



Voices from the Rwanda Tribunal

Official Transcript: Inés Weinberg de Roca (Full Interview)



Role:	Judge
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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 the interview begins on the following page.

Part 1

00:00 Robert Utter: First of all, for the record, what is your background in law and as a judge?

00:06 It's quite a mixed background because I've been a professor of private international law since – I've been teaching at law school since I finished studying law, and for 20 years, I've practiced law and as a lawyer, and then I decided that it was time for a change and became a judge, a civil judge in the city of Buenos Aires, a federal civil judge for about I think exactly eight years.

00:45 And then moved on to the Court of Appeal in administrative and tax matters in the city of Buenos Aires. And from there to here, so it's, I really enjoy all the aspects of law and also like to be changing from one subject to the other.

01:10 RU: And how did you happen to be appointed to the tribunal here?

01:16 The appointments here are candidates just proposed by the countries and then the election is by the General Assembly. So I was asked if I was interested and I was, and my country proposed me. So I took leave from my court in Buenos Aires. They granted me leave of absence while I'm at the tribunal here, and I'm finishing at the end of this year and going back to my court in the city of Buenos Aires.

01:45 RU: What is your role then with the ICTR? You're at the appellate level as I understand, and could you say for a bit for our record what the, the role of the appellate level is compared to the trial level?

02:00 After I was appointed in, elected in 2003, from June 2003 until October 2005 I was on the Joint Appeal Chamber of the ICTR and the ICTY, the Tribunal for the Yu-, for the former Yugoslavia and the difference basically between the trial level and the appeal level at this tribunal is that at the trial level you hear the testimonies of the witnesses, sometimes of the victims, whereas on the appeal level it comes more filtered.

02:35 You have testimonies which you have not heard personally so the impact is not that great emotionally, and you have more questions of law to decide.

02:48 RU: You mentioned the tribunal for ICTR and ICTY. Is that an unusual combination of responsibilities or . . .

02:59 I think it's – well, it's not un-, unusual. It's how the Security Council created these tribunals, establishing a joint appeal chamber. I believe that probably two purposes were, were taken into consideration. On the one hand, not to create such a big infrastructure which was the original idea, so to create the second tribunal, the Tribunal for Rwanda with the same appeal chamber as the Tribunal for the former Yugoslavia.

- 03:32 And on the other hand, to have a similar jurisprudence, (___), a jurisprudence which wouldn't depart very much in one tribunal for the other. I do not think that the second option, the second purpose has been entirely fulfilled.
- 03:51 RU: Would you care to elaborate a bit more about that?**
- 03:54 I think that the same judges, the same panels, when they have to decide an ICTR case and an ICTY case, do not process the information in the same way. And this article on incarceration is just an example. I, I feel the – I have the perception that the cases were considered in a different light because of the different location and of course no, no two cases are similar or the, are not the same.
- 04:30 So you can have perhaps a perception that there, there is a different level of understanding the cases, but it might not be the case. It's just that the crimes were different or the perpetrators different.
- 04:44 RU: Did you feel the sentences were different in like cases?**
- 04:47 I think that everything was different. That the sentences were different and the approach was different.
- 04:54 RU: At the appellate level with the International Tribunal, you review just the written record of what occurred in the lower court?**
- 05:01 Yes we – the, the record of the case, yes. Only self-, in very few cases did we hear a, a (___), a witness on appeal so it was basically written records, and the oral submissions on appeal.
- 05:18 RU: And what would the exceptions be for oral testimony?**
- 05:21 New evidence, new evidence.
- 05:22 RU: New evidence, of course, of course.**
- 05:23 A new witness which could not be heard at the trial level.
- 05:27 RU: So it is essentially the same as the British system, in terms of the appellate functions of the court.**
- 05:30 Mm, mm, mm.
- 05:35 RU: How have the cases been at the ICTR? Are, are these well-prepared and issues clearly presented to you on appeal?**
- 05:47 It depends very much on the parties, because every case has different prosecutors and different defense counsel, so the quality of the appeal depends very much on the quality of the lawyers who prepare the submissions.

