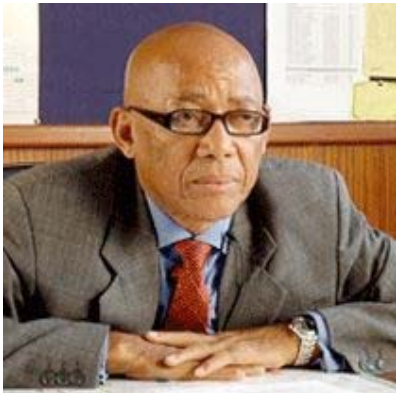


## Official Transcript: Emile Short (Full Interview)



<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 the interview begins on the following page.*

## Part 1

- 00:00** Robert Utter: I'll start with my introduction and then ask you to introduce yourself. My name is Justice Robert F. Utter. I'm from Washington State. I formerly served as Chief Justice of their court and on the Supreme Court for 24 years and a judge for 14 years in other levels of courts before that. I'm here with the ICTR Information Heritage Project.
- 00:27** RU: And in that capacity, it would be my honor to ask questions of my colleague judge, Francis Short. Mister Justice or Judge, whiche-, whichever you'd prefer, we'd be interested in your background and how you got here, and what were the reasons for seeking this position.
- 00:49** Well, my name is Emile Francis Short. Presently, judge with the International Criminal Tribunal for Rwanda. Prior to taking up this position in March 2004, I was the head of the State Human Rights Commission in Ghana as well as the Ombudsman from 1993 to 2004.
- 01:19** In that capacity, we adjudicated complaints of human rights violations, administrative injustice, et cetera, and also did a lot of public education on human rights issues. Prior to that, I was in private practice for about 20 years in Ghana and during that period, I also lectured in law part-time in the University of Cape Coast Ghana and I have also lectured in law in London for some time.
- 01:57** And I also worked in Rochester, New York as an assistant editor with the Lawyer's Cooperative Publishing Company for a period of about three years. Briefly, that's my background. I'm of course obviously a lawyer by profession. I hold a Master's Degree from The London School of Economics and Political Science.
- 02:23** RU: And how did you get to your present position and what interested you in this?
- 02:28** Note: Gap in interview (Approx. 1 minute in duration.) Gaps occurred due to interruptions during the interview, technical issues, or corrupted files.
- 02:36** RU: Mister Justice Short, how did you arrive at this position and, and what was your interest in doing this?
- 02:44** Well, I've always had a passion for, for justice, you know, and have always been interested in, in adjudication, you know, which I was involved in, in my previous job as head of the Human Rights Commission and as an Ombudsman.
- 03:04** That position was a very challenging one, inasmuch as we had to investigate as well as adjudicate on, you know, human rights complaints against public officials and the manner in which they exercise their power or exercise their discretion.
- 03:24** After, after many years in that position, I felt I needed another challenge and I saw this position as a bigger challenge and I wanted to be involved in dispensation of justice at

the international level. So I intimated to my government that I would like to be considered for intern-, an international judicial position.

03:59 And so my name was forwarded to the United Nations and, you know, we wen-, we went through the usual process of elections and luckily I was one of those who was elected to serve on this tribunal.

**04:18 RU: Has it met your expectations?**

04:23 The – well, in many ways yes. This work is very intellectually stimulating. You know, international humanitarian jurisprudence, international criminal law jurisprudence is very complex and very interesting. It's a different kind of jurisprudence, which I wasn't used to, but I've found it very exciting and very challenging.

04:56 And here, we, we, we have to deal with lawyers from all over the world, from every part of the world, you know, and you have some of the best lawyers appearing before us and the intellectual discourse is quite stimulating. And therefore to that extent, the work itself I've found very, very interesting and very satisfying.

05:27 At times it has been stressful because we're under pressure to complete our, our work. And so for the last two or three years, we've been sitting full days, you know, that's from nine to five thirty and sitting in court continuously, you know, wi-, with the usual short breaks can be stressful at times. You know, you have to be attentive throughout such a long period. So yeah, it has been quite stressful at times.

06:07 It also has been sometimes disturbing to see or to hear the events that took place, you know, in this continent and how it has affected, you know, our national development. So there are different perspectives; I have different perspectives of my experience here. Some are very satisfying, others are quite disturbing.

## Part 2

**00:00 RU: What has your role been with the ICTR?**

00:04 Well, as a judge, my first and foremost role of course is to, is to dispense justice, to, to determine the guilt or innocence of those that are brought before us. But you know I think all of us have a much wider role, and in order to, to identify that role, we must look at the, the objectives of this institution.

00:33 First of all, I think this institution, like the other ad hoc, you know, tribunals, was established to, to fight impunity against gross violations of international law and so, I'm contributing to that objective. This judicial process also in my view upholds the rule of law. You know, in Africa in particular, the issue of accountability of public officers is a very critical and important one.

