



Voices from the Rwanda Tribunal

Official Transcript: Mandiaye Niang (Part 11 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 11

- 00:00 **Eric Saltzman: Let me ask – are you ready?**
- 00:02 **Patricia Boiko: Mm-hmm.**
- 00:04 **ES: Help me understand this first. Tell me the way in which the tribunal can grant immunity to witnesses. Do they, how do they choose which witnesses will have immunity? Does the Prosecutor apply to the judges for immunity from prosecution for witnesses, and is there an actual immunity agreement written so they understand the breadth and depth of the immunity?**
- 00:34 I, I, I don't think that we have in fact that mechanism in place whereby a witness may be granted immunity here. The only rule to my knowledge we have is –I'm sure you know, you know that because we borrowed it from your system – I think that is this rule against self-incrimination. So, that is what we have in our rules.
- 01:03 When, for example, a question is put to a witness and then in answering to that question he may incriminate hi-, himself, that witness may be advised not to answer that question or if forced to answer that question, then he will have immunity. He can claim immunity when forced to answer a question knowing that his respond will be self-incriminating.
- 01:35 That is the only extent to which we have rule about immunity. But now, of course, the prosecution now has ample discretion and he has in the past use that discretion to enter into kind of bargain with witnesses. I say okay, "This is what I'm prepared to do if you accept to help me out," but that is done only from the prosecution perspective without any involvement whatsoever from, from the judges or any other institution of the tribunal.
- 02:18 **ES: And what, what provision do you have for that witness who is now entering into a situation where there may be jeopardy for the witness . . .**
- 02:25 Yes. Yeah.
- 02:26 **ES: . . . criminal jeopardy? What, what accommodation do you have, do you have for that witness to have advice of counsel, if any?**
- 02:34 Yes, in fact yeah, that's, that's also a tricky question, b-, but in our practice it only arose in respect to – the only witnesses who come to court with counsel are witnesses who are already accused in other cases. Those witness, when they come to court, they have their counsel sitting, holding what we call here a watching brief and if need be, he may interject, particularly in respect of that sensitive area of self-incriminating evidence.
- 03:10 But for ordinary witnesses, they come here without a counsel, so meaning that everything has only to be done under the control of the presiding judge. That will be up to him to

evaluate the situation and allow the witness to respond or not to respond, but that would not be done with the assistance of, of counsel.

03:31 ES: So if, if I'm a witness and I am about to testify in an, in an area that may cause me to incriminate myself, is it up to the witness to understand and refuse? Does the judge advise the witness, and if the judge advises the witness does the judge make clear how far the immunity would run?

03:57 So in real, in real life, I have never really experienced that witness and it's a very tricky question in a sense that a lay-, a layperson may not be even understanding all those intricacy. Of course I would understand that even a layperson about to say something incriminating would know. And in fact we have had that situation many times because for the last five or seven years, many witnesses are people who have already been arrested and even convicted in Rwanda.

04:35 And those are mainly people sometime brought by the prosecution coming here to testify against some of our accused as even, you know, accomplice of the, those accused. "I did this because you know, this accused requested me to do that." But of course, you know, in that situation, this precaution on self-in-, -incrimination do not arise because those are people already serving sentence in Rwanda.

05:05 And when they, they come here, you know they don't require any type of protection whatsoever. But of course now, one of the problems facing the defense is always the, the level of their truthfulness; whether they have any interest particularly in Rwanda, not here, in charging their client. Were they promised anything? Those are area sometime visited by defense counsel.

05:29 But that question never really arose as to whether they require protection from the tribunal because most of those people are already undergoing heavy sentence in Rwanda.

05:40 ES: That surprises me because as we know, you, you only prosecuted so many people . . .

05:45 Yeah . . . yes.

05:45 ES: . . . but there must be so many other participants who could be witnesses who may be subject to jeopardy themselves.

05:50 Yes, yes, but, you know, the way I have experienced it is just the way I explain – people already sentenced or being prosecuted in, and detained in Rwanda coming here being very forthcoming in every detail as to their involvement, but not seeking any protection whatsoever.

06:08 ES: Very interesting. I'm going to stop myself. I'm going to invite Batya to, to, to jump in . . .

Mandiaye Niang

06:16 Okay.

06:17 **ES: . . . but you've explained a lot to me. I learned a lot. I appreciate it.**

06:19 Okay, okay, thanks.