March 1997

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WORKING WITH RWANDA TOWARD THE DOMESTIC PROSECUTION OF GENOCIDE CRIMES

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This paper reflects the views and opinions of the authors only and is not intended to speak for the U. S. Marine Corps, the U. S. Navy, or the Department of Defense.

This Commentary discusses the prosecution of the individuals accused of the genocide crimes that occurred in Rwanda during the summer of 1994.1 The primary focus of this Commentary will be an analysis of the efforts of Rwanda's government to affect domestic prosecution of genocide criminals, with some reference to the work of the International Tribunal.2 Part I provides, as a framework for our observations, a brief overview of the International Training Detachment (ITD) program in Rwanda. Part II describes the goals of the ITD's latest trip, and examines the state of affairs in Rwanda during that time. Part III discusses the ITD's latest work regarding the domestic prosecution of genocide crimes in Rwanda. Finally, Part IV assesses the merits of the ITD's work.

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and remarks on future challenges that Rwandan prosecutors will face.

I. THE INTERNATIONAL TRAINING DETACHMENT

The International Training Detachment is a military organization headquartered in Newport, Rhode Island.\(^3\) The ITD was created in 1990 in response to a congressional mandate for a program reflecting the United States' concern for human rights issues\(^4\) in the military context. Intending to focus on the military, the United States State Department offered the administration of the program to the Department of Defense. The United States Navy took charge of the program and has been developing it ever since.\(^5\)

The ITD began its work with four countries in 1991, and now is engaged in working relationships with sixty-two countries around the world.\(^6\) The ITD consists of a detachment staff made up of one lawyer from each of the uniformed services and two civilians.\(^7\) There are also training teams, augmented with active duty and reserve military members, who each meet the needs of the particular country the ITD may be visiting.

Initially, the ITD works with each country in three phases. The first phase consists of a visit to a host country by a two member team which meets with key members of the government and gathers information to make an assessment of the needs of that nation.\(^8\) In the second phase, the host country sends a delegation of

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\(^3\) See Bruce T. Smith, Uncle Sam's Newest Recruits: A Look at the Three JAG Schools, Their Curricula, and Continuing Education Programs, 42-SEP FED. LAW. 22, 26 (1995) (outlining various educational JAG programs currently in force).


\(^5\) See Smith, supra note 3, at 23 (noting Navy is manager for joint-service, congressionally mandated Expanded International Military Education and Training Program, supervised by ITD).

\(^6\) See id. at 26 (stating faculty sent to teach United States Constitution, civilian control of military, human rights, and American military justice in Ukraine, Romania, Czech Republic, Balkans, Senegal, Sierra Leone, Zimbabwe, Bolivia, Columbia, India, Surinam, Chad and Poland).

\(^7\) See id. (explaining organization of ITD and make-up of its staff).

\(^8\) See id. (noting that ITD targets senior government leaders worldwide to benefit from programs).
five to seven individuals to the United States for one week to survey pertinent institutions and discuss with United States personnel issues that are of importance to the delegation. During this second phase, the delegates help develop a curriculum for a one week seminar that the ITD team and host country's instructors will conduct in the delegates' country. The third phase is a seminar which is designed to reach an average of sixty participants.\(^9\) The seminar allows the host country's government to assemble a formidable number of executive level administrators at one time. The goal of the seminars were to implement the institutional changes that the host government desired. After the first three phases, each country developed its own pattern of involvement with the Detachment. While some countries have scheduled multiple weeks of work in a fiscal year, others had maintained an annual pattern. The maintenance of a working relationship with each country was essential to the program and the ITD's efforts, regardless of the frequency of the visits.

Despite being a military organization, the ITD sought and was permitted to work with civilians in every country. Regarded as essential to the success of the program, the ITD often brought civilians into the program despite the objections of some host country military members.\(^10\) The Detachment attempted to involve participants from the executive, legislative, and judicial branches of each country to promote the broadest possible base from which to implement desired changes.\(^11\) Typical goals of the programs have been the implementation of a military justice system and the establishment of a law of war training program, to promote the military's protection of human rights.\(^12\)

In the spring of 1994, just weeks before the worst of the fighting broke out in Rwanda,\(^13\) the ITD completed the third phase of the

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\(^9\) See id. (explaining that ITD provides broad range of seminars and programs focused on rule of law and civilian control).

\(^10\) See id. (discussing how countries send their best attorneys to United States for immersion in military legal system and American culture).

\(^11\) See id. (noting foreign governments send their most qualified attorneys to United States for immersion into American governmental policies and cultural policies).

\(^12\) See generally id. at 25 (discussing goals and success of ITD in exporting American law and culture).

\(^13\) See Robert C. Johansen, Reforming The United Nations to Eliminate War, 4 TRANSNAT'L L. & CONTEMP. PROBS. 455, 478 (1994) (arguing rapid deployment of international forces to Rwanda in April of 1994 may have saved tens of thousands of lives); see also Morris, supra note 1, at 350-51 (describing mass killings orchestrated by Rwandan government to avoid broadening of power).
initial program in that nation. Many participants had great hopes for change, in light of the fact that several Hutu and Tutsi leaders attended the seminar and discussed their differences regarding the future of the country. Unfortunately, that hope was misplaced and unimagined horrors followed.

II. ITD's Participation in the Affairs of Rwanda

A. The Goals of the ITD Mission

The ITD returned to Rwanda in the spring of 1996, after the country stabilized. The country called upon the program to re-establish ties with the Rwandan government and military personnel, who were tasked with prosecuting those individuals accused of committing atrocities during the summer of 1994. The program abandoned the initial request for it to work with military members in developing a human rights training program when the Rwandans were inundated with human rights training from other sources. To paraphrase one Army Major, the Rwandans did not need to hear the definition of a war crime again; they knew that crimes were committed. What they were interested in, however, was how to go about prosecuting people accused of the crimes.

