



Voices from the Rwanda Tribunal

Official Transcript: Asoka de Silva (Part 1 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 1 begins on the following page.

Part 1

- 00:00** Donald J Horowitz: Good afternoon, my name is Judge Donald Horowitz . . .
- 00:01 (_____), good afternoon.
- 00:04** DJH: . . . and I am a member of the ICTR information heritage project and I'm here to interview you which is – you've, you have volunteered to do so. And we will be asking you some questions and the first question – would you please give us your full name and your position at the I-, at the International Criminal Tribunal for Rwanda, and the country you are from.
- 00:32 My full name is Joseph Asoka Nihal de Silva and I am attached to the trial chamber three at ICTR and I preside over few cases.
- 00:47** DJH: Okay. You preside over a few cases, are you on other cases as a member of the, of the three judge panel?
- 00:53 I have always been presiding, since I came here.
- 00:59** DJH: Okay. Let me ask you a bit about your – oh excuse me, go ahead.
- 01:04 Yeah, you wanted to know about my position in, way back in Sri Lanka? (____).
- 01:10** DJH: I was about to ask you that. Okay.
- 01:12 Okay I am from Sri Lanka, I'm a member of the highest court of the judiciary there, that is the Supreme Court.
- 01:19** DJH: How long have you been a judge . . . ?
- 01:21 I was promoted to the Supreme Court in the year 2001.
- 01:26** DJH: Okay.
- 01:27 And I came here in 2004 September.
- 01:34** DJH: And are you on then a leave of absence from the Supreme Court (____)?
- 01:38 Yes.
- 01:39** DJH: Is it called the Supreme Court of Sri Lanka? Okay.
- 01:41 Yes. What happened was really there was another judge who was from Sri Lanka called Judge Gunawardena. He was here from the inception of the court. And I think due to ill health he resigned in 2004, and I came here as his replacement.

- 02:07 DJH: And what was the process by which you replaced him? Did you have to be voted on by the Security Council and so forth?**
- 02:15 No-, not in my case because my predecessor was elected for the second term. So he could, once you're elected you can go on for three years, I think. Since he, since his second time election he was here only for one year. So when he resigned on health grounds instead of going through the election process again, Secretary General of the UN nominated me from my country.
- 02:54 DJH: And y-, to serve out the balance of his term?**
- 02:56 Balance, balance of his period.
- 02:58 DJH: Okay and have you finished the balance of his period?**
- 03:01 Yeah, it was long time back that I finished it.
- 03:04 DJH: Okay.**
- 03:05 I was, I had only two and a half years to complete. From 2004 September, maybe 2006 May or July, but the circumstances have now compelled me to stay on for some more time.
- 03:24 DJH: Do you have an, an inde-, an indefinite period?**
- 03:27 No, now they have fixed, now they have fixed it till December 2008.
- 03:34 DJH: Okay. Which is pretty soon.**
- 03:37 Not soon . . .
- 03:40 DJH: Like a month from now?**
- 03:40 2009, sorry.
- 03:41 DJH: Oh I'm sorry. Okay . . . okay.**
- 03:42 2009, yeah.
- 03:44 DJH: Very good. Before you were a member of the Supreme Court of Sri Lanka could you (_____), give us a brief outline of your education and legal experience and, and judicial experience?**
- 03:56 Yeah . . . yeah, I will start with my university career. I don't have to say all where I studied and all that.
- 04:02 DJH: Sure, sure.**