01:20 And to the extent that I'm involved in this process of accountability, I find that I am contributing to the establishment of the rule of law and to providing justice to the

many victims, you know, in this tragic event. Of course, I must emphasize that like any other judge, we, anybody that appears before us is presumed innocent until proven guilty.

02:00 None of my remarks should be interpreted as, you know, prejudging anybody that appears before us. As you know, some people who have appeared before the tribunal have been acquitted. So that's o-, one of the, the other important contributions.

02:20 This tribunal is also providing what I think is an accurate, historical record of the events that took place in Rwanda in 1994 and this is an important historical heritage.

02:39 You know, it is important for, for us, for, for Rwandans, for Africa, for the entire world to know exactly what took place. And insofar as we are in a position to collect testimonies from, from witnesses, from accused persons, from experts, espe-, especially you know, political scientists, historians, social scientists who have expert knowledge of these events, we are amassing and we are, you know, putting in, on record what I consider to be a very accurate historical record of the events that took place.

03:31 And lastly but not the least, we are providing a very rich body of jurisprudence for other similar tribunals like the International Criminal Court, the Special Court, and all the other hybrid tribunals that have been established. I think the ICTR has developed a remarkable body of jurisprudence which would be extremely useful to all these other bodies and I, I am proud to be part of, of that, that heritage.

04:15 You know, I've been involved in a number of important decisions, you know, landmark and seminal decisions and so that, to my mind, is also another very important contribution that I think that I am making, you know, in this particular role that I have.

04:38 **RU: That's very helpful.**

### Part 3

00:00 **RU: You mentioned one of the obligations is to fight impunity. There are, as I understand, literally hundreds of thousands of perpetrators of the genocide in Rwanda. What is the role of this court in the prosecution and hearings and charges, opinions of the court in dealing with those perpetrators and what is the role of other courts like the Rwandan courts for instance?**

00:29 Well, this court is primar-, primarily required to handle cases involving those who, who we say bear the greatest responsibility for these crimes. And by that, I mean the legislation or the statute that established the court mandates us to deal with those category, that category of people.

00:59 And by that I mean not necessarily those who actually participated in the, in the crimes but those who are alleged to have masterminded the crimes or to have been behind, you know, the, the, the crimes, to have planned it.

- 01:21 And so you find that most of the cases involve accusations of conspiracy, you know, to commit genocide, incitement to genocide and so on. So our role of course is limited to those people who occupy the, the, the high positions, the big fish so to speak.
- 01:49 The Rwandan courts on the other hand are dealing with the vast majority of the alleged perpetrators, you know, especially those who are alleged to have actually participated in the commission of the crimes. So that's one big distinction.
- 02:15 The, the process here of course is quite different. The – it's a much more – we, we try to uphold international standards of justice, you know, and we are obligated to adhere to very high standards of fair trial rights for accused persons, and therefore that explains why our cases of court takes quite a long time.
- 02:54 You know there are many other factors, but that's one big, bi-, big element in this judicial process, that this tribunal strives to uphold the highest standards of, of justice for, for all involved.
- 03:15 RU: Do you think the definition of the role of the ICTR was adequate or appropriate? If not, would you change it in some way?**
- 03:25 I think it is quite, it is quite satisfactory. As I understand it, the role is to, is to provide justice to, to the victims; to act as a deterrent, you know, to potential perpetrators; to dispense justice in the, in this field of international criminal justice; and to bring about peace in, in Rwanda and in the Great Lakes region, and in Africa generally.
- 04:00 Now whether, whether this tribunal would be able to meet these noble objectives is yet to be determined. I mean history will tell, I think it's probably too early to make a final judgment on that.
- 04:25 I, I, I believe that the work of this tribunal contributes greatly to the issue of deterrence, you know, especially if the work is publicized and, you know, made available to a large section of the international community.
- 04:50 With regards to bringing about peace in Rwanda, I don't have any empirical evidence to comment on that. But at least I can say with-, without any fear of con-, contradiction that we are providing justice, you know, to, to the victims and we are giving, we provide a platform to, to victims and to the accused persons themselves to be able to tell their stories.
- 05:27 So, so this is as far as I, I, I could speak about the extent to which the tribunal has, has or is achieving the objectives which it was setup to achieve.

## Part 4

**00:00 RU: What are your thoughts about reconciliation?**

- 00:04 Well, reconciliation is a long-term process. It's not a one on, it's not a, it's not a, something that happens overnight. And I must admit that the work of the ad hoc

tribunals does not provide as much scope for reconciliation as other methods, maybe such as Truth Commissions or other judicial processes.

00:53 For the simple reason that the victim, victim participation in this tribunal is quite limited. That is a defect which is being remedied by the ICC, the International Criminal Court, to the extent that victim participation is, is greatly recognized. It provides greater scope for reconciliation. By and large here, victims come, witnesses come, they testify and then they go away, you know.

01:38 The structure of the tribunal, the ad hoc tribunals, does not provide the kind of forum or space for reconciliation. So I believe that if we achieve reconciliation, it will be in, in an indirect form, you know, in the sense that people who come here would feel that they have received justice and maybe when they go back, they will be willing to put the past behind them and to reconcile with those who they perceive to have been their perpetrators.

