Voices from the Rwanda Tribunal

Official Transcript: Mandiaye Niang (Part 10 of 13)

Role:	Senior Legal Advisor
Country of Origin:	Senegal
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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 10

00:00 **Eric Saltzman: All this is so interesting to me, I'm learning a great deal. Help me understand this – in the normal situation in a city or country, in Dakar or New York, you have a certain number of crimes. You have certain resources. You can only prosecute some fraction of them and you have the prosecutorial discretion.**

00:17 Yes.

00:18 **ES: You have the opinion or, or, or procedure that the Prosecutor wants and you go after these cases. In, in this one, you have 800,000 or more deaths even leaving aside other cases . . .**

00:35 Yes.

00:36 **ES: . . . you have such limited resources. Can you help me understand how those decisions were made, the strategy and even the philosophy behind them?**

00:42 Yes. I think that here, it has been clear right from the beginning that the tribunal would only be able to handle a minimum of cases, you know. The ambition of the tribunal has never been to adjudicate over all cases but though our statute does not make it very clear, because if you read our statute, you know, defining our jurisdiction, it only say some person responsible of some crime within a certain timeframe and within, you know, in a certain venue.

01:22 Mean-, meaning for example, in Rwanda or in neighboring country. So nothing in our statute say that what type of person we should focus on but I think that the, the policy right from the beginning was we, was just to focus on the most symbolic cases, meaning member of the government, the prefect which was, you know, the highest, you know, level of administration locality, and the top military, sometime the clergy, head of political party.

02:00 That's how I understand the policy. But, of course, this has not been total-, always followed, but that also needs to be understood because of the difficulty we faced right from the beginning. Because if you have this type of institution, you know the international community has shown a certain resolve to make it work. And everything has been put in place but in the early days we did not have many people to, to try.

02:33 So this in my view explains that why you may sometime find some of those pe-, people arrested in the early days and tried here in this tri-, this tribunal. I can give you some names and example of people who are not high profile people in, in our docket like you know, the trial of Mika Muhimana.

02:57 Some of, some of the people, even in, in Akayesu was the first case we have. Akayesu was not a high profile case in terms of his, his responsibility in Rwanda because he was not

more than a bourgmestre, meaning a mayor of a very small, you know, province. But I think that in the beginning also we needed to exist and to exist, we needed to have case to try.

03:23 So those kind of derail a little bit from the, the main express policy which was just to focus on very symbolic case. But finally, when we started getting those big fish, I think that you know, we, we, we kept now focusing on them. You will see the Military One trial, which is really the very top offi-, officers in the military. You have the Government trial. Even the name itself, self-explanatory, those were member of the government of Rwanda.

03:59 And we have even two group of, of trial. In, in two cases, we have member of the government, former government. So I think that that has been the policy right from the beginning. Though for the sake of our own existence, I think that we have sometime derail a little bit to content ourself with small fish.

04:23 ES: I've sat in on part of the Military trial now.

04:26 Yeah.

04:27 ES: Have there been, in, in the exercise of discretion in the choosing of cases, have there been heated arguments within the prosecutorial staff on which cases to choose and where to allocate resources?

04:40 No, I think that no. I think that this has been always the Prosecutor decision himself. I think that, you know, I am not representative of the Prosecutor, though I have worked with them but not even in a level where I would attend those kinds of meetings. But my understanding has always been that you know, there are things which are a matter for the prosecution and the Prosecutor alone to decide.

05:05 So. Of course now, there have been meetings but those meetings would turn around some strategic question like, "Okay, should we go for conspiracy theory? Was there a conspiracy? Should we go," for example, when this new concept also emerged here of joint criminal enterprise, "how to make use of that concept to be more efficient in our prosecution strategy?"

05:35 Those are the strategic questions they discuss but when it comes I think that to – when it comes now to decide, I think it is the decision of the Prosecutor. Because I remember that even this Prosecutor we have, you remember that in the beginning we shared the same Prosecutor as ICTY. It's only from September 2003 that the split was decided by the Security Council. And from that time, we had our own separate Prosecutor.

06:05 And of course the new Prosecutor, when he came here, his first decision was to make an assessment but he was pretty new. He didn't know, would not necessarily know the detail of the case. And one of the strategic decision he made was okay, to appoint a team of people very familiar with the case and they, they have brainstorming decision and they

made to him a presentation of all the cases with recommendation what case should be dropped.

06:35 Just, not dropped in a sense that they will no, there will be no further prosecution but just to be given for example to national jurisdiction (__), just to streamline and focus on the more important cases – because at that time also, we already have a, our docket full of cases. And that committee made recommendation, which helped the Regi-, the Prosecutor decide on which case he should be focused.

07:04 ES: Can you help me understand one, one, just one more thing – am, am I right in my understanding that the information to inform ultimate sentencing is not saved for after a verdict but is part of the trial in chief? Am I right or . . . ?

07:21 Yes, in a sense that there has, there has been a change in our rules because as I told you right from the beginning, we are following the common law pattern but with some variation. In the beginning, for the first cases, we used to be consistent with that common law philosophy of separating the conviction stage with the sentencing stage.

07:55 People would even bring witnesses, character witnesses or whatever they would like to make their case in respect of the sentencing, but you know that this is not the practice in civil law. And some of the judges, including the late Judge Kama, they pushed for – they found it as a waste of time.

08:14 Because how it is done in the civil law system would be okay, when you, you, you put forth your argument, so, you can have a principal argument but of course you can also have some contingency argument, meaning that (__), you can put forward your main argument which is okay, "My client should be acquitted."

08:39 But nothing would de-, deprive you of, from saying okay, "Should my client be found guilty, this is now my second type of defense." And because of that civil law philosophy, they changed the rule to say that okay, first, when you bring witnesses, you don't need to split your substantive witnesses with your character witnesses.

09:04 You, you put up all your case together, altogether including for that contingency argument. And then when now you, you, you make also your final, you present your final brief and you make your final submission, you put everything together. Yes, so for the last I think that five years, this has now been the practice, just now, not – or even I should say now for the last eight years now, this have been the practice.

09:33 So that now counsel are required to put everything together. But this practice, the, old common law practice has only survived in respect of now a guilty plea. When now we are facing a guilty plea procedure, so, or in a plea-bargaining, so, of course, now usually there is

a contract between the Prosecutor and the defense and then those two stages are respected.

10:01 There is a first stage where you have the decision in respect of the guilt and then people are required now to bring witnesses and make submission separately in respect of sentencing. But that has only survived in respect of a guilty plea.