



Voices from the Rwanda Tribunal

Official Transcript: Lee Muthoga (Part 3 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.

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Part 3

- 00:00** **Robert Utter: Which of these cases that you've heard has been the most difficult for you?**
- 00:08 I guess Bizimungu will prove the most difficult, largely because it's a long trial with four accused, former ministers in the government of, of Rwanda and it has taken a long time. It is started – the hearing started on the 3rd of November 2003 and ended on the 29th of May 2008. That's when the evidence phase concluded.
- 00:40 But it hasn't really concluded because we haven't heard the final submissions. So that of course means that there's a lot of material as you can see behind you. It's a lot of material, which needs to be – we need to go through.
- 00:57 I think there are 48 or 49,000 transcript, pages of transcript waiting and, and so forth. And it is also a, a trial when we are trying people more for what they did not do than what they, they did.
- 01:20 As ministers in the so called Abatabazi government, they are charged of course with all manner of things but there are not, there are no allegations that they got up and went out there in the killing fields and, and murdered people, but that they were the government and they were as such government involved in or had policy decisions that related to the genocide and, and so forth.
- 01:53 And they didn't do things they might have done and so on and so forth. It's a lot more difficult in determining than when you have somebody like Muhimana, who is – there is testimony that he was seen doing this and doing that and doing that and doing that and so on and so forth. Because there it's a matter of, "Do you believe this witness or do you believe this one?"
- 02:16 And if you, if you believe then the out-, the outcome is this, if you don't believe the outcome is that. In the, in the other case it is more how you understand, there you interpret the actions of the people and what they did, what they didn't do and what they could do and what they couldn't do and, and so on and so forth.
- 02:37 So it's technically a more difficult deciding to do than when you are deciding a trial where, which involves actions of, of, of the individuals before you.
- 02:53 And jurisprudentially too I think it's wider than the other cases but as I said, we have not even begun deliberation in it. Maybe when we begin deliberation we will find it running smoothly, easily, easily. But I, I doubt it, but it is a possible, it is possible. So in that way I would say that is the more, is a more difficult one.
- 03:23 The other two trials had both single accused – the Zigiranyirazo one and the Muhimana one. Muhimana was good because the allegations, there are witnesses who say they saw and so on and so forth and it's much easier when you are looking to see whether this person did or did not do that. It's more difficult when you are going to be, tried

going to the mind of the person to see whether he was thinking this way or thinking that way.

04:00 Zigiranyirazo again is another one. It has certain element of which are easy to determine and certain that are more difficult to determine. But since we haven't determined that one I would rather not speak too much about it.

04:17 RU: (____), of course, of course. What case has been the most satisfying for you? In terms of having reached what you believe was a just result.

04:31 You see I have only one decided case. The others are not yet dec-, decided.

04:36 RU: That's an easy, easy answer.

04:37 So, and well, there is, there is some – it's a difficult decision always when you have to decide on the lives of people . . .

04:48 RU: Yes.

04:48 . . . people who lost their lives and people who are before you waiting to be found guilty or not guilty of it. It is always a difficult one. But in carrying out the role that we do, we do it in the hope that what we do today will contribute in making sure that never again will humanity be faced with a situation similar to that.

05:17 And to that extent, I, I feel satisfied that we have been able to make determinations which have been found – affirmed and confirmed by the appeal court in matters relating to the offenses say facing that Muhimana faced and such.

05:39 And I do hope that other people who might be inclined, w-, would have been inclined to act in that way will be restrained from doing so by reason of what we did. So that is the satisfaction.

05:58 And, and this tribunal succeeds or fails depending on the extent to which it contributes in the management of impunity. If, if when we have wound up this tribunal the world remains prone to genocide the same way it was before, then this tribunal will just have been a mistake in fact.

06:28 I am hoping that when we do finish, when eventually posterity looks at us, it will agree that what we did here contributed in making genocide and other crimes against humanity, and other mass offenses less likely than, than, than it would have been if this tribunal had not happened.

07:00 RU: And the cases you try here are the most difficult obviously in terms of the type of crimes alleged to have been committed.

07:07 If for instance we, the cases that we are doing which involve ministers in government, the outcome of those, (___), that kind of cases I think could send messages that is, the fact that you're in government shouldn't provide you with com-, comfort that what you

do will never have consequences. And as you know this, this tribunal has already tried the Prime Minister of Rwanda.

07:39 **RU: Yes.**

07:41 And, and that means the fact that a minister or Prime Minister can be tried – acquitted or not acquitted – but tried, means that other ministers and prime ministers and other managers of power in managing it will know that whatever they do can come to the determination or come to investigation by international trib-, court or tribunal and can have consequences.

08:12 And that I think will go some way in reducing the possibility that impunity will survive.