mitigation, Kambanda, on the advice of his counsel, relied on his counsel because his counsel had made the representations for his client indicating how remorseful the client was, how voluntary his plea was, et cetera. Judge Kama was a civil law judge. Now, under the civil law system the accused must himself show remorse. That is why they are usually given an opportunity to say something if they have anything to say.
- 06:07 Now, judge, the civil law judge did not get this from Kambanda. What happened was that this was interpreted by a panel of judges presided over by a civil law judge as the absence of full remorse.
- 06:25 Under the common law system we all know that the counsel is the agent. He speaks for and on behalf of his client, but in the civil law that client himself must go beyond that and make his representation and convince the judges that he was actually remorseful.
- 06:43 So it happened that that was very significant fact in the decision and Kambanda, of course, despite of the fact he had pleaded guilty, was actually given a sentence that did not reflect any mitigation. He was given the full and maximum sentence.
- 07:00 There are other issues, other factors – for example his superior responsibility, his command position – that were taken into account. But I'm saying this to tell you that we work in a hybrid system where sometimes it is important for you to know your

judges. Fortunately we have an appellate court that sits on top of the decisions of the, decisions of the trial chamber.

07:24 But as a young attorney who is coming on, you have your rules. The rules define how we are supposed to navigate through the process but you always have to keep an attentive eye for your panel because at the end of the day it is your judge. When we were in law school we learned something and they said, "Know your judge." Know your judge.

07:46 So there is actually a, a, a, an attorney who comes into a team who is at a subordinate position, certainly has the benefit of senior counsel who are sometimes counsel who have been there longer than him. They could be civil law or common law but more experienced than him. He learns as he progresses. Yeah.

08:07 DJH: Very understood. W-, I, I want to ask you one more question on that case. Was there an appeal of the sentence based perhaps on that, the problem that you just pointed out that the lawyer didn't understand that and that the defendant would have said that himself, et cetera? Was there an appeal?

08:26 Yeah, there was an appeal.

08:27 DJH: And what was the outcome?

08:28 There was an appeal and the appeals chamber confirmed, confirmed the decision of the trial chamber.

08:34 DJH: Mm-hmm.

08:35 Well, you know usually an appeal court being a court of record . . .

08:39 DJH: Of course.

08:40 . . . there, there are a couple of reasons why an appeals chamber may decide not to set aside the decision of the, the decision of the lower court.

08:49 DJH: Mm-hmm.

08:49 And especially on matters of discretion.

08:52 DJH: Yes.

08:53 Because sentencing is an issue of discretion.

08:56 DJH: Right.

08:57 They could have as well given 30 years or 40 years but they decided to give life. Until there is a showing that that discretion was exercised in total violation of a law I don't think the appeals chambers usually goes the extra mile of setting aside the decision. But the long and short of it is that the appeals, the matter went on appeal and that the appeals chamber did not see any solid grounds to alter the sentence.

09:19 DJH: You, you raised another question for me.

Part 6

00:00 DJH: You've been a judge in your own country.

00:02 Okay.

00:03 DJH: And you've I guess tried both civil and criminal cases, or not-criminal and non-criminal cases. And you've sentenced people I presume?

00:11 Exactly.

00:12 DJH: Okay. Is there any difference in, in your view, as to sentencing here in the ICTR within – particularly the nature of the crimes and the, the kinds of people that ICTR is, is, is trying, and assuming you get conviction, and in terms of the considerations, the principles of sentencing and so forth – between your na-, your consideration in your national court and the on-, and the considerations here.

00:43 Well, certainly we are dealing with, in this jurisdiction we are dealing with crimes that are substantially different in nature from the crimes that we, we, we tried, I tried in national jurisdiction. So that is the first point.

01:00 In terms of appreciating the sentence to be meted out in, to an accused person for crimes in both jurisdictions, certainly there are – I, I the experience I have here is that there is a very high level of scrutiny before sentences are, are passed out. But what I have found a little bit different here is that – which is not the same in my national jurisdiction. Let me tell you what happens in my national jurisdiction.

01:39 In my national jurisdiction most of the crimes are codified. Sentences are tabulated in a way. A sentence for murder in my jurisdiction will be broadly similar to a sentence for murder in a different part of my country.

01:57 But what you will realize here is that sometimes the sentences, the sentences that are meted out by this tribunal are different from sentences for similar offenses that are meted out, say, in a sister tribunal like the ICTY.

02:15 We always draw comparisons be co-, between the ICTR and the ICTY because these tribunals were basica-, ba-, basically set up on the same platform. You do recall that at a certain point there was one Prosecutor for both tribunals.

