



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 8 of 11)



Role:	Judge
Country of Origin:	Kenya
Interview Date:	4 November 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Lee Muthoga compares the cases of Casimir Bizimungu and Mikaeli Muhimana, reflecting on the difficulties of determining the guilt of implicit political action as opposed to explicit individual action. Muthoga discusses the unique challenges posed by a hybrid jurisprudential system, stressing the need for judges to have investigatory capacity as typical of civil law systems. He calls for mandatory induction courses for new Tribunal personnel and notes that many staff may require counseling as a result of their work.

The transcript of Part 8 begins on the following page.

Part 8

- 00:00 **Donald J Horowitz: Ha-, you've been in practice, and that's important. You know what good presentation is and what not so good presentation is on the part of lawyers.**
- 00:12 **DJH: I'd like to get an assessment from you of, of the quality of representation both from the prosecution side and the defense side and whether it has improved, whether, what, what could be done to make it better, et cetera, if you don't mind, to the extent you're, you know, you're willing to share that with us.**
- 00:35 The quality of presentation before the courts, before the tribunal here is a rainbow; it varies. It's a very good presentation I have seen, there is not some not so good and some even bad. And I think . . .
- 00:53 **DJH: Okay. Whether that's prosecution or defense.**
- 00:56 Whether prosecution or defense. I think largely it more depends on, I think, jurisdictions. Although again, I have seen some good practice from the same jurisdiction as I have seen bad, bad practice so it can't be exactly jurisdictional.
- 01:22 But some very good lawyer, very, very fine lawyers have appeared before us, some not so fine. Easy, less easy-going lawyers have also appeared before us.
- 01:32 **DJH: Do you think that additional training of the lawyers, whether again prosecution or defense, would be helpful in terms of the present-, the court presentations?**
- 01:45 For now it depends on what will be being (___), done, because on the basis of the workload that is still left to be done, one has to make the assessment whether really you can really do meaningful improvement on the people already here.
- 02:06 **DJH: And maybe I wasn't clear in my question which, because I'm thinking more about if there were a future tribunal.**
- 02:12 Yes, if there were future tribunal there is a lot of improvement. I, I personally would probably decree that no one becomes, no one is allowed to practice in the tribunal unless he has had an induction course of at least three weeks in minimum, but probably better six weeks.
- 02:34 An induction; a course which seeks to refocus him from wherever he is coming, whatever jurisdiction he is coming and bring him to the practice as it is practiced here so that you, you don't end up in a position that Judge (_____) was talking about where if, if lawyers for instance who doesn't-, who don't know or appreciate that if one lawyer is speaking, the others should sit down.
- 03:08 That you should never have two people standing concurrently in the, in the courtroom and, and so forth. And also that you, in, in presenting your testimony to the court, you should be presenting this kind of form, make this kind of copying, and all those things.

- 03:29 Because a lot of delays we have had here has been because a lawyer has not prepared his presentation well enough, so we end up with not adequate copies of documents made, documents presented in this way and those other things which cumulatively slow down the process quite, quite a bit.
- 03:52 But if we had an induction course, it would set up certain standard practices which lawyers who practice before us, either for the prosecution or for the defense.
- 04:03 I expect the prosecution here does have some, some, some training courses for their people. I'm not sure that that is so but I expect they would. I, I don't think I could, I would never be the prosecutor here unless I had c-, courses for my people so I expect they have.
- 04:24 But I don't – because there is no unani-, uniformity in whatever is done, the presentation isn't. Again, I have seen prosecution teams present very differently. The pr-, the team which presented Zigiranyirazo presented their case much different from the team which presented in Muhimana and a-, and also which (___), presented in Bizimungu.
- 04:52 So there is no unani-, there is no uniformity even in the prosecution presentation. I have seen very good counsel, prosecution counsel, and I have seen them not so good.
- 05:05 DJH: Okay.**
- 05:06 . . . the kind of people only the United Nations can employ because nobody else would employ them.
- 05:13 DJH: Okay.**