Exploring International Justice through the International Criminal Tribunal for Rwanda

Voices from the Rwanda Tribunal
www.tribunalvoices.org

University of Washington Information School
in partnership with Never Again Rwanda

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About the Value Sensitive Design Research Lab
Value Sensitive Design refers to an approach to the design of technology that accounts for human values in a principled and systematic manner throughout the design process. The lab’s work is primarily concerned with values that center on human well being, human dignity, justice, and human rights. The Value Sensitive Design approach connects the people who design systems and interfaces with the people who think about and understand the values of the stakeholders who are affected by the systems. Current projects include long-term envisioning, privacy in public, personal mobile security, sustainability, and value sensitive design methods. Ultimately, Value Sensitive Design broadens the goals and criteria for judging the quality of technological systems to include those that advance human flourishing.
# Table of Contents

Overview ......................................................................................................................... 5  
The Kigali Workshop ...................................................................................................... 6  
Toward a Safe Discussion ............................................................................................... 7  
How to Use the Curriculum ............................................................................................ 8  

Getting Started .................................................................................................................. 10  
I. Law and Justice ............................................................................................................ 11  
II. International Law ........................................................................................................ 15  
III. International Criminal Law ....................................................................................... 21  
IV. The International Criminal Tribunal for Rwanda ....................................................... 25  
V. Alternative Approaches to Justice ............................................................................... 31  
VI. Prosecuting Genocide and Sexual Violence ............................................................... 39  

Glossary of Key Terms ...................................................................................................... 43  
Voices from the Rwanda Tribunal Video Clip Index ....................................................... 44  
Case Study Index .............................................................................................................. 45  

TABLE OF CONTENTS 3
Overview

This curriculum is designed to give young people the opportunity to explore themes relating to peace and justice in the context of the International Criminal Tribunal for Rwanda (ICTR). The curriculum is the product of an 11-day workshop held in Kigali, Rwanda, from 20 July to 1 August, 2009, in partnership with the Rwandan non-governmental organization (NGO) Never Again Rwanda (NAR). This project is independent from the Government of Rwanda, the United Nations (UN), and the International Criminal Tribunal for Rwanda.

The curriculum is accompanied by a series of video interviews conducted with court personnel from the ICTR. The video collection: the Voices from the Rwanda Tribunal (also known as the Tribunal Voices; www.tribunalvoices.org), is used to introduce core themes and debates surrounding transitional justice issues in the aftermath of violent conflict.

The curriculum invites students to watch and discuss the video interviews in order to learn more about the political challenges and inner workings of an international court. Students are also introduced to alternative approaches to transitional justice, including challenges and questions that arise from different approaches.

The curriculum is designed to be taught in sequence; however, different aspects of the curriculum can be adapted and incorporated into other learning experiences. Each unit can be broken down into smaller stand-alone lessons, which may be useful to instructors teaching classes in African studies, communications, filmmaking, genocide studies, history, international affairs, law, or philosophy. A glossary and guide to the accompanying video interviews from the ICTR collection can be found at the end of the curriculum.
The Kigali Workshop

This curriculum was developed in conversation with the Rwandan NGO Never Again Rwanda (NAR) in the summer of 2009. A team of eight workshop instructors from the University of Washington worked with NAR to create the opportunity for members of Rwandan youth community groups to discuss the process of justice after genocide, while simultaneously providing the youth with film-making skills to contribute to their professional development.

The workshop was conducted in English, the official language of higher education in Rwanda, with some translation into the native and widely spoken Kinyarwanda where appropriate.

Ten Rwandan students participated in the workshop; all spoke Kinyarwanda, nine spoke fluent English, and three spoke fluent French. The students were aged between 16 and 18. None had any prior training in international law, although all students had a sophisticated understanding of the Rwandan traditional justice mechanism: Gacaca (see Case Study 6).

The team of eight workshop instructors from the University of Washington consisted of information scientists, legal experts, and professional cinematographers, together bringing the expertise to teach each of the various workshop components.

To see the student films, please visit: www.tribunalvoices.org.
Toward a Safe Discussion

An awareness of the potential resurgence of violence is essential when discussing sensitive issues in a post-conflict setting, especially in a situation where victims and perpetrators live side by side. It is also important to remain aware of the fact that there may be parties, or friends and relatives of parties, to each side of the conflict present in any discussion of this nature.

The University of Washington team was acutely aware of these factors while conducting its work and was largely guided by strategies developed by Sarah Freedman et al. [1] during their work in Rwanda since 2001. Freedman recognizes that it is necessary to address the challenging issues of ethnicity and power when carrying out this work in a post-conflict society with deep-seated historical ethnic divisions such as Rwanda, but that these topics need to be approached with extreme care and caution. Freedman identifies the following ‘entry spaces’ through which to engage sensitive material:

- **Democratic teaching methods:** allowing the opportunity to think about history as multifaceted and open to interpretation rather than as a single received truth. Students can be given space for honest and open communication, while moving away from emotionally charged topics such as ethnicity.

- **Distanced material:** allowing students to discuss emotional and controversial topics in non-Rwandan contexts, such as the Holocaust, before drawing parallels or making observations about the situation in Rwanda. This permits students to discuss issues faced by Rwandans without immediately engaging in potentially divisive or uncomfortable discussion.

The case studies offered in the curriculum are of critical importance given the above requirements. They allow students to consider other transitional justice experiences and offer their opinions in a safe, removed, and non-threatening context. Likewise, the Tribunal Voices material is expected to be valuable in other post-conflict settings or countries experiencing transitional justice such as Sierra Leone, Burundi, Sri Lanka, Zimbabwe, and elsewhere.

How to Use the Curriculum

The curriculum can be taught in sequence (as part of an introductory course in transitional justice, international justice, or the ICTR), or, lessons can be broken down into individual units to accompany or complement existing lessons on similar topics.

Each lesson is preceded by a rationale, objectives, and resources needed for that session.

Equipment
- Voices from the Rwanda Tribunal DVD or access to the website
- Laptop and projector or portable DVD player
- Speakers

Questions?
Throughout the curriculum, questions in boxes are intended as direct questions that can be posed to the class.

Notes and Talking Points
Plain text questions and bullet points are intended as notes and talking points for the instructor.

