



Voices from the Rwanda Tribunal

Official Transcript: Asoka de Silva (Part 4 of 9)



Role:	Judge
Country of Origin:	Sri Lanka
Interview Date:	5 November 2008
Location:	Arusha, Tanzania
Interviewers:	Donald J Horowitz Robert Utter
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Asoka de Silva describes the challenges of coming from a common law background to the ICTR hybrid system that incorporates both common and civil law traditions. He notes that despite stark differences, the two legal traditions share a common goal: the impartial administration of justice. De Silva reflects that while the Tribunal might have benefited from being located in Rwanda, this could have compromised the possibility of fair trials. De Silva comments on the process of convicting and sentencing defendants.

The transcript of Part 4 begins on the following page.

Part 4

- 00:00 **Donald J Horowitz: Have you thought about what proposals you would like to make to solve some of the problems? If, if you were designing a system, what proposals you would like to make to improve the process, to make it better, more efficient, more effective?**
- 00:26 I can tell you about only one area.
- 00:28 **DJH: Okay.**
- 00:30 Now I have found that indictments have been drawn up and served on the accused for a number of years, before it has been taken up for trial, right? And sometimes indictment is drawn up and takes about five years for the case to commence. And what happens is under this system, the defense has to tender their witnesses only once the prosecution cases, closes the case.
- 01:21 So because of that, again the time comes into play. Because they don't do anything with regard to their defenses. Sometimes it may be correct because they must know what they have to answer. If the Prosecutor cannot prove the case there is no point in them looking for witnesses.
- 01:43 **DJH: Mm-hmm.**
- 01:43 But I think once the indictment is served on them, they have enough time to see if they have defenses. Look for their witnesses and submit a list of witnesses – list of witnesses, nothing else, for their defense within six months or so. So that the Prosecutor will also know the kind of witnesses they have and with a summary.
- 02:21 Here of course they don't have to do anything; it's a free rolling for the defense. They don't have to give a summary to the Prosecutor; only thing is that the, the chamber orders them to give the names and the summaries, maybe 21 days prior to the trial date. So having listened to everything they bring witnesses and say that, "Well, I was there on the particular day and I didn't hear this."
- 03:02 Normally the tendency is, they say – because hearsay evidence is admissible here – "Well, I didn't hear anything. If that happened I would have known." Like that. So I think with regard to the defense portion there can be some improvement. There should be some improvement on that.
- 03:22 **DJH: In terms of the quality of, of the practice before you, can, do you have any comment about that? Whether on either side? The . . .**
- 03:30 Quality of the lawyers?

03:31 DJH: Yeah, the quality of the presentations.

03:37 Most of these people are all international lawyers, so they are up to the mark. Only thing is sometimes some people are – some people go beyond the mark, also.

03:46 DJH: Meaning what?

03:47 Meaning, they think that they are not subject to any sort of . . . In our own countries, of course, bar counsel can take action against them if they behave in particular manner or behave in an offensive manner. But here some people try to do that, but what happens is if they are, we, we also can take some action against them by just asking the Registrar to strike them off.

04:26 But certain things are happening here, so if we do that kind of thing, then that case gets – we have to stop the case, because accused has the right to be defended by his choice. So these people are selected by the accused. So if they say, “Well, we don't, we don't want the one who is been nominated,” then it might again contribute to the delay.

05:04 DJH: 'kay.

05:04 So those are the difficulties . . .