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I. Executive Summary

1. Survivors Fund (SURF) and REDRESS (“the Organisations”) publish this discussion paper to help progress discussions on reparation for survivors of the genocide with the Government of Rwanda, survivor organisations and other stakeholders. The Organisations propose a range of options that could be explored further with a view to ensuring that survivors ultimately secure reparation, in particular in the form of restitution and compensation.

2. Our main recommendation is to encourage the Government to consider establishing a Task Force on Reparations to address the outstanding issues. This would assist to generate consensus with a view to deciding on the best way forward in providing genocide survivors with adequate reparation. The outstanding issues include in particular (1) identifying the number of past compensation and restitution awards of national courts and gacaca that have yet to be implemented; (2) consulting with survivors and survivor organisations throughout Rwanda to identify their needs and determine adequate measures of reparation; (3) establishing criteria for beneficiaries of reparation in regards to indirect victims; (4) recommending forms of reparation that are meaningful to survivors, feasible and adequately funded.

3. This Task Force, if it is established, could take into account experiences of reparation programmes in other countries, in particular the establishment of 'compensation funds' in South Africa, Morocco and Sierra Leone. It could also draw on experiences of the Committee on Reparation and Rehabilitation established within the Truth and Reconciliation Commission (TRC) in South Africa, tasked with designing and putting forward recommendations for a Reparation Programme to assist victims of Apartheid. Lessons learned by the “Reparation Task Force” in Sierra Leone, established to develop a programme strategy for reparation in Sierra Leone could also be taken into account.

II. Introduction

There is no justice without compensation; that's why we consider that a key issue for the government to look into.” ¹ Dr Jean Pierre Dusingizemungu, IBUKA President, April 2012

4. An estimated one million Tutsis, and numerous moderate Hutus and Twa, were killed in the genocide, and the lives of survivors were destroyed. Survivors interviewed by SURF and REDRESS in Rwanda over the past five years have repeatedly stressed the critical roles that justice and reparation play in addressing the consequences of the genocide. This includes holding to account the perpetrators and providing adequate reparation, also with a view to contributing to reconciliation and enabling survivors to rebuild their lives.

5. Ensuring adequate reparation, including rehabilitation, compensation and restitution, for survivors in Rwanda is a daunting task. Over the past eighteen years since the genocide in 1994, the Government of Rwanda, as well as survivors’ organisations and human rights advocates have grappled to find solutions as to how best to ensure that survivors’ rights and needs to adequate reparation can be met. As of today, such solutions have yet to be found.

6. On 17 August 2011, Tharcisse Karugarama, Rwanda’s Minister of Justice and Attorney General spoke at a conference organised on the topic of reparation for survivors of the genocide, emphasising that reparation for survivors still needs to be addressed “better late than never”.2

7. This discussion paper is meant to serve as a roadmap for further consultation with relevant stakeholders. It is based on a series of interviews carried out with survivors, Rwandan government officials and representatives of national and international human rights organisations over the past five years on the issue of reparation, as well as workshops and seminars held by the Organisations. This includes in particular a conference that took place on 17 August 2011 in Kigali, and two workshops organised on 20 and 21 March 2012 in Kigali. This discussion paper also examines reparation mechanisms established elsewhere in the aftermath of conflict and/or in response to systematic human rights abuses, focusing in particular on South Africa, Sierra Leone and Morocco, as valuable lessons can be drawn from their experiences. These experiences provide lessons but not ready-made solutions for the Rwandan context. It is ultimately for the Government of Rwanda, in close consultation with survivors and survivors’ organisations, to find the ways and means to address the unique situation that survivors find themselves in and to honour their rights in the process.

8. This discussion paper is structured in five parts. First, we briefly set out the rights of survivors of genocide and other serious international crimes to a remedy and reparation under international law. Second, we examine to what extent the Government of Rwanda has managed to implement these rights, in particular in regards to rehabilitation, compensation and restitution, and how survivors appear to perceive these efforts to date. Third, we outline the possibilities that could be explored on how best to ensure that survivors obtain adequate reparation, also taking into account the experiences of other countries. Finally, we make recommendations as to the next steps for the work ahead.