Voices from the Rwanda Tribunal
The curriculum also includes material from the Voices from the Rwanda Tribunal video collection. In 2008, a team of information scientists, legal experts, and cinematographers conducted 49 video interviews with representatives from the International Criminal Tribunal for Rwanda (ICTR). Interviews were conducted with the heads of sections, judges, prosecutors, defense counsel, interpreters, court administrators, prison warden, and many others associated with the ICTR on location in Arusha, Tanzania and in Rwanda. The Voices from the Rwanda Tribunal video collection is in English with subtitles in Kinyarwanda as resources permit.

The Voices from the Rwanda Tribunal video material is intended to guide discussion around specific points, highlight important issues, and encourage students to think about questions relating to post-conflict justice in new ways. The videos offers insights from individuals who have been involved in the work of the ICTR at different levels and in different capacities.

Relevant transcripts have been included in the curriculum and are offset with a decorative band (see left dashes). All material used in the curriculum can be found online at: www.tribunalvoices.org. An index of the clips used can be found in on page 44.
Case Studies

Case studies are intended as learning aids to provoke discussion and draw attention to important or contentious issues. The case studies are usually found near the end of each lesson to illustrate the key points that have been raised throughout. Students are encouraged to first think independently about the questions asked and then direct their discussion toward concrete examples. The instructor should use case studies at his or her discretion to illustrate, clarify, or build upon important theoretical ideas. In addition, the studies provide a contextual framework for the discussion that is removed from the students’ own experiences. Guided by Freedman, they provide entry points to the issues addressed, allowing students to express opinions in a context that does not directly associate them with a particular political position. Like the Voices from the Rwanda Tribunal video clips, case studies are offset by a decorative band (see left, diamonds). An index of the case studies can be found on page 45.

List of Case Studies

1. The Practice of Bulu-bulu in Fiji
2. Piracy on the Somali Coastline
3. A Question of Torture
4. The Nuremberg Trials
5. Amnesties and Truth Commissions
6. Domestic Trials
7. Traditional Justice
8. Decision in the case of Jean-Paul Akayesu

The authors welcome any comments, suggestions, or feedback concerning the utility, content, and structure of the course. We can be contacted at tribunal@uw.edu or via the project website at: www.tribunalvoices.org.
Getting Started

Rationale
To introduce the curriculum and manage student expectations.

Objectives
- Get to know one another
- Become familiar with the structure of the course

Suggested Time
30 minutes

Getting to Know You
Introductions should be made to the group.

Teach and Discuss  What This Curriculum is About
- Outline what the students will get to do and what will be learned.
- Provide an overview of the schedule, including how each day will proceed and what the learning goal will be for each lesson.
I. Law and Justice

Rationale
To familiarize students with the overarching concepts of law and justice. These exercises lay the foundations for talking about a system of international justice which is removed from the students’ personal experiences. In a non-threatening environment, students will be encouraged to think objectively about the basic principles of law.

Objectives
• Define the terms ‘law’ and ‘justice’
• Introduce arguments about culture and politics
• Learn about general principles of law

Resources
• Case Study: The Practice of Bulu-bulu in Fiji

Suggested Time
2 - 3 hours

Teach and Discuss  What is Law?
• Pair students and ask them to write down a definition of law in 1-2 sentences.

• Ask students to read their definitions aloud and explain them. Write the definitions on the board. Discuss the students’ responses:
  o What elements are similar?
  o What elements are different?
  o Why are they similar or different?
  o Can we agree on a definition as a group?

• Write the student definitions down for use in future lessons.

• For your own reference or to share with the students, student responses from the Kigali workshop (2009) included:

  “Law is rules to be put in place to be followed and if broken they may lead to punishment.”

  “A set of rules which are implemented to bring stability and justice to a community.”

  “We need law to feel secure and to be able to live together.”
Teach and Discuss  What is Justice?

- Ask students, in pairs, to write down a definition of justice in 1-2 sentences. Ask students to think about how this definition differs from their definition of law.

- Ask students to read their definitions aloud and explain them. Write each definition on the board.

- As a group, use the definitions as a starting point to discuss the ways in which justice may be different from law. Ask students to try to clearly define these differences.

- The instructor should be prepared to expect a diversity of responses, ranging from philosophical approaches to justice to specific legal ideas of justice as it relates to fair trial and fair punishment.

- In discussion, try to reach a conclusion about how justice might be different from law.

- Write the student definitions down for use in future lessons.

- For your own reference or to share with the students, student responses from the Kigali workshop (2009) included:

  “Justice is a process that follows people who have broken the law.”

  “If you don’t have punishment, or a means of enforcing law, then law is meaningless.”

  “Law is different from justice as law is something to abide by – if you break it you are punished. Justice is to be fair.”

Teach and Discuss  How Do Culture, Politics, and Circumstance Impact the Definitions of Law and Justice?

- Ask students to discuss different understandings and associations with the concept of justice. How might these vary in different cultures? Students might consider retributive, restorative, punitive, spiritual, and community-based ideas about justice and its administration.

- If a society includes multiple definitions of justice within different cultural or religious traditions, which one should take precedence? Who is responsible for the administration of justice?

- In a group, discuss some basic principles of law and justice: the right to a fair trial; the right to the presumption of innocence; the right to defense counsel. Why is each of these elements important?
Case Study 1
The Practice of Bulu-bulu in Fiji

In her work on the appropriation of human rights law in different socio-cultural contexts, Sally Engle Merry [2] discusses the ancient Fijian practice of ‘Bulu-bulu.’ Bulu-bulu is a custom of the indigenous Fijian community used to resolve conflicts between two parties. Bulu-bulu brings the two most senior figures from each side of the conflict together to negotiate and results in the payment of monetary compensation to the injured party. It is an important custom in indigenous Fijian culture and has been successful in peacefully resolving disputes between families and villages. However, recently there has been discussion of whether Bulu-bulu can be applied to rape cases. While it is a valuable means of dispute resolution in Fijian villages, Merry discusses fears that many accused rapists are turning to the practice of Bulu-bulu to avoid formal justice proceedings, although the accused have formerly shown little interest in indigenous justice. Additionally, there is even greater concern over the fact that women who have been raped are often excluded from Bulu-bulu proceedings while male elders negotiate the compensation with the alleged rapist.

How might you balance the need for accountability for accused rapists with respect for preserving the ancient custom of Bulu-bulu?

Do the victims have a right to seek redress in a courtroom?

Is there a way to differentiate between genuine respect for ancient customs and those trying to avoid legal repercussions for their actions?

How would you reconcile these tensions?

II. International Law

Rationale
To introduce the ideas and principles of international law. Bearing in mind the philosophy and politics behind law-making in society, explore the evolution and rationale behind a system of international law and enforcement.

