



Voices from the Rwanda Tribunal

Official Transcript: Mandiaye Niang (Part 8 of 13)



Role:	Senior Legal Advisor
Country of Origin:	Senegal
Interview Date:	8 October 2008
Location:	Arusha, Tanzania
Interviewers:	Batya Friedman Eric Saltzman
Videographer:	Patricia Boiko
Interpreter:	None

Interview Summary

Mandiaye Niang describes the early years of UN investigations and procedures, and recounts being traumatized by his initial experiences in the field listening to the stories of witnesses. He claims that these experiences increased his sensitivity to the needs of Rwandan people. He notes that the Tribunal's capacity building initiatives have helped strengthen Rwanda's judicial sector, indicating that these initiatives have transformed attitudes of Rwandans from initial distrust and criticism to feelings of ownership and support.

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Part 8

- 00:00** Eric Saltzman: You know, I'm not an expert at all in the tribunal so I've been reading and trying to catch up. And one of the criticisms of the tribunal from, from the outside and maybe from people familiar with it is that the, the crimes involving sexual violence have not been as focused, as well prepared.
- 00:23** ES: That the, that the identification and perhaps the, the evidence on the sexual violence has not been done as well as could be. So now you've been on the investigative side early on . . .
- 00:34 Yes.
- 00:35** ES: . . . and now of course, preparing cases and advising in the courtroom. Can you comment upon that? Help me understand the criticism better.
- 00:43 Yes, in fact I have even somehow – I think I am among those who have extensively written about that. I have published articles about, you know, the tribunal's record in respect of you know, prosecution of gender-based () violence.
- 00:59 And yeah, I have also read about, you know, some of those criticism and I have also lived it in the sense that I was advising the judges in Cyangugu, the Cyangugu trial for example, when this NGO, NGO of women, NGO based in Canada, they file an Amicus curiae because they wanted the judges to order the prosecution to amend the indictment and include some sexual assault and rape charges.
- 01:32 And which it was turned down by the judges but for very good reasons. Because I think that what people forget was that, okay, right from the beginning, in the early – I think that the, the record of this tribunal is not as poor as the people would describe it.
- 01:51 Because right from the beginning in the Akayesu case which was a real first case we had, the ju-, the judges admit the trial when evidence of rape unfolded, the judges authorized the amendment of the indictment to include charge of rape.
- 02:11 And in fact, you know, one of the record of this tribunal was that this tribunal has been the first of the kind to decide that genocide, you know, rape can be a tool of genocide.
- 02:24** ES: Yes.
- 02:25 So. But what sometime people forget also is that, you know, it's not always easy to be successful for the prosecution in bringing those kind of charge.
- 02:37 And unfortunately, most of the outsider who make that criticism, they are not in a position to test the quality of the evidence and make a good determination as to the potential of success, because people for example don't – you should remember that in the Musema

trial, a charge of rape was brought and even an conviction-, a conviction was obtained, but, but that conviction was eventually overturned by the appeals chamber.

03:11 So what, what does it tell us? It, this tells us that, okay so it may be easy sometime to bring charge of rape but that does not necessarily guarantee success. And when, of course, now you are not successful, this also will kind of backfire in a sense that that will even increase the trauma of those victims awaiting, you know, to be, awaiting justice.

03:39 And I think that one of the difficulty also, people need to remember – and in saying so I am not downplaying the gravity of rape – people need to understand that here we are dealing with very, very serious crime. So y-, you are talking about rape just as an intermediate crime to, to capture genocide.

04:06 But when you look at carefully, so technically speaking, you will see that in fact rape can hardly be a tool of genocide in a sense that what is genocide? Genocide is a crime by which you tend to eliminate a group, to eradicate a group. So, rape is not a tool of eradication.

04:29 So of course there are, you know, that can affect the victim, but usually what happened in Rwanda was that some victim have been raped but eventually they were killed meaning that, you know, the rape, the, the rape has been kind of absorbed by a more radical crime, meaning the killing.

04:51 So that also may explain why, for example, why rape is not that always present, because we are dealing with a cr-, very serious crime which do not necessarily make it necessary to go through rape to achieve what we, we want to achieve.

05:09 ES: Y-, you've thought about this a lot.

05:10 Mm-hmm. Yes, yes, mm-hmm.