III. The right to reparation under international law 3

9. Reparation refers to the obligation of the wrongdoing party to redress the damage caused to an injured party. In the context of international law, it is recognised that reparation must as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would in all probability, have existed if that act had not been committed.4 The UN Basic Principles and Guidelines on the Right to a Remedy

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2 Speech of Tharcisse Karugarama, Kigali Conference on Reparation, 17 August 2011
4 Ibid
and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (‘UN Basic Principles and Guidelines’) emphasise that states have the responsibility to provide victims with “adequate, effective and prompt reparation”\(^5\) which should be “proportional to the gravity of the violations and the harm suffered”.\(^6\) Several human rights treaties impose an obligation on States parties to provide the individual with an effective remedy, effective redress and an enforceable right to fair and adequate compensation. In the case of Rwanda, these include Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR), Article 14 of the UN Convention against Torture and other cruel, inhuman and degrading treatment or punishment (UNCAT), and Article 7 of the African Charter on Human and Peoples’ Rights (ACHPR).

10. Also very relevant to the Rwandan context, the Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation,\(^7\) provides a useful blueprint for devising comprehensive strategies to address sexual violence and related forms of gender based violence perpetrated against women and girls. It recognises the central importance of including women and girl survivors as full participants in the development and implementation of reparation programmes. Also, it recognises the importance of ensuring that reparation goes above and beyond the immediate reasons and consequences of the crimes and violations; they must aim to address the political and structural inequalities that negatively shape women’s and girls’ lives.

11. As a general rule, the more comprehensive and wide-ranging the reparations measures adopted, the more adequately the needs of survivors can be met and their dignity restored. The UN Basic Principles and Guidelines provide the most detailed guidance of the forms of reparation needed to his end, which should be used to inform reparation measures for genocide survivors in Rwanda:

- **Restitution:** aimed at the restoration of a victim to his or her situation before the gross violations took place; it includes, as appropriate, restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.

- **Compensation:** monetary awards for any economically assessable damage as appropriate and proportional to the gravity of the violation and circumstances of each case, such as a) physical or mental harm; b) lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; c) moral damage and d) costs required for legal or expert assistance, medicine and medical services, psychological and social services.

- **Rehabilitation:** including medical and psychological care as well as legal and social services.

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\(^5\) The UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (‘Basic Principles and Guidelines’), adopted by the UN General Assembly on 16 December 2005, Resolution 147 (A/Res/60/147), principle 15

\(^6\) Ibid, principle 18

• **Satisfaction:** to end continuing human rights violation and to establish and publically disclose the truth.

• **Guarantees of non-repetition:** to prevent such abuses from happening again, through institutional reform (judicial, military, police, etc) and the implementation of mechanisms to monitor and prevent future social conflicts.  

### IV. Legal Framework and Survivors' experiences in claiming compensation and restitution in Rwanda

#### a. Reparation claims before ‘Specialised Chambers’

12. The 1996 Organic Law on the *Organisation of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1 1990* provided that “the ordinary rules governing denunciations, complaints and civil actions are applicable to cases before the specialised chambers” and provided survivors with the possibility to commence a private prosecution. This law provided that damages awarded to survivors who had not been identified should be deposited in a victims compensation fund, “whose creation and operation shall be determined by a separate law.” Until the creation of such a fund, all damages awarded by the courts were to be deposited in a special account at the National Bank of Rwanda.

13. From 1996 up to the establishment of gacaca courts in 2001, survivors participated in approximately 2/3 of all criminal cases before specialised chambers in ordinary courts as “partie civile” or civil parties (claimants). Approximately 50% of survivors who lodged complaints for compensation against individual perpetrators were awarded compensation for material prejudice and/or moral grief. Initially, courts awarded very generous amounts of compensation, with reportedly close to $100 million USD having been awarded after about 4,000 people had been tried. The basis for awards is not clear, as court judgments differed substantially in the awards made (e.g. for the loss of a husband, courts awarded between 250,000 and 8 million Rwandan Francs (FRW) (approximately $400 and $ 13,000 USD), often without providing further explanation on how these awards were arrived at.

14. To date, none of the compensation awards by national courts against individual perpetrators and/or the state have been fully enforced. This is due to a number of reasons, mainly the inability of indigent perpetrators to pay the awards or an unwillingness to pay the awards. In some instances, according to interviews with survivors carried out by SURF and REDRESS, perpetrators avoided payment by bribing those responsible for the enforcement of compensation awards. Furthermore, none of the survivors and Government officials interviewed by REDRESS and SURF could

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8. UN Basic Principles and Guidelines, principles 19-23.
13. Interview with survivor, Kigali, 10 December 2010; interview with a civil party, Kigali, 21 December 2010.
confirm that any damages awarded by the courts had been deposited at the National Bank of Rwanda as provided for in the 1996 Organic Law.