Objectives
• Learn the general principles of international law
• Learn the basics of the United Nations system
• Understand the difference between domestic and international law

Resources
• Case Study: Piracy on the Somali Coastline
• Case Study: A Question of Torture

Suggested Time
2 - 3 hours

Review, Teach and Discuss  Reviewing Definitions of Law

• Write the individual definitions of law from Lesson I: Law and Justice on the board.

• If you did not use the previous lesson, select one or more definitions of law and justice to present to the class. For guidance, the below definitions of law are from the workshop conducted in Kigali, Rwanda in 2009:

  “A body of rules and principles governing the affairs of a community and enforced by a political authority.”

  “An agreed system of rules and conditions through which different groups within society can live together peacefully.”

Do we need law? Why?
What happens when different groups with different interests or needs live together? Why might we need or rely on law in this situation?
To what extent does ‘law’ rely on a system of enforcement or implementation?
Is it possible to have law without punishment? How might that work?
Discuss and Share  International Law

• Divide the students into groups of two and ask them to think of and talk about some specific situations beyond the reach of national laws where international law might be necessary or important. Invite them to share their ideas with the whole group.

What do we think of when we think of international law?
What are some of its key characteristics?

Possible Answers

- Laws of the air and laws of the sea—areas where space may not fall within the jurisdiction of a single country.
- Laws of the environment—issues which affect multiple states.
- Laws of trade—rules governing economic relations between states.
- Laws of human rights—issues relating to the behavior of governments and individuals within and across domestic borders.

Teach and Discuss  What is International Law?

Possible Answers

- Rules and guidelines governing the behavior of states rather than individuals
- Treaties entered into voluntarily by individual states
- Relies upon the cooperation of governments
- No police force
- Law without punishment?

• United Nations System: if there is time and if it is felt to be relevant, introduce the conditions determining state intervention in domestic conflict as defined by the Security Council and Chapter 7 of the UN Charter. [3]

• Human Rights Treaty System: if there is time, introduce the UN treaty system, and discuss the six major human rights treaties (the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the International Convention on the Elimination of All Forms of Racial Discrimination).
• For your own reference or to share with the students, the definition of international law reached in the Kigali workshop (2009) was:

“A system to regulate the behavior of states so that different sovereign nations with competing values and cultures can coexist together within a shared system of norms and regulations governing their interaction.”

[3] Chapter 7 of the UN Charter, ‘Action with respect to the Peace, Breach of the Peace, and Acts of Aggression’, states that ‘the Security Council shall determine the existence of any threat to the peace, breach of the peace, or acts of aggression and shall make recommendations, or decide what measures shall be taken in accordance with articles 41 and 42, to maintain or restore international peace and security’. See: www.un.org
Read and Discuss

Case Study 2
Piracy on the Somali Coastline

Just beyond the territories of Somalia’s coastline, pirates have taken possession of the seas. Both cargo vessels and tourist ships have been targeted, with crews taken hostage and large ransoms demanded for their release. The pirates are predominantly poor Somali locals who hope to profit significantly from these endeavors.

Each captured ship is thought to contribute $1-2 million to Somalia’s economy. It is widely accepted that coast officials and government actors ignore the pirates’ attacks, and 30% of the collected revenue is thought to end up in the hands of government officials. Thirty percent of the world’s oil is transported through the Somali gulf. Avoiding this coastline would add 20 days and $1 million in costs to the journey. [4]

Identify all the different sets of actors involved in the above scenario.

Who are the criminals?
Who is responsible for their prosecution?
In whose territory are the crimes committed?
Why might international law be important or useful in the prevention and prosecution of the kinds of crimes described above?

Case Study 3
A Question of Torture

In 2010, four men were arrested in Nepal for stealing a quill of water pipe from the Gorkha Welfare Society Drinking Project. The four men were transported by police to the District Police Office and were detained in a small room. Each of the men was made to lie face down and questioned about the theft. When the men denied the charges, they were beaten by the police for hours with sticks and wire-inserted plastic pipes until contusions appeared on their hips, thighs, legs and other parts of their bodies. The men complained of excruciating pain. Eventually, the men confessed to the crimes of which they were accused and were compelled to serve out their sentences in prison. [5]

Is this an international or domestic issue?
Is this a human right violation—and why?
Who is the guilty party?
Who is responsible under international law?

III. International Criminal Law

Rationale
To clarify the distinction between international law and international criminal law. To explore the emergence and development of such a system, familiarize students with the core crimes, and discuss its history and continued relevance.

Objectives
• Learn about international criminal law and major categories of crimes
• Learn about the Nuremberg Trials
• Understand the challenges of post-conflict justice

Resources
• Case Study: The Nuremberg Trials

Suggested Time
2 - 3 hours

Teach and Discuss  What is the Difference Between International Law and International Criminal Law?

• Remind students that the discussions surrounding international law in Lesson II referred largely to the behavior of states, with governments themselves as the accountable parties. In contrast, international criminal law deals with individuals accused of grave breaches of international law.

• Ask students to identify the four major crimes covered by international criminal law.

  o Crimes Against Humanity (give definition and examples: rape, apartheid, forced displacement, mass killing) [6]
  o Genocide (give definition) [7]
  o War Crimes (give definition: any violations of the laws or customs of war, as defined in the Geneva Conventions) [8]
  o Crimes of Aggression (explain that this crime is loosely defined and lacks a coherent definition as of 2010) [9]
  o While there are four overarching crime categories, specific crimes fall within these umbrella categories. For clarification, see the Elements of Crimes accompanying the Rome Statute of the International Criminal Court [10]
• Ask students to think carefully about why we would need or want a system of international law for prosecuting war crimes, crimes against humanity, genocide, and crimes of aggression.

• For your own reference or to share with the students, the responses generated by the students in the Kigali workshop (2009) were:

  “A lack of infrastructure or resources in the country where the crime was committed.”

  “The lack of a political will to prosecute, if perhaps the government itself was complicit in the crimes.”

  “Corruption or lack of faith in the judiciary in the country the crime was committed.”

  “May set a precedent to demonstrate to the world that no one is above the law and that such crimes are universally unacceptable.”