In light of this development, the ITD began providing a crash course in how to conduct investigations. With only one week in which to conduct its work, the ITD provided a general overview of

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14 See Smith, supra note 3, at 26 (noting that military men and women involved take with them superb legal expertise and sense of hope for people struggling to develop democratic legal system).
17 See Wang, supra note 1, at 196-97 (discussing various problems of law requiring Rwandan government to prosecute violators of humanitarian law).
18 See Anthony Goldman & Michela Wrong, Exodus Averts Disaster in Zaire, FIN. TIMES, Nov. 16, 1996, available in 1996 WL 13948808, at *4 (explaining that hundreds of agency relief vehicles were on way to Rwanda, swamped with refugees); see also James C. McKinley, Jr., 76,000 Await Trial in Rwanda Slayings, AUSTIN AMER.-STATESMAN, June 24, 1996, available in 1996 WL 3434237, at *3-4 (explaining that United Nations has spent nearly nineteen million dollars in foreign aide to train prosecutors, rebuild courthouses and expand prisons).
investigative procedure, stressing the relationship between the investigator and the prosecutor. Though the majority of the participants in this program were young and inexperienced, they were motivated to learn and most benefited more from the week than expected. Most beneficial to the participants were simple checklists, which provided a flow chart of an investigation, that ITD developed during the course of the week. Very simply, the flow chart provided a methodology for dealing with the crime scene. That crime scene was most often described as the entire city of Kigali, and almost as often, the country of Rwanda.

While the first seminar since the massacre was occurring, the Rwandan government was debating the particulars of a new law to address the events of 1990-1994. This law was the focus of the ITD's second trip to Rwanda in September of 1996. The goal of this two week mission was to review the newly-passed law, in coordination with Mr. Gerald Gahima, the Deputy Minister of Justice, with investigators, prosecutors and judges, and to develop an approach for its implementation. The ITD's general approach was to review the provisions of the law, then come to a mutual agreement as to the meaning and intent of each aspect of the law. The second task was to apply the provisions of the law to a fact pattern and conduct a moot court with the forty-five participants of the seminar.


23 See id. (discussing Ministry of Justice's plan to conduct information campaign to explain new law to judicial and civilian authorities).
B. September 1996: The State of Affairs in Rwanda

Rwandans estimate that their own countrymen slaughtered as many as one million people.\(^{24}\) It appears that the actual count ranges from five hundred thousand to eight hundred thousand, all massacred in approximately ninety days with machetes and farm tools.\(^{25}\) Many publications explore how this massacre came to pass; what follows is a condensation of several accounts.\(^{26}\)

The history of Rwanda is straightforward, compared to many other African nations. The Hutus and the Tutsis share the same culture, language, and religious beliefs.\(^{27}\) They even shared the same king (the Tutsi Mwami).\(^{28}\) Some historians argued that it was inaccurate to call them different tribes.\(^{29}\) One may trace the genesis of the most recent massacre back to the turn-of-the-century, when the Germans took Rwanda as a colony.\(^{30}\) The Belgians succeeded the Germans in 1916, by taking Rwanda with military

\(^{24}\) See Akhavan, supra note 15, at 328 (estimating one million of population of 7.5 million slaughtered in less than three months); Morris, supra note 1, at 350 (estimating that from April 6 to July 17 1994, between one half million and one million Rwandans were butchered by their neighbors); John Robinson, Crime, Culpability, And Excuses, 10 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1, 4 (1996) (noting in spring of 1994 Hutu Rwandans slaughtered eight hundred thousand Rwandans (citing ALAN DESTEXHE, RWANDA AND GENOCIDE IN THE TWENTIETH CENTURY (1995))).

\(^{25}\) See GERALD PRUNIER, THE RWANDA CRISIS, HISTORY OF A GENOCIDE 264-65 (1995). The estimated population of Rwanda in April of 1994 was 7,776,000, twelve percent, or 930,000, of which were Tutsi. Id. at 264. Only approximately 130,000 Tutsi survived the massacre. Id. at 265. The combined killing of Tutsi and moderate Hutu resulted in eleven percent of the population being killed. Id.


\(^{27}\) See Maguire, supra note 26, at 88-89 (explaining that Hutu and Tutsi share common languages, religions, culture and history); see also Henry J. Robinson, III, “Failed States,” Self-Determination, and Preventative Diplomacy: Colonialist Nostalgia and Democratic Expectations, 10 TEMP. INT’L & COMP. L.J. 1, 16 (1996) (explaining that early in their history, Hutu and Tutsi had peaceful relationship, “sharing language, religion and military alliances”); Wang, supra note 1, at 179 (describing arrival of Tutsi in Rwanda and beginning of sharing of culture and language of Hutu).

\(^{28}\) See Robinson, supra note 27, at 17 (noting Tutsi king consolidated authority throughout Rwanda).

\(^{29}\) See DESTEXHE, supra note 24, at 36 (noting that Hutu and Tutsi cannot correctly be called ethnic groups).

\(^{30}\) See Maguire, supra note 26, at 54 (discussing arrival of Germans in Rwanda in 1892 and colonial rule from 1899-1916); see also Robinson, supra note 27, at 16-17 (explaining colonial rule of Germans over Rwandans).
force, and the League of Nations officially gave Belgium control of Rwanda after Germany lost World War I.\textsuperscript{31}

