



Voices from the Rwanda Tribunal

Official Transcript: Mandiaye Niang (Part 4 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.

The transcript of Part 4 begins on the following page.

Part 4

- 00:00 **Batya Friedman: So, just to – there’s so many ideas that you’ve put out there.**
- 00:04 Yes.
- 00:05 **BF: Just following up a bit on the relationship – or the way in which you feel the Rwandan people have responded to the tribunal and that there’s been this shift. Can you talk about that a little bit more? I mean, what are some specifics that help you feel like there’s been a shift in, in, in how the Rwandans are viewing the tribunal?**
- 00:28 So I think that that shift – first and foremost, () you, you need to look at the beginning of this tribunal. What happened in the beginning was that Rwanda first requested for the creation of the tribunal. (), it, it was not something which was imposed upon Rwandan people. That was a move from the Rwandan government to request for an international tribunal to be created in the model of the former Yugoslavia.
- 00:59 But immediately thereafter, because at the time Rwanda was sitting as a member of the Security Council, they voted against. They voted against because they say, okay, what was given to them was too little.
- 01:17 **BF: And too little in what way?**
- 01:19 Too little in a sense that – okay, that was, you need to understand that was still in the year ’94, so the wounds were quite fresh. They wanted death penalty; so the UN tribunal would not uphold death penalty. So, even the timeframe, because if you look at our statute also, our tribunal has jurisdiction to, to adjudicate over only what happened during the year ’94.
- 01:51 So. And the Rwandan government position was, okay this genocide, which occurred starting in April ’94, was prepared for quite a long time. Crime occurred and there were recurrence since ’90, at least to say the least.
- 02:07 **BF: What is your opinion about that?**
- 02:10 So I think that, you know, it’s, it’s, it’s very difficult. I think that, you know, what they say, there were crime committed and even this tribunal, and now later crime have been committed in '90, before '94, but the problem was that, okay, where to draw the line? It was very difficult to do, find. You see, for example, in Burundi, they have a similar issue but they can never now agree on a tribunal because of this very issue.
- 02:39 They say – because you know, in those country where they have a cyclic violence, you know, sometime a group is targeted and some other time another group is targeted. For example, in Burundi they say, “Okay you have to take into account what happened in 1973”

and you will see the other ethnic groups say, "Oh, and how about what happened in 1970?"

- 03:02 And other would say even, "How about 1959?" So I think that at one point you need just to, to draw a line. So that may never be good enough but that, that would be just a political decision.
- 03:16 In the Rwandan context particularly, what happened was that okay, there were two faction at, at war, the RPF which attacked and there were negotiation. But when the plane of the President were downed on the 4th of April, that was what triggered large-scale massacre which we call the genocide.
- 03:38 So that happened in April '94, and it only stopped when the RPF won the war the 6th of July the same year. So in the international community, I think the result was to punish what happened during that period.
- 03:57 But because of Rwandan claim, a kind of agreement has been reached in the, within the Security Council to expand a little bit, to expand, for example, of, to apprehend the preparatory act which may have started from January, but that was just a compromise. But that compromise of course, you know, the government of Rwanda would not accept it.
- 04:21 BF: So from where you sit now, right, hindsight is so much, but from where you sit now, what is your opinion on having chosen those dates, just the year of 1994?**
- 04:33 BF: Do you think that looking at it overall, that that, that those were good dates, or that it would have been better to have expanded them a small amount, or – I mean, you have so much more knowledge now obviously than when the decision needed to be made, but what insights?**
- 04:49 Yeah, I think that, you know, I, I, I don't think that there is anything wrong in limiting it to that genocide because that's what – what triggered really is that international communities resolved with what happened from April. I don't mean to say that you know, what happened before should be just dismissed or disregard.
- 05:13 In fact, when legally speaking now, when you look at our jurisprudence, in fact what Rwanda was claiming for and which was formally refused by the statute in fact was given by our jurisprudence in a sense that from the first judgment we have here, it has always been decided that, "Yes, even crime committed before '94 may be referred to in our judgment."
- 05:44 So what is not permissible is to find someone guilty of that. But sometime, when you, when you, when you describe a (___), you can't just decide to stop or to start from this. You just start from the very starting point. That's why now the Prosecutor here in making up his case, in most of the cases, they have made re-, even reference to crime committed before.

- 06:09 But what is required for them to do to convince the judges is to show continuity. If the mindset w-, started before '94, the judge admit the evidence, but of course now the only limitation is that they cannot find someone guilty.
- 06:28 But in – what I mean to say is that in the tribunal practice, you know, in fact we are reconstituting the history of the genocide. But, and in doing so, we are not necessarily stopping at the starting point which is fixed by the statute.
- 06:46 BF: So was that a change that happened over time, to begin to look earlier and allow that continuity to carry forward, or do you think, or was that there from the very beginning?**
- 06:55 No, from the very beginning it was there, but at one point, of course this point has been litigated. Because the defense says, “Okay, so you are in breach of the statute.” The statute says specifically that the only charges that can be brought would be charges starting from, or element, even factual element you should be referred to would be the element from 1st January '94.
- 07:18 But then, that would be, that point was litigated and we had a decision from chambers and as that went up to the appeal, appeals chamber, and the appeals chamber say it's okay to do that. So long as it's just sometime to show continuity or to show intent, it's okay to do that, but it would not be permissible to find someone guilty for act committed prior to '94.