[6] A ‘crime against humanity’ is defined as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, apartheid. (Article 7, Rome Statute of the International Criminal Court, http://www2.ohchr.org/english/law/criminalcourt.htm)

[7] Genocide means “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group”. (Article 6, Rome Statute of the International Criminal Court, 1998 http://www2.ohchr.org/english/law/criminalcourt.htm; Article 2, Convention on the Prevention and Punishment of the Crime of Genocide, 1948 http://www2.ohchr.org/english/law/genocide.htm)

[8] War crimes means “grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: willful killing, torture or inhuman treatment, willfully causing great suffering, or serious injury to body or health, extensive destruction and appropriation of property, compelling a prisoner of war or other protected person to serve in the forces of a hostile power, willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial, unlawful deportation or transfer or unlawful confinement, taking of hostages, intentionally directing attacks against the civilian population or civilian targets, employing the use of poison or biological weapons...” (Rome Statute of the International Criminal Court, http://www2.ohchr.org/english/law/criminalcourt.htm)


Case Study 4  
The Nuremberg Trials

Following the Second World War, 22 trials were held in Nuremberg, Germany, to hold accountable the senior figures of the Nazi regime for acts carried out between 1939 and 1945. Nuremberg was the first international military tribunal created to hold individuals accountable for gross violations of human rights. The trials paved the way for a system of international criminal law based on the Nuremberg Principles of 1950. With the international goal that such atrocities should never be tolerated again, the UN Charter (1948), the Geneva Convention (1949), the Universal Declaration of Human Rights (1948), and the Genocide Convention (1948) were also established, laying the foundations for our current system of international law and international criminal justice. [11]

Read and Discuss

Why did the Allied Forces after the Second World War decide to establish a military tribunal to prosecute the crimes committed?

What is the point of putting someone on trial if everybody already knows the person is guilty?

Can you identify any potential problems or criticisms relating to the Nuremberg trials?


III. INTERNATIONAL CRIMINAL LAW
Teach The Nuremberg Trials

Inform students that the Allied Forces took the position that establishing a legal response in accordance with the rule of law was essential in order to set a precedent of legality (‘rule of law’ rather than ‘rule of force’). They wanted to establish a system whereby the horrors of the Holocaust could not be repeated and that all states should incur collective responsibility for ensuring it would not happen again. [12]

• Highlight some of the criticisms of Nuremberg (see Case Study Three): that the Nuremberg Tribunal was not impartial; that the courts were accused of providing “victors’ justice”; that defendants were not granted the right to appeal.

• Highlight the fact that Nuremberg began the first conversations about the need to establish a permanent system of international criminal justice—a conversation that was not properly reconsidered until the 1990s.

• The 1990s were characterized by a wave of impunity for gross violations of human rights, with many heads of state seeking immunity from prosecution abroad (General Augusto Pinochet, Chile; Papa Doc Duvalier, Haiti; Idi Amin Dada, Ethiopia; the Khmer Rouge, Cambodia). Many countries affected by cycles of violence began to perceive justice as essential for establishing a sustainable peace and any chance of reconciliation. The idea that international mechanisms for accountability were needed to depoliticize guilt and innocence became more widespread.

• However, until the events in Rwanda and former Yugoslavia in the early 1990s, there was little international response to these kinds of crimes. Heads of state especially were typically granted immunity rather than brought to justice.

**IV. International Criminal Tribunal for Rwanda**

**Rationale**
To familiarize students with the international response to the events in Rwanda in 1994 and the reasons to create an international tribunal to deal with them.

**Objectives**
- Learn about the International Criminal Tribunal for Rwanda (ICTR)
- Learn about the controversies and challenges surrounding the Tribunal

**Resources**
- Video Clip: Law Not Revenge (Hassan Jallow)
- Video Clip: Rwandan Frustration with the Tribunal (Mandiaye Niang)
- Video Clip: Rwandan Participation in the Tribunal (Charles Phillips)

**Suggested Time**
2 - 3 hours

**Show and Discuss**
Watch the clip “Law Not Revenge” from the interview with Chief Prosecutor Hassan Jallow.

**Voices from the Rwanda Tribunal**

**Law Not Revenge (Hassan Jallow)**

“I had a member of staff, a Rwandan, who I learnt later had actually lost his entire family in the genocide, and here he was working with me—he was actually my driver in Kigali. And I looked at him and I couldn’t trace any sort of bitterness or anger or anything like that; things looked normal with him. And so one day I sort of plucked up the courage myself to ask him, ‘how do you cope with this, the fact that you’ve lost your entire family?’ And his answer was simply this—that ‘I know those people who... those people who did it, I know that they are in detention awaiting trial. If the law is going to take its course, it will not bring back my family but it gives me satisfaction and peace of mind. And I have no desire then for revenge at all’. And I thought well, he was casting a big burden on our shoulders then, as the lawyers, a big responsibility. That people were looking up to the law to find a solution, to find justice, instead of turning to retribution and to revenge.”

What are the initial reactions from the students?
What issues does this raise for the Tribunal?
**Teach and Discuss**  International Criminal Tribunal for Rwanda (ICTR)

Why was the ICTR created to deal with the genocide in Rwanda?

- In response to the lack of infrastructure or functioning justice system in Rwanda.
- To demonstrate internationally that such crimes are unacceptable.
- To ensure that those responsible are held accountable for their actions in a court of law.
- Never Again: Other African countries would benefit from the experience of Rwanda in combating impunity.
- To demonstrate political and legal accountability. The Tribunal sends a powerful message that even high ranking political leaders across the world will be held accountable for atrocities committed.
- To show acceptance of the idea that international fugitives cannot be protected from prosecution by seeking refuge abroad.
- To allow prison sentences to be served in Africa near the territory in which the crime was committed, if possible.

What are some of the common criticisms of the ICTR?

- Only a small number of cases have been tried.
- Court and detention facilities, as of this writing, were located outside Rwanda.
- Masterminds of the genocide receive a higher standard of detention and trial than those charged with less severe crimes, who are tried in Rwanda’s domestic justice system.
- The decision was made to initially exclude Rwandans from the justice process.
- Trials are lengthy and do not have immediate results.
- The ICTR has not successfully communicated its work and investigations with the Rwandan people.

How was the ICTR created? How does it function? What is its relation to the national court system?

- The ICTR was created by the United Nations Security Council Resolution in November of 1994 to deal with the crimes committed.
Voices from the Rwanda Tribunal
Rwandan Frustration with the Tribunal (Mandiaye Niang)

“And of course, the other... I think that one of the biggest problems also was that after the genocide, Rwanda was completely left with almost nothing. All the judiciary people were killed; all those involved in the genocide, they fled the country. And yet, they were invited to coexist with the Tribunal, full of means, so to speak, millions of dollars invested into a justice system which was kind of foreign to them. Which was being held abroad—they even... they barely knew what was going on here. So I think that all those frustration was just building up, and then they could not stand it. Because, for example, we would invite witnesses here, they, you know, starving witnesses, and so they see the staff of the Tribunal very well paid, and once they know about the cost involved in this system of justice, it just did not fit—for people who even had nothing to eat.

