



Voices from the Rwanda Tribunal

Official Transcript: Roland Adjovi (Part 3 of 10)



Role:	Senior Legal Advisor
Country of Origin:	Benin
Interview Date:	13 October 2008
Location:	Arusha, Tanzania
Interviewers:	Donald J Horowitz Lisa P. Nathan
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Roland Adjovi compares the structure of the ICTR to other international tribunals and describes the ICTR's broad mandate for establishing peace and reconciliation. Adjovi discusses his early aspirations to improve the ICTR. He reflects on a proud moment in the case of Michel Bagaragaza, a case expected to be transferred to Norway but held back because Norway had failed to implement the Genocide Convention into domestic law. This decision prompted Norway to enact new laws, thus improving its legal system.

The transcript of Part 3 begins on the following page.

Part 3

- 00:00** Donald J Horowitz: The, th-, this, I, I need to go back and begin to try to understand the structure. As I understand it, correct me if I'm wrong, there is sort of three parts to the tribunal; there's the Chambers, which are th-, essentially the judges.
- 00:17 The judges.
- 00:18** DJH: There's the OTP, the Prosecutor or the Pros-, the Office of the Prosecutor . . .
- 00:22 Mm-hmm, the Office of the Prosecutor.
- 00:23** DJH: . . . and then there's the Registry.
- 00:24 The Registry.
- 00:25** DJH: Which, sort of, is the managing part.
- 00:27 Executive.
- 00:28** DJH: Executive part of the – administrative and executive.
- 00:32 But you are committing the same error as the international community.
- 00:36** DJH: Oh tell me the, what the error . . .
- 00:37 In the statute, you have only three organs. Which – each one of them had a principal; the Prosecutor for OTP, the President for the Chambers of the judges, and the Registrar for the Registry.
- 00:52** DJH: Right.
- 00:52 And nothing was provided for the defense.
- 00:55** DJH: I understand that, ().
- 00:56 Defense, in fact, is within the Registry because the Registrar has a mandate to appoint a counsel for the accused person and the tribunal pay for the legal representation of the accused whenever he's indigent. In the case of this tribunal, I think all the accused has been indigent up to now but the defense has not been consider as such as an organ of the tribunal.

- 01:25 While if you look at the Special Court for Sierra Leone, you have an Office for Public Defender, a public counsel for the defense. If you look at the ICC, the International Criminal Court, they have move a little bit forward. Y-, they have one office for Pub-, Office of Public Counsel for Defense, Office of Public Counsel for the Victims, but they also have the Registry running the legal aid program.
- 01:56 DJH: Hm. Can you tell me a little bit more about that? That seems a little strange.**
- 02:02 It's – the way it was designed in the statutes was not clear. This was provided . . .
- 02:09 DJH: In which statute, the . . .?**
- 02:10 The statute of the International Criminal Courts.
- 02:12 DJH: Okay.**
- 02:13 I've . . .
- 02:13 DJH: Which is not what we're doing (___).**
- 02:14 No, no, no. It's not here. I think it was provided for in the Rule of Procedure and Evidence of the Regulation of the Court. I don't remember exactly. And the Office of Public Counsel for the Victim and the Office of Public Counsel for the Defense are independent office administratively linked to the Registry.
- 02:35 DJH: Mm-hmm.**
- 02:35 They provide legal assistance to the accused person or to the victims. In the case of the Office of Public Counsel for Victims, they can also represent the victim in the proceedings. The Office of Public Counsel for the Defense, they were not supposed to represent the accused person but it happened that instead of appointing a duty counsel for someone who has just been arrested, the judge decide to, to appoint the principal counsel of the Office of Public Counsel for the Defense.
- 03:07 So in fact they will be doing the defense counsel work while at the tribunal, the tribunal for Rwanda, you have an office which only manage the administrative aspect. They always appoint non-staff member to represent the interest of the accused. While at the International Criminal Court, the principal counsel of the Office of Public Counsel for Defense is a staff member and he can be appointed to represent temporarily an accused person.
- 03:39 DJH: Okay.**