Both the Germans and Belgians believed in a social theory popular in the early part of this century.\textsuperscript{32} Essentially, they believed that one can tell a man’s intelligence and abilities by sight.\textsuperscript{33} Typically the Tutsi people have lighter skin. They have small skulls, thin lips and straight noses.\textsuperscript{34} Some believe the Tutsi are descendants of Noah himself, and that they are a dignified race of “white-coloreds.”\textsuperscript{35} By contrast, the Hutu people generally are short and stocky.\textsuperscript{36} Their skin is very dark, and they have thick lips and flat noses.\textsuperscript{37} Thus, many considered the Hutus to be “sub-human” negroes.\textsuperscript{38} The bottom line was that since the Tutsis looked more like the European whites than the Hutus, it followed that the Tutsis must be smarter. As a result, the European colonists educated the Tutsis and placed them in administrative positions in the colonial government.\textsuperscript{39} The Europeans left the Hutus to farm the land despite the fact that the Tutsis owned most of the cattle.\textsuperscript{40} By the end of the 1950’s, the pseudo-ethnic division between the Hutus and Tutsis became a real division under the policies and programs of the Belgian colonial rulers.\textsuperscript{41} Both sides succumbed to fifty years of theory and practice and the Hutu peasants grew resentful.\textsuperscript{42} The Tutsis, the “superior race,” grew arrogant.\textsuperscript{43}

\textsuperscript{31} See generally Prunier, supra note 25, at 23-26 (describing arrival of Germans in Rwanda and their rule until 1916 Belgian conquest and League of Nations Mandate of 1919).
\textsuperscript{32} See generally id. at 37-39 (discussing social theory of Belgians and its impact on Rwandese society, as well as resulting racial prejudices).
\textsuperscript{33} See generally Destexhe, supra note 24, at 38 (noting that German and Belgian colonizers developed system of “tribes” based upon aesthetic impressions).
\textsuperscript{34} See id. at 39 (describing Tutsi as slim, with straight noses, high foreheads and thin lips, who are distant, reserved, polite and refined in personality).
\textsuperscript{35} See id. at 38 (describing belief that Tutsi, or Hamites, descended from Noah).
\textsuperscript{36} See id. at 39 (describing how Hutu are assimilated to the Bantu, or “negroes,” who play role of serfs in society).
\textsuperscript{37} See id. (noting Hutu possess characteristics of negroes: flat noses, thick lips, low foreheads and brachycephalic skulls who, “like children,” are “shy and lazy and usually dirty”).
\textsuperscript{38} See id. (discussing role of Hutu as serfs in society).
\textsuperscript{39} See id. at 41 (noting that Belgians’ main priority in Rwandan schools was educating Tutsi students).
\textsuperscript{40} See id. at 39 (describing that, through customs of ubuhake, or right to own cattle, transferred from father to son, assured Tutsi domination).
\textsuperscript{41} See id. at 40 (noting that Belgians purposefully promoted administrative reforms that kept chieftdoms of Rwanda under Tutsi control).
\textsuperscript{42} See id. at 42 (discussing how Hutu developed own theory of “Ethiopian invaders,” in which they characterized Tutsi as colonizers along with Belgians).
\textsuperscript{43} See id. (noting that Tutsi succumb to, and sometimes backed, mono-ethnic theories of origin).
In 1926, the Belgians went so far as to issue identification cards to all Rwandans. On those cards, the Rwandans had to declare whether they were Hutu or Tutsi, based on their father's ethnicity, as there were, in fact, some "mixed" marriages. This declaration cemented the Hutus' second-class citizenship. The declaration became the death sentence for Tutsis who, nearly seventy years later, were stopped at roadblocks and rounded up by the extreme Hutus for slaughter.

In 1959, a Hutu revolt led to the killing of twenty thousand (mostly Tutsis) Rwandans and a mass exodus of Tutsis to Uganda, Burundi, and the Belgian Congo (now the Democratic Republic of Congo). Around that time, the Belgians realized that they had lost control of their colony and granted Rwanda its independence. From this point on, the Tutsis became the scapegoats for any problems in Rwanda, as one does not easily forget decades of oppression. While the Tutsi in Rwanda faced persecution, the Tutsis in Burundi maintained their power, due to the strong control of the Burundi military. Thus began an interesting dichotomy in the fate of Hutus and Tutsis in the neighboring countries of Rwanda and Burundi.

In 1963, the Rwandan Hutu government beat back a poorly planned Tutsi attack on the Rwandan exiles in Burundi, leading to the reprisal killings of an estimated ten thousand Tutsis in Rwanda. From 1963 to 1973, Rwanda's President Kayibanda, a Hutu, ruled the country much like the prior kings, requiring the unquestioning obedience of the Rwandan people. This rule

44 See id. at 40 (describing policy of racial theory resulting in issuance of identification cards to suppress Hutu).
45 See id. at 37 (discussing various classifications of ethnic groups, or "castes").
46 See id. at 45 (describing beginning of rising political tensions in early 1990).
47 See id. at 43 (discussing revolutionaries' call for the "return to Ethiopia of the Tutsi colonisers").
48 See id. at 43-44 (describing turning point in Rwandan history as large number of Tutsi exiled).
49 See id. at 44 (noting independence declared in 1962, and Hutu then monopolized power); see also Prunier, supra note 25, at 54 (discussing formal declaration of independence).
50 See generally Destexhe, supra note 24, at 44 (discussing treatment of Tutsi in Rwanda following declaration of Rwandan independence).
51 See generally id. (noting quota imposed on Tutsi who were allotted only ten percent of places in schools, universities and civil service posts).
52 See Prunier, supra note 25, at 56 (feeling loss of control over situation, exiles invaded Bugesera, but were beaten back and ten thousand Tutsi were slaughtered).
53 See id. at 57 (noting attack by exiles, with subsequent Hutu victory, strengthened President's political position).
would later play an integral part in the 1994 genocide. When President Kayibanda felt his power slipping in 1972, he attempted to take advantage of the problems in Burundi.\(^{54}\) In that year, the Burundi’s Tutsi-dominated army killed nearly two hundred fifty thousand Hutus.\(^{55}\) To maintain power, President Kayibanda tried to stir up Hutu resentment of the Tutsis in Rwanda. Ultimately, he failed and the Rwandan Army Major, General Habyarimana, a fellow Hutu, overthrew Kayibanda in a bloodless coup.\(^{56}\)