02:26 DJH: Yes.

02:27 So we drew, usually draw similarities. There are some, in several cases you will find that sentences that are meted out for crimes of similar nature here they are higher, much higher than the sentences that are meted out in the ICT-, ICTY.

02:47 So – but beyond that, what I simply say is that sentencing, sentencing is a matter discr-, the discretion of the judges. And I have not seen an occasion where even though the

sentences were really very high, the (___), the discretion of the judges, decision of the judges was questioned. And of course we have the chamber of appeal that actually vets all of this and . . .

03:09 DJH: Yes.

03:10 I do remember once in the case of Jean-Bosco Barayagwiza, where the appeals chamber reduced the sentence of the accused person, but that was on account of the fact that the trial chamber did not take account of the fact that his rights were violated. But that is a very specific issue and it is not unique to find also cases where the appeals chambers actually varies sentencing, sentenc-, sentences.

03:42 But I will simply state that in cases where we have had a perception that it was too high or too low, the issue of the discretion of the judges has never been a matter up for debate.

03:57 DJH: Yeah, can you talk about, just briefly, the rights which were violated in his case that affected the sentence?

04:03 Yes. Now in the, Jean-Bosco Barayagwiza was arrested in 1998 or thereabouts in Cameroon. One of the issues he raised from the moment of his arrival here was that an essential right of his was violated and the right was the right to explain fully the nature of the charges that were proffered against him.

04:32 That's a fundamental right in the statute that for an accused person at the moment of arrest, his right has to be – it is a, well, it is a fundamental right of his for the crime that he is charged with to be explained to him.

04:46 Secondly, he arrived at the tribunal and the rules provide that as soon as the accused person arrives at the tribunal or within a reasonable period of time he is to be brought before . . .

05:02 DJH: Oh, yes I know (_____) . . .

05:03 . . . the court for his initial appearance.

05:04 DJH: Yes. Mm-hmm.

05:06 That didn't happen in, in Mr. Barayagwiza's case.

05:11 DJH: Mm-hmm.

05:12 So accumulation of all these – and then the trial went on. Now, he continued to insist that his rights were violated. Now, it went on to the court of, it went to the court of appeal and the court of appeal actually gave credence to that argument, that his fundamental right was violated. Initially he was, initially the appeals chambers came to the conclusion that the violation was so fundamental as to entitle him to an acquittal.

- 05:42 So there was an order asking him to be released. So thereafter there was a review process that went on and we actually went into overdrive and to try to cure the defect. And we succeeded in the process of review, in demonstrating to the tri-, to the appeals chamber that that was an extreme, an extreme measure taken to deal with a violation of a right.
- 06:12 Because the violation was a procedural matter as we, we dealt with but the substantive issues were his responsibility for the crimes and we argued that that procedural, procedural failing on the part of the prosecution should not actually entitle him to such extreme remedy.
- 06:34 And at the end of the day the trial chamber actually agr-, sorry, the appeals chamber agreed with the reasoning and varied the order for discharge. So actually Barayagwiza was now sent for retrial and he actually went through his trial completely.
- 06:51 And I do recall that in that appeals chamber's decision for his release, it was indicated that upon the retrial if he is found guilty the fact of his violation must be taken into account when delivering sentence.
- 07:08 So he got off on a lighter sentence compared to other persons with whom he was tried because the trial chamber found, after finding him guilty actually took account of that violation and he had a substantially reduced sentence.
- 07:22 DJH: And so there were two trials in his case. The first one which was set aside . . .**
- 07:25 Correct.
- 07:25 DJH: The second one whi-, for which he was, in which he was convicted, the conviction stood but the sentence was modified because of the . . .**
- 07:32 The violation of his rights.
- 07:34 DJH: The violation.**
- 07:35 Yes.

Part 7

- 00:00 DJH: 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 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.

Part 8

- 00:00 **DJH: I have many questions but I'm only going to ask two more.**
- 00:03 Yeah.
- 00:04 **DJH: Number one is a question I couldn't, I wouldn't have known to ask a few days ago when we met.**
- 00:09 Yeah.

