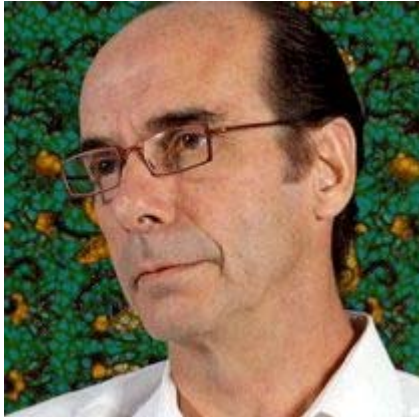




Voices from the Rwanda Tribunal

Official Transcript: Benoît Henry (Part 5 of 11)



Role:	Defense Counsel
Country of Origin:	Canada
Interview Date:	31 October 2008
Location:	Arusha, Tanzania
Interviewer:	Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Benoît Henry speaks about his first ICTR appointment defending Andre Ntagerura, who was accused and acquitted of genocide. Henry reflects on a major shortcoming of the Tribunal surfaced by Mr. Ntagerura's acquittal: the question of what happens to accused genocidaires after they are acquitted? Mr. Ntagerura remained in UN custody because no country, including Tanzania, was willing to accept him. Henry further suggests that to perform their role effectively, defense counsel must distance themselves from the events of the genocide.

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Part 5

00:00 Donald J Horowitz: So now let's go back. Your client was acquitted. Then what?

00:03 Mm-hmm. Mm-hmm. Then he was acquitted. This is when some of the problems started. Well, of course . . .

00:13 DJH: And I understand it's somewhat unique.

00:16 Yes. It is, it is, it is somewhat unique because the situation of a Rwandan being accused here at the ICTR is, is greatly different from the one, the situation of people accused before the ICTY, for the simple reason that, of course, the regime has changed since. Of course . . .

00:41 DJH: Regime in Rwanda.

00:43 In Rwanda, yes. After the events, of course, there was another, another team, if I can say, that took power.

00:51 DJH: . . . and is now continuing to rule Rwanda.

00:54 . . . and is now, and is now in place in Rwanda. And of course they were, they were military and politically, and political opponents and obviously the person accused here are considered by the actual authorities as, as responsible of all the crimes that happened and a decision of acquittal is not really welcome in, by the Rwandan authorities now.

01:21 So of course people here who are accu-, who are accused and finally acquitted, are not very hot returning in their country and everybody can understand that. They feel they will, their security will be at risk and they don't feel they, they, they can go back. Well in fact now, Ntagerura asked the Registrar to go to Canada.

01:54 This is a country of, of his choosing and requested the, the Registrar to, to, to be able to, to go to Canada, but so far he is still here under the custody of the tribunal.

02:10 DJH: Has Canada – has, has the request been made to Canada?

02:15 Well in fact, there is, there is a problem in regard with that. We on the defense side considered that a certain request was made by the Registrar after his acquittal because a note verbale was sent to the Canadian authorities requesting that they examine the possibility of receiving Ntagerura in the country. But apparent-, well, not apparently, I know for a fact that Canada, Canadian authorities never gave a clear answer.

- 02:53 They did not even give an answer that we are aware of, because they might have given an answer to the Registrar, but we don't know so we don't know. The Registrar never, never revealed what this answer could have been. So . . .
- 03:10 DJH: Have you asked the Registrar specifically?**
- 03:11 Of course we have.
- 03:12 DJH: Okay.**
- 03:13 Of course.
- 03:14 DJH: And how long has it been since the request was made?**
- 03:18 Well, the request was made . . .
- 03:21 DJH: (), at least your request to the Registrar to . . .**
- 03:22 Yes, yes, well the request was made shortly after his acquittal by the Trial Chamber.
- 03:26 DJH: And what . . .**
- 03:26 It was, it was in February that he was acquitted; February 2004 and the, the request was made a month or two after.
- 03:36 DJH: Has there been, have there been any request for him to stay in Tanzania but as a resident or as a person at least in legal status in Tanzania?**
- 03:49 Well in fact the – I can't remember the expression in English but it's called a, an accord de siege. This is, this is an agreement between the United Nations and the Republic of Tanzania providing certain conditions for the tribunals being put in place here.
- 04:14 And in that agreement there is a provision providing that any person being acquitted could not, would not stay here in Tanzania after his, his, his acquittal. So this is a provision provided, already provided in the agreement.
- 04:31 DJH: Have any other efforts been made to, for him to go elsewhere? Some other country? Formal or informal.**
- 04:36 Well, there was, there was, there was a request made to France. France refused and there was also steps taken to, for him to go to the Netherlands but I'm not fully aware of the answer of the Netherlands. Well, the reason for that is that I'm, I'm

