



# Voices from the Rwanda Tribunal

## Official Transcript: William Egbe (Part 5 of 12)



<b>Role:</b>	Senior Trial Attorney
<b>Country of Origin:</b>	Cameroon
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<b>Location:</b>	Arusha, Tanzania
<b>Interviewers:</b>	Robert Utter Donald J Horowitz Batya Friedman
<b>Videographer:</b>	Max Andrews
<b>Interpreter:</b>	None

### Interview Summary

William Egbe discusses the ways in which the Office of the Prosecutor (OTP) has evolved during his ten years at the ICTR. He describes the OTP selection processes for determining which perpetrators should face trial. He also compares the sentencing processes at the ICTR with those at other international tribunals such as the ICTY. Egbe identifies the limitations of the ICTR Statute and discusses the impacts of these on the Tribunal's work. He highlights best practices for new international tribunals.

*The transcript of Part 5 begins on the following page.*

## Part 5

- 00:00** Donald J Horowitz: All right. Mr. Egbe, I'm Don Horowitz and we – Judge Don Horowitz – and in fact we met before in an airplane a few days ago.
- 00:09 Yes, we did. We did, yeah.
- 00:09** DJH: We were both coming from Rwanda.
- 00:11 Yeah, we did.
- 00:13** DJH: Before I go into the further, some further discussions, I'd like to get a little bit more of your background.
- 00:21 Yeah.
- 00:21** DJH: One of the things you recently mentioned is problems that had existed in your country.
- 00:25 Mm-hmm.
- 00:27** DJH: What is your country?
- 00:29 Okay. I, I am, I am a Cameroonian.
- 00:32** DJH: Yes.
- 00:32 Yes. I come from the English part of the country. You know Cameroon is, it's, it's one of those countries like Canada that have an English and French component in the, in the population. We also have bi-jural system and we are essentially bilingual, we operate in our systems. So I come from Cameroon and prior, I am still a magistrate in Cameroon. I joined the magistracy in 1980, so I'm actually in the court now for 28 years.
- 01:13** DJH: Okay.
- 01:14 Yes. And during that period, I was a prosecutor and I was a judge. And yeah, basically I, I practiced in both parts of the tradition at the English speaking part of the country and the French speaking part of the country. And, yeah.
- 01:32** DJH: So you are familiar with both the common law and the civil law.
- 01:34 And the English civil law. That's right.
- 01:36** DJH: Okay.
- 01:37 That's right. That's right.
- 01:39** DJH: And of course here in the tribunal we have discovered there's sort of a hybrid system.
- 01:43 Yes.

- 01:44** DJH: And you're fortunate enough to know, to know both. Some of, some of the attorneys who worked both on the defense side and on the prosecution side have had just one of, of, of those. Ha-, has there been any training in the office to assist newer attorneys relative to, to the juri-, to the format or, or the, the code from which it comes?
- 02:10 Yeah. What usually happens is when new attorneys are hired and they come on board in the Office of the Prosecutor there is a period where they, they go through an induction process. That induction basically assists them to settle down.
- 02:28** DJH: Mm-hmm.
- 02:28 Settle down and understand what the essential workings of the office are. Now, for practicing attorneys who are either of the English common law – well with English common law there is not much of a differen-, a, a difficulty but for attorneys who come from the French civil law background, a, a few of them especially at the lower level are usually integrated into teams where you have a mixture of attorneys both of the civil law and of the common law extraction.
- 03:00 We all work under the, the co-, under the statute, provisions of the statute, under Rules of Procedures and Evidence. In fact that is what defines how we approach issues. That is what defines how we prepare basic documents for, for trial. In terms of the ability of an individual counsel to learn the mechanics, that is an issue between the team and the judges.
- 03:34 We have as you understand the system here where you can have on a panel judges of the civil law and judges of the common law. So it tells you that both the civil law and the common law are in play but one thing you must remember is – and I can, I can quote a very concrete example which is the case of the late Judge Kama, who was the first President of this tribunal, who actually presided over the Akayesu case, who actually presided over the A-, Akaye-, -kayesu case.
- 04:08 Before I . . .
- 04:08** DJH: That's, that's fam-, famous for defining rape in certain respects as a, a crime against humanity and a genocide.
- 04:16 Yes. Ye-, yes – no. I, I think I, I made a mistake. Not the Akayesu case.
- 04:20** DJH: Okay.
- 04:21 The, the Kambanda case.
- 04:22** DJH: Okay.
- 04:22 Sorry, I made a mistake.
- 04:23** DJH: Right.

