



Voices from the Rwanda Tribunal

Official Transcript: Asoka de Silva (Part 3 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 3 begins on the following page.

Part 3

- 00:00 Donald J Horowitz: And then I want to move to, you said there were two other cases that you had tried with individual defendants. Was there any special or unusual jurisprudence? Or issues involved that you feel are particularly relevant that we might want to learn about?**
- 00:19 Yes I can remember, case of Muvunyi was a peculiar case in the sense I was asked to takeover that along with this. So that is because I think there was a problem regard to, with regard to another judge who was nominated there. So I had to do that case along with two other lady judges. So then I said, "Okay," and then we started.
- 00:48 One week prior to the commencement of the case, that is the prosecution moved to amend the indictment and we didn't permit that. Because that was after so many years of, after maybe about one year after getting the case ready and marking it ready, on the eve of the trial they wanted to move for a, they moved for a, for an amendment.
- 01:13 So I said this is not, we all decided that we are not going to permit. And they went on appeal on that and appeal also I think they said that it shouldn't be amended at that stage.
- 01:31 DJH: It should not or should be?**
- 01:33 It should not be.
- 01:34 DJH: Mm-hmm.**
- 01:35 So we went on with the case and we convicted him and sentenced him for 25 years.
- 01:44 DJH: 'kay.**
- 01:45 They went on appeal and at the appeal I think they overturned the decision on the basis that indictment is defective. It's, yeah, (___), o-, on the base, that on the main basis, and they also said that they have a no, they have not pleaded certain particulars in the indictment.
- 02:14 DJH: So was the person set free?**
- 02:16 No, except on one charge. One charge they said that he should be re- tried.
- 02:21 DJH: Okay.**

- 02:21 So that also Judge Byron wanted me to do it, I said, “No, I don't want to do that case again.”
- 02:29 DJH: Okay.**
- 02:29 That was a charge of incitement or something.
- 02:33 DJH: Okay. So is that pending now or . . . ?**
- 02:35 Yeah it's pending . . . it's still not . . .
- 02:36 DJH: It's not . . . in some other chamber?**
- 02:39 No, in the same chamber . . .
- 02:39 DJH: In the same chamber . . .**
- 02:40 . . . but maybe, maybe some other judge will take it over.
- 02:43 DJH: Okay.**
- 02:44 It is now a very short case because only one charge and a limited number of witnesses maybe . . .
- 02:51 DJH: Okay.**
- 02:51 . . . they have. They now say that it can be concluded in, within a month. I don't know that is how we start.
- 02:58 DJH: (____). And the, the other case that you saw through to conclusion . . .**
- 03:03 Yeah that is also concluded now, we are now in the process of writing the judgment.
- 03:08 DJH: Okay, so you can't tell us about that . . .**
- 03:10 Yeah, I can't talk about it.
- 03:11 DJH: But the nature of the case, what was the nature?**
- 03:12 It's, it's involving a priest . . .
- 03:15 DJH: Ah.**
- 03:16 . . . and his role in genocide, that's all.
- 03:18 DJH: Okay. Well, I guess I – the question I had in mind is almost in some ways redundant. I was going to ask you if there's anything that happened since you**

came here that surprised you. I think from what you've said, the, the process of trying the cases surprises you.

03:47 Yes.

03:48 DJH: And . . .

03:48 It takes a hell of a lot of time.

03:51 DJH: Is it () . . .

03:51 And I think now even the Prosecutor and the Security Council have realized that multiple cases, multiple accused cases take a lot of time. Otherwise these are single accused cases, I think we may have done a lot more work if we had selected the, the witnesses and taken single cases.

04:17 DJH: Okay.

04:17 So that is why most of these cases have now run into about five, four, five, six years.

04:27 DJH: Okay. Are there () . . .

04:30 The same problems I told you with regards to the witnesses apply to other cases also.

04:37 DJH: Is there any – I guess we'll get to this point a, a bit later. Is there anything that you've done here that you feel particularly – whether it's administrative or, or in the, in the cases – that you feel proud about, that you're, you're pleased that you participated in?

04:56 Well I'm happy with what I am doing.

04:58 DJH: Okay. Tell us about it.

05:00 Yeah. And I, I don't take any particular interest or, or over-ambitious with regards to a case. So I, so I don't think that I . . .

05:15 DJH: 'kay. When you say you're happy with what you're doing, tell, tell us what you mean by that.

05:20 I enjoy the work I do.

05:22 DJH: Okay.

05:22 Yeah.

- 05:25** **DJH: Do you enjoy it specially because it's these kinds of cases or this kind of context, that involves human rights, or just, you just like judging and maybe it's both?**
- 05:35 N-, no, since it is involving human rights and the international involvement in this, because of international involvement.
- 05:52** **DJH: Okay.**