



Voices from the Rwanda Tribunal

Official Transcript: Charles Taku (Part 3 of 10)



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

Interview Summary

Charles Taku discusses the failure of the ICTR to prosecute RPF members. He refers to a form of 'judicial genocide' through which Hutu victims are denied justice and the Tribunal perpetuates violence through impunity. He notes that the Office of the Prosecutor (OTP) should investigate crimes based on the acts committed rather than on ethnicity or political affiliation. Taku also discusses the controversial principle of joint criminal enterprise which he claims has been abused by the OTP to indict individuals without sufficient evidence.

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Part 3

- 00:00 **Batya Friedman: So if, thinking about tribunals in the future and you can imagine that we may have others, other situations that arise where a tribunal is needed – we might not want that but that might be the case – what kinds of checks and balances would you put in place in how other tribunals are constituted to try and address this problem?**
- 00:23 Well, in the first place, the statute here guarantees the independence of the judges. The statute also guaranteed independence of the Office of the Prosecutor. And I think this independence of the Office of the Prosecutor has been abused to the extent that the Prosecutor in refusing to indict the RPF perpetrators, even when the Security Council mandate directed clearly that all the people without distinction, that per-, perpetrated the crimes should be indicted.
- 01:01 In spite of the fact that the, the RPF itself has admitted – in spite of the fact Prosecutor himself has said so many times that, “We’re investigating the RPF, they will be indicted.” The fact that the Prosecutor is unable to do this, presumably due to other influences, and he can hide behind prosecutorial independence, I think it’s an abuse of the notion of independence.
- 01:28 There should be an, an organ, an organ to hold the prosecution to account. To say, “Look, your mandate, you’ve not been able to meet the, the, your mandate. You’ve not been able because, you’ve turned the tri-, the, the court into a victors’ court,” and that at the end of the tribunal, the c-, the, the, the – at the end of the tribunal, there’s every indication that the violence will start all over, as long as one of the parties believe that they too were victims.
- 02:13 They believe that justice has not been totally done, (____) victor’s just-, justice. And as the, the, the factors that led to the crisis in the first place remain with thousands and thousands, no, millions of Hutus now as refugees, not in the sub-region but across the world, they will be telling they want to come back to Rwanda.
- 02:36 They want to regain their land, the land issue remains unresolved. They, they, they want free and democratic elections – one man, one vote under international supervision. They want that this injustice should, should be, sh- – of course we know exactly that the, the conflict is still playing out now in the Congo.
- 02:58 Now, as long as the Prosecutor cannot prosecute the RPF, the perception that the tribunal has condoned impunity will remain. And therefore that will be a viable factor to start the war again, (____) tribunal. As long as the tribunal is here, and the ability to arrest, it serves as some form of – it pre-empts.
- 03:30 You see, people will look at the tribunal as it is on the continent, not only in Rwanda, but in the African continent. It serves as a monument to people who may like to, to, to take up arms and kill people at that massive scale. That, “Oh, look, that could be you. Those people there, that could be you.”

- 03:49 But as long as the tribunal is not and as long as the many dictators in the continent can continue to, to stonewall in ratifying even a treaty of the ICC or if there were to be a special tribunal of this nature, they will use all sort of limitations of – I mean they'll (_____) to limit their participation to, to, to make sure that they can't, they're not held accountable.
- 04:26 They'll put the politics of it ahead. As long as the African Union remains a club for dictators on the continent, they don't really have the power to say no. I believe that that, that act of impunity that has been condoned by not going after all the perceived perpetrator of the crimes, will remain. It will remain a scar, a (_____) on the conscience of this tribunal.
- 05:01 And I say so for good reason, because one of the reasons why the, the, the – it has been ruled that this is a genocide is because of the fact that the Tutsis were targeted. Now when you have a tribunal that targets the Hutu, it becomes a sort of judicial genocide, sort of judicial genocide.
- 05:24 And the, the tribunal and United Nations, did they do, do, do justice? No, they didn't do justice, as long as that perception remains very, very strong, especially on the majority of Rwandans. Not just the majority of Rwandans but majority of people of the ethnic, the same ethnic composition of the Tutsi-, the Hutus in Congo, in Congo Brazzaville, in Central Africa, in Cameroon.
- 05:49 And the, the Tutsi that constitute the Himas in Uganda or other places, the wider, the wider ethnic configuration as long as it remains, it remains a major problem for the – so I believe that if another tribunal were to be set up, yes there should be independence of the, the Prosecutor's office, but it should be well-defined to say that we will hold you accountable at some point in time, in order for you to justify that you carry out your mandate consistent with United Nations resolution, with the statute.
- 06:24 With the judges, there is very little you can do because these come from member state of the UN. And if I can say this from the African continent and some of the smaller states where at the moment (___) war is going on, I doubt whether the government of these countries will submit to the Security Council the name of a judge who is truly independent. It must be someone who has rendered service or rendered service to the regime in power in the respective countries.
- 07:00 You can count, look, look at the countries and the background of the judges. I, I, I say with due respect; some of them are very, very good. Some are very fair minded. Some of them have transcended the limit of being subservient to their respective countries.
- 07:16 But so many of them are still very, very – especially some on the African continent and some of the oth-, some from the Asian countries, some from the, the islands, some of them you find out their background, just read their CV and find out their background.
- 07:38 You'll find that it is very, very difficult. They come with that concept in mind and the, the potential for influence, political influence, is still very, very great. If you look at the

first judgments that we had from here and the, the, the judgments we are having lately, you find that they have overturned themselves several times because some of the, the notions were just (_____).

08:05 The notion of joint criminal enterprise, developed right from the Tadić case, have been so much abused to sign a conviction by association. There has been so much abuse and if this tribunal should close down and perhaps the tribunal for Yugoslavia, without them putting that notion into context, and if it were to be a jurisprudence not only at the international tribunal level but also in national jurisdiction, imagine what dictatorships can make of that.

08:44 So some of these later notions that were conceived in order to address particular situations now have a potential to be a weapon in the hands of dictators to perpetrate further genocide, judicial genocide in the community, in the country in which they preside or as tools of oppression in order to remain in power.

09:10 **BF: So back to . . .**

09:10 So, so, so my suggestion is that there should be a potential apart from this, that apart from just having a review of the cases, the UN should put in place a structure that can review some of these decisions, and really have a, a good debate about that, so that the tribunal (_____) some of the judges will know whether they succeeded – one, in meeting their mandate and two, if the legal pre-, pre-, the legal precedent that they laid out for the international community are going to do good or bad for international justice.