



Voices from the Rwanda Tribunal

Official Transcript: William Egbe (Part 12 of 12)



Role:	Senior Trial Attorney
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Location:	Arusha, Tanzania
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.

The transcript of Part 12 begins on the following page.

Part 12

- 00:00** **Batya Friedman: 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 Max Andrews: 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.