02:31 So the issue of reconciliation is a very complex one, it's a very difficult one. It's also very difficult to monitor, and I'm not aware of any studies that have been done to gauge the extent to which reconciliation has been achieved, either by the judicial process here or by even the, the judicial process in Rwanda itself.

03:01 The Gacaca Courts for example, claim to, to be a better forum for reconciliation, you know, because they meet in a very communal setting and the parties, you know, are encouraged to come forward to confess and, and the community members are encouraged to forgive them and to live with them, you know. So that process, it is claimed, provides a better avenue for reconciliation. We don't have that kind of process here.

**03:38 RU: And is that because the design of the international tribunal did not really take into account what needed to be done for the victims?**

03:53 To some extent, even though the issue of reconciliation I think is mentioned in our statute, to some extent I think the structure and the whole judicial process here did not take that into account. And I think that is why the International Criminal Court has now taken that particular issue on board and makes specific provisions for victim participation, you know, at all levels of the judicial process.

04:31 And so I would agree to a large extent that the, the framers of the statute did not think well ahead of what was required in order to achieve reconciliation, you know, through this process.

**04:51 RU: It placed rather an unfair burden, it would appear, on you to include that word in your charge and yet not give you the tools to do the job. Is that a fair observation?**

05:02 Well I, I wouldn't go so far as to say so, but I, I think I would like to, to comment that it's important to recognize that reconciliation is a, it's a complex and long-term process and it's very difficult to assess.

05:25 If you take for example even truth commissions, like the Sou-, South African Truth and Reconciliation Commission, which has been hailed as one of the, the model truth commissions, there are many skeptics about whether that process even achieved reconciliation.

**05:44 RU: Yes.**

05:45 You see, so I think that we cannot be too hard on the, the framers of our statute because I think this whole reconciliation process is a very difficult and complex one.

**05:59 RU: Is there a tension between justice and reconciliation?**

06:05 Well, many people have seen that as, as there being a tension, yeah, but I don't think, I don't think it should be so. I think they're complementary. Justice is part of the process of reconciliation; to the extent that you provide justice, it contributes to reconciliation. And so to me, they're two sides of the same coin.

06:45 Reconciliation is also a form of justice. You know, if you're able to bring people together and reconcile them, you provide justice. So I, I do not see these two concepts as being directly opposed to each other and I would like to see them as being concepts which are complementary and can work together.

07:18 I think if you look at the Special Court of Sierra Leone for example, you would see that that judicial process together with the National Reconciliation Commission has sought to achieve both objectives of justice and reconciliation. So I do see both concepts as complementary and not opposed to each other.

**07:47 RU: If the international community were to draft a charter again for an ad hoc commission, would it appear that the Sierra Leone outline or format is more suitable than the one you have now?**

08:02 You mean the statute or the combination of, of the special court plus a truth commission?

**08:08 RU: Both, yes.**

08:14 I mean if we look at the statute, I think the ICC statute is an improvement on the statute of the ad hoc tribunals and the ICC has learned from, a lot from, you know, the development and the work of the ad hoc tribunals. So I mean one should be looking at, I would say, the ICC statute and some of the changes that have been made in that statute to reflect the omissions in the statutes of the ad hoc tribunals.

08:56 The Special, the statute for the Special Court is significant in the sense that it combines the, the, it combines local and international judges. That brings a very important element to the process. The, the judicial proceedings are taking place in the lo-, location where the crimes were committed and so the people are directly involved in the whole process.

09:36 So that's also an important element which, which can be considered in any future establishment. But of course, you know the ad hoc tribunals, the life of the ad hoc tribunals are coming to an end. So now we have the International Criminal Court and, and even though you may have national courts, I think in terms of framing a charter for international justice, I would be looking more to the ICC on any improvement that can be made on the ICC statute.

## Part 5

**00:00 RU: As we define justice, there is an old adage that, "Justice delayed is justice denied." Has that been a problem for the hearings here?**

00:14 Well I, I'm very reluctant to comment on that because . . .

**00:23 RU: If, if you feel uncomfortable with that, we can go to another subject.**

00:28 Yeah, well I, I, I could comment partly on it. Whether justice has been delayed here is difficult to say. It's a relative, delay of justi-, it's a relative term because one has to take into account the difficulties that this tribunal encountered in the initial stages. The, the, the whole process or the whole judicial process here is very complicated.

01:03 You have, we have to slow down the proceedings because of the contemporaneous tr-, translation and interpretation. You know into the three languages, Kinyarwanda, English and French, you know. And we don't have enough court space and not enough judges. We have to deal with voluminous number of exhibits, documents, so many witnesses and so on.

01:41 So that adds to the delay that has occurred. Ideally we prob-, we would probably have wanted to finish these cases much earlier, but there are many, many inherent problems in the system, which contributes to the delay. So I wouldn't say, I'm not in a position to say there has been unjustified delay. I, I emphasize the word "unjustified" delay.