- 00:09** DJH: And that is there are some things going on today now in the Congo. And how does that bear on, if at all, on your thinking about the tribunal, what you're doing and what might have to be another tribunal at some point, which if you are to design it what would you do?
- 00:33** DJH: Those are broad questions . . .
- 00:34 Yeah.
- 00:35** DJH: . . . but you're, you are one of the most qualified people I know to answer those questions.
- 00:39 Yeah. Our legacy has a direct impact not only on Rwanda, but on the Great Lakes Region generally. And Congo and what is happening in Congo falls within what we are doing. We expected that with the message that this tribunal is sending out, there are people out there who should be paying attention to it but I don't know to what extent they are paying attention.
- 01:13 But what I know certainly is that there is work to be done there but we, the international community must take its responsibility. If we, if a structure were created today to deal with the issues of Congo I would readily be part of that.
- 01:33** DJH: You would like to?
- 01:34 I would readily be part of that.
- 01:36** DJH: Yes. Okay.
- 01:36 I would certainly be part of that. On a personal level I think there are atrocities being committed in the Congo today that defy imagination. The atrocities that we believe should not have been committed at this time, at this, at this situation in the history of the continent. And Congo is not unique. There is Darfur.
- 01:58** DJH: Yes.
- 01:59 There is Ethiopia.
- 02:00** DJH: Yes.
- 02:01 Sorry, sorry. Not Ethiopia.
- 02:02** DJH: Sudan.
- 02:02 Somalia.
- 02:03** DJH: Somalia. (____) . . .
- 02:03 Yes. Darfur is in, Darfur is in Sudan.
- 02:04** DJH: (____), right.

- 02:06 There is, there are things that are happening and it will take the will of the international community. And what I would say is that the talent is available today. The professionals are there today. The international community just needs to make up their mind and create the structure and there will be no shortage of lawyers who are up to the task to deal with that kind of situation.
- 02:29 **DJH: And you would, I assume, have ideas to remedy some of the imperfections that occur here at, at ICTR?**
- 02:36 Certainly.
- 02:37 **DJH: Whe-, whether it's the statute's limitations or other things?**
- 02:38 Certainly. Certainly. I would be in a position to make proposals . . .
- 02:42 **DJH: Yeah.**
- 02:42 . . . as to how I think we can do it better. First proposal I would do would have to do with the jurisdiction, with the mandate.
- 02:51 **DJH: Go ahead, tell us.**
- 02:52 It usually starts from the mandate, starts from the mandate. And I, I would even go ahead and suggest that – it may be a little bit far-fetched and I'm going to make this suggestion based on the experience we had, we had with this tribunal.
- 03:06 Recall that this tribunal, like – unlike a national j-, unlike a national prosecution, prosecution authority has no force of its own, no police force.
- 03:20 **DJH: Yes.**
- 03:20 We depend on cooperation. There is a lot we can do with that aspect of cooperation in, in new dispensation. There are lots of proposals we can do. Go beyond the issue of cooperation. Give a more, a force to a new dispensation to be able to operate.
- 03:39 Once we have the signature of a country as a member, they should gi-, be able to give us the independence to send our people there to do certain things.
- 03:48 See what NATO did in the former Yugoslavia. To be able to – they had a robust, robust arm that was able to achieve a lot of things both in terms of protection of witnesses and in terms of actually physically arresting people.
- 04:07 Today the reason why we have the mandate – why we have – sorry, the reason why we have the fugitives, that many fugitives is because we lack the muscle.
- 04:16 I'm not saying we should create a force but there is a way that we can integrate our unit with INTERPOL and create that mechanism where we have the ability to go into a country without actually being subservient to the local investigation authorities like the police or the gendarmerie and be able to achieve results.

- 04:35 There are a couple of other areas that I think if we actually sat down and we put our heads together and we wanted to make proposal, we can make very, very concrete proposals.
- 04:45 For example there is no reason why we don't have a component for compensation of victims, yet the international community is spending millions of dollars just to ensure fair trials of accused persons. There is no component of compensation for the victims.
- 05:02 That is a very serious issue, especially victims of serious sexual crimes. You destroy whole humanities. No amount of justice can bring solace to somebody who has been completely damaged in that nature.
- 05:16 But these are things that we should (___), if we are able to fashion a new tribunal and we spread our thinking and actually building from the examples of these two ad hoc tribunals, we can make a better functioning system and we can actually associate, connect more with the people that we are serving than has been the case here.
- 05:35 We had an outreach program here but it was like an afterthought. It didn't have a very significant impact but if we have a new dispensation I think we don't lack the talent to make significant proposals that can make it more effective, more effective both for international justice and for the people that the justice is supposed to serve.
- 05:58 DJH: Yeah.