So, time and time again, you would even hear Rwandan people, ok, tell, ok so ‘we would be better off without this Tribunal if just the means put there were given to us to alleviate some of our suffering. We would be better off, for example, hundreds of millions of dollars—why don’t we just give us the money?’ Even at the official level, you know, you would hear those kinds of comments.”

Do you agree with the point Mr. Niang makes?
Why did this situation arise?
Why might the ICTR need to maintain such high standards for the accused?
What are the arguments on either side of this debate?
Does this clip make you think differently about any of the issues discussed above?
Teach International Criminal Tribunal for Rwanda (ICTR)

• Mandate and jurisdiction of the Court [13]

“To try genocide, crimes against humanity and war crimes between 1 January and 31 December 1994 committed by Rwandans in the territory of Rwanda and in the territory of neighboring states, as well as non-Rwandan citizens for crimes committed in Rwanda.”


• Three principle organs of the Court [14]

1. Judicial Chamber
   o The judicial arm is composed of 3 trial chambers and 1 appeal chamber; the latter is shared with the International Criminal Tribunal for the former Yugoslavia.
   o Judges are nominated by member states of the UN and elected by the General Assembly; judges must reflect principal legal systems around the world.
   o No two judges may be nationals of the same state.
   o Judges are elected every 4 years and can be re-elected.

2. Registry
   o The Registry is responsible for all other aspects of court administration: Building management, court management, defense counsel, detention unit, finance, legal aid, personnel, procurement, translation, victims, and witnesses.
   o Provides witness protection and organizes transport and timely availability of witnesses for both the prosecution and defense.
   o Provides defense counsel and manages the detention of accused individuals; as of July 2009, the Arusha Prison Complex in Tanzania and facilities in Senegal and Benin housed these prisoners.
   o Provides childcare, security, healthcare, specialized services, assistance, and transport for witnesses and Tribunal staff.


[14] ‘Organ’ is the term used by the court to refer to the different branches of the Tribunal.
3. Office of the Prosecutor (OTP)

- The OTP conducts investigations into cases, issues arrest warrants, pursues indictments and prepares the cases, evidence, and witnesses against the accused.

- The OTP has two divisions:
  
  A. Prosecution Division, headed by a Chief of Prosecutions, which includes:
  
  • The Investigation Section, which collects evidence implicating individuals in crimes
  • Trial teams headed by Senior Trial Attorneys, responsible for handling cases at the trial level

  B. The Appeals and Legal Advisory Division (ALAD), headed by a Chief of ALAD:
  
  • Handles all appeals by the Prosecutor from final judgment or sentence; responds to all defense appeals against conviction or sentence
  • Provides legal advice to trial teams on questions of international and national criminal law, evidence, procedure, trial strategy and tactics, disclosure, witness protection, ethics, policy, and other issues.

Difficult decisions: Why was the Tribunal eventually located in Arusha, Tanzania?
Show and Discuss
Watch the clip in which Prosecutor Charles Phillips speaks about the initial decision to exclude Rwandans from the work of the Tribunal.

Use the quote from Prosecutor Charles Phillips below to introduce the topic of the exclusion of Rwandan nationals from the Tribunal.

Voices from the Rwanda Tribunal
Rwandan Participation in the Tribunal (Charles Phillips)

“It was difficult in the context of Rwanda to involve nationals of Rwanda because you were not sure who was who. It was a conflict of two sides, so how do you go about recruiting Rwandese staff when you’re not actually allowed to discriminate between one or the other? So the most practical thing was to just keep them out until we settled in. Therefore, as foreigners, we then had to grapple with understanding the political and cultural context of the crimes which we investigated. So there were immense issues which are absolutely unique to this area of specialization. The same issues that the ICC would confront in Uganda, in the Central African Republic, in the Congo; the same issues that the Yugoslav Tribunal may have confronted in the Bosnia. They are unique to the prosecution of international crimes.”

What issues does this quote raise?
Based on this quote, why did The Tribunal exclude Rwandans from the Tribunal staff?
What does this mean for the impartial administration of justice?
Are there other reasons why it may have been difficult to involve Rwandans in the Tribunal’s work?
What are the arguments against this decision?
How would the Tribunal have benefited from taking a different approach on this issue?
V. Alternative Approaches to Justice

Rationale
To encourage students to think about different mechanisms for administering justice that may complement the broader objectives of healing and reconciliation.

Objectives
• Learn about alternative approaches to justice

Resources
• Video Clip: Rwandan frustration with the Tribunal (Mandiaye Niang)
• Video Clip: Retributive and Restorative Justice (Adama Dieng)
• Case Study: Amnesties and Truth Commissions
• Case Study: Domestic Trials
• Case Study: Traditional Justice

Suggested Time
2 - 3 hours

Review and Discuss  Definitions of Justice
• Ask students to think back to their initial discussions and definitions of justice.
• If this lesson is being offered as a stand-alone lesson, spend the first five minutes asking the students to come up with their own definitions of justice.

Have your definitions of justice changed at all? If so, how and why?
**Teach and Discuss** Justice in the Context of Violent Conflict

- Ask students to think about definitions of justice in the context of violent conflict.

| Is any particular kind of justice necessary in order for a society to recover? |
|------------------------------|----------------|----------------|----------------|
| What might this justice look like? Is there one model? | Can you think of other kinds of justice (distinct from the international model) that have been embraced following violent conflict? | If victims, perpetrators, the international community, and the government each have different conceptions of 'justice,' should one be given precedence over another? | Can different kinds of justice work together? |

- Ask students to think about different approaches to justice that could be applied in the aftermath of violent conflict, such as religious/divine justice, local/community-based justice, spiritual justice, traditional justice, government administered justice, domestic trials, truth commissions, amnesties, international courts, etc. Remind them of the case studies used in *Lesson II: International Law* and *Lesson III: International Criminal Law*.

- Ask students to try to come up with examples for the categories they generated above.

