



Voices from the Rwanda Tribunal

Official Transcript: Arlette Ramaroson (Part 2 of 6)



Role:	Judge
Country of Origin:	Madagascar
Interview Date:	31 October 2008
Location:	Arusha, Tanzania
Interviewers:	Donald J Horowitz
Videographer:	Nell Carden Grey
Interpreter:	Name unknown

Interview Summary

Arlette Ramaroson reflects on her controversial dissenting opinion in the case of Juvénal Kajelijeli, in which Kajelijeli was acquitted for crimes against humanity. In her dissent, Ramaroson explains how she drew on the civil law principle of 'intime conviction.' She compares this principle with its common law counterpart of 'beyond reasonable doubt.' In addition, Ramaroson speaks about the need to retain judicial impartiality, even in the context of the events of genocide.

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Part 2

- 00:05 **Donald J Horowitz: Can you tell us – I know we have limited time today so I’m going to compress a little bit. You have now been here for seven years, I think – what in your opinion are the key cases or the landmark cases that you have been involved with? Maybe one or two, that you have been involved with – that you think are important that you were involved with and why?**
- 00:36 Eh bien, le plus grand procès qu’on a eu, c’est le procès Butare, je crois que c’est le plus grand procès de l’histoire du Rwanda puisque cela implique 6 accusés et puis on a eu d’autres procès bien sur, on a eu Kajelijeli, Kambanda et deux, deux procès où on a, les personnes, les accusés ont plaidé coupables.
- 01:05 *Interpreter: There is the Butare case, which is actually the largest case in Rwandan history, (_____) and I am involved in that case. It is a case . . .*
- 01:20 **DJH: At this time? Yes, Okay.**
- 01:20 *Interpreter: Right now, yes. It’s a case which has six accused. That apart, we have had other cases in which I have been involved like Kajelijeli case, or the Kambanda case. Then there are two other cases in which the accused pleaded guilty.*
- 01:39 **DJH: Okay. Are these other cases completed? The, the previous, the ones you mentioned?**
- 01:47 Alors, on a complété Kambanda, Kajelijeli, les deux personnes qui ont plaidé coupables et nous sommes en train, nous allons peut-être délibérer l’année prochaine sur – ou à partir de cette année, cela dépend, sur l’affaire Butare.
- 02:07 *Interpreter: The Kajelijeli and Kambanda cases are completed, as well as the two other cases where the accused pleaded guilty. For the Butare case, perhaps this year, by the end of the year, or next year, we will have to deliberate.*
- 02:28 **DJH: So, the, is the evidence finished in the Butare case, or is it still going? Are you still taking evidence?**
- 02:35 It is still doing.
- 02:37 **DJH: Okay. And the other case – you’re sitting in two, two cases right now?**
- 02:41 Yes, we have, we have fini-, completed the other cases.
- 02:44 **DJH: Okay, the Ka-, the Kajelijeli case is a bit, a bit famous and particularly your dissent in that case, which I read last night. And I would be interested, if you, if you wouldn’t, wouldn’t mind, in having your comments on that case; both in terms of the jurisprudence and the, and the evidence?**
- 03:14 C’est vrai que j’ai écrit une opinion dissidente sur Kajelijeli, il y a fort longtemps alors – je ne me souviens pas très bien de, de, des détails. Mais bon bien, dans votre – enfin, dans notre common law, puisque je suis de la common law maintenant, on a le droit d’écrire une

opinion dissidente et c'est ce qui m'a beaucoup intéressée parce qu'en droit civil, on n'a pas le droit de dire que moi je, je suis pas d'accord sur cette décision, c'est la majorité qui, qui compte.

03:51 Alors à partir du moment où j'ai vu que, qu'on pouvait écrire une opinion dissidente je l'ai fait parce que je différais un peu, je différais des, de, des, des opinions des, des deux autres juges.

04:12 *Interpreter: It's true that I did write a dissenting opinion concerning Kajelijeli case, as you know it was such a long time ago, I no longer remember all the details. You see, in common law, it's interesting, because now, I do consider myself as a common law judge, it's interesting that you are entitled to a dissenting opinion, because such a thing does not obtain in civil law jurisdictions.*

04:44 *Interpreter: And with the civil law system it's the majority that carries the vote, that's how I would describe it. The reason why I wrote a dissenting opinion for the Kajelijeli case was because I differed my opinions – were different from those of the other judges.*

05:09 Je voudrai un petit peu corriger, je ne suis pas de la common law, mais je suis, bon disons, international judge.