15. One example where a Court’s judgment of a compensation award was partly enforced is the case of Karamira Flodourt, who was executed following his sentence to death. In this case, survivors managed to secure compensation of FRW 15,800 out of an award of RWF 17 million. However, even in this case, the circumstances as to how the plaintiffs were able to secure the enforcement of the judgment are far from clear. It appears that the civil aspects of the case were “settled informally - the legal officers involved informed the plaintiffs where they could find money and everything was done very quickly.”

b. Claiming compensation and restitution before gacaca courts

16. The introduction of gacaca courts by Organic Law No. 40/2000 drastically reduced the opportunities for survivors to file complaints for compensation as civil parties. First, the law declared civil actions against the State inadmissible “on account of it [the government] having acknowledged its role in the genocide and that in compensation it pays each year a percentage of its annual budget to the Compensation Fund. This percentage is set by the financial law.” Second, the law stipulated that aside from Category I suspects, accused of being most responsible for the genocide, all other genocide related cases were to be tried before gacaca courts. However, before these courts, survivors could only file claims for compensation in regards to material losses and bodily damages, as gacaca courts were not vested with the power to award moral damages.

17. Gacaca courts were to draw up a list of victims who suffered material losses or bodily harm and make an inventory of those losses, as well as allocate damages. All judgments by both ordinary and gacaca courts awarding compensation for material and body damages were to be forwarded to “the Compensation Fund for Victims of the Genocide and Crimes against Humanity, with the Fund to “fix the modalities for granting compensation”. Accordingly, the establishment of a Compensation Fund would have enabled survivors to enforce their reparation award through it, rather than against the individual perpetrator, which would have helped to overcome the major obstacles to the enforcement of awards against individual perpetrators and/or the state. The Compensation Fund would have also assisted in providing reparation to survivors in cases where perpetrators had not been identified.

18. However, as will be outlined further below, the Compensation Fund has still not been established. Further, the gacaca courts have not compiled a list of damages and losses and the majority of survivors have not received any, or only a fraction of the actual

14 Interview with one of the civil parties, Kigali, 21 December 2010.
15 Organic Law No 40/2000 Setting up Gacaca Jurisdictions and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994, Article 91.
16 Ibid, Article 90, limiting the possibility for survivors to claim reparation to restitution of property or, alternatively, claim for compensation for property and bodily related damage only.
17 Organic Law No 40/2000 of 26 January 2001 Setting up Gacaca Jurisdictions and organising prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994, Article 90; a subsequent reform of Organic Law No 40/ 2000 in 2004, provided that “other forms of compensation for victims are to be determined by a particular law,” thereby opening up the possibility for survivors to claim for non-pecuniary damages, subject to the adoption of a particular law, see Art. 75 of Organic Law No. 16/2004 of 19 June 2004
compensation awarded for pecuniary damages. All survivors interviewed by SURF and REDRESS expressed frustration about the lack of support when seeking to enforce judgments. One survivor summed up his frustration in regards to the limited mandate of gacaca and the lack of enforcement of its decisions:

“Those who have to pay for what they have taken, for what they have pillaged, did not pay. They use all means of not having to give us what they owe us. The results of gacaca regarding compensation and restitution is basically nil. We, the survivors, have to bend over for the genocidaires. We keep a low profile, we prefer to stay silent and are shy so as to not to become like them.”

“The authorities who are supposed to help assist us with our problems make everything more complicated. They receive bribes. In my case, I understand that the executive secretary of gacaca shared the money that I was supposed to receive with the convicted perpetrator. Honestly, I do not see how these restitution and compensation decisions can be enforced.”

19. Current legislation governing the jurisdiction of gacaca is silent on survivors’ right to claim damages, as relevant provisions of Organic Law 40/2000 and subsequent legislation on gacaca have been repealed. Furthermore, since 2009, the right of survivors to take civil action against Category I suspects has been limited by the Law establishing the Fond d’Assistance pour les Rescapés du Genocide (FARG) which determines that: “Only the Fund is entitled to [bring a] civil action on behalf of the victims of the Tutsi genocide, and other crimes against humanity, against persons convicted of crimes classifying them in the first category.” FARG has yet to take such civil action on behalf of survivors, yet the provision is already of concern to survivors and lawyers seeking to act on their behalf in cases against Category I suspects. Lawyers interviewed by REDRESS and SURF in Rwanda believe that this provision is incompatible with Rwanda’s Constitution which expressly provides victims of crime with a right to have their case heard. The provision also discriminates against survivors when compared to victims of ‘ordinary crime’ who are expressly entitled to file claims for compensation as civil parties under existing Rwandan law. The unconstitutionality as well as discriminatory character of the FARG law has been challenged by IBUKA in a recent submission to FARG.

