

Official Transcript: Linda Bianchi (Part 4 of 6)



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| Role: | Appeals Counsel |
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| Location: | Arusha, Tanzania |
| Interviewer: | Lisa P. Nathan |
| Videographer: | Max Andrews |
| Interpreter: | None |

Interview Summary

Linda Bianchi explains her work with the Office of Appeals and draws attention to the challenges of remaining objective when working with issues of rape and genocide. Bianchi asserts the need for investigators and prosecutors to receive specialized training to deal with gender-based crimes and in order to avoid the re-traumatization of witnesses during the trial process. She recounts her own visits to Rwanda and stresses the importance of visiting the country for ICTR personnel.

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Part 4

00:00 Lisa P. Nathan: Can you share with, with us any of the committee's recommendations or if you were talking to somebody working in a similar Office of the Prosecutor . . .

00:11 Mm-hmm.

00:12 LPN: . . . role in the future, unfortunately it looks likely that there will be . . .

00:16 Yeah. Yeah. Yeah. Yeah.

00:16 LPN: . . . future tribunals either ad hoc or in some manifestation, what would you recommend?

00:25 Well, it's, it's multifold. From the word go, it ha-, it, it needs very special training on the part of investigators and prosecutors to deal with victims of rape and sexual violence. What we've learned from the Rwandan context is that the topic is so taboo, that to elicit the evidence in the first place was very difficult.

00:55 And you know in those cases, what we found was in those cases where there were successful prosecutions, there was always a prosecutor involved who was completely dedicated to the cause, treated the victims in a certain way, you know, trying to elicit the evidence in a way that gave the victim a lot of support and encouragement, while not invading her privacy or you know, not being too bully-ish about it.

01:34 But, you know, there, we have found that there was a certain way, and, you know, there is a certain way that the victims needed to be approached and treated in order to be able for the witnesses to feel and the victims to feel open, and secure, and safe to share that kind of information. And that's true for I would say most rape and sexual violence wi-, crim-, victims no matter what the context.

02:04 But in this particular context, there was the added layer of complexity in that the Rwandan society just wouldn't talk about it, and though even though everyone knew it had happened and it was happening – and you know in prosecuting sexual violence and rape, it is such a sensitive issue.

02:29 And again in the Rwandan situation, we have situations where, you know, there's a terrible story where you may have already heard where a woman came to testify and didn't realize that the evidence would be in open court and her soon-to-be husband found out that she was about to testify – or that she had been raped during the genocide and then refused to marry her.

02:54 So you know that just shows the level of, of difficulty and the challenges that exist in eliciting the evidence. So you know for me, the very first advice would be to have a really sensitized, well-trained team of professionals who seek the evidence in way that is particularly designed to deal specifically with vi-, rape victims.

03:29 All victims of these mass crimes are going to be traumatized and they're going to find it very difficult in any event, so the training of investigators and prosecutors, interpreters,

language assistants, everyone, is crucial for all of these types of crimes. But from our experience, there's an extra level when it comes to rape victims and sexual violence victims, in order just to get the, elicit the evidence in the first place, then taking it forward trying to get the evidence into court.

04:01 And you know, it's very difficult often times for all these, all victims and witnesses to understand the complexities of the court room, the challenges of bringing forward evidence in a way that meets the standards of a court of law and that's really outside the reality and a lot of times understanding of, of, you know, citizens who have nothing to do with the law.

04:25 And so for Rwandans sometimes to come and r-, victims to come and have to tell their story in a court of law, it's all about how you prepare the witnesses for what they're about to encounter, making the victims comfortable with the court room, and, and making the courtroom an e-, an, an enabling environment.

04:43 Because we have had issues with the way witnesses and victims have been treated in court which was horrific and hopefully would never happen again, but that would be another thing that would be really important for prosecutors and investigators to be aware of. To that end, our committee has developed a best practices manual.

05:08 And as far as I know, it's a manual that's going to be shared with the upcoming National Prosecutors Conference that's being held here. And so hopefully in that way, it won't be a confidential document but it can be shared with the national prosecuting authorities who hopefully will be taking on transferred cases or be otherwise engaged in prosecuting génocidaires who are either on their territory or in some other way the national prosecuting attorney would obtain jurisdiction over them.

