



# Voices from the Rwanda Tribunal

## Official Transcript: Everard O'Donnell (Part 6 of 14)



<b>Role:</b>	Deputy Registrar
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<b>Location:</b>	Arusha, Tanzania
<b>Interviewer:</b>	Donald J Horowitz
<b>Videographers:</b>	Max Andrews Nell Carden Grey
<b>Interpreter:</b>	None

## Interview Summary

Everard O'Donnell discusses the unique characteristics of ad hoc tribunals and the challenges of coordinating multinational ad litem judges. He notes that the ICTR has been effective at tracking and capturing international fugitives such as Jean-Paul Akayesu. Although the ICTR has been criticized for providing 'victor's justice,' O'Donnell stresses its efforts to deliver justice impartially. He reflects on the case of Mika Muhimana who was convicted of genocide, but later had his conviction overturned by the Court of Appeal.

*The transcript of Part 6 begins on the following page.*

## Part 6

- 00:02 **Donald J Horowitz:** The way things were going when you arrived, it soun-, and you were talking about this thing will go on for two decades to, et cetera, et cetera. I, I'm thinking back to, you know, a basic principle of, you know, speedy justice and, or at least having justice exist within a decade of – or you know, the, the conclusion of something occur within a reasonable period of time from when the person was apprehended or the, or the crime was committed.
- 00:32 May I just ask you, within a decade of what? A decade of arrest or decade of the events?
- 00:37 **DJH:** Well, I, I don't know.
- 00:39 You let it, you let it drift.
- 00:40 **DJH:** Yes. Okay. What, I guess the, the point I'm making is . . .
- 00:44 I know the point you're making.
- 00:45 **DJH:** . . . the, the question, yeah, good. What is it?
- 00:50 Yes. Well, I, if I am to be suit-, suitably defensive.
- 00:54 **DJH:** (\_\_\_\_\_) . . . I, no, I'm not, I'm not really thinking of, I'm thinking about, you know, the mission of the court and your sense of what the court – and, and that's really kind of where I was going to get.
- 01:06 **DJH:** I was going to get away from some of the, of the processes for at least a bit and, and, and ask you what your understanding was of the mission of the court itself? Whether by the statute or by, you know, what was at least accepted or by the judges or – and the, and the various peo-, (\_\_\_) the authorities.
- 01:26 Alright. That's a slightly different question but it, it, it links back.
- 01:30 **DJH:** Right.
- 01:31 The mission of the court, if you read the original resolution, you see that the principal purpose of the tribunal was to effect individual justice against the perpetrators of the genocide in Rwanda during the a-, actual year 1994, not outside it, in Rwanda and neighboring states. So that was the, the actual geographical component of the mission and the temporal component of the mission.
- 02:03 But there was an added statement that – because of course this was the Security Council using its Chapter 7 powers which of course are peacekeeping powers and quite sincerely I think members of the Security Council – although academics regard this as debatable and you're

referred to the literature – the Security Council felt that setting up a judicial institution would bring reconciliation to the Great Lakes region, and . . .

**02:34 DJH: That being Rwanda, Burundi, Uganda . . .**

02:37 Yes, yes. The whole, the whole of the area around the Lake Victoria, and . . .

**02:42 DJH: Okay.**

02:44 So the mission was therefore expressly a peacekeeping mission. Now, one of the interesting things about that mission is that it was therefore, you have this interesting situation where the tribunal is set up for political purposes by a political body and it's set up to deal with politicians and the witnesses come from a very politically intense area and there's still a conflict between two parties in which you are trying one party.

03:18 And so the whole thing is intensely political. Nevertheless, the purpose as far as the Security Council was concerned was to bring reconciliation and by doing, the, the obvious logic, the, the nexus between the judicial process and the peacekeeping process was clearly that if you punish the principal perpetrators of the genocide, then not only do, you do two things – You tell the story. You tell the story in a definitive way.

03:49 Objective people come from all over the planet with no axe to grind, with no tribal component to their prejudices. They come perhaps ignorant of the tribal issues, of the dynamics of Rwanda. You bring them from Russia. You bring them from India, Pakistan, Norway, Sri Lanka, wherever. And you plant them down and you give them a set of facts, which are in fact historical facts.

**04:16 DJH: Now, you're talking about the judges.**

04:17 Yes.

**04:18 DJH: You, these people who you just brought, okay.**

04:18 The judges, the judges.

**04:20 DJH: Okay.**

04:22 And not only do they judge whether X killed Y, Z, A, B, C, they also have to come to various conclusions about historical facts that took place around those individual events. So you're giving a historical account, a narrative, a historical narrative in each judgment and you're giving it from an objective standpoint – although not a historians' standpoint, a, a lawyers' standpoint and we can return to that another time.

04:59 Secondly, you are holding perpetrators responsible who would never have come to justice had you not set up a court. This is one interesting thing – it was a message that I don't think had

got home in Rwanda when I was here. I, several times I went over to Rwanda and they were completely, I thought, completely disillusioned with the tribunal.

