



Voices from the Rwanda Tribunal

Official Transcript: Inés Weinberg de Roca (Part 6 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.

The transcript of Part 6 begins on the following page.

Part 6

- 00:00 **Donald J Horowitz: Now, you, you've written this article and I have, obviously I just found out about it today so I've not read it. And I take it that quickly you felt that the court that you're at, the, the, the appeals court, processed information differently for the Yugoslav, the facts in the Yugoslav cases in the law and, versus the Rwandan, and, and the approach was different, and the sentencing was different, if I'm – am I accurate?**
- 00:31 I will answer this but, and I will sign your informed consent but there's one thing I must add is that much of the information I give you, you will depend upon the tribunal whether it can be released or not.
- 00:44 **DJH: Of course.**
- 00:44 I can give you all this information because it's a tribunal project. But I am not the ultimate authority to say whether this can be released or not.
- 00:53 **DJH: Okay. I'm really asking you about the article, which is public, it's a public document and I'm really . . .**
- 00:59 No, but much of the information I think that it's not for me to decide whether they can be released because it's about the organization. So I as a person have no problem but the organization might.
- 01:10 **DJH: Okay, and that's fair. I will, I'll, we'll, we'll check that out. But I, I'd like to ask you a bit about the article. And . . .**
- 01:17 I think there's a different standard for ICTY accused and ICTR accused between, between – there's a different standard for European accused and African accused.
- 01:30 **DJH: And did you say in the article why you thought that standard . . .**
- 01:32 No, because I, I published the article while I'm still an ICTR judge so I didn't feel in the liberty more, of doing more than having, making a research and indicating the difference and leaving it to the reader to . . .
- 01:50 **DJH: Decide.**
- 01:50 Decide, to make the conclusion.
- 01:52 **DJH: Okay. You have not in your previous judicial position had the responsibility of sentencing.**
- 02:05 Mm-hmm.

02:06 DJH: I take it however, as a human rights lawyer and as a professor, you have, you are aware of what at least in national courts, s-, sentencing is generally based on the criteria of sentencing. May I, may I assume that?

02:21 Yes. What happens is if you compare national parameters with these tribunals, you don't get anywhere because in national courts, you don't have cases of genocide and crimes against humanity usually, so again you get, you go nowhere.

02:36 So this about cri-, experience in national and domestic criminal law is not very useful for these tribunals, because it's not the same to murder your husband in a moment of . . .

02:51 DJH: Passion.

02:51 . . . passion, than to commit genocide. It's . . .

02:56 DJH: Of course, and that, that was the purport of my question really. What do you see, to the extent that you can comment on this, as different, and I mean I, obviously the crimes are different and very, very different in very, very important ways.

03:11 DJH: What, what, what are those things in se-, as you as a judge think about sentencing as you've written about sent-, sentencing, what are the differences in your, in the criteria that you use or the thoughts you have about sentencing?

03:25 I think that these tribunals have been useful in that they have established sentences, they have, which have been then taken, as I think, probably guidelines for the national statutes which have, for example, adapted into the national legi-, legislation the ICC statute. S-, and so many, most of the countries which have ratified the ICC have adapted their domestic legislation and possibly our sentencing practices might have been taken into account.

04:01 There's been quite some work on sentencing. One of my colleagues at the appeal chamber, Judge Schomburg at the Max Planck Institute in Freiburg establish-, make a study on sentencing practices at a comparison of the domestic systems of European and non-European countries. But again, it was – there was a great difference.

04:29 I remember that, for example, the US sentences were much more – were greater, were more, greater number of years than most of the European countries. And life imprisonment doesn't mean the same everywhere. There are countries where life imprisonment means 30 years and others where life imprisonment means life imprisonment.

04:51 So there is a great difference but it's again, difficult to translate these differences into the work we're doing here because our crimes are again different. It doesn't matter what the punishment for homicide is in a national jurisdiction because for us it's often much more than murd-, murder and it's usually not the murder of a single person but mass murder.

- 05:22** **DJH: How do you – that's and that's really my question. In, in deciding a sentence, it's mass murder. It's many, many people, assuming that (_____) . . .**
- 05:30 I think that there, very much depends on the philosophy of the person and the background of the judge, because the first difference is whether you think that a person should be convicted for life or not, and that is already a philosophical and human rights decision which is different for each judge.
- 05:49 And once you decided the maximum is life or 30 years, then the rest starts falling into different places.
- 05:56** **DJH: Okay. Are you – do you feel comfortable saying what your view of that is?**
- 06:01 I don't believe, well, again in principle I'm against life sentence, but I also acknowledge that there are cases when it's the deserved sentence.
- 06:18** **DJH: Okay.**