02:14 Because we have had applications for, from accused persons to be discharged on the grounds of undue delay and in my recollection, those applications have been refused for good reason, you know. But I believe that another difficulty is the, is the mixture of the common law and civil law system which we have here. That also it's something that can be looked, looked at.

02:51 There might be something to be said for greater use of the, of the civil law system of using an investigation, investigating judge to collect the evidence, you know, and that might expedite the process because you must realize that here, we're dealing with mass atrocities.

03:26 We're dealing with the, we're dealing with numerous events that took place over a long period of time. Investigation and collection of this evidence is a massive undertaking.



03:42 And in my view, it is possible to approach this task in a p-, in a , in a – I think the civil law system of collecting and this type of evidence might probably expedite the process better.

**04:07 RU: You've had additional problems with extradition of the accused that have raised difficulties that were not part of the fault of the ICTR certainly.**

04:18 Well, that's not the fault of the ICTR.

**04:21 RU: No, I said they were not the fault of the ICTR at all . . .**

04:23 Yeah, yeah. No.

**04:24 RU: . . . and unique to this particular series of hearings here.**

04:29 Sorry?

**04:31 RU: They, they appear to be unique to this particular type of issue that was before the ICTR.**

04:37 You know the, the need to extradite.

**04:38 RU: Yes, yes.**

04:39 Yes, of course. That is, that is a, a problem that is peculiar to the nature of this particular process. Majority of the, of the alleged, ac-, accused persons were living outside and in different parts of the world and getting them here is a big, big, big, big, big difficulty.

05:10 Of course under our statute, member states of the United Nations under Article 28 expected to cooperate with the tribunal, you know, to give assistance to the tribunal in any, any form, in any way that the tribunal needs assistance.

05:28 So that, that also does help us in, in, does facilitate our work to, to quite a, a great extent, you know, and we have succeeded in, you know, getting transfer of accused persons to this location substantially. It hasn't posed, hasn't posed a difficulty.

## Part 6

**00:00 RU: Much of the historic record of the acts of this tribunal will be found in the written materials, but is there anything that will not be in the written materials that you feel is important for the people looking at this tribunal and its work 20, 50, 100 years now, that you can comment on?**

00:21 Well I guess the memoirs of, of the people who have worked in this tribunal . . .

**00:28 RU: Yes.**

00:28 . . . would be invaluable. The memoirs of the judges, the prosecutors, I mean everybody. A lot of those are not on record. A lot of our deliberations are confidential.

Well, some ( ) may not be confidential but they are not in the public domain. Notes, ( ), ju-, judge's notes are, are not in the public domain.

01:02 And I think in the future, some of these, this information, like judge's notes, and some of the deliberations which can be made public would be of invaluable assistance to the international community.

**01:24 RU: One of the reasons we're doing this project is to add the human touch to the dry records that are there, and it's one reason we so appreciate your cooperation and participation in, in this process. They're not, they're not easy things to describe but . .**

01:42 Yeah.

**01:42 RU: . . . we appreciate the time that you've given us.**

**01:47 RU: What would you like to tell the people in terms of the process between the judges? Without disclosing directly what is said, is there anything unique in the deliberation, deliberative process that's different from what, what you had in your home country?**

02:05 No, I don't think it's different. I, I think the judges here and also at home try to achieve consensus and that's the primary objective, to achieve consensus. As you know, three judges sit on each case and in the appeal, you know, five judges. In extreme and exceptional cases, you know judges may dissent but that's a rare phenomenon.

02:44 But I think one of the hallmarks of the process here is the, the, the attempt to achieve consensus and there's free expression of opinions and ( ), confidentiality in our deliberations to enable judges to express their views openly. And that, that's a very important element in our deliberations among the judges as well as among the legal officers who may sit in on deliberations.

03:22 But the – I do not see much difference between the deliberative process here and what I'm used to in my country.

**03:37 RU: Collegiality, I take it, has been present ( )?**

03:40 Very much so, very much so. Yeah.

**03:43 RU: With three or five judges, that is commendable. I, I sat on a court with nine judges; it was often difficult to maintain that collegiality I must confess, so congratulations.**

03:57 Thank you.

## Part 7

**00:00 RU: What is your understanding of the reaction of the Rwandans to the process of the ICTR?**

00:13 Well, my understanding of the process is that I think, I think it's a mi-, it's mixed. I think – I believe that there are many Rwandans who are quite satisfied to see that justice is being done here, that people who held high office have been arrested and brought before this tribunal.

00:54 I believe also on the negative side that there is a perception that the cases take too long, when you consider the number of years the tribunal has been in existence and the number of people that have been tried and convicted or acquitted.

01:21 Recently, I have the perception that Rwandans have not been happy with some of our 11bis decisions and the 11bis decisions are applications to refer the trial of some accused persons to Rwanda. There has, there have been about four or five of those applications; all of them have been refused.