not really acting for Mr. Ntagerura since a little while because another colleague took over the, the matter.

05:02 DJH: Okay. Do you think if there were a response, somehow or other you'd find out?

05:07 Yes, of course.

05:08 DJH: Yeah. Your colleague would tell you. Yes.

05:09 I would, I would be told. My colleague would tell me and my former client would inform me also.

05:15 DJH: Have you maintained some contact and relationship with Mr. Ntagerura?

05:20 Sure. Sure. He is still here in Arusha and I very often meet with him.

05:22 DJH: And (____) so he is living, where?

05:25 He is living in a safe house provided by the Registrar for him. And well of course we have to admit that his living conditions improved substantially since his acquittal but he is still here without being, without full, full liberty, full freedom.

05:45 DJH: Okay, living here sort of I guess under the, I don't want to say shadow but under the influence of, of the United Nations, the ICTR.

05:53 Yes, exactly. Exactly.

05:55 DJH: And unable to go anywhere else.

05:57 Yes. Mm-hmm.

06:01 DJH: Okay. And I'm sure we'll find out. Do you have anything else you'd like to add with respect to this rather unusual circumstance?

06:11 Well, what I, what I have to say about that is of course this is, this is a real problem of the tribunal because the Registrar and the tribunal itself is unable to have the decision of the judges being put in place effectively, having an effective freedom for this man who was acquitted.

06:43 So of course this is a problem. And this is a problem that is likely to happen again in the future, for the reason that there will be situation where people accused by either the International Criminal Court or any other tribunal, international tribunal, there will be situation where pe-, person accused like that won't be able to return

to their country. Let's say just, just have in mind the situation of some rebels acting in, within a country.

07:24 If they are arrested, charged, tried and acquitted, these people won't be welcome in their country. So it is, it is a situation that is likely to happen again and this is something, this, there is a lesson here that we have to learn from the situation of this man here in, in the ICTR.

07:49 DJH: Okay.

07:54 We have to learn something about that and we have to find a solution to this problem. How the tribunal can implement the decision of the tribunal. How an acquittal decision can be implemented in a situation like that.

08:06 DJH: Okay.

08:08 So this is, this is a real problem that has to be looked into for the future I think.

08:12 DJH: And probably, we, we know that there is now a permanent court, ICC, International Criminal Court, and I take it that from your point of view this has not yet been addressed either in this, the treaty which creates I-, ICC or in some other document, as far as you know. This, I, I don't mean just your clients, but the issue.

08:36 No, no, no, but you mean, you mean, you mean this issue – I don't believe, well, I know that the ICC is, has some concern about that but I don't know if there was any, any solution, if they found any solution so far. Well, of course they are not at that stage because nobody has been, has been tried yet (___).

08:55 DJH: Right, right, but one hope they would pre-plan.

09:00 Exactly. Mm-hmm. Exactly.

09:01 DJH: Okay, all right. And you don't know the answer to whether, what they're doing about it now in terms of deliberating on that. Okay. Okay.

09:07 No. No, no, no. Well, they must, they, they must, they must be thinking about this because this is, this is a real problem. This is real situation.

09:15 DJH: Can you . . .