- Five major approaches to transitional justice have been highlighted:
  - International justice (Case Study 4)
  - Hybrid courts [15]
  - Domestic justice (see Case Study 5)
  - Truth commissions (see Case Study 6)
  - Traditional justice (see Case Study 7)

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[15] Hybrid courts are not included in the case study section, but you could refer to examples from Cambodia and Sierra Leone.
Show and Discuss

Watch again the clip “Rwandan Frustration with the Tribunal” from the interview with Senior Legal Advisor Mandiaye Niang, and watch “Retributive and Restorative Justice” from the interview with Registrar Adama Dieng. Ask students for their initial reactions in light of recent discussions.

Voices from the Rwanda Tribunal
Retributive and Restorative Justice (Adama Dieng)

“And that is why, when we talk about justice, we should always also bear in mind the two dimensions— the retributive justice and the restorative justice. The retributive justice is the one which, for instance, we are applying here in the International Criminal Tribunal for Rwanda, in which we are searching for the truth, and which correspond definitely to the modern way of delivering justice— focusing on the criminal offender. Because here, unfortunately—and I said unfortunately because that has been my position—we have not been able to focus on the victims. We only focus on the criminal offender. It would have been fair to also paid attention to the victims. And I would say, thanks to the play made by this Tribunal during the time of the drafting of the Rome Treaty, establishing the International Criminal Court, a provision was adopted offering a role and a place to the victims of these types of crimes—genocide, or the crimes against humanity, torture, etc. While the restorative justice is the one which is really aimed, like in the traditional way of delivering justice, to focus on the victim—focus on the victims and his healing and rehabilitation.”

• Have the students comment on each of the different approaches to justice discussed above. Does one approach seem preferable to another?
• Is it possible to come up with a ‘one size fits all’ solution to post-conflict justice or do responses need to be adapted to fit specific circumstances? Give some examples.
• What are the key problems Niang draws attention to?
• Think about the Gacaca courts in Rwanda and their relationship with the ICTR. What does this look like and what kind of justice is offered by each?

What are the pros and cons of administering justice solely through Rwanda’s national courts?
If you were to design a system of post-conflict justice following the genocide of 1994, what would you do?
Which elements would you use and how would they work?
Case Study 5

Amnesties and Truth Commissions

South Africa. Following South Africa’s policy of apartheid from 1960-1994, a truth commission was established to determine the facts about events during this period. Individuals judged to have displayed genuine remorse for their crimes were granted conditional amnesties in exchange for contributing to the truth about the past. Establishing a factual historical record formed the basis for healing and reconciliation in South Africa. Although amnesties were granted under specific circumstances, the commission was accompanied by domestic trials and prison sentences for the majority of offenders. The combination of criminal accountability, conditional amnesty, and the establishment of a factual record was intended to create the opportunity for the people of South Africa to eventually live together in peace. [16]

El Salvador. The war in El Salvador took the lives of over 75,000 people between 1980 and 1992. In an effort to establish peace and stability and encourage leaders to relinquish power, a United Nations-mandated truth commission was established in 1992. The commission was tasked with investigating violations and making binding recommendations to both parties to the conflict. The commission’s report implicated the judiciary, naming individuals responsible for human rights abuses and calling for their dismissal from public office. Although the recommendations of the report were legally binding, a 1993 law nevertheless granted unconditional amnesty to all those responsible for violations committed prior to 1992. The government, backed by El Salvador’s Supreme Court, declared that the amnesty law was intended to put the past in the past and allow the people of El Salvador the opportunity to move on without provoking further conflict and unrest. As of 2010, the government of El Salvador is being urged to repeal the amnesty law. [17]

What are the good and bad points of each of the approaches above?
What are the arguments in favor of granting amnesty to offenders? What arguments can be made against amnesty?
What is the appropriate role for prosecutions in this process?
Is it important to produce a factual account of crimes committed? Why?
What role or response do you foresee for the victims in each of these cases?

Case Study 6
Domestic Trials

Argentina. The Dirty War in Argentina, from 1976-1983, was characterized by policies of intimidation, abuse, and violence carried out by the military junta against political dissidents. Although the Dirty War came to an end with democratic elections in 1983, many affiliated with the military regime remained in positions of power within the country. In an effort to achieve justice and redress for wrongs committed, domestic trials alongside other domestic approaches have been pursued in Argentina for those most responsible for the policies of the Dirty War. However, amnesties were granted to certain individuals, and many of those responsible for committing atrocities remained politically powerful, raising serious questions about whether justice has been offered to victims and perpetrators through Argentina’s domestic courts.

United States. In 1993 a panel of prominent international judges from Japan, New Zealand, Korea, and the United States convened in Hawaii to hear charges of genocide and ethnocide committed by the United States and the state of Hawaii against indigenous Hawaiians. The Ka Ho’okolokolonui Kanaka Maoli (People’s International Tribunal of Hawaii) decided that the Hawaiian people had been subject to both physical and cultural genocide by the United States and the state of Hawaii. The Tribunal ruled that the actions of the United States against the Hawaiian people were in violation of the basic principles of customary international law, the 1948 Convention for the Prevention and Punishment of Genocide, UN General Assembly Resolution 1514 on the right to self-determination, and rights protected under the US Constitution such as equality before the law and the right to life, liberty, and security of person. In the same year, the United States Congress issued a Joint Resolution in the form of an apology to the Hawaiian people for its role in the overthrow of its monarchy. [18]

V. ALTERNATIVE APPROACHES TO JUSTICE
Under what circumstances might domestic trials constitute an effective path to justice?

Under what circumstances might such trials be ineffective or unsatisfactory?

If they are ineffective or unsatisfactory, what are some alternatives?

If justice is to be administered domestically, how important is the legitimacy and credibility of the government and the courts?