The exiled Tutsis, and dissident and moderate Hutus, organized the Rwandan Patriotic Front (RPF) in 1988.\(^{57}\) By 1990, the Hutus had become more radical, as the RPF seriously challenged the Hutus’ monopoly of power. During 1990, the RPF attacked Rwanda from Uganda, but the Rwandan army (known as the FAR - Forces Armees Rwandaises) repelled the RPF with help from French and Zairian troops.\(^{58}\) Following this conflict, the countries signed a cease-fire agreement.\(^{59}\) The agreement was largely ineffective, however, and, as a result, thousands of Tutsis died during sporadic and scattered incidents between 1991 and 1993.\(^{60}\)

The FAR then armed and trained ordinary peasants to become civilian Hutu militias (or “Interahamwe” - “those who stand together”).\(^{61}\) In 1992, the countries signed another cease-fire agreement and negotiations began in Arusha, Tanzania between the RPF and President Habyarimana’s regime.\(^{62}\) More killings oc-

\(^{54}\) See id. (noting President Kayibanda did not forget successful victory over Hutu exiles when he tried to reproduce that victory in late 1972 into early 1973).

\(^{55}\) See generally id. at 60-61 (discussing President’s various attempts to keep hold on political power, as partial result of massive massacre of Hutu).

\(^{56}\) See id. at 60-61, 198 (describing bloodless coup of Major-General Juvénal Habyarimana on July 5, 1973, resulting in widespread popular relief).

\(^{57}\) See id. at 72-73 (discussing formation of RPF, offensive organization dedicated to return of exiles); see also Destexhe, supra note 24, at 79 (pinpointing creation of RPF as occurring in 1988).

\(^{58}\) See Destexhe, supra note 24, at 52-53 (discussing involvement of France in stopping RPF’s advances in 1992 and February of 1993).

\(^{59}\) See Prunier, supra note 25, at 91 (noting document drafted to allow Rwandan government delegates to visit Uganda and select candidates for repatriation exercise by November of 1990).

\(^{60}\) See id. (fearing loss of support from refugees, Rwigyema, ex-commander in chief, spread rumors as part of conspiracy of his own power, resulting in attacks and civil war).

\(^{61}\) See id. at 165 (discussing France’s role in organizing notorious Interahamwe, responsible for genocides of April and May of 1994).

\(^{62}\) See Destexhe, supra note 24, at 80 (pinpointing signing of peace accords between RPF and government on July 12, 1992).
curred in Burundi during this period, however, causing thousands of Burundi Hutus to flee to Rwanda in early 1993.63

In that year, the RPF again attacked the FAR, but with greater success than before.64 Despite help from French troops, President Habyarimana had to engage in negotiations.65 The Hutu-run government of Rwanda and the Tutsi RPF signed the Arusha Accords in August of 1993, but they never really had a chance to implement its provisions.66 Although the parties intended the Arusha Accords to provide peace for Rwanda and a sharing of power between the two factions, the existence of an integrated FAR and RPF army, the RPF attacks, and the peace negotiation process, led to the rise of Hutu extremists.67

The assassination of Burundi’s first freely-elected Hutu president occurred in October of 1993.68 A moderate Hutu, the president’s death frustrated Burundi’s Hutu radicals and Tutsi extremists alike.69 His death set off massive killings of both Hutus and Tutsis in wave after wave of retribution in Burundi.70 This uprising, in turn, allowed the Hutu extremists in Rwanda to begin a propaganda campaign against the Tutsis in Rwanda.71 On April 6, 1994, Rwandan President Habyarimana and Burundi’s new President Ntariyamira were returning to Rwanda, after meeting with other regional leaders.72 Those leaders had been pressuring President Habyarimana to implement the power-sharing Arusha Accords.
Instead, two missiles took out the plane carrying the two men as it approached Kigali Airport. In an ironic twist, the plane crashed into the garden of President Habyarimana’s own home. It was believed, at first, that Tutsi rebels shot down the plane. The prevailing belief today is that Hutu extremists, who opposed the Arusha Accords, were responsible. The genocide started within an hour of the plane crash.

Working off “death lists,” prepared long in advance by the Hutu government, the Rwandan army and the Interahamwe militia went house-to-house and killed Tutsi men, women, and children. The militia also set up roadblocks around the country and demanded identification papers from all who tried to pass. The identification cards became death warrants. On the radio, the main tool for communication in a country with a low literacy rate announcers and soldiers urged... “[i]t is your civic duty to kill the Tutsi cockroaches.” They also exclaimed, “[k]ill the Tutsi and your problems will be over;” “[c]ut down the tall trees,” and; “[t]he grave is only half full,” referring to past Tutsi massacres. The peasants of the society, who the government had taught to follow orders for centuries, did just that. This genocide lasted three months.

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\(^{73}\) See id. (discussing reasons for meeting between political leaders).

\(^{74}\) See id. at 212 (describing firing of missiles and direct hit on Presidents’ airplane); see also U.N. SCOR, Oct. 1, 1994, para. 43, U.N. Doc. S/1994/1125 (1994) (including letter from Secretary-General to President of Security Council discussing airplane crash); Morris, supra note 1, at 351 (describing airplane crash of Presidents and ensuing events).

\(^{75}\) See Prunier, supra note 25, at 212 (noting plane crashed into garden of Habyarimana’s house).

\(^{76}\) See id. at 213 (explaining that there are no certainties as to who killed President and detailing various theories).

\(^{77}\) See id. at 222-23 (discussing possibility that Hutu extremists were responsible for killing).

\(^{78}\) See id. at 229 (describing immediate appearance of roadblocks and killings).

\(^{79}\) See id. at 231 (noting lists were long and detailed and targeted broad range of innocent Tutsi).

\(^{80}\) See id. at 243 (describing setting up of roadblocks and house-to-house searches to kill Tutsi); see also Interviews by authors with seminar participants, Rwanda (1996) (on file with authors) (discussing aftermath of President’s plane crash).