V. Survivors’ discontent and frustration with the status quo

20. The closure of gacaca courts is imminent, with an official closing ceremony scheduled to take place on 18 June 2012. After the closure of gacaca, remaining genocide cases are to be prosecuted before ordinary and military courts. It is unclear how this will impact upon survivors’ right to claim for compensation. Equally, it is as yet unclear how thousands of compensation and/or restitution awards by gacaca courts that have not yet been enforced will be handled after the closure of gacaca. IBUKA tabled a submission...
on the new law on the termination of gacaca, seeking clarification on the proposed articles, yet it appears that only a few of its concerns unrelated to reparation, were taken into consideration.

21. What is clear, however, is that the vast majority of survivors to date have not received any of the compensation and/or restitution awarded by national courts and gacaca. The promises over the past eighteen years to establish a Compensation Fund to provide survivors with compensation have raised hopes and expectations among survivors that have yet to be fulfilled. The lack of enforcement of court and gacaca judgments has a significant adverse impact upon survivors’ lives as well as on survivors’ perceptions of the justice processes initiated by the Government - and third countries and the UN (“international community”) - to date:

- Survivors interviewed by SURF and REDRESS have expressed that justice has not been served, as it has not included compensation;
- Interviews and seminars organized by survivor organizations in collaboration with SURF and REDRESS suggest that the inadequate responses to calls for compensation and restitution slows down if not hamper progress in reconciliation;
- Survivors have expressed their fear that their right to compensation will never be addressed, especially now that gacaca is closing down and that the ICTR is coming to an end;

VI. Potential mechanisms to deliver adequate reparation for survivors of the genocide: Government of Rwanda and ICTR initiatives

a. Draft Law establishing a Compensation Fund for survivors

22. As outlined above, relevant legislative provisions allowing survivors to claim compensation before national courts and before gacaca courts were to a large extent based on the establishment of a Compensation Fund. Moreover, the organic law establishing the gacaca courts recognised the need for a specific law governing *other forms of compensation* aside from compensation for property related and bodily damages.

23. With the introduction of gacaca courts in early 2001, the Government of Rwanda presented a draft law on compensation, seeking the input of survivor organisations such as IBUKA, with a view to implementing the relevant provisions of Organic Law 40/2000. The draft law set out in detail how a Compensation Fund could be established, managed and made to dispense money to identified beneficiaries. The fund was to be

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22 IBUKA Submission on the Draft Law on the Termination of Gacaca, April 2012, ANNEX B.
23 Interview with lawyer, 5 January 2011; workshop organised by SURF, African Rights, REDRESS with IBUKA, AVEGA, AERG, GAERG, Solace Ministries, Kigali, on 8 November 2010.
24 Interview with IBUKA, Kigali, 4 November 2010; interview with AVEGA, Kigali, 4 November 2010.
25 Organic Law No. 16/2004 of 19 June 2004 establishing the organisation, competence and functioning of gacaca courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994, Article 90.
26 Projet de Loi No.……Du…… Portant Creation, Organisation et Fonctionnement du Fonds D’Indemnisation des Victimes des Infractions Constitutives du Crime de Genocide ou de Crimes Contre l’Humanite commises entre le 1er Octobre 1990 et le 31 Décembre 1994 (copy of draft law available with the signatory organisations of this discussion paper).
established specifically to enforce judgments rendered by ordinary courts and gacaca courts. Material and human losses were to be compensated, including death and injuries, as well as moral damages.

24. While the draft law was debated in public and civil society was consulted to some extent, it was eventually not adopted, and no Compensation Fund has been established to date. Government officials have indicated that the establishment of such a Fund could hamper its efforts to reconcile Rwandan society and that it would generally be unrealistic to find the resources that could compensate all survivors. Even though the draft law set out who could benefit from compensation, the group of beneficiaries was considered to be too broad, as it provided that relatives up to the 6th degree would be entitled to compensation in cases where the direct victim had died.