- 05:26 The ordinary people didn't know what was going on there. They thought it was a waste of resources, which should be spent in other ways. They weren't aware of who'd been arrested and so on; total ignorance over there. And that was our fault. We hadn't sold ourselves.
- 05:43 But the interesting thing is that if Rwanda had been just simply asking the world community for rendition – sorry, that's a bad word to use these days, it now has overtones – for extradition of fugitives, firstly, they would have had to have been tracking the fugitives wherever they had gone, under whatever aliases they had gone, whatever continents they had gone.
- 06:08 They would have to co-, be, have a continuous tracking process that would work all the way through the extradition process until finally arrest took place and then the formal extradition process started. And that was not happening. The Rwandan state was not in a position where it could engage in international extradition of the principals in, behind the genocide.
- 06:30 So unless you'd set up a tribunal of some kind or some kind of institution with a, a police force, an undercover CID that could track globally, give hush money, go spy – e-, essentially a Secret Service, to go all over the continent to track these Rwandan génocidaires, then you would never have caught these principal individuals. And that message had not been sold to Rwanda.
- 07:01 So that was the first thing we started to do, was to say, "Look, none of these people," – now I don't want to give names because most of the, of them are under trial at the moment, unless, unless what I'm saying comes out in years to come but, but there are people being tried now who are of course innocent until proven guilty.
- 07:25 But let me, for example, choose names of those convicted, supposing you, Akayesu hiding in some foreign country under an assumed name, in disguise. Though he was pr-, in, in charge, a Mayor of a particular commune in which he'd encouraged rape as a form of genocide, famously, "Now you know what a Tutsi woman tastes like" is one of his phrases, to, as he encouraged the, the, the, the Hu-, the Hutu Interahamwe to go out hunting women and rape them before killing them.
- 08:05 Now, those individuals would never have been brought to justice had we not set up an institution like this. So part of the, the, the link between the peacekeeping mission and our existence is capturing those who would never have been caught. And in fact what we ended up doing was capturing virtually the whole of the interim government in 1994.
- 08:29 And again I have to be a little careful because the interim government by virtue of being a government does not mean all its members are guilty of genocide. Although many people

have argued otherwise, that is not the legal position. We don't have guilt by association, guilt by organizational membership.

08:48 You had something similar to it Nuremberg. Members of the SS for example would have been regarded as having been guilty of certain offenses by virtue of that membership. This is not the situation in Rwanda.

**09:03 Note: Gap in Interview (Approx. 5 minutes in duration.) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.**

09:12 What essentially we had done was to arrest everyone from the Prime Minister, from all the ministers downwards, the chiefs of civil society, the senior clergy who were responsible because of course the role of the Catholic Church was also somewhat regrettable in some of this, and the military leaders and all the – basically all the people, the principals at the top of what took place in 1994 were arrested. Very few have so far escaped.

09:48 So you have a whole government inside the prison here and interestingly enough they still function almost like a government. They issued a communiqué the day before yesterday, which landed on my desk yesterday, in which they proceed to defend the Republic of France against the allegations that the French were involved in the genocide. So they're actually still issuing communiqués as a government even though they are sitting in Arusha.

**10:17 DJH: In the detention center.**

10:18 In the detention center; very delightful situation. Anyway, the point is that you bring, you show Rwanda in due course. And once we did our outreach, we have a wonderful outreach program that was set up and, and funded by European Union which proceeded to tell the Rwandans more about what was going on here, who was being tried.

10:48 And slowly I think the message has got out. Certainly amongst the elites in Rwanda, everyone I think is now fairly familiar and our relations with Rwanda have warmed as a result of that, generally.

11:04 And so I, I think the people there know those responsible for the, the, the killings, have been and are getting justice, but of course justice for a lot of the victims may not be living in a prison, in a situation of comparative luxury in African prisons. And we still have a certain amount of criticism of our penal regime.

**11:36 DJH: Why don't you tell me what that, what that is?**

11:40 Well, we – to set up our prison we took over a corner of the lo-, local Tanzanian prison. And we then set it up according to international standards, as you would expect from the United Nations. And it has individual cells. It has recreational facilities, research facilities so the people could work on their cases, computers, exercise gym, a chef feeding them food. And therefore it's a fairly enlightened regime in penal terms.

- 12:21 If you move 50 yards to the right as you look at the UN det-, detention facility, you enter the Tanzanian prison which are a series of block houses in which – and I make no criticism of the Tanzanian government; this is a fairly typical regime in Africa because of lack of resources and of difficulties in using plant and machinery effectively.
- 12:50 You have hundreds of people all trying to use a very narrow space. In Rwanda itself for example, I feel a little more comfortable talking about Rwanda, the, the, it was estimated that each prisoner has about 40 centimeters of sleeping space – tremendous overcrowding amongst the ordinary prisoners in this part of the world, and very little in the way of food, good food, very little in the way of recreational facilities.
- 13:24 It's obvious that our prisoners, although they are in some ways (\_\_\_), some of them, those who've been found guilty, are guilty of the most heinous crimes in the calendar of human crime. Nevertheless, they are treated probably better than the person who stole something in the local market.