Part 9

- 00:00 DJH: My, my la-, my last question of you, and, and Professor Friedman will be asking a few more, is: You've been here a long time. You have certainly seen and heard a lot of evidence and testimony of some very difficult things. How, and you faced a lot of issues and you're very committed to justice it seems to me. How has this experience changed you personally?
- 00:32 Oh, it has changed me significantly. I've come to see that humanity is the same for everybody. And one of the most difficult lessons about humanity is to be in a situation where you face your torturer and you are still willing to forgive.
- 00:54 We've had many situations in the trial chambers where people have broke down in front of their torturers. Some were speechless but they found, after the tears, they found the courage to say what they knew and at the end of the day they said, "Forgiveness is for God, it's not for me." That's changed me.
- 01:16 And I have seen situations where people who are so cruel to other human beings, they appear before the courts and are willing to shed a tear and to say, "I am sorry."
- 01:32 Those are two aspects; forgiveness on the part of the victim and remorse, genuine remorse on the part of the killers, the perpetrators. It's a very touching experience, very touching experience and it touches on my humanity and it touches on even the humanity of the judges.

01:51 I have come by situations where a judge has actually not been able to restrain himself or herself in the course of listening to testimony. At the end of the day we are all human beings and you ask yourself, "Why. Why? Why did it have to happen?" Because of the greed of the human being and the greed for material wor-, worth or greed for power.

02:18 It's a very, it's a, it's a touching experience. It has touched me personally.

02:25 DJH: Thank you.

02:26 Thank you too.

Part 10

00:02 Batya Friedman: So I'm Professor Batya Friedman at the University of Washington.

00:07 Yeah.

00:07 BF: And I thought I would actually have you pronounce your own name and also say your title and the country that you're from.

00:14 Okay.

00:15 BF: For the record.

00:15 Good, good, good. My full name is William Tambon Egbe but my friends call me Bill and I'm comfortable with that, yeah. Currently I am Senior Trial Attorney at the Office of the Prosecutor. The senior trial attorneys are the attorneys, the senior lawyers of the tribunal and we head different trial teams, all the other lawyers are constituted in two other teams.

00:48 B-, Above the senior trial attorney is management: Chief of Prosecution, Deputy Prosecutor and the Prosecutor. But we are the ones with the prime responsibility to carry the cases to court and prosecute.

01:05 BF: And you're from?

01:05 Cameroon.

01:06 BF: Cameroon.

01:07 I'm from Cameroon. And I, I did my early education in Cameroon up to 1972 and then I went to Lagos where I did – well, I went to Nigeria where I did high school for two years in Eban and entered University of Lagos in 1975 and graduated in 1978.

01:33 So in 1978 I had the option of going to, to the Lagos Law School to practice as a private attorney but I said, "No," I wanted to go back to the government and work with the government.

- 01:48 So in '78 I went back to Cameroon and I entered the government bar. That's what we call the School of Magistracy and Administration. I did two years there until 1980 when I became, I graduated as a magistrate.
- 02:02 So in our system, which is a hybrid system, as a magistrate, as a trained magistrate you can either be appointed as a prosecutor or as a judge of the bench. So throughout my career since 1980 I have been interfacing between the Office of the Pros-, Attorney General and the bench.
- 02:24 And it's in that capacity that I was at some point deputy prosecutor, at some point the public prosecutor for my region then went to the bench again and be, I was a judge and then I was the President of the tribunal.
- 02:39 And cumulatively also I had some experience with the military tribunal. That may be part of the reason, I do not know, why the prosecutor decided that I should actually supervise and monitor the trials that are going on in the military tribunal in Rwanda but of course I had significant experience in that area as well. And that's the experience I brought to the ICTR when I came in in June 1997.
- 03:06 BF: So let me, for a minute, take you back to the spring of 1994.**
- 03:10 Yes.
- 03:11 BF: Where were you during that time?**
- 03:13 In 1994, I was actually the director of public prosecution in my region. That is the last post I held before I joined the tribunal. That was in 1994.
- 03:27 BF: Mm-hmm.**
- 03:28 Because I was in that position from 1994 until I left in 1997.
- 03:32 BF: And if you had stayed in that post, what would your trajectory have been?**
- 03:37 If I had stayed in that post, after that probably I would have been looking at moving towards the position of the attorney general.
- 03:46 BF: Of your country?**
- 03:47 Well, the attorney general of my province.
- 03:49 BF: Mm-hmm.**
- 03:51 Because the way our country is structured you have at the head of the province an entire, well you have the chief justice of the province on the bench. The opposite number is the attorney general of the province.
- 04:04 BF: Mm-hmm.**

