



Voices from the Rwanda Tribunal

Official Transcript: William Egbe (Part 11 of 12)



Role:	Senior Trial Attorney
Country of Origin:	Cameroon
Interview Date:	30 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz Baty 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 11

- 00:00 **Batya Friedman: 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 RTLM. 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.