- 04:03 Yeah, I did my law degree in Sri Lanka, that was in 1967. Thereafter once you complete the law degree, I, we can't practice with that degree unless you go through the law college.
- 04:22 So I entered Sri Lanka Law College in 1971 and took my oaths as an advocate in 1972. Thereafter, I practiced for a short time in an official bar and I was called to the Attorney General's Department in 1974 February. I worked in Attorney General's Department for nearly twenty, 21 years and rose to the position of Deputy Solicitor General, starting with State Counsel or Crown Counsel you call it.
- 05:04 And I was the most senior Deputy Solicitor General when I was appointed to the Court of Appeal. Our Court of Appeal is the second highest court in the island. Earlier it was a little different because we, we had an appeal to the Privy Council, but with the establishment of the republic we have now severed connections with the Privy Council and we established our own Supreme Court. And started with a Court of Appeal . . .
- 05:43 DJH: Mm-hmm.**
- 05:43 . . . and now the Court of Appeal, appeals are going to the Supreme Court instead of going to the Privy Council.
- 05:51 DJH: So you have 2 levels of appeals court . . .**
- 05:54 Yes.
- 05:54 DJH: . . . and then below that I assume the trial court.**
- 05:57 Yes, and I was, I came to the Court of Appeal in 1995. There I was six years and in my sixth year, I was the President of that court . . .
- 06:11 DJH: Okay.**
- 06:12 . . . before I was elevated to the Supreme Court.
- 06:14 DJH: Have you ever sat as a trial court judge . . .**
- 06:16 No.
- 06:16 DJH: . . . before, before this?**
- 06:18 No, I have prosecuted, that's all.
- 06:20 DJH: Mm-hmm. I, I noticed on your resume that you attended the University of Illinois in Chicago . . .**

- 06:28 Yes.
- 06:28 DJH: . . . can you tell us about that.**
- 06:29 Yeah, that was because the, the Asia Foundation sponsored members of the Attorney General's Department to go to Illinois and follow courses there. That was because the Vice Chancellor there, Dick Bir-, Dick Ward, when he came to Sri Lanka, I think those people negotiated with him to give us some exposure in the, the western world.
- 07:04 So I went there in 1987 for about a year and followed some graduate level courses there.
- 07:14 DJH: (____) . . .**
- 07:14 . . . including international criminal justice, Islamic justice and then sentencing policies. Like that . . .
- 07:28 DJH: Very good.**
- 07:28 . . . on various areas we were . . .
- 07:31 DJH: And you've talked about the 1990s but I'm going to ask you a specific question about the 1990s. Where, do you remember where you were in April 1994? A date that, that has come to have greater meaning for you since that time, which is when the problems in, I guess the, th-, the genocide occurred, started in, in Rwanda?**
- 07:57 I was in Sri Lanka.
- 07:58 DJH: Okay and you were, do you remember that day or some, or when you first heard about what was happening in Sr-, in Rwanda?**
- 08:06 Yeah, but only thing is we heard that there was a conflict between two tribes. All that we could get was from the television and what appeared in the papers. So it was projected as a conflict between, tribal conflict bet-, in Africa.
- 08:27 DJH: Mm-hmm.**
- 08:27 So, but I, the onl-, we, I didn't take any special interest in that because every day you find some problem somewhere. So because of that I didn't pay much attention to that.
- 08:43 DJH: When did you first begin to pay some special attention to this?**

- 08:46 Yeah, when a judge from Sri Lanka was appointed to this court, then I was wondering as to wh-, what, I thought that there must be some interest in the world, and with the UN taking over, then, then only I started, thought of going into details of these matters.
- 09:10 DJH: Can you tell us about when that was that you began . . . ?**
- 09:13 Yeah, that was in '97 or so . . .
- 09:16 DJH: 19?**
- 09:16 . . . yes 97, (___) with the establishment of the ICTR, yes.
- 09:19 DJH: Of the tribunal. And, and tell me again the name of the judge . . .**
- 09:23 He was my namesake, Asoka Gunawardena.
- 09:27 DJH: Okay. I know about Asoka. (____) . . .**
- 09:32 He died unfortunately. He died after, soon after he retired, he died.
- 09:37 DJH: And how long did he serve on . . . ?**
- 09:39 He was here for nearly five and half years.
- 09:41 DJH: Okay. Now, since you've been here you've, this, it's the first time you've been a trial court judge, I think you said.**
- 09:53 Yes. Yes.