06:05 **RU: Are you comfortable in saying your opinion on how well-prepared most of the cases are?**

06:15 It's very – I don't think I can give a uniform judgment. I think it has been very, there's not been – sometimes the English becomes a bit more difficult.

06:31 **RU: Of course.**

06:33 There has not been the same level in all the cases so there's been quite some disparity.

06:40 **RU: Sounds like life in another court system, so, so much depends on the quality of counsel and their ability verbally, so to speak.**

06:49 Yes, because the role of the judges has been, the, I don't know whether in your system or the English system, but the role of the judges has been just as a sort of arbitrators, not to interfere very much. I as a judge have departed from that traditional role at this tribunal and have taken control of the proceedings.

07:12 I don't know if that is good or not, but it has been different from what most colleagues have been doing, because most, in most of the cases the judges just don't interfere very much and I'm told, we're told that that is common law. I do not come from a common law system and I'm not a very patient person, so when I think that it's just nonsense I say so.

07:34 **RU: Good for you. What, when you say take control, could you explain that a bit more?**

07:42 Yes, when the parties go on questioning and it's not relevant to the case, just ask them what they intend to prove or why they are continuing that direction, and, or if it's not a good idea to move on and also inquire how many witnesses, when they will appear, why they need the witnesses. So, really to have more information, not give just a carte blanche to the parties.

08:10 **RU: I, I would feel right at home in that type of system, I believe.**

08:14 So when I'm told it's common law it's not your system, not your common law.

08:18 **RU: No.**

Part 2

00:00 **RU: Tell me about the cases you've decided. Which one for instance do you feel the most satisfaction about?**

00:07 I don't think one feels satisfaction at this tribunal. I've not felt satisfaction since 2003, and I think that's the great difference between a judge at this tribunal and being a judge at

home. Judging cases at home, I always have the feeling that I am solving concrete problems to, of individuals.

00:32 Whereas here, it's more the feeling that we're having a good account of events for history, which is not satisfactory. It has to be done but it's not a satisfaction (), for a judge who is solving cases.

00:53 RU: Does the word reconciliation create problems for you?

00:57 I don't think we are creating reconciliation, not in the short term. Perhaps in, in the long term, because there cannot be peace, you see, without reconciliation and there cannot be reconciliation without justice, which for me means have a good account of the events.

01:13 You cannot just push everything under the carpet so you have to know what happened. But I do not think that we are in a short term in any way assisting reconciliation.

01:24 RU: Would there be some way it could be done?

01:27 Not by this tribunal, especially since we're also only trying one side. All our accused are Hutus and there, there have been no cases against the paramilitaries of the other side, and perhaps they didn-, so we do not know whether they didn't commit the crimes or if they were just not investigated, or investigated and not brought to court.

01:56 So we have the feeling that it's a one – I have the feeling that it's a one-sided justice; not so different from justice at home in the end, but in Argentina there's also been one-sided, and that is not great.

02:16 RU: Courts are, I think traditionally, focused on deciding a crime and sentencing for a defendant if found guilty. In some countries, concern is shifted to the victims of the crime, to go so far as to say that the victims are the clients of the system. Is there some way this system could be more effective in giving opportunity for the victims to present their, their views?

02:46 I think that the only way we could be more effective is, would be the case in, if we were trying the cases in the place where the crimes occurred, because then there wou-, we could have perhaps more victims coming to testify. We are a long-distance tribunal. We need the local authorities to determine where the witnesses are and assist the ICTR Prosecutor.

03:15 You're, you're interviewing the prosecutors so you will know more about the way they go about their investigations than I would know. But my feeling is that possibly had the tribunal been established in Rwanda, there would have been more contact with more victims.

03:34 **RU: Do you recall or do you know the process by which the tribunal was placed in Arusha rather than Rwanda?**

03:40 I have an, an idea, yes.