01:53 And I have a feeling that Rwandans are not happy with those decisions. I've read, I've read commentaries about the dissatisfaction with those decisions. So, that's my overall assessment of the impression of Rwandans to this tribunal. But I think, I think by and large, the tribunal is highly respected and approved of. You know, the work of the tribunal is highly respected.

02:40 As I said, the only issue has been the, the delay and the refusal of, the refusal to refer some of the cases to the Rwandan courts for trial.

**03:03 RU: Do you think the Rwandans would have been more satisfied, had the tribunal hearings been located in Rwanda?**

03:11 I think the, well, I, the, the authorities definitely would have preferred . . .

**03:17 RU: Yes.**

03:18 . . . the, that these ca-, some of these cases are referred to the Rwandan courts. I can't, I can't say whether the mass, the general mass of people would prefer it that way. I, I don't have any information on that. That would depend on whether the, whether people generally in Rwanda have faith in the Rwandan judicial system, you know, and I have no information on that . . .

**03:57 RU: Of course.**

03:57 . . . so I can't comment on that. But I think the p-, the authorities would have preferred that the, the cases are referred to the Rwandan courts ( ), and have openly expressed disappointment about those decisions.

**04:16 RU: What about the hearings of the ICTR itself? Do you think that people would have felt more closely connected to the ICTR if these hearings had been held by the tribunal in Rwanda?**

- 04:33 Well, absolutely I think if we were sitting in Rwanda people would have been more involved. They would be able to come to court and it would be closer to them and yeah. But I think the tribunal has an outreach system.
- 04:55 Most of our proceedings are beamed by satellite and, and the records are public records; they could be obtained in, in Rwanda. And there are radio transmission of proceedings in Rwanda.
- 05:14 And there have been a few NGOs who have also gone into the various communities to show the proceedings of this tribunal, to get people more familiar with what is going on here. But I think the ideal would have been courts like in Sierra Leone where . . .
- 05:37 RU: Yes.**
- 05:38 . . . the trial takes place where the alleged crimes took place, but I think there are good reasons why that was not possible in this case.
- 05:50 RU: And the presence of say a Rwandan on the tribunal itself, was that something that you believe might have improved the confidence of the Rwandan people in the tribunal?**
- 06:03 The what?
- 06:04 RU: Would have improved the confidence of the Rwandan people.**
- 06:07 What would have improved the confidence?
- 06:08 RU: The presence of a Rwandan as part of the international tribunal.**
- 06:13 The presence of Rwandans on the tribunal?
- 06:15 RU: Yes, yes.**
- 06:19 Well I mean I have to speculate on that because that, that's hypothetical. I don't . . .
- 06:26 RU: Of course it is.**
- 06:28 But I guess it depends on w-, who, who was on the tribunal . . .
- 06:38 RU: Of course.**
- 06:38 . . . you know. I don't know to what extent the ethnic factor would have come into play. I mean even if there are Rwandans on the tribunal, how would the selection be made and how acceptable would that selection be to Rwandans? I mean this is purely hypothetical and it's difficult for me to comment on.
- 07:05 RU: That's a fair comment.**
- 07:06 (\_\_\_\_\_) . . .

## 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'm really happy to have had a fuller an-, a full answer is because obviously, and you would 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’d 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.

## Part 9

**00:00** DJH: You said to – in the first part of the interview that one of the things you were pleased about, if I can state that, is that you took part in some landmark decisions that enriched the jurisprudence, international law jurisprudence.

**00:19** DJH: And I’m interested in hearing from you some description of one or more of those that I, I gather are now public records. But again, why you’re pleased with those or why you feel good about participating in those. Perhaps you could point out one or two examples.

00:37 Well, I took part in the first case in this tribunal which had to determine whether it was proper for the prosecution to prepare their witnesses before they testify. And we held that there was nothing wrong with the process of preparing witnesses, provided they don’t coach them, you see. We drew a distinction between coaching witnesses and preparing them to testify. That decision was affirmed on appeal.

01:36 But the interesting part of this is that the ICC has given a decision contrary to ours, you see. And – but I think that our decision has been upheld by our sister tribunal, but there are decisions also by the ICTY, our sister tribunal, which has adopted our approach and our position. 02:07 And so that, that is, to my mind, is a very important landmark, you know, decision as to, as to the limits to which counsel, pr-, especially prosecuting counsel, can go in preparing a witness to testify, you know.

02:29 One of the – the first case I also did . . .