- 04:05 Then you have the judges of the court of appeal below the chief justice, then on the side of the prosecution you have the, the public prosecutors who are all representing the districts.
- 04:13 BF: Mm-hmm.**
- 04:16 So I would actually have been moving, looking towards that direction and then from there possibly to the Supreme Court.
- 04:24 BF: So a pretty major role within your own country. When did you hear about the genocide in Rwanda?**
- 04:30 I heard about the genocide in Rwanda when it occurred because it was an event of international importance. We heard about it on the radio, in discourses at intellectual gatherings we all heard about the genocide.
- 04:49 But then it was like a notion like any other notion, very fanciful notion. In our ju-, in our jurisdictions and in our practice we had never come close to anything like that.
- 05:04 We knew of multiple homicides, but never had it really been something that we actually paid attention to when it was said that people were killed in hundreds of thousands within a very short time.
- 05:18 So I started searching privately. And I did some consulting work in South Africa in 1995 and I went to Brussels also in 1996 where I met an interesting person, George Forbes. George Forbes was one of the judges in the appeals chamber.
- 05:42 And he – I had a chat with him and he was like, “By the way Mr. Egbe, are you aware that there is a tribunal that is set up in Rwanda that is involved in the kind of things that your profile fits?” I was like, “I heard about it, but I have not actually given it very focused thought because right now I’m involved in my consultancy work in international banking and trade finance.”
- 06:12 It was in that context actually that I went there, after doing the work I did in Investec Bank in South Africa. So I was interested in the idea and I made up my mind to come over to Rwanda on a visit and to see exactly what the tribunal was doing.
- 06:28 So in early 1997 I came over at my own expense. I went and sat in court and I saw what was happening. And after that I came back to meet a certain woman who was called Wendy Woodruff, an American. She is actually in the Sierra Leone tribunal. She’s in, in charge of human resources.
- 06:48 I went to introduce myself to her and I told her that, “I’ve had a couple of references and I want to talk to you about my experiences. I just came here and I’ve seen what is going on. I’m very interested.”
- 06:59 I started discussing some details about issues of witness presentation with her. She was not a legal mind. And she, she said, “Mr. Egbe you sound interesting and I have looked

at your CV. And you are the kind of person that we would need at this time in the life of the tribunal. Are you interested?" I said, "Yes, I'm interested."

07:24 There and then she interviewed me and said, "I could give you a job now but if I did that you would lose because you would be hired as a local. Go back to your country and I will send you a recruitment letter." And that is how I went back to my country and after a couple of months I got a letter calling me to come and serve as a trial attorney in the ICTR.

07:52 I came then and I was deployed to the office in, in Kigali. At that time the Office of the Prosecutor was still struggling to find its feet. We were at a stage where the trial attorneys, unlike now, were actually involved with the investigations.

08:12 We built up a case from the scratch. We listened to the witness' testimonies. We selected the witnesses. We determined what charges could actually be supported by the testimony that we heard.

08:25 We took part in indictment reviews because it was a process where after you prepare the indictment and you had all the supporting material you had to send it for the peer reviews.

08:34 Once we passed the test of indictment reviews, the attorneys that were involved in the process from the investigations were the attorneys that moved to Arusha to confirm the indictment and to respond to our pretrial motions and suddenly be prepared for trials. That is how it was in the, those early days.

Part 11

00:00 **BF: So let's continue with that, because my understanding is that that process changed over time as more of the court moved to Arusha. And maybe you can talk with us about those changes; what you think was good about them, what might be problematic about them.**

00:16 **BF: And also I understand that there have been issues with how the indictments had been written over time, that, that the tribunal has learned how to write more effective indictments. Maybe you can just talk to those issues.**

00:30 Exactly. When, when we started in 1997 we had, we, we had attorneys all pooled up and divided according to sectors of cases. The strategy then of the Prosecutor, strategy of the Prosecutor then was to approach the issue of determination of targets by regions. That is how you had the Cyangugu trial; you had the Butare trial which survived, et cetera; you had the Military trial and the Media trial.

01:03 So we, over time we developed a legal advisory section but before we developed the legal advisory section the trial attorneys who were involved in that team were responsible both as investigators, as reviewers and as prosecutors.