03:43 **RU: Can you explain a bit more about how that occurred?**

03:46 Well, I wasn't here at the time and then I, I can only give hearsay information, which is that at the time it was not possible to establish it in Rwanda, and the government of Tanzania offered Arusha, and there was this building which had been donated by the Italian government to the East African Community some time ago and which had space for the court.

04:13 And it's not far away from Rwanda and within the reach of our Beechcraft to bring and, to bring the witnesses to testify. So I think that might have been basically one con-, one of the considerations or some of the considerations. There might have been others.

04:34 **RU: Have there been opportunities that judges here have taken advantage of to go to Rwanda?**

04:41 I've gone three times to Rwanda; once on a private visit and then twice on site visits. And at the beginning when I arrived in 2003, I was told I should not go to Rwanda because whatever I did there would be given a political interpretation. In 2005 I went on a private visit but kept very much a-, very far away from the sites in which the crimes in my cases occurred just to avoid any possible interpretation.

05:12 And then in 2006 and '07, I'm not sure in which years, no, 2-, this – I'm not certain about the dates but I went twice on site visits in two of my cases.

05:29 **RU: Have other judges on the court done that, to your knowledge?**

05:31 There have been quite a few judges, quite a few benches which have gone on site visits.

05:36 **RU: And are the people of Rwanda aware of that, to your knowledge?**

05:39 Well, it's n-, impossible not to be aware, because our site visits take place in a convoy of six white UN cars with security and, and on the roads of Rwanda, so it's impossible to ignore us or not to see us.

05:54 **RU: Well, it's probably good but . . .**

05:56 It's just justice should be done and seen to be done so . . .

05:59 **RU: Yes, absolutely.**

Part 3

- 00:00 **RU: Judge Horowitz will have a number of questions. I don't want to, as they say in theater, step on his lines, but . . .**
- 00:07 **Donald J Horowitz: (_____) . . .**
- 00:08 **RU: . . . but there's some other areas that I would like to ask. If you were designing another tribunal, not this one but one for the future that had similar problems in terms of crimes and difficulty of witnesses, are there any suggestions that you would make that would differ from what now exists?**
- 00:27 I have a whole lot of suggestions.
- 00:32 **RU: Let's wait for a minute til then.**
- 00:35 **Note: Gap in Interview Gaps occurred due to interruptions during the interviews, technical issues, or corrupted data files.**
- 00:42 **RU: If you were to design another tribunal, in what ways would it differ from what currently exists?**
- 00:52 I think there are a number of elements. First, I think that the tribunal should in principle be in the location where the crimes occurred. Even if it cannot be done immediately, I think it's worthwhile to wait a couple of years and set the tribunal at that place.
- 01:12 Also I think it's important to have local judges involved; not international judges alone. I think that possibly the Sierra Leone and the Cambodia solutions might prove to be better, because it's not a justice imposed from outside, but a justice which, in which the local judges or the I-, the I-, domestic courts intervene.
- 01:40 I think that is important, because it also s-, serves then as a model for the local courts. Thirdly I think, I think (_____), with a third – I do not think it's a great idea to establish a tribunal where the infrastructure is not able to support it, and where the UN first has to create the infrastructure, because that means a lot of delay.
- 02:11 **RU: Yes.**
- 02:12 So these telephone lines to the outside are telephone lines of The Hague, Brindisi, and New York. The satellite for internet was established by the UN. It's a country in which the staff, much of the local staff does not speak English, which, but Swahili, which is not a UN language, so there are many problems which could have been avoided with a different setting of the tribunal.

