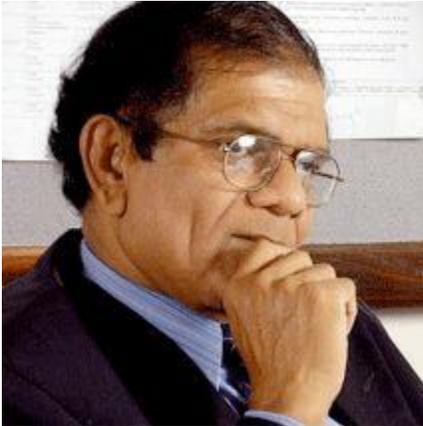


Voices from the Rwanda Tribunal

Official Transcript: Asoka de Silva (Part 7 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 7 begins on the following page.

Part 7

- 00:00 **Robert Utter: I notice as we go through the halls and the downstairs part of this building, that there are posters that say "no impunity." I assume that means that everybody should be responsible for their criminal acts. Do you feel . . .**
- 00:16 (___), only thing what is happening here is only the leaders are taken in and punished. The others are dealt with at the local level.
- 00:27 **RU: Do you feel at the local level enough provision has been made to hold people accountable?**
- 00:35 I think they have their own justice system so people are happy and what I feel sometimes they come to court and openly apologize and people are willing to forgive them. That is where the reconciliation is, not here.
- 00:55 There are in th-, those courts I think people come and I hear, read and heard, people even the husband is murdered, the wife is willing to forgive them. And the, the accused or the accusers sentenced to eight to ten years time, both sides are happy. That is why the reconciliation really operates there.
- 01:22 **RU: But that's harder to do at, at your level.**
- 01:25 I don't know anywhere; the state interest is only to punish the person. So here it has some, I don't know how, if a person can forgive another person . . .
- 01:42 **RU: That's a difficult responsibility to, to place on a judge's shoulders.**
- 01:47 That's the thing. So we can't, that, if the people here also, if the accused plead guilty, that is what we try to get. To see whether there are any mitigatory circumstances, to enable us to give him a lighter sentence. But the other system is quite okay; they do it openly and before your own people. I think that is a marvelous system.
- 02:16 **RU: What incentive if any is there to plead guilty at your level? Do you have many pleas of guilty at your level?**
- 02:24 I had, I did one, and they don't plead guilty here because the very first person who pleaded guilty got life. So thereafter they are reluctant to, and that was the Prime Minister . . .
- 02:38 **RU: Mm-hmm.**
- 02:39 . . . he got life. So because of that I think the guilty pleas went out. Except there are, exception-, exceptional cases only they plead here.

- 02:49** RU: In the United States and in some other countries they have what's called plea-bargaining . . .
- 02:54 Yeah.
- 02:55** RU: . . . the prosecutor will (_____) . . .
- 02:55 Yes, but in these cases it's difficult.
- 02:58** RU: Mm-hmm.
- 02:59 This type, here it's difficult. But here also there is some kind of plea-bargaining because the Prosecutor agrees with the accused and he agrees with the, with the, the charges and even including the sentence. But even though the sentence is not binding on the judges, there is some kind of plea-bargaining here.
- 03:22** RU: With the pressure on the court to resolve its cases within a reasonably short time from now, is the Prosecutor proceeding in a way that can speed up the hearing of these cases or . . . ?
- 03:36 Yes, but it is not the speeding up, because it, it is the system. Now there is, the Prosecutor will call te-, ten, 15 witnesses to prove his case even though there is no burden of proof for the defense. They will call about 75 witnesses. Then you can't, how, when you try to limit also, then they will say, "No, we want all these witnesses."
- 04:02 So those are the practical problems that the tribunal faces. (__) we can limit the Prosecutor will say well, "15 witnesses I will," defense will call, even though the defense witnesses maybe very (__), but the number, I don't know the reason. They keep on calling . . .
- 04:23** RU: Does that have something to do with the compensation for the defense lawyer?
- 04:28 I don't know, I don't want to comment on, maybe.
- 04:31** RU: There's a suspicion that they may . . . That there might . . .
- 04:33 Yeah, you can look, you can look at it, look at it that way also.
- 04:37** RU: Yes.
- 04:38 Unless I think they are now thinking of giving them a block fee, so that, that will prevent them from over-taxing the case.
- 04:54** RU: Yes.