- 01:21 So we went to, we proceeded with the Akayesu trial in that fashion. We had general indictment reviews where all attorneys came to sit down to determine whether the charges were suff-, sufficient for confirmation.
- 01:36 But I think around 1999, there was a legal advisory section that was created. This was a section of attorneys who were not actually devoted to prosecution but who were lawyers as well, whose duty was to review the indictments thoroughly.
- 01:55 They had that as a specific task. Because during that period now, we had some cases that were now permanently going on which require that prosecution attorneys stay in Arusha permanently. So they had to build that robust legal advisory section to be able to deal with that task in the absence of the attorneys who were there.
- 02:14 Of course the process of the preparation of indictments was a learning process. Even after we created a legal advisory section. That was not a panacea, it was a learning process and it was directly connected to the prosecution theory, which was driven by the prosecutor at that time.
- 02:32 Let me tell you something about the prosecution theory because, how it evolved, because I was there. When we joined, when I joined the tribunal the Prosecutor was Louise Arbour, the Canadian. She had just taken over from Judge Goldstone. Goldstone's theory was that – well, first of all Goldstone was the first Prosecutor.
- 03:02 At the time he had been there to direct the work of the prosecution there was a lot of pressure shortly after the tribunal was created. It, he, it came up in 1994. By 1995, '96 no trials were c-, no trials had been filed. There was a lot of pressure from the international community.
- 03:22 Meanwhile Goldstone's strategy prior to when Akayesu was pushed to court – I'm using my words very carefully – it was pushed to court. Prior to that, the focus of the investigation was according to regions.
- 03:36 You had the Kibuye region where you had (____) a couple of other accused persons. I'll give you the names shortly. I'll give you the names shortly. You had the Kibuye, which was one of the a-, a-, areas where there were massacres of a large scale.
- 03:53 So what he, what he determined that was his course of action was go to where you had the greatest massacres, start investigating from that crime base, see what you come up with and then determine afterwards how to or who to prosecute. But by 1996 there was a lot of pressure on him because the international community had set up the tribunal and nothing was coming.
- 04:15 So through the pressure of the international c-, community, Akayesu was one of the few cases that actually had an indictment that was ready. It was pushed to court in response to the pressure from the international community.
- 04:29 When Louise Arbour came, her prosecution strategy was different. Louise Arbour being a judge, intellectual of a high level – I'm not saying the others were not – she sort of

conceptualized. She said, “We must prosecute, but we must find a way also of telling the story of the genocide as it occurred.”

04:54 The genocide could not have happened if there was no planning at a very high level. To have planning at a higher level requires that there are people at the tertiary level that are either willing pa-, participants or, or who are part of the planners. Then you have people at the lower level who are the executioners. Louise, Loui-, Louise Arbour’s strategy was then to tell the story of the genocide through mega trials.

05:26 That is where we had the, the, the indictment of Bagosora and 23 others all in one trial because Louise Arbour felt that you would tell the story of the genocide and you would accelerate the trials by putting all too many people – so many people in one trial, but it backfired.

05:46 It backfired first of all on a technical point. The technical point was that we came to confirm an indictment of 23 people. In that indictment you had people who had been arrested and were waiting to proceed to trial. You had people who had gone over the pretrial stage and they had their cases ready, you had people who had not been arrested.

06:10 So the judges said, “Listen, if we confirm this indictment in this configuration, we will re-, we’ll arrive at a situation where there will be a significant violation of the rights of some of the persons in the joint indictment, because those whose cases are ready to proceed will have to wait until those who are arrested are brought so that the trial can proceed at the same level.” Because that’s the only way you can proceed with a joint trial. So it would violate their right to a fair and expeditious trial.

06:44 So that theory collapsed, of the mega indictment, which will put all people together according to their participation. We now went into, it was, it, it really caused the Office of the Prosecutor to review their prosecution strategy.

07:02 Now, we proceeded nevertheless with a breakdown of the indictments into smaller components. That is why even though the Bagosora and 23 others failed you still had the Cyangugu indictment coming in that configuration, you still have the Butare indictment coming in that block form but all other indictments, so now, now had to be reviewed.

07:27 Carla Del Ponte came, learning from the failure of Madame Arbour, decided now that we should look at the possibility of not approaching, not, not going with the prosecution’s strategy in terms of either the global indictment or the locations but looking at single accused cases that are ready, that can expeditiously go forward.

07:53 Carla Del Ponte started that theory focusing on single accused cases and that is what Mr. Jallow came and met. Mr. Jallow came and refined it, refined it. Apart from the emphasis on single accused cases – and keep in mind this strategy was not applied to other cases that had not been started; the other Cyangugu cases and the rest which

were in blocks which were already in court proceeded. Mr. Jallow's strategy was now to refine the single accused approach.

08:28 We looked at indictments that were, that were previously huge. Indictments that were laden with what you call historical context. We were moving at a point where the history of the genocide was already public knowledge so why repeat the history of the genocide in every indictment?

08:47 His strategy was now – focus on the single accused, look for the strongest evidence, make your indictment as lean as possible, focus on the essential factual allegations that you can prove. And that is how you had the cases, the other cases, the Bikindi cases that I did, so many other cases moving expeditiously.