- 02:42 And all this would have made sense, to cope with all these inconveniences if it were the place where the crimes were committed. But to have all these inconveniences in a place where the events did not (___), take place, I think it's really just crazy.
- 02:58 Note: Gap in Interview Gaps occurred due to interruptions during the interviews, technical issues, or corrupted data files.**
- 03:06 Among the things which do not exist here is a good health system. So people get sick like they, the same as they get sick everywhere else in the world, but when you are sick anywhere else, you go to the doctor, or have a test in the morning and then go to work in the afternoon.
- 03:23 Here you have to fly out, and you don't come back until (___), you get a clearance from your doctor. And of course, we all, we don't all get sick at the same time. So sometimes it's prosecution, sometimes it's defense, sometimes it's the accused, sometimes it's the judge or one of the judges, then it might be the other judge, so it's just a vicious circle.
- 03:48 RU: I assume that a better infrastructure would improve that as well.**
- 03:51 Exactly.
- 03:54 RU: What about the use of defense and prosecution attorneys? Have difficulties in obtaining qualified people contributed to the delay?**
- 04:05 Well, of course the lack of inf-, infrastructure in a city or in a country does not help to get qualified people in the long term. Everybody likes to come on a short term because it's like summer camp, some of the staff have described. It's (___), exciting. You get paid for an exciting experience. But after a time, you want experience to end and move on.
- 04:34 RU: Summer camp ends and the work begins.**
- 04:36 Exactly.
- 04:37 RU: Alright. We have children so we know about that. Part of the challenge for the future in documenting what happens here is to go beyond the written record. Anyone can look at what's there in writing. Is there something you would like to say that will not appear in the wri-, written record but you feel would be of help to the future in understanding what occurred here?**
- 05:07 I, I think I've said what I can, what I can contribute to the idea of why this place isn't working as it should.
- 05:24 RU: That's been very helpful. It's been my great delight and pleasure to talk with you. I will now turn the matters over to my friend, Judge Don Horowitz.**

Part 4

- 00:00 **DJH: Judge Weinberg, I want to go back a bit in your biography, because we went over it briefly but I would like to understand a bit more about the nature of your pra-, your, your practice when you, when you practiced law. Could you tell us some-, something about that?**
- 00:18 When I practiced law, that is a long time ago but it was in different aspects of law. I sort of jumped from one area to the other, so.
- 00:27 **DJH: Okay, was it mostly civil law rather than criminal law?**
- 00:31 It was very little criminal law.
- 00:33 **DJH: Okay. Now, you've also taught. And in what, in what fields have you taught?**
- 00:40 Mainly private international law but also public international law, human rights.
- 00:46 **DJH: And has that been something of a passion for you during your career, duri-, both academic and otherwise?**
- 00:53 Well, I'm, I'm still on leave at the university so I really enjoy being a professor and I've been now, I've had the Chair for, (__) probably seven years and it's something I miss here.
- 01:15 **DJH: What do you miss?**
- 01:17 The contact with the students and, basically yes.
- 01:21 **DJH: And, could you put a little meat on the bones, if you don't mind, of your teaching and as it relates to in-, international . . . ?**
- 01:30 Well, teaching in, in Buenos Aires is a, in Argentina in general, is not a full time job because we professors are not paid very much, or teachers or university teachers are not paid much. So it's becomes part time, and you teach while you are either a lawyer or a judge if it's the law faculty, which for me has been a great arrangement because it didn't matter if the salary as a professor was low because I earned enough either as a lawyer or as a judge.
- 02:01 And it avoided – well, it, the, the combination of both I think is great, because you don't just teach theory but you know how it, it goes in practice. I think it's – for me it worked out well.
- 02:18 **DJH: And are there areas of law that you have either practiced in or taught that are relevant to your exper-, to what we're talking here about, the ICTR or the ICTY?**
- 02:31 I have taught human rights at university so that of course is relevant, and I do not see law as compartments in, of criminal, civil, commercial law. I see it more as one. It's more a

pers-, it's, I think it's – they are general, how, how can I describe this, can I explain this? That there are principles which apply to (), to law in general and not to just one of the disciplines.

03:07 And I finished law school when law was a bit simpler than it is today. I, each year, it's getting somehow more complex with more sub-disciplines and more statutes, so as time goes by, one specializes more because of the need to learn more specific information. But I think it's specific information that you have when you are an expert on a discipline, but not the general knowledge of law, which becomes better.

03:43 DJH: Mm-hmm.

