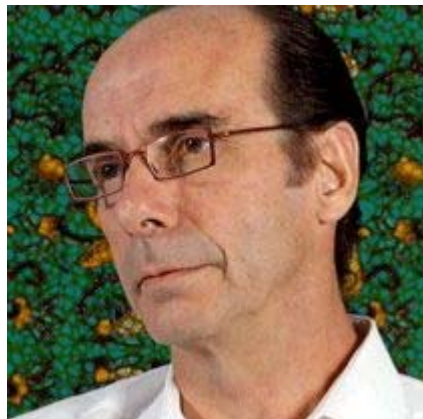




Voices from the Rwanda Tribunal

Official Transcript: Benoît Henry (Part 8 of 11)



Role:	Defense Counsel
Country of Origin:	Canada
Interview Date:	31 October 2008
Location:	Arusha, Tanzania
Interviewer:	Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Benoît Henry speaks about his first ICTR appointment defending Andre Ntagerura, who was accused and acquitted of genocide. Henry reflects on a major shortcoming of the Tribunal surfaced by Mr. Ntagerura's acquittal: the question of what happens to accused genocidaires after they are acquitted? Mr. Ntagerura remained in UN custody because no country, including Tanzania, was willing to accept him. Henry further suggests that to perform their role effectively, defense counsel must distance themselves from the events of the genocide.

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Part 8

- 00:00** Donald J Horowitz: **Have there been other situations, and we won't go through all of them, where you have had if not exactly the same experience, similar experience in terms of a culture of non-disclosure.**
- 00:11 Yes. In the same case I had another situation that is very close to the one I, I, I just explained but I'll give some details to, to explain it to you. My client was accused and there was, there was a witness who testified that on a certain date he, he made a, he made a, how do you call that? A (____) . . .
- 00:43 DJH: A statement?**
- 00:44 A statement, a public, a public declaration. It was public meeting and he did a declaration during a public meeting. But for that occasion he, he, he very clearly said that it was at a specific period of time. And I knew for a fact that at that time – oh no. I'm sorry. This is not the good story so withdraw that from the camera.
- 01:12 DJH: Okay, alright. Very good.**
- 01:15 I'll, I'll start again. It's another thing. No, I was, I was confusing in between two stories with the same witness but I'll, I'll tell you the, the story I, I had in mind, okay. So the, the, the story I had in mind is that my client was accused on a specific date which was the 28th of January to have come into a particular place in a helicopter with a military to, with particular military coming from the same prefecture who was, who was a known military, to distribute weapons to militia.
- 01:53 My client said, "Listen, I did not do that. I did not go to, to that place on that date. I, I, I was in Kigali. There is no other way I can say I was in Kigali. I, I was just in my office on that date. I remember because it was the, it was a, it was a holiday. It was the, the Republic Day and I remember having been in my office during that day.
- 02:23 But the person I'm accused of having distributed weapons with is General Kabiligi and Kabiligi on that particular date was in Egypt. He was in Egypt. He was on a mission, on an official mission in Egypt." So what I did, I called the, the, the witness. I called Kabiligi. He testified to the effect that he was in, in, in Egypt and that he, he was on an official mission from his government.
- 02:59 And he had documents, documents that were disclosed to him in his case by the prosecution. And the documents was a report that he had made to the president of

the Republic on his return from his mission. It was a mission report. The prosecution had that. They never admitted having that.

03:24 They never admitted that this document was a real document although they had disclosed the document to Kabiligi himself. So they had, they had to, to write to the Republic of – to, to Egypt.

03:41 DJH: Sure.

03:42 They had to write to Egypt to obtain all sorts of documents which they finally after a very, very long and hard process, they finally disclosed to us and had to admit. But you see it, it, it is something very easy to admit and very clear this is the truth. This is the simple truth.

04:02 They know the truth and they don't want to admit it because of course they would break their, it would break their evidence. You see, so this is something I, I have, I still have problems with.

04:14 DJH: Okay. And you know of course that the rule is that all exculpatory evidence must be disclosed . . .

04:18 Sure, sure.

04:20 DJH: . . . to the defense. And also I gather all statements, all statements of anybody who the prosecutor wish, wishes to call as a, as, planning on calling as a witness.

04:31 Mm-hmm.

04:32 DJH: Okay. And I, I was told that by a prosecutor.

04:34 Yes.

04:35 DJH: And I take it you'll agree that that is the rule.

04:37 Well, of course it is clear in the rules. It's Rule 68. It's very, very clear.

04:40 DJH: Okay. Okay. Let me go on because we have limited time.

04:43 Okay.

04:45 DJH: And let's talk briefly about the case you're currently handling which is – and I gather is not concluded and obviously I don't want you to go into anything which

is privileged or confidential, but maybe you can tell me a bit about what the nature of the case and at what stage is it.

05:02 Okay. This is a case of well, which is commonly called here Military Two. This is a case involving four militaries.

05:16 DJH: High up, I take it.

05:18 High ranked militaries, yes. I was very recently appointed co-counsel in this case. This case has been going on for four years. There are more than 350 days of trials so far and I came at the very end because the co-counsel of one of the accused just left.

05:43 He withdrew from, from the file and the lead counsel asked me to replace him and, and help him in, in concluding this case, concluding this case and preparing the final arguments and, and this is at this stage only that I came in to the case.

05:58 DJH: Okay. So you're fairly recent.

05:59 Yes.

06:00 DJH: How soon do you think the case will be, will conclude, at least in the presentation of evidence (_____)?

06:05 Yes, at the presentation of the evidence. Well, from what I can expect, it, the evidence will be concluded probably by the end, no, by the beginning of 2-, 2009.

06:18 DJH: Okay.

06:18 We have a session now. We have, we are actually, actually going, have an on-going session that is supposed to end on the 5th of December. And w-, we think that they will, they will need an additional, they will need an additional session in January because the, because of a decision of the court who concluded of, who concluded that there was a violation of the right of the accused to be disclosed exculpatory material by the prosecution in order to recall some (___), of the witnesses and call additional witnesses.

06:58 So we can see that there will be an additional session at least.

07:02 DJH: Okay. And who are the three judges in the case currently pending?

07:06 Okay. We have Judge de Silva. We have Judge Hikmat and Judge Khan.

07:14 DJH: Okay. And I remember de Silva's from Sri Lanka. And . . .

07:18 Yes. Hikmat is from Jordania, Jordania and Khan is from Korea.

07:27 DJH: Okay.