\(^{81}\) See Prunier, supra note 25, at 224 (discussing role of “Radio Television Libre des Mille Collines,” run by Hutu extremists, in encouraging killings).

\(^{82}\) See id. (discussing propaganda by media in encouraging massacres); see also Interviews by authors with seminar participants, supra note 80 (discussing messages disseminated by media that encouraged killings).

\(^{83}\) See Prunier, supra note 25, at 236-37 (noting massacres sweeping across country was in fact genocide).
Forty-eight hours after the Presidents’ deaths, and the beginning of the genocide, the RPF started an all-out war. Its advance, and eventual victory in July, saved the Tutsi people from extinction. An estimated one million people exited Rwanda. The Hutu extremists (the Rwandan army and militia) fled to Zaire with the innocent Hutu civilians and took charge of the refugee camps. The new Tutsi-led government urged the refugees to come home without reprisal, but the camps’ rulers would not allow such a result. In July, a cholera epidemic began killing thousands of refugees, until international aide arrived.

The ITD received briefing reports, prior to leaving for Rwanda in 1996, that read much like the newspapers. The military situation had stabilized, there were thousands in jail, and even more refugees just beyond the boarders of the country. The reports described the surroundings as devastated, destroyed, ruined, and one was left imagining a wasteland populated by a dying people who lacked the ability to carry on, without international aide. What the ITD found, however, was at odds with the media’s portrayal of both the country and its people.

The support from the international community was improving the situation. The Rwandans, however, were the ones making the real effort to undo the damage that the fighting had brought, and to bring stability back to the Country. The first thing that one appreciated, having made multiple trips to Rwanda during this period of reconstruction, was the continuing redevelopment of the city. The Rwandans replaced street lights, resurrected traffic signs, patched roads, and repaired buildings. All of this construc-

84 See id. at 268 (noting RPF started military operations again on April 8, 1994).
85 See generally id. at 265-68 (describing trauma suffered by large numbers of refugees).
86 See id. at 312-16 (estimating number of refugees from confusion of available information).
87 See id. at 298-99 (discussing overwhelming confusion and complexities surrounding large number of refugees).
88 See generally id. at 299-305 (detailing onset of cholera epidemic as new government took over in July of 1994).
89 See id. at 298 (describing horrors as refugees had no other place to go but to line up along roadsides); see also Teson, supra note 15, at 364 (describing conditions in refugee camps).
90 See Prunier, supra note 25, at 299 (noting refugees lost all possessions, including homes, in massacres).
91 See Akhavan, supra note 15, at 239-40 (noting various international efforts aimed at training judicial personnel and developing judicial institutions); Jason A. Dzubow, The International Response to the Civil War In Rwanda, 8 GEO. IMMIGR. L.J. 513, 517-18 (1994) (discussing role of international community in rebuilding Rwandan society).
tion gave one the sense that the Rwandans were re-establishing a sense of order, developments that were indicative of the processes of a people seeking to re-establish a functioning government.

Just as the people suffered, most of the buildings that housed the agencies and officers of the government also suffered damage, if not complete destruction. From legislative offices to local magistrates' offices, the places where people went to create and enforce the law were in shambles, with only the jails surviving. This devastation of physical resources, and limited human resources, severely impeded the enormous task of processing those accused of crimes.

One accomplishment, however, was the passage of a long-debated law that focused on the treatment of individuals accused of participating in the massacre of 1994. There were approximately eighty thousand people in jail, held for allegedly committing these crimes, when ITD arrived in Rwanda in September of 1996. The government detained roughly eight-hundred more each week, five hundred of which were later released. Thus, two years after the genocide, the government detained approximately twelve hundred new suspects each month. One prison official told ITD that, short of committing murder, it was unlikely that the government

92 See Indictment of Eight in Rwanda Slaughter First Step for Tribunal, CHICAGO TRIB., Dec. 12, 1995, at C2 (discussing overpopulation of Rwanda's jails with people yet to be tried by justice system for genocide crimes); Rwanda Kicks Out UN Troops, THE VOICE, Dec. 5, 1995 (noting swamped jails another factor in devastation to justice system in Rwanda). See generally Ruth Wedgwood, Retaliation in Rwanda, CHRISTIAN SCI. MONITOR, Dec. 20, 1995, at 20 (explaining that there are no working courts or available judges in Rwanda, but greatly overcrowded jails).

93 See Rwanda Monthly Information Report, supra note 22. The law defines four categories of criminals: Category One includes four sub-parts: a) the planners, organizers, instigators, and leaders of the genocide; b) persons in position of authority - political, religious or military - who perpetrated or fostered such crimes; c) notorious murderers who acted with zeal or excessive malice, and; d) those who committed acts of sexual torture (while there was no precise definition of the term "sexual torture," common law rape is included in the offense). Id. Category Two contains perpetrators, conspirators or accomplices of intentional homicide or of serious assaults causing death. Id. Category Three includes persons whose acts or participation make them guilty of serious assaults (but not resulting in death). Id. Category Four includes persons who committed offenses against property, or looters. Id.


95 See id. (discussing government detention of individuals accused of genocide crimes).

96 See id. (describing imprisonment of individuals accused of genocide crimes).
would arrest individuals in Rwanda simply because there is no place to put the accused. A visit to the Kigali prison proved this to be true. The prison revealed wall-to-wall people, with the prisoner hierarchy determined by those who had to stand, those who could sit, those who could lie down, and those who could lie down in the shade.

In light of these statistics, the Rwandans were, and still are, under constant pressure to address the issue of processing the accused. The new law, designed to allow the few legal professionals that remained in the country to perform what can only be characterized as a daunting task, was a vehicle to accomplish this processing. It was no small feat that the government passed the law. Distinct factions in the Rwandan government were at odds over the sweeping reforms that came with the new law. Central to the arguments, though, was the guilty plea provision of the genocide law.