25. Irrespective of the obstacles that ultimately prevented the adoption of the draft law, the majority of survivors’ organisations consulted by SURF and REDRESS indicated that for them, such a Compensation Fund would still be the best option for delivering compensation and restitution to survivors, provided that survivors and survivors’ organisations throughout Rwanda would be consulted prior to its establishment and that it would include formal representation of survivors’ organisations in its governance (addressing the exclusion of survivor’s organisations from the management of FARG, see below). A Compensation Fund could help to address the lack of enforcement of compensation awards, and help survivors to address the most serious consequences of the genocide.

26. The challenge remains for the Government of Rwanda to make a significant contribution to the establishment of a Compensation Fund. Survivors and government officials indicated that assets from convicted perpetrators, as well as donations from other countries, voluntary contributions from individuals and the UN would be another source of funding. However, concerns have been expressed from potential international supporters, as to whether such a Fund could be perceived to be ethnically divisive, if it benefitted only survivors of the genocide, and not other victims of crimes against humanity and war crimes allegedly committed by the RPF during and after the genocide. These concerns could potentially be addressed by mandating the Compensation Fund to afford reparation, as appropriate, for all victims of genocide, crimes against humanity and war crimes committed in Rwanda between 1 October 1990 and 31 December 1994.

27. Compensation Funds have been established in South Africa, Morocco, Sierra Leone and elsewhere in response to calls for reparation in the aftermath of a conflict and/or systemic human rights abuses. The establishment of these Funds was the result of longer processes that involved the identification of specific reparation recommendations

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27 Chapter I, Article 2.
28 Chapter 5, Articles 16-19.
29 Ibid, Article 14; Interview with government officials, Kigali, 17 November 2010.
30 Interview with embassy official, Kigali, March 2012.
by Truth and Reconciliation Commissions (TRCs), and the design of often complex processes for claiming and implementing compensation from the Compensation Fund.

28. In South Africa, a ‘President’s Fund’ was established in 1995 to implement the recommendations of the Reparation and Rehabilitation Committee (RRC) within the TRC to pay reparation to victims of Apartheid between 1960 and 1994.\(^{32}\) Funding of US $100 million was appropriated by Parliament for the purposes of the Fund. By the end of the 2010/2011 financial year, 15,962 victims had received payment of one-off lump sum awards of approximately 30,000 Rand (about FRW 2 million).\(^{33}\) However, a significant number of victims have yet to receive the one-off lump sum payment, even 17 years after the establishment of the President’s Fund, and nine years after promulgation of the RRC’s recommendations.\(^{34}\) In addition, these payments fall short of the RRC’s recommended reparation grant of 120,000 Rand (about 8,462,267 FRW) for all individuals identified by the RRC.\(^{35}\)

29. The Government of Morocco set up a particularly well-funded programme of reparation, disbursing $85 million USD in funds to address human rights violations that took place in Morocco with particular intensity between 1981 and 1991. In addition to collective reparations, the Government provided reparations to approximately 16,000 individual victims and/or family members of victims, with funding coming mainly from the Moroccan Government.\(^{36}\)

30. In Sierra Leone, the establishment of a “Special War Fund for Victims” was envisaged in the Lomé Peace Agreement of 1999 and eventually became operational in December 2009. Its primary source of funding coming from the annual state budget, $25,000 USD was spent by the end of 2010 to provide emergency medical support to victims as a form of reparation. However, the serious funding gaps of the Special War Fund for Victims prevent the implementation of further reparation measures by the Fund. A Reparation Programme financed by donations from, inter alia, the United Nations Peace Building Fund and the UN Trust Fund to End Violence against Women partially complements the Special War Fund for Victims. The Reparation Programme has thus far managed to provide “micro cash allowances of $100 USD to almost 22,000 war victims, prioritising the war wounded amputees and victims of sexual violence. Approximately 650 victims of sexual violence benefitted from basic medical treatment and/or fistula surgery.”\(^{37}\) However, despite these advancements, due to the lack of sufficient funding for the

\(^{32}\) Promotion of National Unity and Reconciliation Act, 1995 (Act No 34 of 1995), section 42.


\(^{35}\) Ibid.