05:42 So hopefully they'll be able to use – and other international courts, hopefully will be able to take our best practices manual and learn from our experiences and hopefully we'll take our best practices manual and learn from our experiences going forward as well.

06:00 **LPN: So I'm going to ask you – no . . .**

06:00 Sorry, that felt like a long way to say all about our manual.

06:06 **LPN: Well I have a, a question which I'm not quite sure how to word but, it has been described to me that for some witnesses, when they go through the process and, and are in court testifying, for them it's like being raped all over again . . .**

06:24 Yeah.

06:25 **LPN: . . . with an audience.**

06:26 Yeah.

06:26 **LPN: And why do you think it's – why do that? Why prosecute these people for this particular crime?**

- 06:33 Yeah.
- 06:34 LPN: Why do you think that's so important, so important that it can have people relive this experience that they're trying to forget . . .**
- 06:40 Yeah.
- 06:40 LPN: . . . and move on with their life?**
- 06:41 Yeah. You know, that's true. The re-traumatization of the victim and the witnesses is a real issue to be dealt with. I think one of the things that we recommended is that prosecutors before subjecting anyone to this, that sort of re-traumatization, really needs to assess their evidence and be sure they have a strong case.
- 07:09 That's the one thing we've already recommended, to say be very careful before you're re-, putting anyone through this, this trauma again. On the other hand, I think, and myself personally, I believe that the prosecution of sexual violence and rape is so important in an international, for the international community because it's a way that, you know, perpetrators humiliate and degrade.
- 07:37 There are all, there, you know, men and children are victims but it's also a way of targeting women. It's way of, of – for example in, in the Rwandan society, the use of rape against women, and men, and children, was a way of destroying the group because it's, you know, demoralized, dehumanized women. And I think in the broader sense of human rights and trying to ensure a safe place for women, that there has to be a way to make perpetrators realize that they're not going to act with impunity.
- 08:17 That rape will be treated as a serious crime that will be prosecuted by the international community because time and again, it's used. It's not just Rwanda; it's all conflicts. Rape is a form of warfare and, and the, you know, in the bigger scheme of what are we doing here at the International Criminal Tribunal, if we have anything to add to the culture of impunity, to deterrence, to stopping this sort of thing from happening, then rape has to be seen as a really serious crime that the community, international community will not tolerate.
- 08:55 So, it definitely is a balancing of interests and it's a case by case analysis of whether you should bring rape charges, and the thing to keep in mind is, from a, a legal standpoint, we're trying as an office to find other ways to bring the rape charges. So for example in the Military One case, there was only one live witness and she did not give evidence in direct examination but was cross-examined only.
- 09:26 So her, there's a mechanism in our rules of procedure and evidence by which her statement was entered and so she came just to, to be cross-examined on this statement, but that minimized – the office believed, her re-traumatiz-, traumatization and hopefully lessened the impact of giving that sort of evidence again.
- 09:48 What the Military One team did I thought really well was bring in evidence from witnesses who just witnessed the rapes occurring, so we've given that advice to all our

trial teams of, you know, don't just focus on the victims here. Also bring in evidence, you can bring in evidence through a myriad of different ways.

10:09 One of them being, persons who witnessed rape and sexual violence crimes. And the, you know, we've been trying to start using different judicial mechanisms, legal mechanisms such as judicial notice at this stage in the tribunal's life. We have such a rich body of jurisprudence to draw on. So if we can look back and pull out those cases where – excuse me.

10:38 Note: Gap in interview (Approx. 14 seconds in duration) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.

10:52 Yes, so if we can look back and pull out facts that have been found in previous cases where they found rape to have occurred, then, you know, if we're dealing with the same general area, so for example in Kibuye where we've prosecuted eight or nine accused persons from that particular area, you could try to use the facts as found in previous cases where they're relevant to this case and ask the courts to, you know, find as a – make judicial notice as a, on the basis of that fact as an adjudicated fact that would be relevant to this accused in lieu of calling the witness again.

11:32 So, you know those are sort of ways that we're advising the office to look at, instead of calling victims themselves. Yeah.