



# Voices from the Rwanda Tribunal

## Official Transcript: Everard O'Donnell (Part 8 of 14)



<b>Role:</b>	Deputy Registrar
<b>Country of Origin:</b>	England
<b>Interview Date:</b>	15 October 2008
<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 8 begins on the following page.*

## Part 8

- 00:00 **Donald J Horowitz:** And the question is, you know, frequently we think justice should be visible to the, to the victims, you know, and not at a great distance from them because at least in that way, the argument is that the victims will feel, some call it reconciliation with their own suffering, call it feeling that justice was done and they could actually see it done. And, and that's frequently a good thing in terms of getting on with life.
- 00:32 Yeah.
- 00:33 **DJH:** But that was not done here and some people must have thought about that. And so what you were just talking about bears to some extent on that question. I would ask you your thoughts on, on, on that question and perhaps some of the other issues that were raised vis-à-vis that.
- 00:55 **DJH:** I know you, you talked earlier about developing an outreach program to at least provide information to the Rwandan, the Rwandan people. So is that coherent to, to you and can you respond to that?
- 01:15 I always say that whenever a judge speaks it's always coherent. But I shall try and extract from it . . .
- 01:21 **DJH:** That's not, that's not, that's not always quite the case, but . . .
- 01:26 Yeah, I think it's a tremendous shame that these trials did not take place close to where the victims are and where the crimes took place, tremendous shame. And I think it's one of the issues that has dogged us in terms of our effectiveness. Having said that, when you go back to 1995, 1996, just think of the situation then.
- 01:57 The Security Council had to, and the, and the Secretariat had to put in place a trial system that was going to be able to operate in a fairly dispassionate, f-, free li-, environment in which defense were going to be able to act freely as well as prosecution. I know they considered Nairobi originally when they were trying to locate a place.
- 02:27 And it, but it was felt that really the situation, although the infrastructure was better, the political situation in Kenya was not such as to make it a very neutral ground. And so Arusha was chosen although dusty and a town with no infrastructure, no computers, no roads, nothing. Was not really the best place in hind-, in hindsight, because it took a long time to get things going.
- 02:59 And it, what it does mean is we have to hire this aircraft, you know, which has almost been on permanent hire throughout the, the, the life of the tribunal. Lifting witnesses with – and a so-called anonymity wi-, with pseudonyms out from Kigali airport, bringing them, flying them

into Tanzania, putting them up here in safe houses or in hotels, giving them enough money to survive and then lifting them back and inserting them back into their communities.

- 03:28      Apparently, although, you know, officially not, with the community not even knowing that they've been giving evidence in Arusha, you know, (\_\_\_\_\_). It, it's unfortunate but you know, it's obvious, it's to some extent impractical.
- 03:43      And it's, it's fairly widespread experience that, you know, the white Toyota car which is, even with no markings, is obviously a UN vehicle appearing somewhere in a rural community to pick up X. Or there, or the time the vehicle appears, X is away from the village, you know.
- 04:04      I mean, it's very difficult for people giving evidence here. Certainly I think this is more important in the early days of the tribunal. Now, our witness protection system is, you know, a lot more sophisticated but even so, people are known. We've had a situation few months ago where witnesses who were meant to be anonymous had been denounced by a survivors' organization in Rwanda for giving evidence for the defense.
- 04:39      And they were denounced and they were told they would no longer have the benefits of getting survivors' benefits and so on. And when they complained to the witness protection officer, the witness protection officer in Rwanda, who is not part of us, the Rwandan protection, the government protection officer cooperates within the Procureur General's Office, proceeded to denounce them herself for being snakes in the grass and for betraying their colleagues.
- 05:12      So you can see the enormous difficulties. And so choosing a neutral territory was necessary from the point of view of getting both sides heard. And one thing you see, the, the, when I came here, people always used to say, "Oh this was just a . . ." – I mean the, the, to some extent our, our guests in the detention facilities still say that it's a political tribunal and so on and so on.
- 05:39      But – and a victor's tribunal, you know, the old thing about the Nuremberg slander you know, is thrown at us. We try the Hutus. We don't try the Tutsis. But if you look at the way we function, we give the defense every opportunity. We give them equal facilities. We treat them in every way – we, we privilege them.
- 06:06      We, and you know, will do anything we can to ensure a fair trial. And I think our, our detainees individually, when they are not in their sort of group mode, they all agree that they are actually – we, we do a tremendous job in getting their witnesses here or getting them heard if necessary by video link.
- 06:31      And we get them the best lawyers we can get. We spend, we are often criticized for spending too much money on defense lawyers but we have some superb defense lawyers who, if you compare them with the prosecution lawyers, I don't think they – I have to be a little bit careful here – I don't think they necessarily fall below the standard of the prosecution lawyers.

