



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 9 of 11)



Role:	Judge
Country of Origin:	Kenya
Interview Date:	4 November 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Lee Muthoga compares the cases of Casimir Bizimungu and Mikaeli Muhimana, reflecting on the difficulties of determining the guilt of implicit political action as opposed to explicit individual action. Muthoga discusses the unique challenges posed by a hybrid jurisprudential system, stressing the need for judges to have investigatory capacity as typical of civil law systems. He calls for mandatory induction courses for new Tribunal personnel and notes that many staff may require counseling as a result of their work.

The transcript of Part 9 begins on the following page.

Part 9

- 00:00 **Donald J Horowitz: Now I'm going to ask you about judges. Because it's a hybrid jurisprudential system or j-, you know, j-, judicial system; common law, civil law, et cetera, people from different, many different countries, would you – if you were designing a tribunal for the future – also suggest that judges have (), have training or some sort of orientation before coming in and just sitting on the bench?**
- 00:34 I-, i-, it would be mandatory. Not even because of the cross-jurisd-, jurisdictional necessity, because that can be avoided. I think Judge Møse when he was doing his judge selection almost succeeded in avoiding it.
- 00:50 Like, say, I sat in a tribunal, in a, in a court with a judge from Pakistan, and a judge from Sri Lanka, was eventually replaced by a judge from Ghana. You see that is a Commonwealth, so they all like you to be common law judges.
- 01:06 Of course that is perhaps dictated by language because you will find that those who are from Commonwealth jurisdiction probably will be speaking English only and not F-, not French, or very little French. And others like, say, Karemera the first group of judges was French speaking judges put together, and so on and so forth.
- 01:35 So, but that was, I think, a practical attempt to do it. But if I was designing a tribunal, apart from that, I would have judges also go through a similar orientation course so that there is less, less reason for differences in perc-, in perception of the testimony, perception of the decision-making process, perception of court, court control and court, court management.
- 02:08 **DJH: Court control and co-, court management, yes, yes, yes.**
- 02:10 Court management yes. And, and also because I think judges ought to know what is in store for them because sitting there in the national jurisdiction and listening this morning a tort case, this afternoon a divorce, a marriage, tomorrow night some broken contract, and so on and so forth.
- 02:39 You don't get the same weight of, force of weight as you do when you are sitting in there day in day out, hearing about killings and killings and killings and killings and never anything else. A-, and judges ought to know when they are coming here that that's what they will be, they will be hearing.
- 03:03 That's the kind of life they are going to be leading. And it is extremely stressful. I'm surprised we haven't broken down. It is extremely stressful; it is the kind of thing that requires counseling and if I was, if I was doing it, this thing again I would have a counseling section for, to counsel judges as they carry out their work and as they bear the weight of receiving that, those testimonies.
- 03:37 I, I recollect in the first w-, weeks when I was here and we were hearing this, this testimony about some of these ma-, mass killing sessions and so forth and seeing those

video clips. I didn't sleep well at all for quite some time. So yes, I would orientate judges coming to work here.

- 04:07** **DJH: Well you, you've anticipated, actually your answers anticipated a number of questions I was going to ask which is about the difficulty of hearing these cas-, these kinds of cases day in and day out and, you know, might, and would counseling be of assistance.**
- 04:22** **DJH: We certainly have found that, that in other instances, interpreters for example, people who hear, hear this day in day out as the judges do, that there is a stress and, and after a while it grinds you down and, and some help is often necessary.**
- 04:38** **DJH: Has it changed you personally, having been here five years and listening to this, if you don't mind sharing some of that with us?**
- 04:48 Do I really know? I think so but if you ask me in what ways I will – it is very difficult to define. But let me put this, say this way, I began hating this work. My first year, year and a half, I just lacked the courage to say, “No gentlemen, let me go back to where I came from.” But since then, I have got to like it.
- 05:20 In fact I have got to appreciate the gravity, the gr-, greatness of the work and the great opportunity that people who work here have got, as opposed to judges who work in the national courts, of developing the jurisdictional, extending the jurisdictional, jurisprudential capacity of international criminal law and so forth.
- 05:55 Things that I think I will look forward – I will look back to with satisfaction when I leave this tribunal. And I think it has made me a more courageous lawyer than I probably was before. Yeah, I, I don't think I have remained the same.