



Voices from the Rwanda Tribunal

Official Transcript: William Egbe (Part 6 of 12)



Role:	Senior Trial Attorney
Country of Origin:	Cameroon
Interview Date:	30 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz Batya Friedman
Videographer:	Max Andrews
Interpreter:	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.

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Part 6

- 00:00** Donald J Horowitz: You've been a judge in your own country.
- 00:02 Okay.
- 00:03** DJH: And you've I guess tried both civil and criminal cases, or not-criminal and non-criminal cases. And you've sentenced people I presume?
- 00:11 Exactly.
- 00:12** DJH: Okay. Is there any difference in, in your view, as to sentencing here in the ICTR within – particularly the nature of the crimes and the, the kinds of people that ICTR is, is, is trying, and assuming you get conviction, and in terms of the considerations, the principles of sentencing and so forth – between your na-, your consideration in your national court and the on-, and the considerations here.
- 00:43 Well, certainly we are dealing with, in this jurisdiction we are dealing with crimes that are substantially different in nature from the crimes that we, we, we tried, I tried in national jurisdiction. So that is the first point.
- 01:00 In terms of appreciating the sentence to be meted out in, to an accused person for crimes in both jurisdictions, certainly there are – I, I the experience I have here is that there is a very high level of scrutiny before sentences are, are passed out. But what I have found a little bit different here is that – which is not the same in my national jurisdiction. Let me tell you what happens in my national jurisdiction.
- 01:39 In my national jurisdiction most of the crimes are codified. Sentences are tabulated in a way. A sentence for murder in my jurisdiction will be broadly similar to a sentence for murder in a different part of my country.
- 01:57 But what you will realize here is that sometimes the sentences, the sentences that are meted out by this tribunal are different from sentences for similar offenses that are meted out, say, in a sister tribunal like the ICTY.
- 02:15 We always draw comparisons be co-, between the ICTR and the ICTY because these tribunals were basica-, ba-, basically set up on the same platform. You do recall that at a certain point there was one Prosecutor for both tribunals.
- 02:26** DJH: Yes.
- 02:27 So we drew, usually draw similarities. There are some, in several cases you will find that sentences that are meted out for crimes of similar nature here they are higher, much higher than the sentences that are meted out in the ICT-, ICTY.
- 02:47 So – but beyond that, what I simply say is that sentencing, sentencing is a matter discr-, the discretion of the judges. And I have not seen an occasion where even though the sentences were really very high, the (___), the discretion of the judges, decision of the

judges was questioned. And of course we have the chamber of appeal that actually vets all of this and . . .

03:09 DJH: Yes.

03:10 I do remember once in the case of Jean-Bosco Barayagwiza, where the appeals chamber reduced the sentence of the accused person, but that was on account of the fact that the trial chamber did not take account of the fact that his rights were violated. But that is a very specific issue and it is not unique to find also cases where the appeals chambers actually varies sentencing, sentenc-, sentences.

03:42 But I will simply state that in cases where we have had a perception that it was too high or too low, the issue of the discretion of the judges has never been a matter up for debate.

03:57 DJH: Yeah, can you talk about, just briefly, the rights which were violated in his case that affected the sentence?

04:03 Yes. Now in the, Jean-Bosco Barayagwiza was arrested in 1998 or thereabouts in Cameroon. One of the issues he raised from the moment of his arrival here was that an essential right of his was violated and the right was the right to explain fully the nature of the charges that were proffered against him.

04:32 That's a fundamental right in the statute that for an accused person at the moment of arrest, his right has to be – it is a, well, it is a fundamental right of his for the crime that he is charged with to be explained to him.

04:46 Secondly, he arrived at the tribunal and the rules provide that as soon as the accused person arrives at the tribunal or within a reasonable period of time he is to be brought before . . .

05:02 DJH: Oh, yes I know (_____) . . .

05:03 . . . the court for his initial appearance.

05:04 DJH: Yes. Mm-hmm.

05:06 That didn't happen in, in Mr. Barayagwiza's case.

05:11 DJH: Mm-hmm.

05:12 So accumulation of all these – and then the trial went on. Now, he continued to insist that his rights were violated. Now, it went on to the court of, it went to the court of appeal and the court of appeal actually gave credence to that argument, that his fundamental right was violated. Initially he was, initially the appeals chambers came to the conclusion that the violation was so fundamental as to entitle him to an acquittal.

05:42 So there was an order asking him to be released. So thereafter there was a review process that went on and we actually went into overdrive and to try to cure the defect.

- And we succeeded in the process of review, in demonstrating to the tri-, to the appeals chamber that that was an extreme, an extreme measure taken to deal with a violation of a right.
- 06:12 Because the violation was a procedural matter as we, we dealt with but the substantive issues were his responsibility for the crimes and we argued that that procedural, procedural failing on the part of the prosecution should not actually entitle him to such extreme remedy.
- 06:34 And at the end of the day the trial chamber actually agr-, sorry, the appeals chamber agreed with the reasoning and varied the order for discharge. So actually Barayagwiza was now sent for retrial and he actually went through his trial completely.
- 06:51 And I do recall that in that appeals chamber's decision for his release, it was indicated that upon the retrial if he is found guilty the fact of his violation must be taken into account when delivering sentence.
- 07:08 So he got off on a lighter sentence compared to other persons with whom he was tried because the trial chamber found, after finding him guilty actually took account of that violation and he had a substantially reduced sentence.
- 07:22 DJH: And so there were two trials in his case. The first one which was set aside . . .**
- 07:25 Correct.
- 07:25 DJH: The second one whi-, for which he was, in which he was convicted, the conviction stood but the sentence was modified because of the . . .**
- 07:32 The violation of his rights.
- 07:34 DJH: The violation.**
- 07:35 Yes.