



Voices from the Rwanda Tribunal

Official Transcript: Alex Obote Odora (Part 2 of 9)



Role:	Chief of Appeals
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Location:	Arusha, Tanzania
Interviewers:	Lisa P. Nathan John McKay
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Alex Obote Odora speaks about the responsibilities of African states in creating peace and stability in the Great Lakes region and across Africa. He talks about the importance of education in upholding human rights and the necessity for justice capacity building. Odora also offers his opinion on the quality of defense counsel, the implications of maintaining the highest international standards, and the need to delink criminal prosecutions from the broader goals of reconciliation.

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Part 2

- 00:00 **Lisa P. Nathan: Before – because you have been working here for a number of years and have different experiences in your roles here at the Office of the Prosecutor, is there something in your reflections as you look back at that time, that you would wish to share before we go any further; something that you have on your mind that you would like to share about your experiences or things that you’ve learned here, reflections, a story?**
- 00:31 Well, it is difficult because the bulk of the work that I did with the, wi-, with the Prosecutor as Senior Legal Advisor and Special Assistant to, to the Prosecutor, they are very interesting in the sense that we have the opportunity to really what I would call test our Article 28, that is Cooperation with States.
- 01:04 We meet a number of senior government officials including presidents, attorney generals and discuss these other issues of cooperation. In the African context, the issue is not cooperation, lack of cooperation as such, when it comes to fugitives and transfer of cases; I think the issue is financial.
- 01:28 You see, the expenses of conducting a case is not very easily appreciated. When a, a country accepts to prosecute one individual, many of the witnesses who are Rwandans who fled the country are all over the world. You have to get witnesses from Canada, from Australia, from Europe and other parts of Africa, and that country must be able to finance all this and that costs a lot of money.
- 02:05 So the political will, in most cases, are there. Usually when you discuss with government officials, you notice that they are very easily willing to say, “Okay we can do something.” But once their Minister of Finance make the calculation that, “Okay this will cost so much,” then things change.
- 02:27 That, that, that has been really what I’ve seen and some people have construed this as lack of cooperation; I see it differently. In areas that do not involve financial responsibilities there have been very good cooperation across the board. Maybe that’s what I can say at the moment, yeah.
- 02:49 **LPN: Okay, I have a follow-up question. If you were involved in the creation of another tribunal, another ad hoc tribunal such as this – we all hope that doesn’t have to happen but if it does, do you see something that could be put in place in the infrastructure, the way in its mandate that could help address that problem, the financial problem for the individual states?**
- 03:20 It is difficult. I don’t have an answer at the moment. What I can say is that with regard to the structure of the, of the tribunals themselves, you know, when the ICTR and ICTY were established, the first officials to be appointed were the judges and I think that was a mistake.
- 03:49 I think the first people to be appointed should have been the Prosecutor who would then be in charge of investigators, and then get lawyers and others later because

without investigators you do not have the material to provide an indictment even to send in for confirmation.

04:08 The result is that for very many years the judges were sitting waiting for cases to begin and the same mistake was done with the ICC; they get the judges appointed first and once the judges are appointed the assumption is that the court is ready. So people begin, the time, so the time begins to run when the judges are appointed. So they will say for the last four years nothing is happening.

04:35 Actually a lot is happening in the sense that if investigations were the first to go to the field, they will collect informations, they would assess this; by the time they are ready to draft the indictment for judges to confirm the indictment that is when judges would be appointed.

04:52 The other problem which is a bit technical is the drafting of rules of procedure and evidence. This responsibility has been given to the judges and it is the judges also who interpret these rules, who amend these rules, and sometimes within the concepts of national justice it is a little bit difficult to understand, okay?

05:18 In other national legislation it is the, the parliament or congress that passes the law, okay, that amends the law, it is not the judiciary. So some of these things should be reflected on.

05:34 The rules have been good in the sense that the judges came with lots of experience from both, from the, the, the two major judicial systems. So we have got a hybrid of the rules of procedure – that is very helpful. But at the conceptual level it is difficult to appreciate that the person who makes the rules, amends the rules also interprets the rules so maybe that could be done differently next time around.

06:03 LPN: As far as the ICTR functions, can you think of any things that surprised you when you arrived here about how the court works?

06:21 Well, I think not so much how the courts worked but how the first case of a guilty plea was handled; that is the case of Kambanda. You know, there are certain charges that it is difficult to find an individual guilty on all those counts.

06:54 For example, when one is charged with genocide and in the alternative, complicity in genocide, okay, usually it is either or, you don't convict on both. Well, Kambanda pleaded guilty on both and the guilty plea was accepted by the, by both the trial chamber and the appeals chamber.

07:25 There is also the question of the elements of the crime of conspiracy where there should be an agreement between, you know, two or more persons or at least there should be circumstantial evidence leading to that type of agreement, okay? In the guilty plea, those elements don't come out; in other words the allegation did not disclose a crime – but he also pleaded guilty to that, okay? That surprised me.

- 07:59 Another thing that surprised me in one aspect of the, the guilty plea is when you find an accused pleading guilty to complicity by omission, okay, that again is concept-, conceptually, you know, difficult to appreciate.
- 08:19 And there ought to have been a little bit more of the legal arguments in these areas before certain specific conclusion can be reached, in particular when we are developing important jurisprudence that can be used elsewhere.
- 08:37 So what I would say is that some of the things that surprised me here is how certain legal issues were conceptually handled. The, the one that surprised me the most, of course, is how we've, the off-, the, the, the tribunal have treated the crime of complicity in genocide and complicity as a mode of liability.
- 09:02 So while complicity in genocide is a crime, some courts have treated that as a mode of liability. And yet when you look at the statute, that is a specific crime under Article 23 paragraph, sub-paragraph E and modes of liability of complicity under Article 61 is different from a crime and somehow the juris-, some jurisprudence have treated these as if the mode of liability and the crime are one and the same thing. That has surprised me.
- 09:46 **LPN: So there's a few different lines I'd like to follow up on there but I also want to leave time for my colleague John McKay.**