03:44 And this sp-, specific information, you can just update when you need it.

03:52 DJH: You, have you done work related to these subjects in NGOs or government positions or appointed positions?

04:00 No.

04:00 DJH: No. I'm, I'm interested in – you talked about having been approached by your government to be a candidate for this position. What was it you think that led your government to ask you to do that? W-, was there some special accomplishments or long-term efforts in the area of human rights? Or, what, what do you think it was?

04:26 That I was, probably that I was willing to do it and that I would be, that they thought I would be good at if I was elected. I think it's simple as that.

04:36 DJH: Okay. I don't mean to – I'm asking you not to be modest. And in, in your judicial career, you said it was essentially civil or not, not crimi-, you didn't do criminal.

04:49 Not criminal.

04:50 DJH: Was it a trial bench or a, an appellate bench?

04:55 First in-, as a civil judge it was first instance and then administrative and tax law, appellate level; high, what you would call a high court or a court of appeals.

05:08 DJH: And when you – why did you, why were you interested in, in joining ICTR? What was your motivation?

05:16 I think that . . .

05:16 DJH: Or ICTY, which I guess was first.

05:19 Yes, well, together really because it was a joint appeal chamber. I think that as one gets older, one realizes that one cannot only talk about what has to be done but that one has to

contribute in an effective way and it's only – and that is easier once you solve the basics of your life.

05:46 DJH: Mm-hmm.

05:46 So when you're young, you have so many things, I think, of-, often which you have to deal with first.

05:53 DJH: Was there anything in the nature of the kinds of ad hoc tribunals, either the Yugoslav, former Yugoslavia or the Rwanda, that led you to be particularly motivated?

06:08 Well, it was the first time that there were tribunals since Nuremberg because all the evolution had been on treaty law but there had been no real practice of putting those – of, of trying to put the conventions in force of applying them.

06:28 So that was the f-, these tribunals have been the first oppor-, opportunity and I think they have been great at that. But it has stopped being a theoretical evolution and has started to be something concrete, which a criminal should fear.

06:44 DJH: Okay.

06:45 That at the end there will be accountability even if it might take long or longer.

Part 5

00:00 DJH: 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.**

Part 6

- 00:00 **DJH: 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.**

Part 7

- 00:07 **DJH: You've said that you've not felt satisfaction in 2-, since 2003 and you talked a bit about that. Perhaps you could be a bit, well, I'd like to ask you to be a bit global and a bit sp-, specific, if you don't mind.**
- 00:22 I think that being permanently on these very sad cases affects the personality. And my husband and son are living in Buenos Aires and often it's good not to have your family with you because at the end of the day after all the testimonies you he-, listen to, you don't feel like having a great conversation.
- 00:47 But on the other hand, you're isolated in a country which is not your own, listening to just horrendous testimonies. So that isn't a happy work, and again it's not satisfactory because there's not much you can do. You, you don't solve the situation. The situation remains for the victims the same it was.
- 01:08 You don't give them any reparation and you don't, you can't of course give the lives back. You can't give them money. You can't give them a house back. Not even the cattle. So you just hear what happened, what awful things happened and you just are there and you write it down and you make it a judgment.
- 01:29 **DJH: So why do you keep doing it?**
- 01:30 Well, I'm finishing at the end of this year. I didn't want my mandate extended. The mandates of the other judges were extended and I said, "This is it. I need to go back to the present."
- 01:44 **DJH: You and I men-, talked before, before the interview about the fact that we share a common heritage, being Jewish. Has that been relevant to your service here or your consideration here? (____) . . .**
- 01:57 I think so possibly, not in a very conscious way, but yes. I think that it is there and . . .
- 02:07 **DJH: Can you go any further with that?**

