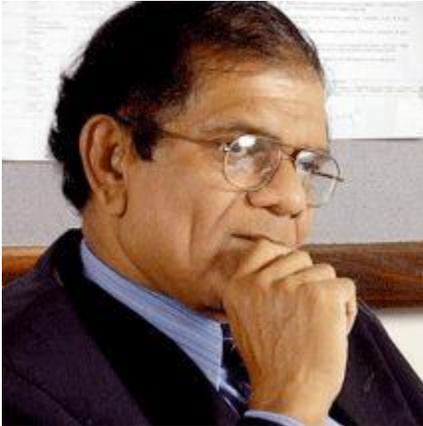


Voices from the Rwanda Tribunal

Official Transcript: Asoka de Silva (Part 6 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 6 begins on the following page.

Part 6

- 00:00 **Robert Utter: Your honor it's a privilege to be here with you today, and I will try and follow some of the questions my colleague has asked, and perhaps explore a few new ones myself.**
- 00:12 **RU: I'm fascinated by the combination of the civil law system and the common law system. I'm wondering how this is applied and discussed in the burden of proof that a state must have in proving the defendant guilty, are they the same or . . .**
- 00:31 The burden of proof, of course in criminal cases, I think it's beyond reasonable doubt. That is the standard that we always apply here.
- 00:40 **RU: Is there a lesser standard in the civil law system or do they agree with the common law system?**
- 00:48 I'm not very familiar with the civil law system.
- 00:52 **RU: But you know which one you apply, that's beyond a reasonable doubt?**
- 00:54 No, it is generally beyond reasonable doubt. So that is the, that is the, that is the standard way of burden of proof here.
- 01:06 **RU: Have you had a case where your panel has found that a case is not been proven beyond a reasonable doubt?**
- 01:12 Yeah, in a charge in an indictment there are so many charges.
- 01:17 **RU: Yes.**
- 01:18 So some charges we a-, acquit them and some charges we convict. We acquit on the basis that it, those charges have not been proved beyond reasonable doubt.
- 01:29 **RU: And how often does this happen?**
- 01:31 That happens in every case I think. It's very rarely that you (___), you can get the conviction on all the charges that the Prosecutor has presented. Maybe, or at least one or two cases (____) charges I think, they also don't press sometimes.
- 01:47 **RU: The prosecutors are the same in our countries, then, they're over charged. Yes.**
- 01:51 Yeah, we have to load all the charges and send – but if it is not proved, it is not proved. So not convicted.

- 02:00** **RU: I was interested in . . .**
- 02:01 . . . not only proved, it has to be proved beyond reasonable doubt.
- 02:04** **RU: Yes, yes. I was interested in going over your CV, to see that you've taken a course in criminology in the United States. Was that before you became a judge?**
- 02:15 Oh yeah, this was in 1980s, '87.
- 02:19** **RU: What led to that interest?**
- 02:21 Well at that time I was doing criminal law, I was doing the appeals for the Attorney General. So since it was criminal law, I, they nominated two of us to go there and we went there and followed it.
- 02:39** **RU: And it was worthwhile?**
- 02:41 Yeah, yeah. And it – the, the interesting aspect was that we had a chance to look into the, the Muslim law aspect also.
- 02:55** **RU: Ah. Let me ask some general questions.**
- 03:00 When I say Muslim I mean Islamic law.
- 03:02** **RU: Yes, yes. Some general questions now. One of the things we're trying to do in this project is to compile information that will be relevant to people 25, 50, even 100 years from now, and preserve it in a way that gives some reality to what's occurring here.**
- 03:23** **RU: We're trying to, I think capture the humanity of the judges who sit, as well as the court personnel. So it's something more than just the writing in the book. Along that line, I'd be interested in what you feel have been the most satisfying parts of your job here?**
- 03:48 It's a little difficult to answer . . .
- 03:51** **RU: Yes.**
- 03:51 . . . because you, you don't get any satisfaction by listening to horrible stories.
- 03:55** **RU: Yes, of course, of course.**
- 03:58 So it's a, witnesses come and say various things. Only satisfaction is, if you think that you have done justice that is the satisfaction that you get after the case. That is if you can, you can look into your heart and say, "Well, I have done what I thought was correct."

- 04:18** **RU: Have you had any cases where you had a question about that?**
- 04:22 No, I mean every case as I said earlier, every charge; we look into every count we go through and take a decision according to evidence.
- 04:38** **RU: If you were to say something to, say, a tribunal that may occur 50 years from now, involving somewhat the same facts, do you have advice that you would give them at this point?**
- 04:59 My only wish is, this sort of thing should not happen, genocide.
- 05:06** **RU: Yes.**
- 05:07 So no tribunal should be established for that purpose. I don't think that they should encourage this type of thing to happen in the world.
- 05:18** **RU: Do you think by having a tribunal it discourages this type of activity?**
- 05:23 That (___) I am unable to answer, that has to be felt by the people who are there.
- 05:28** **RU: Mm-hmm.**