



## Official Transcript: Inés Weinberg de Roca (Part 1 of 10)



<b>Role:</b>	Judge
<b>Country of Origin:</b>	Argentina
<b>Interview Date:</b>	27 October 2008
<b>Location:</b>	Arusha, Tanzania
<b>Interviewers:</b>	Robert Utter Donald J Horowitz
<b>Videographer:</b>	Max Andrews
<b>Interpreter:</b>	None

### Interview Summary

Inés Weinberg de Roca draws attention to the difficulties of straddling common law and civil law systems, highlighting the major differences between adversarial and investigative approaches in the courtroom. She discusses the importance of involving locals in proceedings, reflecting on the benefits that would have arisen from locating the Tribunal in Rwanda. She speculates that it may have been preferable to wait until Rwanda could house the court domestically, or to have based the Tribunal in Europe where better infrastructure would facilitate proceedings.

*The transcript of Part 1 begins on the following page.*

## Part 1

- 00:00     **Robert Utter: First of all, for the record, what is your background in law and as a judge?**
- 00:06     It's quite a mixed background because I've been a professor of private international law since – I've been teaching at law school since I finished studying law, and for 20 years, I've practiced law and as a lawyer, and then I decided that it was time for a change and became a judge, a civil judge in the city of Buenos Aires, a federal civil judge for about I think exactly eight years.
- 00:45     And then moved on to the Court of Appeal in administrative and tax matters in the city of Buenos Aires. And from there to here, so it's, I really enjoy all the aspects of law and also like to be changing from one subject to the other.
- 01:10     **RU: And how did you happen to be appointed to the tribunal here?**
- 01:16     The appointments here are candidates just proposed by the countries and then the election is by the General Assembly. So I was asked if I was interested and I was, and my country proposed me. So I took leave from my court in Buenos Aires. They granted me leave of absence while I'm at the tribunal here, and I'm finishing at the end of this year and going back to my court in the city of Buenos Aires.
- 01:45     **RU: What is your role then with the ICTR? You're at the appellate level as I understand, and could you say for a bit for our record what the, the role of the appellate level is compared to the trial level?**
- 02:00     After I was appointed in, elected in 2003, from June 2003 until October 2005 I was on the Joint Appeal Chamber of the ICTR and the ICTY, the Tribunal for the Yu-, for the former Yugoslavia and the difference basically between the trial level and the appeal level at this tribunal is that at the trial level you hear the testimonies of the witnesses, sometimes of the victims, whereas on the appeal level it comes more filtered.
- 02:35     You have testimonies which you have not heard personally so the impact is not that great emotionally, and you have more questions of law to decide.
- 02:48     **RU: You mentioned the tribunal for ICTR and ICTY. Is that an unusual combination of responsibilities or . . .**
- 02:59     I think it's – well, it's not un-, unusual. It's how the Security Council created these tribunals, establishing a joint appeal chamber. I believe that probably two purposes were, were taken into consideration. On the one hand, not to create such a big infrastructure which was the original idea, so to create the second tribunal, the Tribunal for Rwanda with the same appeal chamber as the Tribunal for the former Yugoslavia.

- 03:32 And on the other hand, to have a similar jurisprudence, (\_\_\_\_\_), a jurisprudence which wouldn't depart very much in one tribunal for the other. I do not think that the second option, the second purpose has been entirely fulfilled.
- 03:51 RU: Would you care to elaborate a bit more about that?**
- 03:54 I think that the same judges, the same panels, when they have to decide an ICTR case and an ICTY case, do not process the information in the same way. And this article on incarceration is just an example. I, I feel the – I have the perception that the cases were considered in a different light because of the different location and of course no, no two cases are similar or the, are not the same.
- 04:30 So you can have perhaps a perception that there, there is a different level of understanding the cases, but it might not be the case. It's just that the crimes were different or the perpetrators different.
- 04:44 RU: Did you feel the sentences were different in like cases?**
- 04:47 I think that everything was different. That the sentences were different and the approach was different.
- 04:54 RU: At the appellate level with the International Tribunal, you review just the written record of what occurred in the lower court?**
- 05:01 Yes we – the, the record of the case, yes. Only seldom, in very few cases did we hear a, a (\_\_\_\_\_), a witness on appeal so it was basically written records, and the oral submissions on appeal.
- 05:18 RU: And what would the exceptions be for oral testimony?**
- 05:21 New evidence, new evidence.
- 05:22 RU: New evidence, of course, of course.**
- 05:23 A new witness which could not be heard at the trial level.
- 05:27 RU: So it is essentially the same as the British system, in terms of the appellate functions of the court.**
- 05:30 Mm, mm, mm.
- 05:35 RU: How have the cases been at the ICTR? Are, are these well-prepared and issues clearly presented to you on appeal?**
- 05:47 It depends very much on the parties, because every case has different prosecutors and different defense counsel, so the quality of the appeal depends very much on the quality of the lawyers who prepare the submissions.

- 06:05     **RU: Are you comfortable in saying your opinion on how well-prepared most of the cases are?**
- 06:15     It's very – I don't think I can give a uniform judgment. I think it has been very, there's not been – sometimes the English becomes a bit more difficult.
- 06:31     **RU: Of course.**
- 06:33     There has not been the same level in all the cases so there's been quite some disparity.
- 06:40     **RU: Sounds like life in another court system, so, so much depends on the quality of counsel and their ability verbally, so to speak.**
- 06:49     Yes, because the role of the judges has been, the, I don't know whether in your system or the English system, but the role of the judges has been just as a sort of arbitrators, not to interfere very much. I as a judge have departed from that traditional role at this tribunal and have taken control of the proceedings.
- 07:12     I don't know if that is good or not, but it has been different from what most colleagues have been doing, because most, in most of the cases the judges just don't interfere very much and I'm told, we're told that that is common law. I do not come from a common law system and I'm not a very patient person, so when I think that it's just nonsense I say so.
- 07:34     **RU: Good for you. What, when you say take control, could you explain that a bit more?**
- 07:42     Yes, when the parties go on questioning and it's not relevant to the case, just ask them what they intend to prove or why they are continuing that direction, and, or if it's not a good idea to move on and also inquire how many witnesses, when they will appear, why they need the witnesses. So, really to have more information, not give just a carte blanche to the parties.
- 08:10     **RU: I, I would feel right at home in that type of system, I believe.**
- 08:14     So when I'm told it's common law it's not your system, not your common law.
- 08:18     **RU: No.**