Reparations Programme, by the end of January 2012, approximately 10,753 victims had yet to receive any reparation.\(^{38}\)

31. The funds and programmes put in place in South Africa, Morocco and Sierra Leone highlight in particular that serious funding gaps can prevent the implementation of reparation measures that are solely based on the existence of a well – resourced compensation fund. The experiences and lessons learned need to be explored further, with a view to identifying how they could be taken into account in the context of Rwanda.

b. Inclusion of the right of survivors to secure compensation under the Draft Rights of Victims Law

32. The Rwandan Government has prepared a draft “Law on the Charter of Rights of Victims and Witnesses of Intentional Offences” (Draft Law).\(^{39}\)

33. The Draft Law sets out the legal framework of rights of victims and witnesses of offences defined in the penal code and other related laws. This includes the right to reparation in that victims have a right to measures “which aim at removing, moderating or compensating effects of committed violations”, and a right to an extensive list of reparation for bodily and mental damage.\(^{40}\) The Draft Law provides further that a compensation fund should be established under the “supervision of the National Public Prosecution Authority”.\(^{41}\)

34. The Draft Law applies to victims of crimes, including crimes that “do not constitute yet a violation of criminal laws in force, but which are violations of the internationally recognized standards in human rights.” The Draft Law does not, however, expressly include survivors of the genocide or other victims of crimes against humanity and war crimes between 1\(^{st}\) October 1990 and 31\(^{st}\) December 1994 as beneficiaries of the Fund, as appropriate. Indeed, survivor organisations as well as individual survivors interviewed by SURF and REDRESS appear to favour a separate law on reparation, and a separate Compensation Fund specifically catering for the rights of survivors, as such a Compensation Fund would reflect the unique nature and the gravity of the crimes committed against them.\(^{42}\)

35. However, if no such law and Fund were to be established in the near future, that again would then potentially discriminate survivors against victims of ordinary crime.\(^{43}\) In that case, a provision could be included in the Draft Law that provides expressly for the application of the Draft Law to survivors, until a separate Compensation Fund is established for them. This would require the Draft Law to apply retroactively to include crimes committed from 1 October 1990 to 31 December 1994. Representatives of the Ministry of Justice voiced concerns that such retroactive application would be contrary to international law and therefore not be possible. However, as genocide, war crimes and


\(^{39}\) Copy available with the signatory organisations

\(^{40}\) See Articles 4-11 of the Draft Law.

\(^{41}\) Ibid, Article 23.

\(^{42}\) Ibuka, SURF and REDRESS workshop with survivor organisations, Kigali, 20-21 March 2012;

\(^{43}\) See above for discrimination of FARG law, para. 19.
crimes against humanity constituted criminal acts already in 1990 according to treaty as well as customary international law, such retroactive application of the Draft Law would be in line with Article 15 (2) of the International Covenant on Civil and Political Rights.

36. Concerns also exist as to the most appropriate body to manage the Compensation Fund. Article 23 of the Draft Law names the National Prosecution Authority as the body to manage the Fund. However it is not perceived to be independent and may lack relevant expertise. Accordingly, survivor organisations have recommended that Article 23 should be modified so as to provide for the independent management of the Compensation Fund, by individuals with specific expertise in management as well as victimology.

c. International Trust Fund for Survivors

37. The establishment of the International Criminal Tribunal for Rwanda (ICTR) in November 1994 had relatively little impact on survivors, aside from the role the ICTR played in prosecuting several high level perpetrators. The limited mandate of the ICTR does not include a right to reparation and survivors are not entitled to participate in proceedings in their own right. Its statute and rules give ICTR judges limited powers to order the return of any property and proceeds acquired by the criminal conduct of the individual perpetrator, to their rightful owners. While 38 perpetrators have been convicted to date, the Tribunal has not ordered such restitution.

38. The then President of the ICTR in her address to the UN Security Council in October 2002 reminded the Council that “compensation for victims is essential if Rwanda is to recover from the genocidal experience” and that a proposal had been submitted by the ICTR to the Secretary General that victims of the genocide should be compensated. According to the proposal, ICTR judges agreed “with the principle of compensation for victims”, yet believed that the responsibility for addressing claims for compensation should lie with other agencies within the UN system.

39. It was feared that for the ICTR to handle compensation claims would severely hamper its everyday work and would be “highly destructive” to its mandate, also taking into account that the resources at its disposal would not allow it to properly handle claims for compensation in a timely fashion. The ICTR judges therefore proposed to consider other options, including a specialised agency set up by the United Nations “to administer a compensation scheme or trust fund that can be based upon individual application, or community need or some group based qualification”.

40. Subsequently, neither the proposal nor the ICTR judges’ call for a greater role of the UN in providing compensation to victims of the genocide was heeded, and no steps were taken at UN level to assist survivors in obtaining compensation.