- 02:10 It's – a friend of mine who is a journalist in Buenos Aires al-, always, she's persuaded that I chose being a judge this is, of, at these tribunals because my family had to emigrate fro-, from Germany and most the family was killed in concentration camps. I didn't make any conscientious or rational link between that fact and my being here, but I don't exclude the link.
- 02:47 And I think it's a mix that and also having been in Argentina. I lived in Argentina during the military junta so it's like a reiteration and at some point you feel you have to do something about it.
- 03:05 **DJH: And that's why, that's why you're here.**
- 03:08 Mm-hmm.
- 03:11 **DJH: You know, I sometimes say, and you can agree with this or not, that there is no such thing as total objectivity but there is something called impartiality.**
- 03:22 Exactly, and it's what – here often with the witnesses, when it's not sure whether they really were present at the events of if they're talking about what others told them and whom they trust. And – but at the end of the day, yes, it's about just assessing the evidence we have and seeing if it's reliable and not what we believe happened, which might be good for the witnesses but not for the judges.
- 04:02 **DJH: I want to go to something else that you – thank you for, for that. I want to go to something else. You talked about having the tribunal be conducted in the country in which the events occurred and as a general rule, justice of course should be visible, particularly to the people who were victims . . .**
- 04:23 Not only visible but also contribute, the, if this is to be useful, it has to contribute to making the justice system in Rwanda or in the former Yugoslavia better and not by way of outreach programs but by being there.
- 04:37 **DJH: Yes. The argument, one of the arguments we've heard against that is that there would be great danger, particularly to witnesses for the defense and that, that could not be, and that the witnesses for the defense would be very reluctant to come and testify.**
- 05:03 **DJH: And, and that argument is of course then it would not be equal justice or the rights of the accused would be compromised, then I – it's an argu-, it's something we've heard. I'm not making any conclusion about it, (___) like to ask you your opinion.**
- 05:15 Well, of course it's one of the things that the UN would have had to work in Rwanda or in the former Yugoslavia, but instead of having these huge buildings and satellites, perhaps it would have been better to invest the money in securing that, and it's also education and transforming the system. It's not something which cannot be done.

05:34 DJH: 'kay.

Part 8

00:00 DJH: Now I wanted to ask you – you used the word site visits and I know what it means but we're talking here to people who are not lawyers as well as lawyers. We're talking to people 20 and 30 years from now. Can you just tell us what you mean by a site visit?

00:15 In the cases to understand the evidence, the parties request the bench to visit the places where the crimes allegedly occurred, to show that it could or not have, could not have happened the way the testimonies go.

00:32 DJH: Okay, so you actually view the site where it happened but you don't take new testimony while you're there.

00:37 No, we don't take testimony. We make photos or notes but no new test- . . .

00:43 DJH: No questions of . . .

00:44 No questions.

00:45 DJH: . . . of witnesses, that kind of thing, okay. You were talking about the delay and you began that by talking about the lack of health care.

00:59 Well, it's a mix, also, the composition of the benches, so it's a qu-, a partly management, internal management of the tribunal and partly the infrastructure of the place.

01:11 DJH: Okay, it seem-, the delay, correct me if I'm wrong, seems to have, for the la-, things seem to have speeded up some in the last few years. Am I misinformed by that?

01:25 I don't think so. I think the different Presidents want to make both here and () former Yugoslavia. It's only natural that they say, "During my term, everything has gone smoother." I don't think so. Pro-, possibly yes, the first four years were the most, were the slowest because the infrastructure had to be built.

01:47 For example, the second President, Judge Pillay who is now the High Commissioner for Human Rights, she told me that the judges at the time were so grateful because she could provide glass for the windows.

01:57 DJH: My goodness.

01:57 So, that gives you an idea of the place. So if you even have to take care of having a windows set in the building, the delays are sort of comprehensible. I think that she was the great President of this tribunal, and that it was during her presidency that we had the important leading cases.

02:23 DJH: And I would, you're, you're now getting to the next questions I was going to ask. Are there any cases . . .

02:29 Well, her case, I think it was her first case, Akayesu is really one of the important ones in which she stayed the proceedings. The Prosecutor have not indicted for, for rape or sexual violence, and the witnesses came and testified and testified over and over again.