**02:32** DJH: May, may I st- . . .

- 02:33 Yes, yeah . . .
- 02:33 DJH: . . . before you – I want you to go on, but I . . .**
- 02:35 Yes.
- 02:36 DJH: . . . when you say ICTY again, I, I need to ask you, that’s the International Criminal Tribunal for Yugoslavia?**
- 02:42 Yes, for Yugoslavia.
- 02:43 DJH: And, and that’s the other ad hoc tribunal? Yeah.**
- 02:45 Yes, tribunal, yeah. Our sister tribunal, yeah.
- 02:46 DJH: Yes, right, and it was, it was these two tribunals, the ICTY and the ICTR, which you feel has influenced the for-, the statute of the formation of ICC . . .**
- 02:59 Yes . . .
- 03:00 DJH: . . . in, in a better way, I mean. Yeah, okay.**
- 03:01 Yes. I think so, I think so.
- 03:03 DJH: I wanted to be clear if that was your view and I think that comes across. Did you in this case that you just described – and by you I mean the court . . .**
- 03:13 Yes, yes.
- 03:15 DJH: . . . provide some definitions or guidelines as to what’s coaching and what’s preparing?**
- 03:20 Yes I did. I think we did. We did provide guidelines. I mean, for example, if – you know, we’re dealing with events that took place 14 years ago, witnesses may have made statements so long ago, you need to remind them of what they had, statements they had made and if there’re, you know, contradictions give them an opportunity to, to see.
- 04:03 Telling them about the whole process, the whole court process and preparing them for the court process and getting them to know the modalities of the judicial process. All these are matters which we thought were harmless.
- 04:18 But coaching the witness and trying to tell them what to say and what not to say, or trying to change their testimony, of course that we, we, we decided was unacceptable, you know.
- 04:32 In other words, coaching. You know, trying to, to, to mold the testimony of a witness. Yeah. I think that’s where we drew the limit, you know.
- 04:46 DJH: Alright, I think we understand that and, and, and your reasons for feeling good about that.**



- 04:52 I think . . .
- 04:52 DJH: You were trying to talk about another case.**
- 04:54 Yeah, well I think, the other case I believe also was – the first case I did here was a case which involved several counts of rape. And we had occasion to discuss the elements of rape, and the, the legal position is still unclear. The first case that discussed the definition of rape in this tribunal was the Akayesu case; that’s a very landmark case and gave a very broad definition of rape.
- 05:44 Subsequent cases gave a much narrower definition; a more traditional definition which included sexual penetration and so on. And so we had an opportunity in that case to look at the . . .
- 06:00 DJH: In which case?**
- 06:01 In the case I’m, I was involved in which was called the Muhimana . . .
- 06:06 DJH: Muhimana?**
- 06:07 . . . Muhimana case.
- 06:08 DJH: Okay.**
- 06:09 Yeah. And I think we were more in favor of the broader definition which was developed in the Akayesu case. And so that, that debate of course still goes on because, you know, there were one or two appeal judgment cases which had approved of the narrower definition.
- 06:45 So that, that was a very interesting case and I, I think the debate on that issue is still quite alive but I think we had the opportunity to express our views about this important issue.
- 07:01 DJH: Let me, if I can – I want to make sure I understand and be clear, there’s (\_\_\_), rape as the crime itself and then rape as a cr-, as a part or as a crime against humanity . . .**
- 07:14 A crime against humanity, yeah.
- 07:16 DJH: . . . and was the definitional discussion about rape as a, as par-, as a crime against humanity or rape itself, or both?**
- 07:24 Rape as a crime against humanity.
- 07:26 DJH: Okay.**
- 07:27 But I’m, I was talking about the element for the crime.
- 07:29 DJH: Yes. Of the crime against humanity? Rape as a . . . yeah.**

- 07:32 Yes. Yes.
- 07:33 DJH: And, but the, the element of, the crime of rape itself, that, was that part of that discussion too? In other words, I presume somebody could be, in the same case perhaps, ac-, accused of rape and then a crime against humanity of which rape was the el-, was an or the element.**
- 07:55 Well, I mean the crimes we deal with here are genocide, crimes against humanity, war crimes, so when we're talking about rape, we're talking about rape as a crime against humanity, you know, which is (\_\_\_) rape committed in a consistent and widespread manner. You know, so that's the context in which we, we're talking about rape.
- 08:17 DJH: Right. The reason I ask this is obviously people will be looking at the . . .**
- 08:20 Yeah, okay.
- 08:21 DJH: . . . this tape, trying to understand it.**
- 08:22 Yeah, yes.
- 08:24 DJH: Any other decisions that you would like to bring to our attention which you participated in?**
- 08:31 There are quite a few, you know, interlocutory decisions I can't, I can't put my finger on, on some of them but I could – if, if I had the time, I would provide you with some of those decisions here.
- 08:50 DJH: You, you're, you're invited to do that at a later point . . .**
- 08:52 Okay. Alright, yeah.
- 08:53 DJH: . . . and we would, we would be happy to have that.**
- 08:55 Alright.
- 08:55 DJH: I had read something about a, a discussion in a case – and a case –involving the difference between incitement and aiding and abetting or s-, or am I correct in that, or, or . . . and, and that you had written about in, in some way and I was trying to understand, for us and for legal scholars, that issue. Do you know whi-, which I'm referring to?**
- 09:25 I think I do. I think that's in the Karemera case.
- 09:29 DJH: I think that's correct, yeah.**
- 09:33 I think . . .
- 09:36 DJH: Is it a crime in itself or is it (\_\_\_\_\_) to the crime . . . yes.**

09:38 Yeah I think that was the discussion. Well, I, I, I can't go into the details of that now. I'll have to look at it and then talk about it at a later time, yeah.

