



Voices from the Rwanda Tribunal

Official Transcript: Everard O'Donnell (Part 9 of 14)



Role:	Deputy Registrar
Country of Origin:	England
Interview Date:	15 October 2008
Location:	Arusha, Tanzania
Interviewer:	Donald J Horowitz
Videographers:	Max Andrews Nell Carden Grey
Interpreter:	None

Interview Summary

Everard O'Donnell discusses the unique characteristics of ad hoc tribunals and the challenges of coordinating multinational ad litem judges. He notes that the ICTR has been effective at tracking and capturing international fugitives such as Jean-Paul Akayesu. Although the ICTR has been criticized for providing 'victor's justice,' O'Donnell stresses its efforts to deliver justice impartially. He reflects on the case of Mika Muhimana who was convicted of genocide, but later had his conviction overturned by the Court of Appeal.

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Part 9

- 00:00 **Donald J Horowitz: One of the things we – we got onto some issues versus the specifics of your job. We went from some of the things that you've been actually working on in your current job versus when, when we were talking earlier about your being Chief of chambers and, and, you know, moving things along.**
- 00:24 **DJH: So let me come back to that and I, I suspect we're going to, somewhere soon, have to, have to take a more permanent break for today and then perhaps we'll come back another time and, you know, finish up some of the things that would be good to talk about.**
- 00:47 **DJH: In, in the process, again going back between 2000 and 2005, apparently things began to move along. You got more resources. You got some additional judges and so forth, and the judges were ad litem. Can you just tell us quickly what that means?**
- 01:09 Well, ad litem judges were essentially the, had the same qualifications as the permanent judges under the statute but the idea was we didn't want to pay them pensions. We didn't want to pay them all the benefits. That would have made it a very expensive option. Part of the way it was sold to the General Assembly, our funding body, was that this is going to be a sort of quick easy option.
- 01:35 We'll bring them in for a maximum of three years to do specific trials, often much shorter than three years, and then we'll send them out. Unfortunately, they were, as a result of another whole series of processes in which we lost judges from long running trials, we were, we – the judges passed a law allowing su-, substitute judges for judges who were already sitting in the middle of trials.
- 02:07 And so some of the ad litem judges were put into long running trials. For example, Judge Bossa when she arrived, was put into the Butare trial; one of the Olympic record breaking trials of all time, and you know, long ago I think exceeded her three-year limit and is you know sitting (___).
- 02:28 And so that in, in essence has meant that the ad litem judges have had to have, be given more benefits and some of these are still, the issues are still being looked at by the President and by the judges.
- 02:42 The idea was that, you know, we, we just needed to be able to put judges – you know, when you're trying to run a court, as you yourself know, you want to put judges in for particular cases and then pull them out. You want the flexibility. With nine permanent judges all (___), all sitting in individual cases, you've lost that flexibility.
- 02:59 So you had a pool, what you had with ad litem judges, you've got a pool of judges you can call upon and they're elected by the General Assembly and the President picks from the top. Whoever gets the most votes comes in first, gets slotted into this trial then slotted into that trial and then is meant to go away but most of them haven't gone away.

- 03:17 Ask Judge Short about it when you talk to him. He's an ad litem judge who, you know, ended up sitting on two trials and ha-, indeed had to drop out of one trial because of his health. And it's, it's a very difficult situation. They're not so ad litem at all.
- 03:33 DJH: Mm-hmm, mm-hmm. It's – I'm, I'm sort of figuring that out, yeah, and, and we'll be talking with Ju-, Judge, Judge Short . . .**
- 03:41 Yeah.
- 03:42 DJH: . . . sometime next week. All right, and, so why don't you sum up for us if you, if you would, your period as Chief of chambers. What other issues were there and what was done about them? (), you know, of any significance.**
- 04:01 Well, I think the introduction of professionalism in the legal work of chambers – that was a very definite necessity and with a, a wonderful person called Suzanne Chenault we devised a continuing legal education program, which the judges have also participated in, and judgment writing seminars. Originally, the judges felt that they, you know, shouldn't really be trained but I think that that original ethos has given way to a more modest attitude.
- 04:33 So we've tried to improve our jurisprudence. We've tried to improve the, w-, the style. We've tried to improve a number of things about our output. I'm not sure we've actually overall improved our jurisprudence. Certainly looking at the appeals chamber's recent treatment of our trial chamber judgments, I would say we've got a long way to go.
- 05:01 DJH: Okay.**
- 05:02 It's a bit late now.
- 05:04 DJH: It's a, and, and a couple of your judges are actually on the appeals chamber.**
- 05:08 Yes.
- 05:09 DJH: How, how does that, that work? And I don't mean just the, the connection between your judges, the judges here and appeal chamber. The appeal chamber is what it, what it is – it, it handles appeals from decisions made by the court here or the Yugoslav court, I presume.**
- 05:28 Yeah.
- 05:31 DJH: What's the mixture of judges? Is it not just judges from here that decide about the cases from here?**
- 05:37 No. Basically, it's up to the presiding judge of the appeals chamber, who's the President of ICTY, to move the judges around as he wishes and he, he can assign any number of judges from the ICTY, or rather five, to our appeals chamber and then they mix and match with our two, but our two sit on ICTY cases as well so it's, it's totally flexible.

06:03 DJH: Okay.

06:04 One of the more bizarre situations is that the appeals chamber judges come down here for our plenary sessions, which amend our rules and pass our rules. And therefore we've got an interesting situation where the appeals chamber judges who are actually going to be passing upon the lawfulness or not of the provisions of our rules are the people who also participated in the passing of those rules.

06:33 One, let me just give an interesting example. When we effected the substitution rule for judges, it was fairly novel at the time for us. I don't know, I mean, there aren't many jurisdictions which allow you to substitute judges in the middle of a trial, who have not participated or listened to the evidence but who have to familiarize themselves with the transcript and records and watch any of the video that they wish to do so.

07:03 And then certify they are familiar with the proceedings and then jump in and replace the previous judge. Unusual situation and one that could have been addressed in an appeal but since our appeals judges took part in the passing of the rule that allowed it, of course, to some extent the position of the appeals chamber as a, a long stop, as a protection of the rule is removed. So you can see that there's a certain amount of structural exoticism in the way we do things here.