Case Study 7
Traditional Justice

Rwanda. Gacaca Courts: After the 1994 genocide in Rwanda, the country’s court system was severely damaged. Only 5% of the judges remained alive and the country’s infrastructure was severely damaged. In order to deal with the scale of the crimes committed, where 100,000 people are estimated to have been involved directly or indirectly in acts of genocide, Rwanda reintroduced an ancient system of justice known as Gacaca. Gacaca combines a traditional approach to conflict resolution with modern legal principles such as trial by jury and prison sentences with the objective of revealing truth about the genocide, speeding up genocide trials and reconciling the country. Gacaca courts collect information relating to the genocide, categorize accused persons, and conduct trials within the community. Locally trained judges preside over trials and witnesses and juries are drawn from the villages in which crimes are alleged to have taken place. These courts have successfully brought a number of perpetrators to justice. While serious criticisms about meeting international fair trial standards have been directed at Gacaca, without the system it is estimated that it would have taken over 100 years to process all those awaiting trial in Rwanda’s prisons. [19]

Case Study 7
Traditional Justice, Continued

Mozambique. Magamba: After the atrocities committed in the civil war in Mozambique from 1977-1992, the government decided that, in the interests of peace, acts committed during the war should be entirely forgotten. No trials or truth commissions have ever been established in Mozambique and many who committed atrocities have been permitted to retain high-ranking positions of public office. To heal the country’s war-torn population, communities have pursued a traditional reconciliation process known as Magamba, which focuses on forgiveness. As part of the Magamba process, victims of abuses are described to be possessed by a spirit which forgives the perpetrator, thus allowing parties in conflict to live together in peace. While Magamba has often provided comfort and healing to victims of the conflict, perpetrators of gross violations of human rights in Mozambique have escaped formal punishment entirely. [20]

What are the differences between the processes in Rwanda and Mozambique?
What are the arguments for and against the use of traditional justice methods in each of these contexts?
How has the need for justice been balanced with the reconciliation and recovery of a war-torn country?
How do you think victims of human rights abuses might respond?
How would you balance the needs of victims with the healing of the country as a whole?
In what ways and to what effect can different systems of justice be used together in the aftermath of violent conflict?


V. ALTERNATIVE APPROACHES TO JUSTICE
VI. Prosecuting Genocide and Sexual Violence

Rationale
To introduce students to the sensitivities of prosecuting rape and genocide as well as to the social and legal challenges relating to dealing with victims and witnesses.

Objectives
• Learn about different categories of crimes
• Learn about prosecuting gender-based violence as an international crime

Resources
• Video Clip: Sexual Violence Offences (Hassan Jallow)
• Video Clip: The Challenges of Prosecuting Rape (Linda Bianchi)
• Video Clip: The Ethics of Calling Witnesses (Charles Phillips)
• Case Study: The Decision in the case of Jean-Paul Akayesu (ICTR)

Suggested Time
2 hours

Teach and Discuss  Genocide

• Discuss with students the legal definition of genocide (as codified in the Genocide Convention and the Rome Statute of the International Criminal Court).

  o Article 2: Genocide means acts committed with “the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.”[21]

• What are some of the legal or political challenges you might associate with this definition?

  o Draw attention to the ‘numbers problem’ arising from the phrase “in whole or in part.” How many individuals need to be killed to constitute genocide?
  o Discuss the difficulty of proving intent. How do you prove that someone intended to annihilate an entire group?

• Examine the Elements of Crimes accompanying Article 6 of the Rome Statute of the International Criminal Court. [22]

  o How has the understanding of genocide evolved over the years?
Another lesson I believe is that we have also recognized is particularly in relation to sexual violence offenses. We have not been as successful as we would have wished. We have not had a very good record of convictions for sexual violence, even though right from the beginning this Tribunal broke fresh ground in the Akayesu case by holding that sexual violence can constitute genocide. But we haven't gone much beyond that. And the lesson we have learned in respect to sexual violence is that it is important and necessary to prosecute it, but you have to fast track it—you have to give it priority in terms of prosecution. If the cases don't get to court within a number of years, you find that by the time you are ready to go to court, your victim is not interested in justice, is really not interested in justice. You want to push through the justice line. The victim has resettled, is remarried, has family—they don’t want to reopen those issues anymore. And that’s one of the problems we’ve had. They don’t want to reopen. You want to push the justice angle but they say no, look, ‘I don't want to reopen that chapter again’ and you end up therefore not being able to prosecute. So you need to, I think, to deal with sexual violence very early, at a very early stage, when people still, when victims still want justice, and they can still, you know, push the justice line.”

**Show and Discuss**

Watch the clips “Sexual Violence Offences” from the interview with Chief Prosecutor Hassan Jallow, “The Challenges of Prosecuting Rape” from the interview with Legal Advisor Linda Bianchi, and “The Ethics of Calling Witnesses” with Prosecutor Charles Phillips. What are students’ initial reactions?

Are you familiar with the concept of rape as genocide?
How could the crime of rape constitute an act of genocide? [23]

**Voices from the Rwanda Tribunal**

**Sexual Violence Offences (Hassan Jallow)**

“Another lesson I believe is... we have also recognized... is particularly in relation to sexual violence offenses. We have not been as successful as we would have wished. We have not had a very good record of convictions for sexual violence, even though right from the beginning this


had to make choices. And prosecuting genocide is a very complex and complicated matter, and garnering that kind of evidence is a monumental task. And so... I don’t think that rape and sexual violence was given a sort of secondary category, but where they had to make a choice, the choice to prosecute genocide as, you know, genocide was always taken. And if something was dropped, the rape and sexual violence was often the one charge dropped or not pursued, and it’s that that we’re trying to make a difference in now.”

“Akayesu was groundbreaking, and constantly we’re focused on ‘we did great in Akayesu.’ And we did—It was a great case. But then, after Akayesu, some of it is just that... there was a time when the ICTR staff was limited, and the resources devoted to the cases was limited, and so trial attorneys had to make choices. And prosecuting genocide is a very complex and complicated matter, and garnering that kind of evidence is a monumental task. And so... I don’t think that rape and sexual violence was given a sort of secondary category, but where they had to make a choice, the choice to prosecute genocide as, you know, genocide was always taken. And if something was dropped, the rape and sexual violence was often the one charge dropped or not pursued, and it’s that that we’re trying to make a difference in now.”

“The most difficult point for me as lead counsel was having to make decisions based upon further revelations that she makes to us. So she’s now told us her story, and we’re thinking ‘What are we going to do with it?’ So they tell me about her story, and I turn and I look at her and I say, ‘Well, are you willing to come to court to say that?’ And she goes, ‘Well, I have a problem.’ ‘What is the problem?’ ‘I never told my husband about it.’ ‘You never told your husband? Why not?’ ‘Well if I told him, I wouldn’t have a husband today.’

So right there I’m faced with an ethical dilemma. I have a good witness, I have a victim to a crime, I need to secure a conviction, she’s a convincing witness. But then she’s posed a question to me, which means that, in essence, if I put her on that stand, and I risk putting her on the stand, and I know we have witness protection and we have pseudonyms and we have anonymous protections and other things, but it’s still a decision that I have to take, as to whether or not I want to take the responsibility of this woman’s husband finding out what had happened to her and risking her marriage at the expense of her testifying on behalf of Mr. Muhimana.

