



Voices from the Rwanda Tribunal

Official Transcript: Mandiaye Niang (Part 5 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 5

- 00:00 **Batya Friedman: So while we're talking about the statute, you know, imagine someone came to you and said, "We have need for another tribunal somewhere and we'd like you to take the lead on that." And you have responsibility for drafting that mandate.**
- 00:15 **BF: What would that mandate look like? I mean, what way would it be similar to the kind of mandate that is for this tribunal and in what ways would you change things based on your experiences here?**
- 00:27 I think that I would borrow quite a lot from the current setting. When I first came here, I had – you know, if you had posed this question to me years before, my re-, answer would have been different, par-, particularly in respect of my civil law background.
- 00:49 **BF: Oh, so tell us about both, what you would have done at first and what you would do now.**
- 00:52 Yes, definitely, because when I first came here – I come from a civil law background, meaning that all the investigation are done by an investigating magistrate. You have a judge, a neutral judge who investigates the issue both for the prosecutor and for the defense.
- 01:16 And that, that case file, which is now put before a judge, and you call upon the parties, the prosecutor and the defense, just to make use of that case file already gathered by a neutral organ.
- 01:29 So that's quick. And if the investigating magistrate, he does very well his job, so that's good. That's fair enough and that doesn't involve a huge amount of money because that will be just a, an international civil serv-, civil, civil servant doing the whole investigation. And of course now party will be called upon to make up their case.
- 01:53 Our tribunal have been modeled according to the common law pattern, so meaning that, you know, it's up to par-, the party to make up their case. The prosecution does his investigation. The defense on his side will do also his own investigation. They will make up the case before judges who are only basically umpire, just sitting, listening to the evidence and making up their mind based on what has been put forward before them.
- 02:23 So that's of course a very lengthy process. It's naturally lengthy but, you know, there are now some other factors, which compound that length when you are in an international environment. Because witnesses are scattered around the world. If every party has to go around to the United State, to Belgium, to France, to Philippine to look or to fetch witnesses, you can see that, you know, why it is so expensive.

- 02:54 So in my thinking then was, “Okay, you know, this, this will never end. Why can’t you just appoint the investigative magistrate? He will do all, all the investigation and he will avail the material to both parties. They make up their case. It’s quick. It’s cheaper and it’s fair.” So that was my thinking.
- 03:15 So, but the more I got used to the common law pattern, the more also I, I found lots of merits in the, the way they, they, they conduct business. So I think that now, even in terms of, you know, this, this setting being expensive, my thinking is that it’s, to a large extent, it is a link to the international setting. Anyway, even if you had a investigating magistrate, he will have to travel around the world.
- 03:53 And sometime my experience from the practice of an investigating magistrate is that, you know, that’s not always the best w-, the best way of doing this () – because the, the level of resolve I see here defense lawyer, you know, doing things to protect the interest of the defense, I’m not, no longer sure that an investigating magistrate would put that much of effort to do it.
- 04:20 So now, I am inclined to think that it is fair for the defense to contact their own () because that’s their own fate which is at stake. And you see that, you know, that, that level of proximity they have with their own defense, having this resolve to check everything, not to leave any stone unturned until they get what they think w-, is, is in the best interest of their client.
- 04:49 I am not sure that I will find that resolve with an investigating magistrate. That’s why now I’m inclined of course to () it. But, of course, I would still plead for some improvement borrowing from the civil law system, because the aspect I don’t like very much with the, the common law system is that, you know, that system – which formally is quite fair, which gives a lot of means and discretion to party to put up their case – but this is also a system which permit a clever lawyer to get his own way without necessarily being right.
- 05:34 So you may be wrong but if – because there are lot of technicalities also involved like cross-examination, picking and choosing specific question, eliciting just a portion of information which may help you put up your case nicely. In the civil law system for example, you, you, you can’t do that.
- 05:57 When the witness is at, on the stand, you, the, the question are open-ended. He will tell you everything he has in, in mind. You can’t direct him so specifically just to, to, to, to get exactly what you want.
- 06:15 BF: So is there a case you have in mind, where you think having had that civil law piece would have perhaps changed the case?**

- 06:22 No, I'm not thinking of any particular case. In fact, I think that maybe I, I have even pushed it too, too, too much because I remember a specific case where we had two judges from the civil law. But you will see that, that their background in fact had a huge bearing on even the way the case was conducted. I refer to the Musema case.
- 06:51 In the Musema case, we have this English lawyer defending the, the accused and we had Judge Kama, that very judge I spoke earlier, who is from Senegal, and another judge, Aspegren who are from, from civil law background.
- 07:08 But I would remember particularly Judge Kama, you know, who was not at ease when for example the defense lawyer, during cross examination, would just elicit portion of evidence for his case. Judge Kama would always interject and say, "No, I want a full response."
- 07:31 So, in fact, this is also permitted by, by our rule. Though our rule are mostly designed following the common law pattern, the judges they have, you know, power, discretion to interject and elicit whatever information they require but of course now, you know, making use or not of that discretion would depend on the judges' background, yeah.