**09:51 DJH: Okay.**

09:51 But I, I do recall that I did write a dissenting opinion on that issue.

## Part 10

**00:05 DJH: You, you've said a number of things about the court being a platform for victims and providing justice to victims and when I ask this, I'm not arguing the point. I'm just . . .**

**00:17 DJH: I wa-, would like to perhaps ask you to provide some – I don't know whether I'd call them examples or explanation of your thinking – on how, on how the court, the c-, this court process does that or, or is that? Those were the words I think you, you stated and I'm, I'm interested in that.**

00:39 Well, I think that to the extent that victims and witnesses, but particularly victims, have an opportunity to come and express their feelings about what they went through during the, the genocide, it has a therapeutic effect. It, it, it has a restorative and healing effect for them.

**01:13 DJH: Personally.**

01:14 Yeah, personally. And the fact that they're able to do this in public, on the international stage, you know, I think gives them a lot of satisfaction and it's part of the healing process, so far as those victims are concerned.

01:32 At least they know that, that their stories are being heard on a platform such as this, that, that people do care about what happened to them, you know, and that something is being done about, about, about it, and that there, there are institutions that are interested in doing something about the events that took place.

**02:06 DJH: Have you yourself or as a court member been to Rwanda? Do you have those opportunities or create those opportunities?**

02:14 Actually, we just came back about two weeks ago on a site visit. We went to look at some of the sites with, with . . .

**02:24 DJH: Where, where, where the crimes were alleged to have been committed? Okay.**

02:26 Yes, yes, yes.

**02:29 DJH: Go ahead, would you describe – can you describe that for us?**

02:32 (\_\_\_\_\_), well, we, we yeah, we . . .

- 02:32 DJH: I don't mean, I don't, I don't mean describe in terms of the specific case but what, what you generally did and why you did it.**
- 02:37 Yeah, we, we went to, to, to look at the sites where the crimes were alleged to have taken place, to give us a better understanding of the evidence and to see whether that would help us understand the cases, the evidence better. That is the primary purpose, of course, of going. And the, both, both parties were present, the prosecution and the defense. You know.
- 03:05 DJH: Were you allowed to ask questions, to clarify what you were seeing?**
- 03:10 No, the parties will have an opportunity to make submissions on the visit sometime in December.
- 03:20 DJH: Okay. You don't have to answer this but do you think it helped you, to be able to see the pl-, the, the sites?**
- 03:28 (\_\_\_), that I can't answer . . .
- 03:30 DJH: Okay. Alright, very good.**
- 03:32 . . . because that's something that we'll have to make a finding on, yeah.
- 03:35 DJH: Okay. Ha-, had you been to Rwanda before?**
- 03:38 I had, I had. In 2003, I went for a conference in Rwanda. At that time, I had not been appointed to the tribunal.
- 03:53 DJH: Do you remember where you were in 1994 and what you were doing when, when this began?**
- 03:59 In 1994 I was in private practice in Ghana.
- 04:03 DJH: And do you remember w-, what, what you first heard about it?**
- 04:07 Well, I must say I don't recall hearing about it in 1994. I may have heard about it sometime later. You know, I have no recollection of those events at the time.
- 04:22 DJH: Okay. I don't want to get into any pre-, pre-knowledge in a way but I – one of the jobs of a judge is sentencing and in, in this case, when somebody has been found guilty, it's a major, major crime.**
- 04:47 DJH: And my question to you is, not again to be specific to an individual case, but can you tell us about some of the – how shall I say – principles of sentencing that you and or the court take into account?**
- 05:05 DJH: It's a different sort of thing than – I've sentenced murderers and, and, and so forth but not on the scale to, of which these people have been sentenced – and I**

**wonder how different or how much the same it is for judges in your position, after the conviction?**

- 05:25 I think the principles are very similar worldwide. I can just mention to namely the gravity of the offense and whether there're mitigating circumstances, you know, which will then affect the, the punishment. Those are the two important factors, which I could mention right now – you know, the gravity of the charges against, for which the accused has been con-, convicted.
- 06:08 Whether there are mitigating circumstances and that would vary from case to case, and whether there is expression of remorse and factors such as, such as those.
- 06:27 DJH: You mentioned the stresses of the job and you mentioned a number of specific stre-, stresses such as delays and, and, you know, and various things like that. To the extent you can or are willing, can you tell us about some of the other stresses?**
- 06:48 DJH: And particularly, you know, you hear a lot of difficult stuff and, and, and difficult facts, and how it, it may affect you over a period of years personally, without again treading, treading on some areas that, that you shouldn't be treading on.**
- 07:09 I think the main stress is physical, you know, sitting long hours in court over a period of time; that takes a toll on your health. You sitting in fixed, a fixed position for hours and you do so consistently in the morning and in the afternoon four or five days a week. So it's both physical and emotional.
- 07:44 You, you, your powers of concentration ha-, have to be at a very high level. You have to be attentive throughout this period because as testimony goes on there might be objections and you have to be prepared there and then to give rulings on these objections, so you have to be alert and ten-, and attentive and that imposes, of course, a stress on the mind. So it's both physical and it's both emotional.
- 08:20 And, you know, I think that it can have a negative effect on your physical and mental health. Actually I had to withdraw from this case I mentioned, Karemera, because it was having a negative impact on my health. Because I was involved in that case which is a, it's a big case, a multi-accused case and another big case, another multi-accused case and the sittings were back to back, you know.
- 09:08 F-, f-, as soon as I completed one case, I moved on to the others. So there wasn't much interval between the two cases, and it was affecting my health so I had to withdraw from that case. So yeah, it does definitely – the work is definitely stressful. I mean in national courts, we don't sit this long.
- 09:35 DJH: I'm aware of that. Did, did you withdraw from the other c-, case as well at that time and take, take a break for yourself or, or, or de-, delay that case somewhat so that you could sort of restore yourself?**