09:13 So you will see that as the different Prosecutors came in the history of this tribunal they all had different kinds of, different approaches to strategy and each of their approaches had an impact on the way we investigated, each of the approaches had. Yeah.

09:26 **BF: So how . . . So.**

09:28 **Max Andrews: (____) we have 10 minutes.**

09:30 Mm-hmm.

09:30 **BF: Okay. So that's very helpful. Wha-, can you help me understand then, there are some themed approaches, so the Military trial . . .**

09:38 Mm-hmm. Mm-hmm.

09:39 **BF: The Media trial. How did those arise within?**

09:43 Well, the, the Media, the M-, Media trial . . .

09:46 **BF: Mm-hmm.**

09:48 . . . was part of the, fell within the strategy of Madame Arbour as well.

09:52 **BF: Mm-hmm.**

09:53 When we started the Media trial actually there were five people in that case. I was part of the trial. I headed the trial so I can tell you about it.

10:03 **BF: Mm-hmm.**

10:04 The people who were in the trial were Félicien Kabuga because he was the head of the comité d'initiative that created and ran the radio RTL. We had George Ruggiu, the only non-Rwandese, a journalist of Belgian extraction, who was part of the media that was actually inciting the killings. Then you had the Nahimana, Barayagwiza and Ngeze.

10:28 At the time we confirmed the indictment of, at the time we are ready to proceed to trial with the media indictment in 2000, Kabuga as now had not been arrested. We had

to sever him. George Ruggiu had pleaded guilty so he proceeded to sentence and we remained with the three accused persons. Now, we continued in that configuration because, as I told you, the kind of incompatibilities you had in the Bagosora and 23 others were not there.

11:00 There was a close connection in the three persons. Nahimana was the head of the, was, was, was the, the brain behind the creation of the RTLM. Jean-Bosco Barayagwiza was a co-director in the comité d'initiative with Nahimana and, and, and Kabuga. Ru-, Ngeze was a newspaper editor that, the way he conducted his business, there was a lot of com-, commonality between what the Kangura and newspaper was doing and RTLM. So they were a compatible group. They continued in that, in that bunch.

11:34 The same with the Military. The Military was now reduced into a trial of four persons who are closely connected. In fact they broke the military then into two trials. You have the Military 1 and the Military 2; Bagosora for Military 1, Ndindiliyimana Military 2.

11:49 So that was a judgment call for us. We had to now proceed to structure our, our cases in a manner that would allow us to proceed because of the connection of the evidence and avoid any delays in the trials.

Part 12

00:00 BF: So you've been privy not only to seeing all these trials unfold over a long period but privy to working with . . .

00:08 The three prosecutors. Mm-hmm. Exactly.

00:09 BF: The three prosecutors. Hearing their strategies, seeing how they play out and also a sense of time, right, so that what one does, I presume, at the very beginning of a tribunal coming in when you're just trying to find out what's happening or has happened with respect to a genocide might be different than five or seven or eight years in when you have a better sense of the lay of the land so to speak.

00:38 BF: So I'm wondering now, let's say that you, let's say you had the role of Prosecutor . . .

00:43 Yeah.

00:43 BF: . . . the head pro-, for a new tribunal, based on all of this experience that you have – you know, what, what would be your general recommendation for a strategy that would account also for, you know, these prosecutions will take place over time, you know, which ones would you evoke in the earlier stages, which ones would come later, what things might you avoid, what would you pass forward?

01:08 Well, today the, we have the, the benefit of hindsight. We have the benefit of trial experience. The kind of difficulties we ran into were not really of our making. If we had the competence and the experience and the support we have today we certainly will not be able to, we certainly would have moved faster.

