



Voices from the Rwanda Tribunal

Official Transcript: Inés Weinberg de Roca (Part 5 of 10)



Role:	Judge
Country of Origin:	Argentina
Interview Date:	27 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	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.

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Part 5

- 00:00 **Donald J Horowitz: I was a little confused by some of what you've done in the ICT – at first you were an appellate judge with the former Yugoslavia ad hoc and tri-, and . . . okay.**
- 00:12 And, and tribunal, and, and Rwanda. It's, it's the same, it's the same appeal chamber. But what happens is that both tribunals have to select judges to sit on the appeal chamber, so once you are elected you are assigned either to the appeal chamber or to the trial chamber.
- 00:33 **DJH: Was it mixed at all?**
- 00:35 We were five ICTY judges and two ICTR judges. But the, the panels were mixed so we c-, would sit either on ICTY or ICTR cases. During those two years and something, I was on 12 final judgments, seven ICTY and five ICTR. And hundreds of interlocutory decisions. (___) . . .
- 00:59 **DJH: And hundreds of, I'm sorry . . . ?**
- 01:00 Intertoc-, interloc- . . .
- 01:01 **DJH: Oh, interlocutory, yeah.**
- 01:02 Decisions.
- 01:02 **DJH: Okay. Let me go back for something I should have asked earlier. Tell me, the Argentine system which essentially has been the system you've worked in al-, all of your life up to here, tell me the nature of that. I, I, I'm, I'm sorry, I'm ignorant. Is it . . . ?**
- 01:18 In criminal law, it's, it's based to a great extent on the Italian and German laws so there have been reforms in criminal law, and basically it's Italian and German law which have substituted the French law. But no common law.
- 01:39 **DJH: Okay, and in the civil area?**
- 01:42 In the civil area, it's also basically it, it was the Code Napoleon and then yes again, influence of Italy, German, for different . . .
- 01:52 **DJH: Okay, yeah. Essentially the civil, the civil, civil code. Yeah, the civil . . . Yes, okay.**
- 01:56 Yes, it's civil, civil system. Definitely.
- 01:59 **DJH: Okay. Yeah.**
- 02:00 No confusion there.

- 02:01 DJH: And you were talking with Justice Utter about the fact that you thought in the common law, judges were . . . yeah.**
- 02:08 That's what we are told. That's not what I think because I don't know, but whenever we wonder why is this done this way here, the answer is, "that's common law."
- 02:17 DJH: Okay.**
- 02:18 But that's different explanations of what common law is.
- 02:22 DJH: Right. And this, here, at least in, in the trial level at ICTR, it's sort of a mixed system. Would you agree with that?**
- 02:31 Yes, and it depends very much on the presiding judge if it's mixed more civil law or mixed more common.
- 02:38 DJH: As always. And since 2005, when you've essentially been assigned to ICTR, correct . . . ?**
- 02:47 Mm-hmm.
- 02:47 DJH: . . . so, are you sitting on the appeals panel still or you . . .**
- 02:51 No.
- 02:52 DJH: So you've been doing trial, trial judging since 2005 and we're now in 2008. That was the part that confused me a bit. And so here you have been hearing the evidence and sometimes impatiently, as I gathered.**
- 03:08 Mm-hmm. Yes.
- 03:09 DJH: And, and also making, with your colleagues, the decision and then if convict-, if there's a conviction, doing the sentencing.**
- 03:18 Yes, that will happen in December because the two cases I've been on, we'll deliver the judgments in December.
- 03:26 DJH: Okay. So you have not yet sat on a case where you've actually decided on conviction or acquittal?**
- 03:33 No, this will happen next, next month.
- 03:35 DJH: Okay so, and it's been almost three years, or maybe perhaps more than three years.**
- 03:40 One, well, one case yes, the others started later.
- 03:43 DJH: Okay, all right.**

- 03:45 Yes, because the cases here, we, we don't sit always in the same courtroom nor with the same judges, so it's a sort of confusing management. I have dif-, different colleagues on the two cases and they have different colleagues as well, each of them.
- 04:08 DJH: Okay.**
- 04:09 So, you either have your colleagues or you have the courtroom. It's difficult to have both. You need the empty courtroom spa-, space and you need the two colleagues not be sitting with your other colleagues in any of their other cases, so.
- 04:26 DJH: I'm even a little confused about that. In, in the interlocutory decisions, I can understand the changing of, of judges, but in the actual hearing of the trial itself . . .**
- 04:36 Well, the trial itself, of course the bench is composed of the three judges up-, un-, to the end . . .
- 04:41 DJH: Ah, okay.**
- 04:43 . . . but in one case, for example, (), one of the judges sits with other two judges on one c-, other case and the other judge sits with other two.
- 04:53 DJH: Okay.**
- 04:54 So we, all of us, have different colleagues with which we sit on different cases. So when Judge A is sitting with Judges B and C, A cannot sit with D on the other case.
- 05:08 DJH: Okay. Okay.**
- 05:09 And if A and D can sit on the same case, perhaps E cannot because he's sitting with F and J on another case. So it's a mess.
- 05:21 DJH: And you have to be something of a mathematical expert to, to figure that out, okay. I, I do understand. And . . .**
- 05:31 It would be simpler if three judges just were one bench and had one, two or three cases and one courtroom assigned either morning or afternoon. Then they could manage their cases. And when one case is stayed because of whatever reason, they could continue with the other. But the way it has been arranged here, that is not possible because you neither have the courtroom assigned nor your colleagues assigned.
- 05:56 DJH: Okay. And if you were designing a future tribunal . . .**
- 05:59 I would definitely do it that way and not the way it has been done, and both the present Pre-, President and the past President didn't go the same way with their own benches, so they have had a very stable bench. They always have had the same two colleagues on their

different cases. But the rest of us who haven't been the Presidents of the tribunal have had to live with this mix.

06:26 DJH: Ah. And . . .

06:28 So it's interesting that they haven't decided for themselves the same.

06:33 DJH: And would they have the authority if they decided?

06:35 Well, they are the ones who assign cases and assign judges.

06:37 DJH: Okay, okay, ha-, alright.

06:40 So you can ask President Byron tomorrow about it.

06:45 DJH: I might. All right.