



Voices from the Rwanda Tribunal

Official Transcript: Beth Lyons (Part 5 of 13)



Role:	Defense Counsel
Country of Origin:	United States
Interview Date:	3 November 2008
Location:	Arusha, Tanzania
Interviewers:	Batya Friedman Ronald Slye
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Beth Lyons highlights the importance of a fair trial for all. She discusses the politicization of ICTR prosecutions, particularly the failure to investigate war crimes committed by the Rwandan Patriotic Front (RPF). She states she has found no evidence of a plan to commit genocide by those accused by the Tribunal, which she views as a key difference between the events in Rwanda and the Holocaust. Lyons reflects on the inequity of resources between the prosecution and defense.

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Part 5

- 00:00** Batya Friedman: So shifting topic just a little bit.
- 00:04 Mm-hmm.
- 00:06** **BF: I mean, what you talked about are some of the political things . . .**
- 00:09 Mm-hmm.
- 00:09** **BF: . . . some things that are outside the control of the tribunal that have to do with politics say within the Rwandan government.**
- 00:16 Mm-hmm.
- 00:16** **BF: . . . and you've also talked about the issue and maybe one might say disappointment with the prosecution here for not prosecuting certain individuals.**
- 00:25 Mm-hmm, mm-hmm.
- 00:27** **BF: But turning to look at what might be reasonably under the control of the tribunal itself, and having to do with your ability to defend those people who have been indicted . . .**
- 00:40 Mm-hmm.
- 00:41** **BF: . . . within this tribunal, what do you see as having been done well here in terms of enabling your ability to do, offer a fair defense and what do you see as the limitations for that?**
- 00:56 Okay, first of all it's not, I'm simply – not simply disappointed with the prosecution. I am critical of the prosecution for their one side. (___) I want to be very clear about it.
- 01:05** **BF: Mm-hmm.**
- 01:06 Absolutely critical because I see it as a violation of international law, fair trial rights and the aims of this tribunal.
- 01:12** **BF: Mm-hmm.**
- 01:13 . . . no question in my mind about it. And they should be held ac-, the prosecution should be held accountable. Okay, now in terms of the limitations, okay. Okay, let me start out by saying that I think that, key – as a lawyer speaking strict-, you know, the law, strictly for, you know, legal technique and practice – the key element, the key, the beginning fundamental issue for a fair trial is a, is actually found in Article 20, the rights of the accused in, in, in the statute.

- 01:48 One of which right, number four, I think, is to be notified in detail the charges against you. And I think a key element of unfairness is the, the, the kinds of indictments that are issued and confirmed in this tribunal. Now, I will also say that when defense counsel raise issues, sometimes there are judgments; there are decisions which support us, support our points of views, sometimes there aren't.
- 02:29 So it's not an immutable situation but by and large, the indictments here fail to give any specific notice as to the elements in the crime, and certainly the modes of liability. And we're not dealing with a tabula rasa. There is clear law, not only from national jurisdictions but particularly from ICTY and some ICTR cases, which demand that the, that an accused know what he has to defend against.
- 03:08 You know, Kupreškić comes to mind. Most recently, the Muvunyi appeal decision, Ntagerura appeal chamber decision. There are numerous ones and they're requirements and the indictments in general here, because I've read a lot of judgments and I've looked at their indictments on, for the judgments on the internet.
- 03:33 To me, it's, it's absolutely appalling as to how one even begins to defend against charges which are broad, which are vague, which don't identify the criminal conduct, some paragraphs which talk about events but don't even talk about the persons implicated or co-defendant cases where the individual co-defendants are not necessarily named.
- 04:02 And so I think that, that this is a fundamental issue, a fundamental fair trial issue that, that concerns me and, and I think that, that that's where, you know certainly from, from the defense point of view, you have to start by analyzing the indictment or the several indictments maybe amend indictments in your cases or whatever, but to look at the defects in these indictments.
- 04:32 Because this really, really goes to the heart of, of what your job is and what you can do. And secondly, you know, I think that in terms of, of actually functioning, we are in a situation that may be particular to the UN or other legal aid systems as well, and it's also true in the federal system in the States, where if you want to go on a mission to investigate a situation, you need permission from an intermediary.
- 05:07 Here, it's the defense unit which is part of the Registry. And I think that, that from a structural perspective, there needs to be a more direct way that defense can be allowed the independence to decide what needs to be done to prepare a case, and be allowed the resources whether it's, you know, decent office space, whether it's a mission, whether, you know, whatever it is to do it.
- 05:38 Now clearly we're, we're allowed to do some things. I'm not saying it's, this, this is always a problem but you're in a situation where you have to, y-, you're not, you really, there's someone else making a determination as to whether you can actually do something,

there's someone else saying, "Yeah, you have, you need six days but you're only going to get four to talk to witnesses."

06:03 And, mind you, we're dealing with, you know, at least two or three language, English, French and Kinyarwanda, in all of these dealings. But I think that here, you know, the defense, this is, there is a structural impediment. When I worked at Legal Aid, of course you had to go to supervisor to get permission for an expert. I'm not, I'm not suggesting there isn't a process, but there needs to be a reasonable process . . .

06:30 . . . and one in which the issues for example of budget are, are looked at very carefully, you know. I don't know what the whole budget for the ICTR is, but I certainly know that it looks as if from appearances, budgets are spent on some things but not others. I'm saying that's the kind of structural evaluation that has to be done in terms of the fair trial issues.