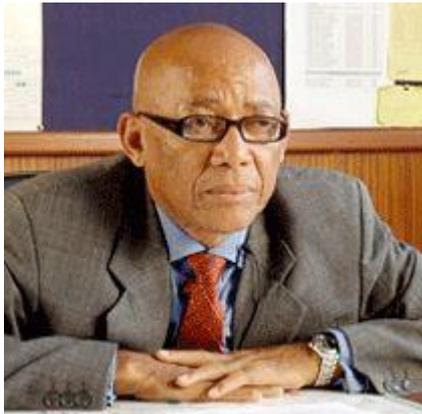




Voices from the Rwanda Tribunal

Official Transcript: Emile Short (Part 4 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 4 begins on the following page.

Part 4

00:00 Robert Utter: 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 am 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 a rather 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.