The guilty plea was not previously part of the Rwandan system, as it had not been part of the Belgian legal system. Most of the seminar participants simply did not appreciate a concept that many take for granted as a method to promote both efficient use of legal resources and responsibility for one's actions. Because of their lack of familiarity with the notion, the philosophical questions regarding the propriety of the new law consumed the participants, preventing their coming to terms with application of the law. In addition, for those who did focus on the application of the new law, their lack of appreciation for the need to achieve a cer-

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97 Interview by authors with Rwandan prison official, Rwanda (Sept. 1996) (on file with authors) (discussing that prisons were so overcrowded in Rwanda that persons committing lesser crimes were not arrested for lack of space). See Akhavan, supra note 15, at 348 (discussing prison population as major source of human rights violations).


99 See Rwanda Monthly Information Report, supra note 22 (setting forth definitions of genocide crimes, and various penalties for those crimes, as described in law).


101 See Rwanda Monthly Information Report, supra note 22 (noting plea bargaining arrangement available for persons tried for assaults causing deaths and violent assaults against persons).
tain level of efficiency in the administration of justice confounded them to a certain extent. This problem, of course, stemmed from the simple fact that a crowded docket, let alone a completely overwhelmed one, had never existed in Rwanda.

III. THE ITD PROGRAM

Based on the above circumstances, the ITD sought to accomplish three goals, in ascending order of importance: 1) Providing the seminar participants with a basic framework for the criminal justice process, from an investigation through prosecution; 2) disseminating, reviewing, and coming to an agreement over the substance of the new law, and; 3) conducting a moot court, to implement the new law in the manner that was agreed upon. While ITD did manage to accomplish its tasks, there were as many new questions requiring answers on the final day of the seminar as there were on the day of ITD's arrival.

ITD began its program with an overview of the criminal justice system for three reasons. First, the staff needed a better understanding of the people that ITD was working with. Their background, experience, and propensity to interact were all unknown. From experience, the average European-educated audience generally takes at least two days to warm-up to an American style of teaching. Second, the staff had to overcome such obstacles as the reluctance for disagreement and discussion amongst participants, and the contradiction of speakers, before participants could learn about the realities of the Rwandan legal system and what is required for a just trial of an individual.102 There was very little information available to the staff in the English language about the Rwandan or Belgium legal systems. While there was more available information concerning the French and European criminal justice systems,103 that information was hardly adequate for


working with prosecutors and judges in implementing the new law under the Rwandan system. Third, an overview of the justice system served to provide basic information about the law. As with the investigators the ITD worked with in July, checklists were popular items for all the participants. The trial notebook, witness interview, and courtroom security checklists all were necessary guideposts for the inexperienced, and the overview portion of the seminar addressed the basics in a short period of time.

The second critical element of our program was an official publication containing the new law.\(^{104}\) Not only was it crucial that each person possess the text of the law, it was important that the publication be the official publication of the government printing office. Rwanda has three official languages: French, English and Kinyarwandan.\(^{105}\) The government publication contains translations of the law in all three languages, allowing for easy comparison of terms that may carry slightly different implications in each language.\(^{106}\) The fact that most participants had a command of two of the three languages further complicated arguments over the text. Fortunately, an educated and opinionated translator was able to keep most disputes short, with both his command of the languages and ability to tell the participants that, simply put, they were wrong.

Providing the official version of the law to the participants also leveled, what some would confide to the staff, was not an even playing field. One participant told a staff member that the judges did not trust the prosecutors, who did not trust the investigators, who did not trust anyone. To a small extent, this was apparent in our seminar, as the participants often posed questions regarding groups of persons who would handle certain substantive matters, rather than posing questions as to the particular subject. For example, rather than pose a question about the extent of investigation necessary to prepare a case for trial, prosecutors questioned why investigators "would not do their job completely." The answer in most cases, unfortunately, was simply that the investiga-

\(^{104}\) See Organic Law on the Organization of Prosecutions For Offenses Constituting the Crime of Genocide or Crimes Against Humanity Committed Since 1 October 1990 [hereinafter Organic Law] (on file with authors).

\(^{105}\) See Prunier, supra note 25, at 343-44 (explaining problems of language barriers between those speaking French, Swahili and Kinyarwandan).

\(^{106}\) See Organic Law, supra note 104.
tors did not know how to do their job. Most were young and inexperienced, and lacked guidance from seasoned professionals in what were less than ideal conditions for learning the trade. Even for those few who did have some investigative pre-war experience in Rwanda, or the neighboring countries where they spent their exiles, investigators lacked the resources to proceed past the most basic steps of the investigative process, such as asking questions and writing answers. Most Rwandan investigators lacked forensic labs, recording equipment, video tape recorders, and cameras; they did not even have enough vehicles to travel the roads in search of witnesses.

The participants countered these questions with retorts implying that, no matter how complete the investigation, prosecutors would not go forward with a case. The sources of reluctance to take cases to trial varied from fear that an inexperienced prosecutor’s first case might be a genocide trial in Rwanda, to fear that his first case would be his last, due to the Hutu rebel forces’ threats of retribution from just beyond Rwanda’s borders. The investigators who spoke out, however, overlooked a more significant factor. The government only passed the law for prosecution of the massacre’s accused participants one week before ITD’s arrival.

The international community that descended upon Rwanda to rebuild the country after the massacre contributed in many ways to the nation’s legal and political infrastructure. Experts from every walk of life have provided input to the Rwandans.

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107 See generally Spalding, supra note 20, at 16-17 (explaining how to evaluate, collect evidence from, describe, photograph, and record details of crime scene).


109 Alan Zarembo, Rwanda’s Genocide Witnesses are Killed as Wheels of Justice Slowly Begin Turning: More than 200 Rwandan Genocide Survivors Were Killed Last Year Before They Could Testify in Court, CHRISTIAN SCI. MONITOR, Jan. 23, 1997, at 7 (describing fears of witnesses in testifying because of threats of, and actual, killings to ensure their silence).

