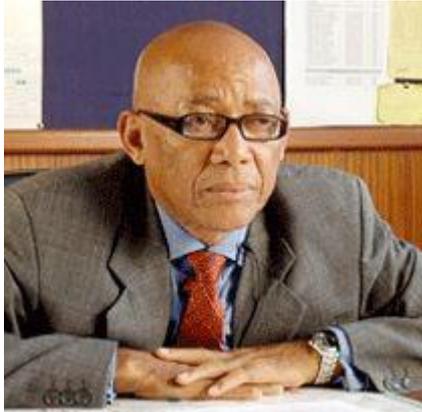


Voices from the Rwanda Tribunal

Official Transcript: Emile Short (Part 11 of 12)



Role:	Judge
Country of Origin:	Ghana
Interview Date:	21 October 2008
Location:	Arusha, Tanzania
Interviewer:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews Nell Carden Grey
Interpreter:	None

Interview Summary

Emile Short discusses the importance of creating an accurate historical record of events in Rwanda. He reflects on the ICTR's contributions to generating a rich body of jurisprudence that future tribunals can draw upon. Short remarks that the ad hoc tribunals have not provided as many direct avenues to reconciliation as might have been provided by other mechanisms. That said he recognizes that reconciliation is a long and complex process of which justice is an important part, particularly for victims.

The transcript of Part 11 begins on the following page.

Part 11

- 00:00 **Donald J Horowitz: Given the nature of what's going on in the world, it, it seems that it's possible there will be future tribunals or there may be future tribunals. If you, if there were and you were the architect or at least a major consultant to the formation of such tribunals, what would you suggest?**
- 00:25 **DJH: And you have complete breadth of, of this – that would hopefully improve the operation, efficiency and so forth, and perhaps the quality and outcome of the work, if you were starting from scratch based on your experience and what you've learned? That's a big question, but . . .**
- 00:51 Well yeah, that's, that's a very wide question, yeah.
- 00:54 **DJH: Yes. Do, do as you will with it. Okay.**
- 00:57 Yeah, that's a very difficult question. As I said earlier, I think the statute of the ICC is a starting point, you know. It has improved on our statute in many ways.
- 01:17 **DJH: Can I ask you to, you know, recognizing you don't have the statute in front of you, but give us some of the things that you think are, are salient and important that have improved?**
- 01:28 For example, victim participation in the process. The definition of some of the concepts of the crimes – I can't be specific at the moment but I think that there has been improvement in some of the definition, especially of the, like – I, I, I can't really put my finger on any specific but I, I remember I have read some elements which have improved, you know, on, on the definition.
- 02:16 **DJH: I'm sorry to put you on the spot this way.**
- 02:16 I would have to, I'll have to, I have to be very careful here. I'll have to sort of go back and take a look . . .
- 02:22 **DJH: Sure.**
- 02:23 . . . but one that comes straight to mind is the victim participation but I can't think of others yet. Yeah.
- 02:32 **DJH: I interrupted you then, okay, so you were, you were talking about the improvements made by the statutes, and, and . . .**
- 02:39 And I think also I mentioned earlier the common law and civil law . . .
- 02:52 **DJH: Yes.**
- 02:52 . . . process, you know.

- 02:54 DJH: Maybe you could explain again. We don't, a lot of people watching this, who will be watching this, are not lawyers. Perhaps you could give us just a, you know, two minute primer on the difference between . . .**
- 03:07 Well the major difference is that in the common law system . . .
- 03:11 DJH: Which is Anglo-American, right.**
- 03:13 Anglo-American, the, the judge is an umpire so to speak, an impartial referee. And he or she sits as a referee between these opposing sides, the prosecution and the defense. The judge does not get into the arena of conflict. The judge does not get involved in investigation of the case.
- 03:46 The prosecution has the responsibility to do all the prosecution – all the investigation – and bring the evidence before the court and the defense will also do its own investigation. And then the two sides battle it out and the judge determines the di-, the dispute, the various disputes in the course of the trial, you know.
- 04:17 On the other hand, the, the civil law system, the major difference is that you have an investigating judge who conducts the investigation and collects the evidence, you know. There, there, there, there may be other differences in terms of cross examination and, and so on but that's the major difference, that you have an investigating judge who is responsible for collection of the evidence.
- 04:55 And I did, I did mention that that process might expedite hearing of cases at the international level be-, because here we're dealing with mass atrocities, events, so many different events that took place over a long period of time and it might be more efficient if you had an investigating judge who collects all the evidence and then present the evidence for both parties, you know.
- 05:44 DJH: Then who would decide the case? Other judges, I take it?**
- 05:48 Yes.
- 05:49 DJH: Not, not the investigating judge.**
- 05:51 No, not the investigating judge, but I-, yeah, I would prefer that another judge would, would, would determine the case. But then the process of collection of the evidence could be more efficiently done by the investigating judge.
- 06:10 And I think less resources would be used, less time would be spent, and even if the parties needed to do supplementary investigation, that could be done but the bulk of the work would have been done by an investigating judge and it will be, it will not be necessary to, to duplicate efforts by, by both sides.
- 06:38 DJH: Now you previously said to us and I know you believe this, that one of the jobs of a tribunal is to make sure that the rights of the accused are carefully – what's the word . . .**

- 06:51 Respected.
- 06:52 DJH: . . . respected. I come from an Anglo-American system so I don't understand the civil co-, civil law.**
- 07:01 Well, I come from an Anglo-American, Anglo-Saxon, you know, system, a common law system as well, so I'm not extremely familiar with the civil law system, mind you I have, I have a broad, I have a knowledge, a sort of broad knowledge of the civil law system.
- 07:17 DJH: But there's the devotion to protecting the rights of the accused as well as, you know, finding, finding guilt. And my question is, how, how do you see that the rights of the accused can be preserved and respected in, in the civil code, in what you just described as the, the, the civil code system – the, the, the judge who's deci-, who's collecting the evidence and presenting it for both parties?**
- 07:43 Well, because I think that, you know, it would avoid duplication of efforts because the prosecution and defense go on missions to do virtually the same work and in terms of resources, in terms of time spent, it would probably be more pra-, it will be less expensive if you had an investigating judge carrying out all these missions and then compiling the evidence and presenting it to both parties.
- 08:25 DJH: I guess the question that comes up for me is how does one maintain the impartiality aspect of that? With, with a, an investigating judge, a judge who's doing I guess what to me sounds li-, like prosecutorial work. But perhaps that's just my lack of knowledge of that system. How does, how does . . . ?**
- 08:44 Well, I, I'm not, I w-, I, I don't claim to be extremely conversant with the civil law process but even assuming that the investigating judge sits on the case, I think it is possible for the investigating judge to have an open mind because he collects the evidence and presents it to both parties and both parties can use it the way they see fit.
- 09:18 On the other hand, it may be possible for a system whereby another judge sits on the case but is provided with the evidence collected by the investigating judge. That evidence is made available to the new judge as well as the . . .
- 09:38 DJH: Both parties.**
- 09:39 . . . both parties. That in my, in my view would be a more efficient system – could be a more efficient system, of course, depending on the, the, the competence, the capacity and thoroughness of the investigating judge.