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45 See Article 23 (3) of the ICTR statute and Rule 105 of the Rules of Procedure and Evidence.
48 Ibid, page.5.
41. On 10 December 2004, the General Assembly adopted a resolution on the “[A]ssistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence.” It does not address the question of reparation but requests:

the Secretary General to continue to encourage relevant agencies, funds and programmes of the United Nations system to implement resolution 59/137 expeditiously, inter alia, by providing assistance in the areas of education for orphans, medical care and treatment for victims of sexual violence, including HIV-positive victims, trauma and psychological counselling, and skills training and microcredit programmes aimed at promoting self-sufficiency and alleviating poverty;49

42. The resolution, which has been adopted at consecutive General Assemblies ever since, most recently at the 66th General Assembly in 2011, has never been meaningfully honoured.

43. The cumulative annual funding from UN agencies, funds and programmes for survivors’ organisations in Rwanda amounts to less than $250,000 annually (less than $1 of aid for each survivor). In contrast, the appropriation of UN funds for the ICTR for 2012-13 is $174 million.50 In total, expenditure on the ICTR has amounted to over $1 billion51 (equivalent to almost $30 million per suspect convicted). The total sum of support for restorative justice programmes for survivors in Rwanda has amounted to less than one-half of one per cent of the ICTR budget.

44. In comparison to the ICTR, Article 75 of the Rome Statute (1998) establishing the International Criminal Court (ICC) expressly provides for reparation to victims, including restitution, compensation and rehabilitation.52 The Trust Fund for Victims (TFV), provided for in Article 79 of the Rome Statute, is the main mechanism for implementing reparation awards by the ICC, along with the ICC’s legal mandate to order convicted individuals to compensate victims.53

45. The Trust Fund is a historic institution essential for the realization of the ICC’s progressive mandate towards victims and is an acknowledgment of the rights of victims of genocide, crimes against humanity and war crimes. It works alongside the Court’s reparative function to benefit victims. Thus far, it has acquired voluntary contributions from States and non-State entities.54

46. As the Rome Statute does not apply retrospectively, there is no such fund for victims of crimes under the mandate of the ICTR. However, it is arguably owes its establishment to

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51 How Rwanda judged its genocide, Phil Clark, Africa Research Institute, April 2012, page 7
53 See Trust Fund for Victims: http://www.trustfundforvictims.org/two-roles-tfv
54 Article 79 of the Rome Statute of the ICC provides that A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.
the clear gaps experienced at the ICTR and the International Criminal Tribunal for the former Yugoslavia. Indeed, Judge Byron, former President of the ICTR stated that the lack of reparation for genocide survivors was the main shortcoming of the ICTR.  

47. 2014 is the twentieth anniversary of the genocide, and will mark the closure of the ICTR. This presents a unique opportunity for the international community, in particular the United Nations, to contribute to reparation for survivors.

48. This could be done through contributions to a mechanism such as a national Compensation Fund, or through an alternative or complementary mechanism, such as an International or UN Trust Fund. SURF and REDRESS have undertaken a comparative study of similar models, including the Trust Fund for Victims, UN Trust Fund to End Violence against Women, United Nations Compensation Commission and the International Commission on Holocaust Era Insurance Claims. The study which is still in draft form and currently being discussed in more depth with stakeholders in Rwanda, addresses how such a Fund could be constituted, how it could be governed and managed, and funded.

49. If an international Fund were to be established, it could be managed by a Secretariat of international organisations already operational in Rwanda with relevant expertise. Such a Secretariat could coordinate projects which the Fund would support, as well as contribute to the building of capacity of the survivors’ organisations with which it could partner. The bureaucracy and costs of administering such a Fund would thereby be minimised, and an effective and transparent process of disbursing and monitoring funds agreed. Voluntary contributions could be accepted from any legitimate source, including intergovernmental organisations, national governments and development agencies.

50. Survivors’ organisations and political stakeholders consulted on first drafts of the comparative study appear to support such an approach. However, for the proposal to be practically possible, it would require the support of the Government of Rwanda, and as such the proposal to establish such an international trust fund requires further research and a formal recommendation if it is to be pursued.

**d. Government Assistance Fund for Survivors (FARG)**

51. A submission on the law establishing FARG has been drafted and submitted by IBUKA in April 2012, which outlines the concerns expressed by survivors in respect of FARG.