110 See Rwanda Monthly Information Report, supra note 22 (stating Rwandese genocide bill passed August 9, 1996).

111 See Cisse, supra note 108, at 104 (criticizing responses of international community to Rwanda’s problems); Peter Rosenblum, Save The Tribunals: Salvage the Movement, a Response to Makau Mutua, 11 TEMP. INT’L & COMP. L.J. 189, 191 (1997) (discussing involvement of international community in genocide crimes in Rwanda); Wang, supra note 1, at 188 (questioning whether involvement of international community can help situation in Rwanda).

international community, however, has not provided the means for Rwandans to help themselves. If Rwanda were the home of the Peanuts, Lucy would offer five cent advice at stands on every corner. But there is no one to get in the trenches and work with Rwandans to actually get things done on a daily basis. The staff encountered few individuals who worked hand-in-hand with the Rwandan on specific tasks. Whether it was interrogating suspects or interviewing witnesses, most Rwandans were left to their own devices. Some argue that doing more than advising is interfering. The staff, however, did not get the impression that assistance on actual cases—to demonstrate investigative, prosecutorial, or defensive techniques—would be shunned. The participants went to great lengths to impart the reality of the environment in which they were working. They devoted a great deal of time to listening to the Rwandan’s concerns over their safety in the justice system, and the obstacles they faced in obtaining information or cooperation from witnesses. These factors showed that, for the program to have any chance at making a significant impact, the staff should focus on doing, rather than telling.

Thus, the staff limited the discussion of the new law, an eleven page document, to two full days. While the participants had ideas about how the government should implement the law, based on discussions with several individuals who helped to draft the law, the staff felt that the Rwandan Ministry of Justice should address the most significant questions regarding each section of the law. The staff collected unresolved questions at the close of each day and delivered them to the Ministry of Justice. Then, a Ministry official would address each point the following morning. It was important for the participants to hear Rwandans telling their countrymen what their law means, rather than well-intentioned members of the international community telling Rwandans what the law should, or ought, to mean.


113 See Żarembo, supra note 109, at 7 (describing fear of witnesses to testify in hostile and dangerous environment).
The majority of questions focused on provisions concerning the guilty plea, a completely novel concept for the Rwandans. Most troubling was that portion of the law that required a complete confession before one could qualify for a sentence reduction. Individuals who implicate themselves in additional crimes while pleading guilty cannot obtain sentence reductions, even if the additional crime divulged is less serious and does not impact the maximum sentence of the crime they originally confessed to. This fact, combined with internal motivations and constant external pressures for prosecutors to seek the severest of punishments, lead to guilty plea interrogations (or providence inquiries) that were almost as lengthy as full-blown trials. Basic unfamiliarity with the guilty plea, and how it aids the justice system, further confounded the issue. Because passions over the massacre run so deep, it is difficult, if not impossible, for the prosecutors to assess the big picture and pursue justice on a grand scale. Rather, prosecutors face each case with equal intensity, pursuing the small fish with the same vengeance as the big.

It was at this impasse that the staff turned to the third prong of the seminar: The moot court. Because experience had shown the staff that more often than not the majority of seminar time is wasted as participants argue over facts, the basis for the hypothetical problem was not an actual Rwandan case. Rather, the staff used a fact pattern based upon actual incidents that occurred in Bosnia and based the problem in fictitious Blueland. The fact pattern, however, was disturbingly similar, and certainly applicable, to an earlier visit to a massacre site in Kongoro. In Rwanda, as in Bosnia, the killings were not the product of a spontaneous uprising, but of calculated efforts to exterminate the pop-

114 See Rwanda Monthly Information Report, supra note 22 (describing plea bargaining arrangement available in certain cases to secure lesser penalties).
115 See Rwandan Genocide Trials, Afr. News Serv., Feb. 20, 1997, available in 1997 WL 8819305 (explaining that defendant who wishes to plead guilty must describe all offenses committed including date, time and scene of each act, and names of known victims and witnesses, as well as any other information that aids prosecution).
116 See Organic Law, supra note 104.
ulation. At the Rwandan massacre site the dormitory rooms of a former vocational school were filled with bodies exhumed from the mass graves surrounding the school. Many of the rooms in the administration building were used as holding cells for the locals who were instructed to gather there to find refuge from the fighting.

The hypothetical problem used at the seminar included several witnesses and limited physical evidence, as well as information regarding the bodies and grave sites. Participants had the opportunity to question the witnesses and the accused. After a discussion of the facts and techniques utilized, the staff gave each participant "official" statements of the facts for the sake of uniformity. These statements became the foundation for charging, and subsequently conducting, a guilty plea for the accused.

The guilty plea did not proceed with the expediency that the drafters had hoped for. To maintain some control over the exercise, one of the teaching team members acted as a judge, and other instructors played the witnesses and the accused. While the staff attempted to keep the process moving by calling attention to redundancies in questioning the majority usually found merit in a colleague's question, compelling the instructors to address the issue. The preliminary questioning to establish the accused's identity also lasted longer than one would expect. Watching this process unfold, however, the staff began to believe that a lack of trust


119 We visited Murambi, (out by Gikongoro) the site of a well known Tutsi massacre, with Major Richard Sesibera, now a member of the National Assembly, who provided us with the details of what transpired there. The Hutus rounded up thousands of Tutsis (and any moderate Hutus that were against the killing) and brought them to a vocational school in the countryside in April 1994. We were given various figures as to the number killed at this site: some stated 26,000 were killed here, others estimated 7,000 or 8,000, but the exhumation was not complete. All of the dead were deposited in mass graves after being killed by clubbing, beheading, or shooting. Many were simply buried alive. The current government has exhumed all of the bodies it could find at this site and others because, we were told, much like with the Holocaust, people began saying the killings did not actually happen. In light of this, the government laid out the dead in each of the school's dormitory rooms (there are twelve dorm buildings with six rooms in each and all of the buildings are completely filled). The bodies and various recovered body parts were covered in time in order to preserve them. The sight, and more particularly the smell, of the thousands of corpses we viewed as we went from room to room made an impression that is beyond description.
pervaded the justice system. The interrogator did not necessarily doubt the accused's credibility, but lacked faith in the system.