- 06:55** DJH: Well done. Another piece of it and it's perhaps more practical than anything else is, as a judge myself, I know that sometimes it's important for me to see the area where something's happened and obviously it's a bit impractical to get a court to get on an airplane and . . .
- 07:22 No, we do it.
- 07:23** DJH: You do it.
- 07:24 Yeah.
- 07:24** DJH: Do you do it regularly?
- 07:25 We've got some judges who've just been there.
- 07:26** DJH: I under-, I understood that. I was talking about . . .
- 07:28 Yeah, no, they do it regularly. Not every, not in ev-, every case but pretty well in most case – now, most cases.
- 07:35** DJH: Mm-hmm. Okay.
- 07:37 And it, it has to be encouraged. Expensive as it is, it has to be encouraged.
- 07:42** DJH: Okay. And apparently there was a decision made not to, as the years went by and perhaps things settled down a bit in terms of emotion, not to do, not to move the court or not to have at least a body of trials done by the UN in Rwanda or, or near Rwanda. Am I correct?
- 08:10 That is absolutely correct and I regret that. I mean, I think at one point we did hope that we could try the, do some of the prosecution cases in Rwanda and then bring the trial here and do the defense case here. But it was overtaken by events, essentially. By the time we got to the point where we could have done that, most of the multi-accused cases, which are very long and convoluted were heading to the defense phase anyway.
- 08:39** DJH: 'kay. Okay. You have a, a – the court has a presence in Kigali . . .
- 08:49 Yes.
- 08:50** DJH: . . . and what is that presence?
- 08:52 Well, we have a – well, we, it's a very small presence now but it used to be quite big. Basically, the prosecution have their presence there. They are the people who look for the witnesses, look into the evidence they have, basically run case investigation and then case support once the trial's ongoing.

- 09:19 Issues come up in evidence, they immediately phone through to the prosecution representatives in Kigali, get an investigator to go and check this, this and this because this has come up in evidence and so they go and check it and then it's fed back into the trial.
- 09:34 And then also we have other staff whose job it is to facilitate the running of the defense cases, the defense investigators, defense counsel, going around Rwanda, getting into the prisons, going into the communities to get their witnesses.
- 09:49 And then we've also got our witness protection staff whose job it is after the witnesses are finished here to ensure that they are looked after, that they don't have any prejudice, that, if they have needs, they have medical needs, we set up a clinic for treating medical conditions of the witnesses and we look after them basically. The idea being – you see, because if we look after our génocidaires here, we look after our guys here.
- 10:17 And considerable numbers of them have ill-, certain illnesses, infect-, infective illnesses which could be life threatening and we give them drugs, modern drugs which are not available to everyone in Africa. So there's another interesting ethical situation. We are feeding highly sophisticated drugs to keep our alleged criminals and our found criminals alive.
- 10:46 And we have witnesses in Rwanda, and maybe even victims who were infected with certain diseases by some of these self-same people or their, their acolytes and their, their, their foot soldiers, who died because of those diseases already because they ha-, didn't have treatment. And then we have witnesses who come here with those same diseases.
- 11:09 And I don't need to ink in all the details, I hope, but for example if you are a female witness of a rape or a rape wi-, victim and you come here and you have an infectious disease that you caught while you were raped in 1994 and you know that the individuals who ultimately were responsible are receiving highly sophisticated drugs to keep them alive, but that you are not receiving any treatment, what kind of justice is that?
- 11:37 So we set up a, a system to ensure that those sophisticated drugs were given to our witnesses in that position.
- 11:44 DJH: And victims, or at least . . . ?**
- 11:45 Not victims, you see in general, no. We did work, in fact we have an officer whose job it was to try and encourage the NGOs to get those drugs available and they've done tremendous work. And we-, through the NGOs in Kigali where we have ensured and we h-, we're getting the victims organizations we worked with to get those treatments out, out there.
- 12:06 DJH: Mm-hmm.**
- 12:07 But, you know, how, hundreds of thousands of people – no, not hundreds, hundreds or thousands of people lost their lives before that took place.