52. Many survivors stressed that FARG should not be considered as a measure of reparation.

53. At present, FARG provides assistance to the most vulnerable survivors in the areas of education, shelter and health care. However, representatives of the Government of Rwanda have repeatedly argued that FARG should also be understood as a reparation...

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56 A draft of the findings is on file with the authors.
57 Consultation undertaken in the SURF / REDRESS workshop in March 2012 in Kigali, Rwanda.
mechanism, and that therefore there is no need for additional reparation measures. Some Articles in the law establishing FARG appear to provide FARG with a mixed mandate of assistance and reparation, as FARG for instance is allowed to claim compensation from category I perpetrators. Reparation for survivors, as opposed to assistance, aims at specifically addressing and acknowledging the horrific and wrongful nature as well as the devastating impact of the crime, whereas assistance has a more humanitarian character. The difference between assistance and reparation is also apparent among many survivors who expect the Government to commit to survivors, to help restoring their dignity and to ensure that genocide “never happens again”.

54. Accordingly, further consultation with survivors and survivors’ organisations would be required if FARG was to provide also reparation. Its mandate would also need to be amended, and any reparation would need to be clearly distinguished from assistance. Further changes would also need to be made to FARG’s management, in order to enhance its reporting and formal representation of survivors.

55. At present, the Board of Directors contains seven members appointed by the Prime Minister’s Office. Ideally, representatives appointed by survivors or survivors’ organisations would also be represented in the Board, which is presently not the case.

56. If such an amendment were enacted, then FARG could potentially play a role in securing and disbursing compensation. FARG already receives funding from the Government of Rwanda, and in fact has excess funds that it currently manages to disburse, amounting to RWF 700 million in 2011/12.

VII. Next steps and recommendations

a. Establishment of a Task Force on Reparations

57. As reflected above, there are a range of outstanding issues that would benefit from further clarification. Therefore, the Organisations recommend that a Task Force on Reparations be established. This Task Force on Reparations could:

1. Collect information: Examine past compensation and restitution awards of national courts and of gacaca that have yet to be implemented. This is of paramount importance as no register exists in regards to past awards. The Task Force could also explore whether any money has been deposited with the National Bank of Rwanda or other banks in accordance with Article 32 of Organic Law No. 08/96 of 30 August 1996.61

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58 Organic Law No 69/2008 of 30 December 2008, Article 8
60 New Times, Rwanda: Local Govt Allocates Lion’s Share of Budget to Survivors, Veterans, 8 June 2012
61 The Executive Secretary of the National Service of Gacaca Courts informed SURF and REDRESS that at least 21 million RWF have been deposited in a bank account as a result of gacaca awards for the unknown victims of Nyagatare that have yet to be enforced, Interview with Domitilla Mukantaganzwa, Kigali, 28 March 2012.
2. **Consult widely:** Extend the consultation with survivors undertaken by SURF and REDRESS in collaboration with IBUKA and AVEGA. This would involve further consultation with survivors throughout the country, civil society, government agencies, and the international community to allow for a wide range of views to be taken into account when determining the proposals for long term measures of reparation for all victims.

3. **Determine forms of reparation:** Consider whether it is feasible to deliver individual reparation, or whether instead or alongside there should be a focus on collective reparation, ensuring to account for the views and needs of survivors.

4. **Assess eligibility criteria:** Taking into account that not all survivors and families will be able to benefit from reparation, further research is required on up to what degree relatives of survivors will be considered beneficiaries of any reparation measure.

5. **Recommend reparation mechanism:** On the basis of the work, to recommend a mechanism of reparation which meets survivors’ needs and is feasible and funded. This recommendation should be made in the form of a final report for approval by the Parliament and presented to the President.

58. Critical to the process is that survivors’ organisations are formally represented on the Task Force. We would recommend there be seven members, possibly to include:

- Representative from President’s Officer
- Representative from CNLG and/or FARG
- Representative from the National Human Rights Commission
- Representative from IBUKA
- Representative from a survivors’ organisation supporting genocide widows
- Representative from a survivors’ organisation supporting genocide orphans
- Representative from an international donor or UN agency

59. To effectively undertake its research, the Task Force would require a budget, as well as a specific brief to ensure that it can and will report back in a timely fashion. We would also recommend that the Task Force calls on relevant experts with experience in post-conflict contexts as well as former members of the South Africa Committee on Reparation and Rehabilitation, from which it can leverage significant learning, some of which is outlined in this paper, to deliver a report that can lead to the reparation that can finally deliver justice for survivors.