The guilty plea broke down when the accused improvidently mentioned a crime that was not contained in the written confession before the court. Although the accused mentioned a lesser crime that would not affect the maximum sentence, the majority of the participants believed that the accused's failure to disclose knowledge of all crimes, as the law required, warranted denying the accused the benefit of the guilty plea and compelling a full trial. One should bear in mind that in this case, the accused did not commit another crime, but merely had knowledge of one.

Thus, literal interpretation of the law prevented the process to move forward as intended. The participants, however, did arrive at a sentence by the end of the day. Surprisingly, after such an intense process of questioning, and arguments over the minutiae of the case, the accused did not receive the maximum sentence. The development highlighted a theme that surfaced in various forms during the seminar—the fairness of the law.

Many participants deemed the genocide law unfair with regard to the families of the victims because the law allows for limitations on harsh sentences that normally accompany similar conduct under Rwandan law; with regard to the accused because it does not compel the government to prove its case; and with regard to the government because the law would prevent effective ferreting out of those individuals taking advantage of the guilty plea process to avoid a trial. However, these issues were addressed by the National Assembly and they passed into law. Whether or not those charged with carrying out the law will appreciate that fact is questionable.

IV. THE FUTURE

The Rwandans began prosecuting cases on December 27, 1996. As of February, 1997, there were eleven death sentences, sixteen life imprisonments, and one acquittal. It does not

120 See ORGANIC LAW, supra note 104.
121 See Tomlinson, supra note 21 (noting that many genocide survivors find Rwandan genocide law to be too lenient).
122 See Rwandan Genocide Trials, supra note 115 (discussing beginning of prosecution of genocide crimes in Rwanda).
123 See id. (explaining progress and status of pending prosecutions of genocide crimes).
trouble Rwandans that there is a lack of defense counsel, as it might trouble Western observers, because such a situation is "in line with the Rwandan legal tradition." Additionally, the lack of trained personnel to make the system work is an impediment that requires some deviations from the standards that the West is imposing upon the Rwandans. In some cases, at the Rwandan government's invitation, the organization "Avocats Sans Frontieres" (Lawyers Without Borders) has provided defense counsel. The guilty plea process, however, has yet to expedite the process, primarily because few accuseds have pleaded guilty. In two cases, the courts rejected the pleas because the accuseds failed to name accomplices. Compounding these difficulties is the fact that witnesses, and even judges, are being killed. The process may continue at its current pace for anywhere from ten to forty years. Just based upon the two thousand estimated cases of crimes against humanity, the prosecutions will take over four years, at a rate of one case per day.

The most often discussed alternative to prosecution under the new law is a general amnesty that would permit the release of thousands of prisoners currently jailed for lesser offenses. The likelihood of such a development any time soon, however, is virtually nil. In anticipation, though, one should note that the Rwandans have been working with the South Africans to learn more about South Africa's Truth and Reconciliation Commis-

124 See Roland Siegloff, Rwanda's Legal System Facing Paralysis Over Backlog of Genocide, DEUTSCHE PRESSE-AGENTUR, Mar. 7, 1997, at 4 (discussing that Rwandan justice system will be threatened for years to come).
125 See Stephen Buckley, Justice, Too, on Trial in Genocide Courts; Different Problems/ Rwanda and UN Tribunals Hampered, INT'L HERALD TRIB., Jan. 31, 1997 (noting that while there are approximately two hundred lawyers in Rwanda, only sixteen are practicing, and most refuse to represent genocide suspects).
127 See Matthew Tostevin, Rwanda Says it Expects Genocide Trials to Pick Up, REUTERS NORTH AMERICAN WIRE, Feb. 27, 1997 (discussing guilty plea and large amount of cases awaiting trial).
128 See Zarembro, supra note 109, at 7 (discussing reluctance of witnesses to testify, as many witnesses were killed prior to trial to maintain their silence).
129 See Tostevin, supra note 127 (explaining that International Tribunal struggling to move cases along, but its efforts have been "useless").
130 See Gordon, supra note 2, at 235-36 (discussing possibility of, and problems with, general amnesty as option in Rwanda); Morris, supra note 1, at 361 (arguing general amnesty is extreme solution to problems in Rwanda).
There is some speculation that once trials are well underway, a similar organization may develop in Rwanda. Another more straightforward proposal is utilization of traditional arbiters in less serious cases.

The bottom line is that there must be closure to these cases, not only to satisfy the Rwandan people and the human rights observers in the international community, but to help the country stabilize and deal with the events of the past. The next step in working with Rwanda, therefore, should be some form of judicial administration. The degree to which the Rwandan legal system should conform to systems in the West is subject to endless debate. It would be sufficient for the international community to be satisfied that the basic tenets of due process exist in handling the serious cases. Less contentious, but no less important, is the administration of such an overwhelming caseload. In this regard, the Rwandans need assistance in the daily management of dockets. The Rwandans attempted using a case triage system and failed. They are now trying to establish another with the help of the United Nations. In the meantime, one cannot help but think that any advice offered will fail to recognize real limitations in both personnel and equipment.

## Conclusion

The ITD will return to Rwanda in the Summer of 1997 to continue working with local investigators and prosecutors. By that time, prosecutions will be well underway and, in all likelihood, a pattern developed. Whether that pattern will be in keeping with the expectations of the international community remains to be seen. What is more important, though, is that the pattern satisfies the Rwandan people. There is no doubt that Rwanda will move ahead with the genocide trials as quickly as possible. Whether the international community will continue to care, or provide useful assistance, remains a real question.

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132 See Rwandan Genocide Trials, supra note 115 (noting mechanism similar to Truth and Reconciliation Commission likely to develop in Kigali).