02:54 And she stayed the proceedings, had the Prosecutor amend the indictment then gave defense time to investigate and that was the first time that rape was considered crime against humanity and genocide, I think.

03:09 And then the jurisprudence of the ICTY followed the ICTR jurisprudence. I think there we-, during that period there were quite some very, quite some challenging cases, and hers was also the much criticized Media judgment but I think it was a good judgment.

03:31 DJH: Tell me about – can you be a little specific . . . ?

03:33 This Media judgment – indicted were a journalist, were . . .

03:43 DJH: Some radio people, I think.

03:45 Yes, and radio people and (), and it was a case of freedom of expression and free speech against the incitement to commit genocide, and the fine line with a lot of intervention from, fo-, from NGOs especially from the U.S. who thought that freedom of speech is über alles, the important thing. And, and I think it was a great judgment and a great appeal chamber judgment.

04:18 DJH: It was a balancing of the, of the interest, would you say that?

04:20 Yes.

04:22 DJH: Are there any other case-, are there any cases in which you participated? I don't know whether you participated in either of those () . . .

04:29 No, well I, I was a pre-appeal judge in, for some time in the Media case. From the law, legal point of view, I think that one of my cases will be interesting because the accused is Simon Bikindi who is the Michael Jackson of Rwanda, so he's accused because of the, of his songs, for singing and because of the text of his songs, among other things.

04:57 DJH: And, and what was the judgment on that?

04:59 The judgment will be delivered on the second of December so you have to wait.

05:02 DJH: Oh, okay, okay. And there's no – I can't go to the Michael Jackson case for precedent I gather. Okay, you don't need to answer that.

- 05:13** Max Andrews: No sneak preview?
- 05:15** DJH: Are there, are there, is there something you've been involved with here, that surprised you, you know, or, after you came here – other than anything you've said – anything here that surprised you?
- 05:31 Yes, possibly but I'm, have, would have to think. I, there, it's a place full of surprises but if you ask me to put them now, count them one by one, it's not . . .
- 05:47** DJH: No, just anything big. I mean, you know, if, if not that's fine.
- 05:53 The whole place is so different from what I was used to, that it was (____) . . .
- 05:56** DJH: Okay. Is there anything that you feel really proud of that you participated in?
- 06:04 No.
- 06:06** DJH: Disappointed, I think you've already said.
- 06:09 Not disappointed. That is, I don't think the word I chose.
- 06:13** DJH: Okay, tha-, no it isn't.
- 06:15 It's not disappointed. I'm not disappointed but I haven't been happy about my work, which is not the same as disappointed.
- 06:24** DJH: Okay. And I think you've explained. If, if you haven't . . .
- 06:27 No, no. I think I have explained why.
- 06:28** DJH: Okay.

Part 9

- 00:00** DJH: I would like to ask you something I was going to mention before. Is there any particular form of evidence that you – as you hear a trial, and I don't ask you to remark about a sp-, specific case – that you find more compelling than others and, and other-, and, and the contrary, that you find less compelling than others?
- 00:26 I find extremely compelling the testimonies of the rape victims. That I find extremely compelling.
- 00:33** DJH: Okay. And, and evidence that you find less than compelling, or . . .
- 00:38 No, all e-, evidence is really compelling. I, I, we do not have non-compelling evidence. What we have is witnesses we be-, believe are – we assess as credible and others we do not consider credible but the evidence is compelling.

