



Voices from the Rwanda Tribunal

Official Transcript: Erik Møse (Part 4 of 14)



Role:	Judge
Country of Origin:	Norway
Interview Date:	22 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Erik Møse addresses the mission of the ICTR, his role and contributions as both judge and Vice President of the court. He speaks about the various lessons learned by the institution; the need to increase efficiency by adding trial judges and establishing a separate prosecutor dedicated to the ICTR and not shared with the ICTY, and amending the court rules of procedure and evidence. He discusses the relationship between common and civil law, and between judges and court interpreters. He speaks about the cases he has been involved in, and about the role of victims in the justice process.

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Part 4

00:00 Robert Utter: Has the combination of civil and common law created any problems for you?

00:09 Well, not personally and we can split this between the institution and the person. Let me start with my own personal approach to this. I come from a Scandinavian country which is some kind of a mixed system. We have the features of common law and features of civil law.

00:30 I have felt very comfortable in this system even if I have of course, since this system is very common law inspired, learned many of the ways the common law judges would behave.

00:48 Like objections, sustained, overrule, all these techniques – we, we don't use them so much at home. And many of the terminology issues are different i-, in my country but, but I've enjoyed working in this tribunal and I don't have found it difficult at all to be part of this mixed system with its two elements.

01:14 Now, more generally we have of course in this tribunal judges from all systems, both common law . . .

01:23 RU: Yes, yes.

01:23 . . . civil law and mixed systems. And the next issue then will be whether that has created any problems and my answer is very little. First of all, I want to stress something, and that is that it is a bit superficial when some people sometimes say that there are two blocks of systems.

01:45 Within each block there are very many individual variations and also not only in terms of law but also in terms of how people behave within the system, the role of the judge. And therefore to, for instance, say that in one system the judges are more passive than in the other system, that doesn't coincide with my own experience watching my colleagues coming from the various systems.

02:23 I think we both as all groups can be comfortable here. I haven't, in my own personal experience, found it difficult at all to work with any judges coming from a different system. I think we all reason pretty much alike even if our point of departure may be different.

02:47 I mean, this issue about hearsay evidence which is shocking to some countries. Of course on the other hand here, we will, even if we allow it, give it minimal weight so it boils down to very little.

- 03:01 Or there are also quite a few other differences which on the face of it may seem significant but when you analyze it further you will see that the differences are not so significant after all.
- 03:25 Sometimes I will ask myself, “Have I ever disagreed with another judge because of the system we come from?” That’s the ultimate test I think. And, and my answer is no.
- 03:38 First of all, we have very few dissenting opinions here both in judgments and in decisions, the many judgment and the thousands and thousands of decisions and I think that’s a very interesting observation to make that there are – well, I haven’t in my ten years ever had a situation where the dissenting opinion could reasonably be ascribed to the fact from which system you come from.
- 04:07 It depends on the personality, not the nationality. And that’s a view I hold very strongly based on practical experience in everyday life. So now the brief answer – has it caused problems? In my view, no. It’s more an inspiration.
- 04:25 RU: Yes.**
- 04:26 It’s, it's, it's fantastic to sit here at an, as an international judge and be able to draw on the experience and different approaches of many countries and try to, to some extent find the best of them all. Always being inspired by what is fair and what is efficient. I, I think that is a privilege with this job.
- 05:00 RU: It’s been interesting to me to listen to your comments on administration because so often, we learn from each other about administrative practices that apply across the board to every court in every country you come to. If you were to rewrite the process for ICTR to perhaps function better for future tribunals, how would you change?**
- 05:30 Well, first of all I would have adopted the rules we have today and not the rules we had ten years ago.
- 05:38 RU: Yes, yes. Mm-hmm.**
- 05:40 That’s the short story. And here I want to add a little observation namely sometimes it’s argued that it is strange that judges adopt and change the rules. Judges should not be legislators. They should be judicial officers. That’s been a criticism.
- 06:01 Of course this is absolutely true at the inter-, at the national level. We all know the clear-cut division into three of the powers at the national level. But here I will really stress how useful it has been for the judges to be able to do just that, because that has made it possible for us to adapt and adopt based on experience when we see the lacuna, when we see the need for change we do it.

- 06:37 And I don't think we can really say that that has caused any unfairness to anyone. These has, have been changes made with the sole purpose to improve the quality of the process. If this had to go to a meeting of state parties for instance, or to some kind of an international legislative assembly, it would have been extremely slow. Now the fact that we can once a year adapt it, that is a good, has been a good system.
- 07:21 I think that is my short answer to your question, "How I would rewrite it." I would, I would start where we are today. Because if we now look at our changes in the plenary sessions, now in 2008 and the last few years, it is an interesting feature that the changes have become less and less, which shows I think that the need for legislative change has decreased and that we are more or less where we should be in terms of procedural rules.
- 08:06 RU: The underlying principle that we look at in the United States is that of the courts retaining the rulemaking power and that if there's one principle that I cherish, I think that's it. If the court can determine the rules that apply in their court then the inde-, independence of the judiciary is more guaranteed.**
- 08:32 RU: It's a revelation to go to judges from some other countries who come from a much more restrictive judicial atmosphere, to think that they might have the rulemaking power, but it's a marvelous process. I'm glad to hear that the tribunal has adopted that as well.**
- 08:49 Yes. We have of course ensured a certain participation in this process by including not only the judges in this process but also hearing the views of the prosecution and the defense, because that is important to the legitimacy of the process. This is not a one-way process. It has been an open – and let me also say that quite a few of these changes, while adopted by the judges, have come from the defense . . .
- 09:26 RU: Yes.**
- 09:26 . . . or from the prosecution. So we must not create a bad impression here. It's only that the plenary of the judges, that's the legitati-, legista-, legitlative, legislative organ but, but the process in my view has been reasonably inclusive, transparenc-, transparent and legitimate.
- 09:48 RU: When I first came on our Supreme Court where we have rulemaking power, we went through a change of almost all our rules of court, but your observation that it is wise to include all the parties affected in discussion of the rules and making recommendations is one I think that applies throughout the world.**
- 10:08 Mm-hmm.
- 10:09 RU: You talk to the people who were involved, you listen to them, sometimes adopt their ideas, sometimes cannot, but the fact that they had participation leads both to wisdom**

for the judges and acceptance by the part of all people. That's a universal process, I think, that we all, all look to . . .

10:29 And when adopting our rules, we have of course often been inspired by the ICTY rules but we have not always followed them. And sometimes we have fol-, avoided following them because we think, having listened to some defense objections, that we, we would, based on our experience particularly here in Arusha, not walk that particular . . .

10:55 RU: Yes.

10:55 . . . step. This does not in any way imply criticism of the other system. It only shows what I will call 'the open mind.'