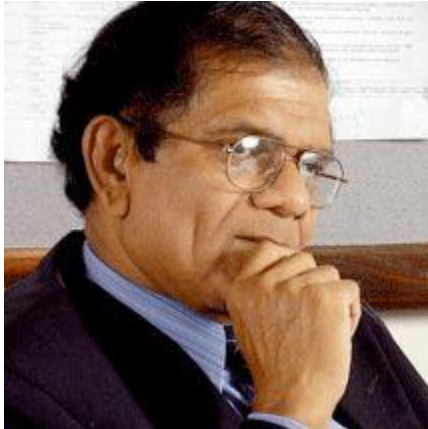




Voices from the Rwanda Tribunal

Official Transcript: Asoka de Silva (Part 5 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 5 begins on the following page.

Part 5

- 00:00 Donald J Horowitz: In just a moment I'm going to take a break and turn the next things over to my colleague Justice Utter. I want to ask you, is, do you see your role here as a judge in the same – as having the same duties or the same role as you would if you were back in your national jurisdiction?
- 00:23 DJH: Or is there some special role you think you have here maybe, by because of the statute that starts the tribunal or, or other reasons. Do you, do you see any different role that you have as a judge in this?
- 00:36 Yeah as a trial judge, I think the role is quite di-, different.
- 00:40 DJH: Okay. In wh- . . .
- 00:41 Yeah, when you function as an appeal judge and trial judge; the two roles are quite different. (_____) . . .
- 00:48 DJH: Of course, yeah, that I, that I understand, that's not where my, my question was going. My question was going: is your role here, if you were a trial judge at home and a trial judge here, or an appeals judge there and appeals judge here, is the fact that you're in this court with the statute that creates this court, and the context in which the court is created . . .
- 01:12 DJH: . . . is it – do you feel your role is – do you have duties or a role that's any different – that's different from what you would have at home?
- 01:20 No, I don't think because in both, both cases we have to do justice.
- 01:24 DJH: Sure.
- 01:25 So in dispensing justice you have to follow the same procedure.
- 01:28 DJH: Okay. (____) . . .
- 01:29 And... so I don't think that – final goal is to do justice . . .
- 01:33 DJH: Okay.
- 01:34 . . . whether it is there, here or at my home.
- 01:36 DJH: Okay.
- 01:36 There's no difference.

- 01:37** DJH: There's something in the statute, that, that begins, that formed this particular court, that talks not just about guilt or innocence, but also about reconciliation. Do you – and, a role that the court may have in, in promoting reconciliation. Do, and, and I guess I want to, do, I think – have you seen that in the statute?
- 02:11 Yeah, that is there but I don't know whether it can be achieved really by coming to this court. Our function is to judge the people who come before us.
- 02:23** DJH: Okay.
- 02:25 And we have to be, we have to give them a fair hearing and act according to the evidence presented. So sometimes I can see that when people are acquitted, some people are not happy.
- 02:37** DJH: Right. (____) . . .
- 02:39 So it is (____) . . .
- 02:41** DJH: In, in sentencing f-, for example, do you see . . . ?
- 02:43 Sentencing of course it's, you, you have to because if it is genocide of course, 'life' you have to give, but if it is something less than that then the judges have the discussion to go according to what they think is reasonable.
- 02:59** DJH: Okay. And, and I was going to ask you, is, is reconciliation a consideration when you're thinking about sentencing? Or, or the victim, the victim himself or herself?
- 03:12 Yeah, dependi-, depending on what he says. If he pleads guilty and regrets for what he has done . . .
- 03:19** DJH: Right.
- 03:20 . . . and if he also tenders that even though the charge is committing murder that he has helped people, those are the matters that the court takes into account and in deciding the sentence. So in this respect the sentencing policies that we have followed, comes into play.
- 03:44** DJH: Okay. Have you been to Rwanda?
- 03:48 I went on a private visit.
- 03:50** DJH: Before the, the c- . . . ?

- 03:52 No, during a vacation. During a vacation just to see what this, what, where, I, I was curious to see what had happened there . . .
- 04:00 DJH: Mm-hmm.**
- 04:01 . . . so I went there but I think there is an application before us by the, by both sides to visit the scenes.
- 04:10 DJH: To, to make a site visit with, with the, in a case?**
- 04:11 Yes . . . yes.
- 04:14 DJH: With, with counsel, et cetera, there? Okay.**
- 04:15 Yeah, yeah, so we have not yet . . .
- 04:18 DJH: Okay.**
- 04:19 . . . we have, we have said that we will give a decision later on that.
- 04:22 DJH: Okay.**
- 04:22 Maybe next year or (___) . . .
- 04:25 DJH: In, in your home court of course, when something is tried or appealed, you're near the people, you're near the people who are affected et cetera, et cetera. This is of course in another country. Do you have any thoughts about, about that?**
- 04:39 Well, human beings are human beings, wherever they live, so I don't think that you should . . .
- 04:46 DJH: No, what I mean is it's not in Rwanda, the court is not in Rwanda. It's not where, where, where the events occurred and of course a lot of Rwandan people were involved. Do you have any thoughts about whether the court should in some way connect, or be closer either physically or otherwise to the Rwandan people?**
- 05:03 To Rwanda. Yeah, it would have been better if the court were established there, but then of course on the other, other hand, the defendants will not get a fair trial because they can't get witnesses there.
- 05:18 DJH: Okay.**
- 05:18 Even if they have, they might not come forward to give testimony. So in a way it will help the people who are there, then there are advantages and dis-

disadvantages. That is why this was based here, which is closer to Rwanda, to give a balance to both sides.

05:37 DJH: Okay. I'm going to take a break now and my colleague will finish the questions.

05:41 Yeah, (__) thank you.

05:43 DJH: Okay.