- 03:40 I don't know if it's clear.
- 03:42 DJH: No, I, I am understanding it. I'm not sure the – essentially, what you're – y-, you said I made a mistake. I, I di-, I didn't make a mistake because I understood that there were only three parts and that they needed, they may need to have been four parts.**
- 03:54 Mm-hmm.
- 03:55 DJH: But what, what happened was, as I understand it, the offi-, the, the, the defenders of the accused were administratively connected to the Registry but they're essentially independent contractors, we . . .**
- 04:10 Yes.
- 04:10 DJH: . . . might say in the United States.**
- 04:12 DJH: They're paid for, they're hired and paid for by the Registry but they are – they may be lawyers from various countries, et cetera, et cetera, et cetera.**
- 04:21 Exactly, exactly. You got it right.
- 04:23 DJH: Okay. Now, and how – I, I assume you know this, how does one, how did a defense lawyer get on the list and are there certain standards that are required for the quality of the lawyer or the experience of the lawyer?**
- 04:40 Here at the International Criminal Tribunal for Rwanda, I think the only real condition; there are two I think. One is being admitted to a Bar somewhere in the world or being law professor attached to a u-, any university in the world. That's the first condition. The second one is that you need to have ten year experience but that has been changed two years ago.
- 05:10 Instead of ten year, it's now seven years. This, the seven year has specific ant-, interest. It's allowed for those who are legal assistants in these proceedings. At the beginning, after seven year to be able to be appointed as counsel. And I have few case where they start as junior lawyer, as legal assistant in a defense team. They don't need to have ten years experience.
- 05:42 They had most of the time two, three years. And after four, five years, they can apply to be on the list and as soon as the Registrar approve the application and they are on the list, the accused person can choose them anytime. So you have – I know

about three who were legal assistant at the beginning and who are now co-counsel in various cases.

06:09 DJH: Okay. And does the accused have to choose the lawyer or agree to the lawyer?

06:15 Yes, it's – he has to a, to choose or agree. He choose – what's happen, the procedure is that he will be given the list of counsel admitted on the list. He has to choose three of them and the Registrar has a (___), discretionary power to appoint one of the three. Except you can have in some instances, the accused want a specific individual.

06:42 And he will add two other individual who are not available. Okay, and that when the Registry will check the availability of the counsel only one will say "I'm available."

06:55 DJH: Mm-hmm.

06:55 So the Registrar can approve, appoint, assign that person or he can ask the accused person to provide three name of people who are right now available. It depends. So they have a right but not unlimited right to choose the counsel.

07:14 DJH: What if a counsel is chosen for him and he doesn't like the counsel or they don't get along? What happens then?

07:21 I, I, I don't want to guess but I will give some, some precedent.

07:26 DJH: Okay.

07:26 There was one case, Barayagwiza. He – okay, I will make it very short. He succeed to get a decision of release for abuse of process by the prosecution but the Appeals Chamber somehow consider that a motion filed by the prosecution for review was well founded and they granted the motion for review and reconsidered the initial decision of release.

08:02 Barayagwiza immediately decide that he will no longer trust the proceedings, and he refused to communicate with any lawyer. The defense counsel he had at that time continue the trial up to the end of the prosecution case and he resigned because he thought that without any communication with the accused, without any instruction from him, he could not continue representing his interest.

- 08:31 But another le-, a-, another counsel was appointed who didn't have any contact with the lawyer, wi-, with the accused and he continue the trial up to the end. During the defense case, he called only one witness, one expert witness. You have another case – just to balance, Rwamakuba, André Rwamakuba. He thought that the proceedings could not be fair and he decides the same not to follow the proceedings, not to participate at all.
- 09:04 But he had a counsel, David Hooper, he accept to talk to him from time to time so even if he was not in court, the accused was still communicating with the defense counsel and he has been acquitted.
- 09:19 DJH: Okay.**
- 09:20 You have a recent case, Nshogoza, where he wanted someone, s-, a specific individual who could not be appointed because of difficulty to (), reach an agreement between respect lawyer and the Registrar. The Chamber instructs the Registrar to appoint a counsel. The Registrar appoints someone else than the person the accused wanted.
- 09:48 So you had one hearing where the two counsel were present in court representing the same accused person, and that the, the decision to, to the, the trial chamber instruct the Registrar to withdraw the counsel appointed in the interest of the accused and to appoint the counsel of the choice of the accused.
- 10:10 I haven't read the decision fully yet so I cannot argue on the reason for the decision. And in fact, the decision was issued today, the 13th October, while the Registrar on Friday has already withdrawn the previous counsel because he finally reached an agreement with the counsel of the choice of the accused.
- 10:34 DJH: Okay, so the decision may be moot but . . .**
- 10:38 The decision was already rendered so . . .
- 10:39 DJH: Oh, okay . . .**
- 10:40 . . . it's not a matter of being moot but it's – gave an instruction . . .
- 10:44 DJH: Sure.**
- 10:44 . . . for something which has already happened.
- 10:47 DJH: Okay, and it, but it may be precedential.**

10:51 It's trial chamber decision.

10:53 DJH: Okay.

10:54 So we have to be careful. Yes.

10:59 DJH: (_____) maybe not, Okay. Yes. Okay.

11:00 Maybe we will see.