- 00:57 DJH: Okay.**
- 00:58 And sometimes perhaps it's less compelling because it might come less, be perceived as less compelling because it has been filtered through time. Because now when we listen to evidence, so many years passed so it's not with the same emotion that the testimonies are being given now than ten years ago.
- 01:22 DJH: And that was one of the qu-, further questions I had. You talked about delay and that, and that (___), says something about the quality of evidence sometimes.**
- 01:30 It's worrying because even the best witness doesn't live in isolation. So he or she has been talking about the events with friends, family, community and been testifying several times in several cases.
- 01:46 So at some point you might believe as a witness that something occurred because you repeated or heard it or recycled it, but it might not be what originally you perceived through your senses.
- 02:02 DJH: Yes. We often hear the phrase, you know, the accused is entitled to a speedy trial, which is of course important and true. But the next question is: isn't the victim, as well, entitled to have a trial that occurs with reasonable speed so that the witness can get on with their – the victim can begin to get on with their lives? And closure.**
- 02:29 Yes, the answer here is yes and no. Because on the one hand of course, everybody's better served with a speedy trial as soon as possible after the events took place. But these are crimes which are, which go very much with the politics of a place.
- 02:50 So very often it's absolutely impossible to have a trial soon after the events have taken place, because those you have to accuse might be in power and many witnesses would not dare come forward.
- 03:06 So very often, time is necessary so the usual, the normal principles of sp-, expeditiousness do not apply necessarily to these cases in which very often you need the political power to shift to be able to indict and come – pro-, proce-, process and eventually convict or not.
- 03:32 DJH: Okay.**

Part 10

- 00:00 DJH: What would you like an information heritage of this court – what would you like it to be like or what would you like it to be, what would you like its purpose to be? Maybe that's not an easy question.**
- 00:15 It's not an easy question and I didn't know you were coming until a few days ago so I haven't created many expectations, but I think that possibly what is important is to assist in

making better tribunals in the future because crimes will continue being committed and we will continue to strive to have proceedings and bring the indicted before the courts.

00:46 But if the courts can be improved, that I think is the main legacy. And you mentioned before the ICC, and I think that has been the great legacy of both the ICTY and the ICTR – that the ICC statute has been improved and the participation of the witnesses in the proceedings has been improved, thanks to the experience of these tribunals which often have not been great but we have all done the best we could, given the circumstances.

01:19 DJH: Okay. You said the participation of the witnesses. Did you also mean the participation of the victims?

01:24 Of, I meant the wi-, victims, I'm sorry.

01:26 DJH: Yes, okay. Are there other areas where the ICC – and that's the International Criminal Court which is a permanent court now that has recently, you know, in the last few years been established – are there other areas where the International Criminal Court has, or the statute which creates it has improved because of things that have been learned from either the Yugoslav (_____) . . . ?

01:52 Well, yes, in many ways the definition of the crimes.

01:57 DJH: The definition of the crimes.

01:58 Of the crimes, the specificity. It's, it's applying the jurisprudence of the ICTY and the ICTR mainly. It's, it has at least been the starting point of the discussion of the Rome Statute that created the International Criminal Court.

02:15 DJH: Okay. And I guess, finally, is there anything, right now you are being filmed and this film may be seen by people of various sorts – scholars, just regular people, students. Is there anything you would like to say to the future, to ten, 25, 50 years from now that comes from Judge Weinberg as both a judge and a person? Given this opportunity.

02:50 Yes. Yes, that the scary part of these proceedings is that you realize that the horrible events that led to genocide or crimes against humanity, either here or in the former Yugoslavia, could have taken place anywhere given the right social and social circumstances.

03:14 And that is really the scary thing, that it's not particular bad people, evil people who do – who commit the crimes but it just the common person who is accompanying a general feeling that what, that what is a crime is at that moment of time the correct thing.

03:39 And that it doesn't take more than each of us saying, "I won't, wouldn't do this. I'm not doing this," for a genocide or a crime against humanity not to occur.

- 03:49** DJH: And that would be true even if it was dangerous to those people saying no.
- 03:53 Mm-hmm.
- 03:55** DJH: It's still important.
- 03:56 Mm-hmm.
- 03:56** DJH: And that's what you want to say.
- 03:58 Yes.
- 03:59** DJH: And do you – the last question really is – do you have hope?
- 04:04 I have always hope.
- 04:06** DJH: And what is your hope for?
- 04:09 That these courts will be more institutionalized, the ICC or just the – better would even be the lack of need of the ICC because in each jurisdiction these cases will be prosecuted.
- 04:33** DJH: Thank you very much.
- 04:34 Thank you.