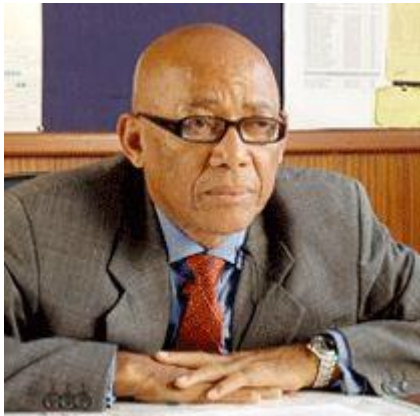




# Voices from the Rwanda Tribunal

## Official Transcript: Emile Short (Part 8 of 12)



<b>Role:</b>	Judge
<b>Country of Origin:</b>	Ghana
<b>Interview Date:</b>	21 October 2008
<b>Location:</b>	Arusha, Tanzania
<b>Interviewer:</b>	Robert Utter Donald J Horowitz
<b>Videographer:</b>	Max Andrews Nell Carden Grey
<b>Interpreter:</b>	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 8 begins on the following page.*

## Part 8

- 00:00 **Donald J Horowitz: I'd like to first go for a moment to the ch-, the referral of cases to Rwanda. And you, you'd said that the, the rationale was good and appropriate, and, and I'm not arguing that point. But I would like, if you could – w-, when they were denied, the, the requests for transfer – what were the published or, or public ra-, reasons given for the denial, if there were?**
- 00:25 You mean the reasons given in the decisions?
- 00:28 **DJH: Yes.**
- 00:29 Well, we've had about four of those cases and each decision has given different reasons.
- 00:41 **DJH: Okay.**
- 00:43 But one reason that runs through, a common thread that runs through all the decisions, is the fear that witnesses for the accused who live outside Rwanda would not feel safe or would not be willing to go to Rwanda and testify, and therefore that would affect the fair trial rights of the accused.
- 01:18 That is one reason that runs through all the decisions. In some of the cases, there have been other reasons, and the appeals chamber has heard an appeal from one of the decisions but that particular ground, namely that there is the likelihood that witnesses for the accused persons might be reluctant to travel to Rwanda to testify on behalf of the accused, is one that was upheld by the appeals chamber.
- 02:04 **DJH: Thank you. Now as I remember your background, this is the first time you've actually been a judge. Is that correct?**
- 02:15 Well, yes and no.
- 02:18 **DJH: Okay, tell me about that.**
- 02:23 In my previous work as head of the Human Rights Commi-, Commission and an, and then the Ombudsman, I'm n-, I wasn't a judge in the strict sense of the word but I conducted hearings, high-level hearings at which public officials like ministers, you know, or your equivalent of secretaries of state, appeared before us and were, were represented by counsel.
- 03:04 And so we conducted hearings and had to, to abide by the principles of (\_\_\_\_) justice which entailed, you know, all the elements of a full-blown hearing and then writing a decision, you know, to determine the merits of the case.
- 03:27 So yes, in the conventional sense, I haven't, I wasn't a judge before I came here, but to occupy that position in my country, you have to qualify to be a court of appeal judge.

- 03:44 And, and also the nature of the work involves – part of the work involves adjudication and application of, you know, legal principles and legal concepts.
- 03:59 DJH: Okay, and that clarifies it very well for us. Thank you because essentially, while you didn't have the official title, you performed judicial functions.**
- 04:06 Yeah, well, yes.
- 04:08 DJH: Sounds like pretty full judicial functions . . .**
- 04:10 Yes.
- 04:11 DJH: . . . for some substan-, some number of years. Can you gi-, tell us approximately . . . ?**
- 04:16 Well, from 1993 to 2004 when I came here, so they're, they're sort of quasi-judicial functions. We had powers to summon witnesses, to, to, to require the production of documents, ( ) compel the attendance of witnesses and testify under oath, and, and all the parties were represented by counsel and so it was very much like a judicial process.
- 04:50 DJH: The reason I ask that question, and I, and I'm really happy to have had a fuller an-, a full answer bec-, is because obviously, and you will know this, the change from being a lawyer to being a judge, while it doesn't sound like much, you have to, you're performing such a different function and you have to learn a lot about yourself and what moves you and so forth, the personal part of that.**
- 05:13 DJH: And I was going to ask you about the tra-, you know, your own personal transformation particularly as you were – I don't want to say dropped in, but you, you became a judge in a court that was hearing rather unusual kinds of cases and put an enormous responsibility on you.**
- 05:31 DJH: Did you – was there some personal transformation you felt you went through when you moved from the previous job to this job?**
- 05:41 I don't think so because as I said, in my previous job, I was handling cases involving high public officials.
- 05:48 DJH: Sure.**
- 05:50 The, the very high-level people that, that come before us here. We, we heard, we hear-, we heard complaints against ministers and in fact I, I did hear one complaint against my own president before I left, you know.
- 06:10 DJH: You mean the president of your country?**
- 06:12 Yes, and that was an allegation brought by the minority member of parliament, alleging conflict of interest and abuse of office. And so, you know, I'll be used to, to hearing cases involving high public officials.

**06:33** DJH: In, in the hearings of those cases, you made a d-, presumably made a decision as to, “Was there a conflict of interest,” or et cetera, et cetera. Did you decide the penalty as well?

06:44 Well, actually, our decisions were not binding. They were in the form of recommendations. And (\_\_\_\_) . . .

**06:54** DJH: Did you recommend penalties then?

06:55 Yeah we do, we do recommend – for example, we might recommend dismissal, we might recommend payment of compensation and so on. But even though they were recommendations, if the recommendations were not complied with, my institution had power to go to court to enforce them.

**07:15** DJH: Okay.

07:16 So we would take the case to court and would seek a judgment of the court enforcing our decision or recommendation. So then that sets in motion another process.

**07:30** DJH: Okay.