And those were some of the difficult challenges and decisions that one had to make in the field. In the end I dropped her. Because I wasn’t sure that I was able to take on that responsibility personally, to be able to say to this woman, ‘Well, if you haven’t told your husband this, I’m not going to risk bringing you to Arusha, and risk the information leaking to your husband, and you having to cope with a domestic situation that emanates from what you are trying to do for humanity and for international criminal justice.’ Typical example of a grueling day in the field.”

VI. PROSECUTING GENOCIDE AND SEXUAL VIOLENCE
Under what conditions might the crime of rape constitute genocide?

What are the differences between rape as a crime of genocide versus rape as a crime against humanity?

What problems and sensitivities do the clips highlight related to dealing with victims and witnesses of sexual violence?

Why does Chief Prosecutor Hassan Jallow assert that rape cases should be dealt with immediately? Do you agree? Can you think of any reasons to disagree with this position?

Does anything in these three clips surprise you?

Are there any other difficulties or issues you might encounter while dealing with witnesses or victims of sexual violence?

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**Teach**  Rape as Genocide

Give a brief synopsis of the Akayesu case.

**Case Study 8**

**Decision in the case of Jean-Paul Akayesu**

Jean-Paul Akayesu was the Mayor of Taba, Rwanda, from 1993-1994 and commanded the police force. Mr. Akayesu was found guilty by the ICTR in 1998 of supervising the widespread rape and massacre of Tutsi women and children in Taba. His case resulted in the groundbreaking ruling defining rape as an act of genocide.

**THE PROSECUTOR VERSUS JEAN-PAUL AKAYESU**

Case No. ICTR-96-4-T, 2 September 1998

“In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.” [24]

Glossary of Key Terms

**Amnesty:** A general pardon for crimes committed.

**Appeal:** To request a case be heard by a higher authority or tribunal; to contest an initial judgment.

**Bulu-bulu:** A traditional method of dispute resolution used in Fiji.

**Gacaca:** A traditional method of dispute resolution used in pre-colonial Rwanda and reintroduced in the aftermath of the Rwandan genocide.

**Immunity:** Exemption from legal prosecution or criminal liability.

**Impunity:** Exemption from punishment.

**Jurisdiction:** The right and power to interpret and apply the law.

**Magamba:** A traditional method of dispute resolution based on forgiveness and spiritual healing in Mozambique.

**Nuremberg trials:** The trials of prominent Nazi leaders conducted by the allied forces in the aftermath of World War II. Twenty-two trials were held in the city of Nuremberg, Germany, between 1945-1949.

**Prosecute:** To initiate civil or criminal action against an individual suspected of committing a crime.

**Transitional justice:** The different approaches to justice in situations following violent conflict or serious violations of human rights. Transitional justice can take various forms, both judicial and non-judicial. It often marks the transition from violence and political instability to peace.

**Tribunal:** A court of justice.

**Universal jurisdiction:** The principle of international law that grants states jurisdiction to prosecute individuals for international crimes committed outside the territorial boundaries of those states, regardless of the individual’s nationality or country of residence.
<table>
<thead>
<tr>
<th>Video Clip</th>
<th>Interviewee</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Not Revenge</td>
<td>Hassan Jallow (Chief Prosecutor)</td>
<td>Hassan Jallow describes the duty of the ICTR to provide justice for the people of Rwanda</td>
</tr>
<tr>
<td>Rwandan Frustration with the Tribunal</td>
<td>Mandiaye Niang (Senior Legal Advisor)</td>
<td>Mandiaye Niang speaks about the resources at the disposal of the ICTR and Rwanda’s domestic justice system</td>
</tr>
<tr>
<td>Rwandan Participation in the Tribunal</td>
<td>Charles Phillips (Prosecutor)</td>
<td>Charles Phillips discusses the initial decision to exclude Rwandans from the ICTR</td>
</tr>
<tr>
<td>Retributive and Restorative Justice</td>
<td>Adama Dieng (Registrar)</td>
<td>Adama Dieng highlights the ICTR’s focus on punitive justice and considers other approaches</td>
</tr>
<tr>
<td>Sexual Violence Offences</td>
<td>Hassan Jallow (Chief Prosecutor)</td>
<td>Hassan Jallow comments on the implications for victims of timely prosecutions for gender-based crimes</td>
</tr>
<tr>
<td>The Challenges of Prosecuting Rape</td>
<td>Linda Bianchi (Legal Advisor)</td>
<td>Lindia Bianchi draws attention to the politics of prosecuting rape as genocide</td>
</tr>
<tr>
<td>The Ethics of Calling Witnesses</td>
<td>Charles Phillips (Prosecutor)</td>
<td>Charles Phillips discusses his interactions with victims and witnesses to sexual violence</td>
</tr>
<tr>
<td>Case Study</td>
<td>Country</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1 The Practice of Bulu-bulu in Fiji</td>
<td>Fiji</td>
<td>Assessing the application of Bulu-bulu to rape cases</td>
</tr>
<tr>
<td>Pg. 13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Piracy on the Somali Coastline</td>
<td>Somalia</td>
<td>Thinking about territorial and subject jurisdiction in international law</td>
</tr>
<tr>
<td>Pg. 18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 A Question of Torture</td>
<td>Nepal</td>
<td>Understanding state responsibility for human rights violations</td>
</tr>
<tr>
<td>Pg. 19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 The Nuremberg Trials</td>
<td>Germany</td>
<td>Introducing the international criminal responsibility</td>
</tr>
<tr>
<td>Pg. 23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Amnesties and Truth Commissions</td>
<td>South Africa</td>
<td>Examining the establishment of an historical record and the granting of amnesty</td>
</tr>
<tr>
<td>Pag. 34</td>
<td>El Salvador</td>
<td></td>
</tr>
<tr>
<td>6 Domestic Trials</td>
<td>Argentina</td>
<td>Thinking about judicial independence in the aftermath of gross human rights violations</td>
</tr>
<tr>
<td>Pag. 35</td>
<td>United States</td>
<td></td>
</tr>
<tr>
<td>7 Traditional Justice</td>
<td>Rwanda</td>
<td>Discussing the role of alternative or traditional dispute resolution methods in periods of transition</td>
</tr>
<tr>
<td>Pag. 36-37</td>
<td>Mozambique</td>
<td></td>
</tr>
<tr>
<td>8 Decision in the case of Jean-Paul Akayesu</td>
<td>Rwanda</td>
<td>Introducing the possibility of prosecuting rape as genocide</td>
</tr>
<tr>
<td>Pag. 42</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>