05:17 *Interpreter: Let me make a correction of sorts – I cannot say I'm really of the common law, but I am really an international judge.*

05:28 **DJH: Yes, yeah, je comprends. Okay. I, I have read the opinion, and I, last night, so I'm perhaps more recently familiar with it than are you, and it was about the, as I understand it, the, the weight of the evidence, and you felt that the evidence did prove the crimes that were charged, particularly the rapes, and the, the other two judges did not, as I understand it – very simplified, oversimplified perhaps.**

06:04 **DJH: Am I correct in my characterization of that, and you detailed very fully what you believed the facts to have been, the evidence to have been is, in your dissent. Is that correct – more or less correct, what I have said?**

06:25 Oui. Il y a, il y a ce qu'on appelle en droit civil l'intime conviction et qui est peut-être le doute raisonnable, je ne sais pas, on doute raisonnablement, et c'est vraiment, ça a été quelque chose de très nouveau pour moi. Mais il y a aussi l'intime conviction, c'est-à-dire que vous sentez à travers les faits qui vous sont soumis, que cette personne a, a, a véritablement commis l'acte criminel.

06:59 A travers les faits, vous le sentez. Et les faits font, les faits sont concordants, précis, précis et concordants de telle manière, que vous pouvez en tirer une déduction que ces faits précis et concordants prouvent que la personne a vraiment commis l'acte.

07:23 *Interpreter: Okay, in civil law, there is something which we call, I don't know if I am using the correct word intime conviction, intime conviction, it's like the intimate conviction (_____). When you talk about reasonable doubt, for me, it was a sort of new area, I was not quite familiar with it.*

- 07:48 *Interpreter: But you see the meaning of intimate conviction or intime conviction as we have in civil law is that when you listen to the evidence, as it is (____), you listen to the facts, you feel, you have that feeling that indeed there are precise and consistent facts which make you think that indeed the accused committed the crimes as alleged. So you can make an inference, a deduction from the facts as they have been presented, the precise and consistent nature of the facts (____) presented.*
- 08:31 En fait je voudrais préciser que l'intime conviction et le doute raisonnable – je crois que je vais écrire là-dessus, se, comment dirais-je, ont des relations étroites et peuvent signifier la même chose, sauf que l'expression est peut-être différente.
- 08:57 Mais il faudrait citer des exemples, quoi, pour, l'exemple, c'est par exemple Kajelijeli, dans mon intime conviction, les faits précis et concordants font que j'en ai déduit que vraiment cet homme a commis le, a commis le crime. Et si ca, et, et c'est aussi, on pourrait dire que c'est un doute raiso-, raisonnable.
- 09:29 *Interpreter: Let me say something to clarify matters. I think that the notion of intime conviction, intimate conviction and reasonable doubt are closely linked. And as a matter of fact, I'm going to write something about that, they are closely linked and they actually mean the same thing. The problem is just in a difference in expression, how are they referred to.*
- 10:00 *Interpreter: And when we talk about those two notions, a typical example that comes to mind is the Kajelijeli case, because the precise and consistent facts made me to infer, to surmise that indeed the accused committed the crimes.*
- 10:23 **DJH: I understand that. I would suggest perhaps, as you think about writing this, that it may be a matter of language. Intimate, how, how you say, intime . . .**
- 10:36 Convic- . . .
- 10:36 *Interpreter: (_____) . . .*
- 10:37 **DJH: I-, intimate conviction is a positive event, you become intimately, inside, convinced. Reasonable doubt is a negative. It is what you don't have. One is what you do have, the other is what you don't have.**
- 10:56 Oui.
- 10:56 **DJH: And they may mean the same . . .**
- 10:58 Yes.
- 10:58 **DJH: . . . but the language may be a little difficult and I must say that I had never heard the word intimate conviction before, but I have experienced it as a judge.**
- 11:13 Yes.
- 11:14 **DJH: And when I feel that, then I have no reasonable doubt.**
- 11:19 Yes.

11:20 **DJH: I think about reasonable doubt to make sure but I don't have a reasonable doubt. It's a very interesting concept, intime conviction, and I must think more about it and I hope you will write on it. It's – I am pleased to have learned from you.**