09:50 No, I didn't, I didn't withdraw from the other case. I withdrew from that one particular case which had not advanced as much as the other case, you see. So I continued with the other case which had, which had reached a more advanced stage and ( ), so I didn't really have to take any period of rest but it was the combination of the two that was stressful. Yeah. Yeah.

10:15 **DJH: Understood. Yes.**

## Part 11

00:00 **DJH: 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 that 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 here 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 all the 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-, 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 civil code system – the, the judge who's de-, 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.



## Part 12

- 00:00 **DJH: I don't know if this is my last question but it-, if it isn't, it's the very close to the last question. And, although I'll ask my colleague if he has anything else he'd like me to ask.**
- 00:12 **DJH: But I'm – if you're now speaking to the future, as we are, is there something that you would like to say, like to say to the future as you speak here from your vantage point or from what you've learned over the course of your career and also in the process of being a judge in this court?**
- 00:37 **DJH: What would you like to tell your grandchildren and your great grandchildren when they look and they say, "That was my grandfather"?**
- 00:46 Well, you know, sitting here, I, I wish we did not have conflicts and I wish there was less need for institutions like ours to resolve the issues that we are confronted with, particularly in Africa where we're confronted with conflicts in, in, in various parts, you know. We have the Darfur situation, we have the Ugandan situation, we have the Democratic of Congo, Republic, Democratic Republic of Congo.
- 01:36 So we have all these trouble spots. And my desire, my hope would be that, you know, that humanity can learn to live more peacefully with each other, or can learn to dialogue and resolve differences without resulting to violence and make it necessary for such institutions to be setup. Because they hinder development; they set us back many, many years and that is my biggest concern as an African.
- 02:27 That is one of my regrets or lamentations. And I would hope that there would be a cessation of these conflicts and that – which would (\_\_\_\_) to the benefit of our people. I also hope that we could develop our judicial systems better to be able to deal with these conflicts when they do occur.
- 03:12 As I said earlier, I think we have to find a way of expediting the judicial process on the international level because accused persons are guaranteed fair and speedy trials; it's, it's a, it's a human right.
- 03:40 By many standards, international justice does provide fair trial, but there are many who would question whether it provides a speedy trial for the accused persons, and that's an area I think that we ought to focus on and find ways of improving the quality of international justice especially the, the, the length of time it takes to, to determine the cases.
- 04:22 I mean take, take Milošević case which is always cited as an example of – Milošević was on a trial for I think four or five years and I don't think he even started to open his case and he died. And there are many people who have regrets about the fact that that case could not be completed, for justice to be done and to be seen to be done.

- 04:54 But there are, I must acknowledge the inherent difficulties in the administration of international justice, but we must find ways of improving the system, especially the length of time it takes, you know, and the, the amount of resources that are, are, are spent, especially human and financial resources that are put into this, this whole exercise. I think that's a study which I would very much like to be involved in.
- 05:37 DJH: As you, as you speak and I hear you very well and you've talked about, you know, the rights of the accused to a speedy trial – and with which I of course have no disagreement. But it seems to me at the same time that the victims would also like a speedy trial so that they can get that behind them and . . .**
- 05:55 Absolutely. Absolutely. Yeah, yeah.
- 05:57 DJH: . . . and begin to reconcile with their own pain and suffering.**
- 06:00 I agree with you. When I talk about speedy trial, I do agree that it's for both the victims and the accused persons, you know. You're right, I mean sometimes we, we focus more on the accused persons but I think the victims also are very important. They want to, they want to see an end to, to this, this trauma hanging over their heads, you know.
- 06:25 They want to bring the whole process to closure and so they can start their lives all over again, you know. So yes, I mean speedy trials are important for both accused persons and the victims, and, and for us of course also, who would like to complete this process and go back to our normal duties.
- 06:52 DJH: Let me just take one minute and I'll check with my colleague and, because I think we're done. Judge Short, thank you so very much for sharing with us.**