- 04:24 This is about the Kambanda case. If you remember, Kambanda was the Prime Minister of Rwanda at the time of genocide.
- 04:31 DJH: Yes.**
- 04:31 I'm saying, I'm giving you this specific example to show you how sometimes the influence of the civil law and the influence of the common law can actually have a significant position in the outcome of a trial. Now, when Kambanda was represented by an English-speaking lawyer, he pleaded guilty. When it came to what we call in my jurisdiction allocutus of plea.
- 05:07 DJH: Allocution.**
- 05:08 Okay. We – in my jurisdiction we call it allocutus, allocution.
- 05:11 DJH: Yes. ( ).**
- 05:12 When it comes to pleading, well, asking for leniency or pleading mitigation, Kambanda, on the advice of his counsel, relied on his counsel because his counsel had made the representations for his client indicating how remorseful the client was, how voluntary his plea was, et cetera. Judge Kama was a civil law judge. Now, under the civil law system the accused must himself show remorse. That is why they are usually given an opportunity to say something if they have anything to say.
- 06:07 Now, judge, the civil law judge did not get this from Kambanda. What happened was that this was interpreted by a panel of judges presided over by a civil law judge as the absence of full remorse.
- 06:25 Under the common law system we all know that the counsel is the agent. He speaks for and on behalf of his client, but in the civil law that client himself must go beyond that and make his representation and convince the judges that he was actually remorseful.
- 06:43 So it happened that that was very significant fact in the decision and Kambanda, of course, despite of the fact he had pleaded guilty, was actually given a sentence that did not reflect any mitigation. He was given the full and maximum sentence.
- 07:00 There are other issues, other factors – for example his superior responsibility, his command position – that were taken into account. But I'm saying this to tell you that we work in a hybrid system where sometimes it is important for you to know your judges. Fortunately we have an appellate court that sits on top of the decisions of the, decisions of the trial chamber.
- 07:24 But as a young attorney who is coming on, you have your rules. The rules define how we are supposed to navigate through the process but you always have to keep an attentive eye for your panel because at the end of the day it is your judge. When we were in law school we learned something and they said, "Know your judge." Know your judge.

- 07:46 So there is actually a, a, a, an attorney who comes into a team who is at a subordinate position, certainly has the benefit of senior counsel who are sometimes counsel who have been there longer than him. They could be civil law or common law but more experienced than him. He learns as he progresses. Yeah.
- 08:07 DJH: Very understood. W-, I, I want to ask you one more question on that case. Was there an appeal of the sentence based perhaps on that, the problem that you just pointed out that the lawyer didn't understand that and that the defendant would have said that himself, et cetera? Was there an appeal?**
- 08:26 Yeah, there was an appeal.
- 08:27 DJH: And what was the outcome?**
- 08:28 There was an appeal and the appeals chamber confirmed, confirmed the decision of the trial chamber.
- 08:34 DJH: Mm-hmm.**
- 08:35 Well, you know usually an appeal court being a court of record . . .
- 08:39 DJH: Of course.**
- 08:40 . . . there, there are a couple of reasons why an appeals chamber may decide not to set aside the decision of the, the decision of the lower court.
- 08:49 DJH: Mm-hmm.**
- 08:49 And especially on matters of discretion.
- 08:52 DJH: Yes.**
- 08:53 Because sentencing is an issue of discretion.
- 08:56 DJH: Right.**
- 08:57 They could have as well given 30 years or 40 years but they decided to give life. Until there is a showing that that discretion was exercised in total violation of a law I don't think the appeals chambers usually goes the extra mile of setting aside the decision. But the long and short of it is that the appeals, the matter went on appeal and that the appeals chamber did not see any solid grounds to alter the sentence.
- 09:19 DJH: You, you raised another question for me.**