- 01:29 But if today I am in a position to make a recommendation I do not think that there is any particular model that fits every situation. Every particular genocidal situation or situations where crimes are committed in a massive scale have their own unique features; they have their own unique features. Sierra Leone is different. East Timor is different. I went to East Timor to work for a brief period and I came.
- 02:04 Today the tendency – and this is my reading – the drift is towards having tribunals that are run by the judiciary of the countries where the crimes are committed with support from international attorneys like us. That is what you saw in, that is what you saw in Sierra Leone.
- 02:29 The Sierra Leone murder today I had the opportunity to discuss with a couple of friends in Rwanda and they, the general consensus is that that is the s-, that is a system that would actually have a meaningful effect, effect, because it empowers the people who are actually concerned the most with the genocide but it leaves open the opportunity for better, for experience to come from outside and make a national system work better.
- 02:59 Forget about Africa. If a genocide happened in any of the European countries it's not going to be, the question would not be whether you have to take it from say Poland to be tried in the UK. They will, the tendency, the, the, the tendency will be to see how you can look at the policies there, see how it fits and find support where it is necessary to beef up the system.
- 03:23 Basically today I, I would say that if an opportunity arises for me to go and contribute to the judiciary of a national system I will be willing to come up with my own ideas but I'm not going with a, a I'm not going with a, a template that will apply in every situation.
- 03:44 It is a matter of reviewing the circumstances of the crimes, looking at the legal structures that are in place, reviewing all the possible strategies and see that which can best deal with the situation on the ground.
- 03:58 **BF: Mm-hmm. So one thing I hear what you're saying . . .**
- 04:01 **MA: This will have to be our last question.**
- 04:03 **BF: Okay. Well, one thing I hear in what you're saying is that in fact the globe as a whole, the world as a whole has actually evolved with respect to international justice. That when this tribunal was established there wasn't much in the way of precedence and there wasn't much in the way of persons who had actually experienced this in the courts and had actually generated that.**
- 04:30 **BF: So any new tribunal is in a fundamentally different situation because there are personnel, I mean there's actually skilled expert personnel who can come in and interact with people in the national court. So, and anybody who is strategizing to build a new tribunal somewhere the pieces or elements they have to work with is fundamentally different than it was in 1994.**

- 04:55 **BF: So I'm just wondering, when you think about that, it, it is really quite different than what any of the early prosecutors here might have had to work with. When you think in your own mind about how those elements might work and what, what – I mean, you have so much experience here, so much that you've seen about how things work and of course every situation will be different, but you must have intuitions about, you know, "These might be the first sorts of things I would try," or, "These might be how I might use those experts."**
- 05:27 **BF: I mean, what would you suggest to people so that they build on your knowledge? Apart from bringing you in, which clearly they would want to do.**
- 05:33 Mm-hmm . . . mm-hmm.
- 05:35 **BF: But, but there are probably ways. If you were the, the consultant or you were in that position what would your intuitions be?**
- 05:42 Well, let, let me just start by saying that certainly what has developed, what has evolved in a positive direction is not the entire world but it is the elaboration of jurisprudence relating to grave crimes of an international nature. That has e-, evolved. The knowledge of – well, well, the, the, the conduct, the behavior of people has not e-, evolved, otherwise you would not be having what is happening in Darfur or what is happening, happening in, in Congo. So certainly it is jurisprudence that has evolved.
- 06:26 Now, if I am called upon to, say, prescribe what initial steps are important in looking at a tribunal, in looking at a tribunal that is called upon to deal with this kind of crimes, the first thing you want to think about is whether the legal framework is in that jurisdiction that matches what you need to do to try x for genocide, for war crimes of an internal or international nature, or for crimes against humanity prosecution. The first thing you want to do is to see whether the legal framework is there.
- 07:11 And I'll tell you that even in European countries we have had cases where some of our accused persons have had to be returned, because the legal disposition did not take care of crimes of this nature. First thing you want to do is to see if the legal framework is in place.
- 07:28 The second thing you want to find out is if the capacity is present, if the capacity is present. And by capacity I'm not only looking at trained people. I'm looking at the conditions that you would look at to assess whether, if a trial of this magnitude is held in this jurisdiction, it will meet international norms and standards. So capacity is in two aspects both in terms of the physical structure and in terms of the, the, the legal standards.
- 08:10 Then number three, certainly you want to understand the history because the history sets the context in which those specific crimes are committed. Off by my – off, off the – off from the top of my head these are the three things I'm thinking about and let me tell you a little bit more about this last aspect I'm talking about.

- 08:34 You remember that the tri-, the genocide that we tried or we are trying was not the first genocide against the Tutsi. So ask yourself – if the international community was actually out to solve this problem from the root, why was it that they limited it to the tip of the iceberg, when we know that in history, especially the Jewish trials, people have gone back to dig what crimes that were committed half a century ago?
- 09:02 Pol Pot and the crimes that Pol Pot committed go back decades and decades and decades. So you want to ask yourself, “What is it in the history, what is it in the history of the people of that area?” That is an essential element for you to take into account when you want to do justice.
- 09:21 So basically off the top of my head these are the three parameters that I can look at. But of course if you have more intimate knowledge about where I am called to go and give advice I can come up with several other pieces of advice, both in terms of operational matters, in terms of what possible policy issues would arise and what are the possible approaches that you can take to deal, to deal with that.
- 09:45 You want to find out also where there any benefits in the truth and reconciliation model as against actual criminal justice model. A couple of other things that you can think about and there when you give that kind of advice. Yeah.