



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 1 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 1 begins on the following page.

Part 1

- 00:00** **Robert Utter:** For the record my name is Robert Utter. I was a Judge in Washington State for about 34 years – on the Supreme Court for 24 and their Chief Justice for a while. I've been involved in international judicial education for quite some time. I retired in 1995 and have taught in, I think, 15 different countries, mainly in central Asia and central Europe in that time.
- 00:30** **RU:** It's been my privilege to teach judges from Iraq in three different sessions and I gained respect for judges all over the world and it's a privilege to be here with you today, sir. For our record, what is your full name and how do you prefer to be addressed?
- 00:49** Well, my full name is Lee Gacuiga Muthoga. For, for spelling purposes Muthoga is M-U-T-H-O-G-A and Gacuiga is C-A-, G-A-C-U-I-G-A. Lee is simple, like General Lee – L-E-E.
- 01:13** **RU:** That's good.
- 01:14** And I'm a judge at the Criminal Tribunal for Rwanda from Kenya. Before becoming a judge, I was, I practiced law for 32 years as a legal practitioner, in which period I established a law firm called Muthoga Gaturu & Company Advocates. It's still operating even now today. I'm still a partner in that law firm on leave of absence for this period.
- 01:46** And, I don't know that, whether I will go back to practice. By the time I, I leave here I will be about eight months before retirement, so my partners may well think I will add nothing to, to their practice. But other than th- I have, than that, I have in my time been President of the African Bar Association, Chairman of the Law Society of Kenya.
- 02:15** I have, as you have seen in my résumé, been a member of the International Bar Association and of the Chartered Institute of Arbitrators. I'm, I am a fellow and I have held a few other things some ()-, some inconsequential, others not so inconsequential in the national legal life of the republic of Kenya.
- 02:44** **RU:** I noticed you have a distinguished career in individual and civil rights law as well. How did you become interested in that?
- 02:54** My civil rights and, and human rights experience starts off I think in the early 80s when I was, when I was elected to the Office of President of the African Bar Association in 1981. That was a time when one of the principal functions of the association was to intervene for persons who had been detained under the Preventive, (), Deten-, Detention Laws that had been enacted all over the African continents – in Kenya, in Ghana, in Sierra Leone, in all these countries.
- 03:51** And it was my job as the President to lead delegations to various presidents petitioning for the release of people, especially lawyers who had been detained for violating what was considered to be security laws of the time. Largely for things they said about – in opposition to draconian legal regimes that existed at that time. And from then on I did a fair amount of it in child rights.

- 04:31 I participated in the preparation on the Convention on the Rights of the Child and eventually worked with the UNICEF in creating the African Charter for the Rights and Welfare of the African Child and did a lot of other things which then predisposed me towards human rights and, and, and international criminal law issues.
- 05:04 I, I can't kind of figure one single event that I can call the beginning of it except the involvement as, as a, a leader of the bar in those issues that really provoked my mind into thinking more about putting into effect some of the things I had learnt in my studies at university.
- 05:30 RU: We share a great deal in common. I spent my first five years as a judge working with children; in a children's court. I tell people I learned more about human beings there in five years than I did at any other time. Was time I, I consider well spent.**
- 05:48 RU: I notice another thing in your CV or biography that's interesting to me, you chaired a tribunal investigating allegations of corruption against the High Court judges in Kenya, as I understand.**
- 06:03 Yes, just before coming here, when the new government came into office in the year 2002, one of its objects was elimination of corruption in the courts. And, and the, the government intimated or set out a committee to look into allegations of corruption amongst the judges. That committee reported and charged or alleged that a considerable number of judges and magistrates had been involved in taking bribes.
- 06:47 And the judges se-, section of those persons – the, the magistrates were dismissed from office, the judges couldn't be dismissed from office so it was necessary to appoint tribunals to investigate them for the purposes of determining whether the allegations made against them were, had any substance or not.
- 07:12 Out of the 23 that were mentioned, a good number of them resigned rather than face the tribunals. But there was 11 or so that did not resign, and – no, eight eventually because some three eventually did – eight remained that decided or all-, alleged that they were not guilty.
- 07:46 And so tribunals, two tribunals were set up – one to investigate judges of the court of appeal, and one to investigate judges of the high court. I was charged with the responsibility of chairing the one charged with investigating judges of the high court.
- 08:06 Unfortunately I only did about nine months of my time in that and it was time to come here and I couldn't have fit in the time with those so I had to resign in order to take up the appointment at this tribunal.
- 08:21 RU: And someone else took your place?**
- 08:22 Someone took over my . . .
- 08:23 RU: And wrote a report...**

08:24 Another, another judge, j-, former Chief Justice of the Republic was appointed to replace me – Justice Cockar. He has since completed – of those eight he has since completed five, found three judges guilty, and two, recommended their removal from the high court, and found two others not guilty and therefore they were not removed. The others are still pending.