

*An English Summary of the Draft Compensation Law for Survivors of the Genocide in Rwanda (translated from the French by Matthew Betts)*

**Article of law no.....of..... which establishes a Compensation Fund and its organisation and operation for victims of constituent acts of the crime of genocide or of crimes against humanity committed between 1st October 1990 and 31st December 1994.**

**Outline rationale**

Article 92 of constituent law number.....of.....(which establishes Gacaca courts and instructs on the pursuit of constituent acts of the crime of genocide or crimes against humanity committed between 1st October 1990 and 31st December 1994) propounds the principle of reparation for harm caused to victims of the genocide and of the massacres perpetrated between 1st October 1990 and 31st December 1994.

The victims themselves or their legal successors have never dropped their claim to reparations, asserting vociferously, and justifiably, that justice without reparation is not truly justice.

The assets alone of those convicted of the crime of genocide or of crimes against humanity are insufficient to amount to reparation for these crimes. As such the constituent law of Gacaca courts and the prosecution of constituent acts of the crime of genocide or of crimes against humanity established a Compensation Fund (article 93) which shall draw from resources other than the damages and concerns which must be paid by those who shall be held civilly responsible for acts of genocide or of crimes against humanity. The latter are in any case insubstantial in face of the scale of reparations which should be disbursed.

The law which establishes, and provides for the organisation and administration of the Compensation Fund is intended to provide genuinely effective indemnity for victims of the genocide and massacres of this sombre period of Rwandan history. Proper administration of the Fund and good management of its acquired resources will allow for this difficult undertaking to reach a satisfactory conclusion.

**a) Establishment, objective, base, administration and operation of the Fund**

As provided for by article 93 of the constituent law which establishes Gacaca courts and the pursuit of constituent acts of genocide or of crimes against humanity, the law here present establishes a Compensation Fund equipped with the legal status to afford it substantial autonomy in devising its policies for operation, but above all for the gathering of funds from wherever it may with the purpose of amassing the largest possible sum of money to disburse amongst the victims to whom courts have accorded damages and interests.

The Fund is established for an indeterminate duration, as it is not possible to accurately predict when all compensation litigations will be concluded. Its objective without doubt is to disburse the monies collected, without prejudice, amongst the victims of genocide and of crimes against humanity committed in Rwanda between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994, and in accordance with the laws and the general interest of the country (articles 1 and 2).

Its base is established in Kigali, but it may open operating branches anywhere else in the territory of the Republic where it may judge that this is necessary for the realisation of its objectives.

The Fund shall function under the leadership of three bodies (articles 3 to 9), as follows:

- The Council for Administration which is the body charged with management of the Fund; decision making and strategy.
- The Permanent Secretariat, charged with the daily running of the Fund; it is the body which implements the decisions of the Council for Administration and is responsible to the latter for its conduct.
- The Supervisory Commission which monitors the utilisation of the Fund's resources and regulates the activities of the Fund in general.

The members of the three bodies of the Fund are all appointed by decree of the Prime Minister. However, after their appointment they shall have a wide remit in which to act and substantial autonomy in facilitating the work of the institution.

Although the law provides that the Compensation Fund shall be a genuinely independent institution, given the composition of its Council for Administration, the State which is at all times concerned on behalf of the victims of the genocide and of crimes against humanity committed in the country, must assure itself that the Fund is carrying out the tasks assigned to it by charging the responsibility of management of monies those in whom the State has confidence. It is for this reason that article 3 additionally accords the right of review of the Fund's activities to the Minister who holds social affairs in his/her portfolio. S/he may thus sound the alarm at the necessary time if ever there are faults on the part of the institution in the realisation of its objectives.

Included in the tasks of the Fund there exists amongst others the expedition of legal rulings made on the matters of genocide or of crimes against humanity committed between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 with regard to the recovery of damages and interests apportioned in favour of the victims of the crimes. It is for this reason that the law involves the Executive (typically an organ which executes laws and carries out justice, and in this instance the Minister of Justice) in the expedition of these judgements and rulings. This is not only done with a view to administering punishments, but also with the particular aim that the Executive shall be regularly assured that the damages and interests ruled upon by the courts are recovered and added to the Fund; thus playing a part in distributing compensation amongst the victims of this macabre tragedy which has stricken our country with grief.

A mandate has been assigned to the Fund's bodies which is renewable once only by the members of the Council for Administration (article 5.3)

An internal code of practice has been devised by the Council for Administration detailing the operational practices of all the Fund's bodies. This shall be submitted to the Minister with social affairs in his/her portfolio.

#### **b) Income of the Compensation Fund (chapter 3; articles 10 to 12)**

The law provides that the Fund shall acquire monies from various sources, of which notably:

- An allocation from the State's own budget which shall be determined annually in financial legislation
- Damages and interests ruled upon in courts on matters of genocide or of crimes against humanity between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994.
- The voluntary contributions of individuals, of foreign countries or organisations, including the International Community, and others.

The Fund managers may also employ all legal means which allow them to generate money which would contribute to the growth of its income, to the advantage of the beneficiaries.

#### **c) Fund beneficiaries (chapter 4: art. 13 and 14)**

Only victims of constituent acts of the crime of genocide or of crimes against humanity committed between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 shall benefit from the coffers of the Compensation Fund, or their legal successors if they are no longer alive.

The law sets out rules relating to the legal successors of the victim, as not all persons who were related to him/her may lay claim to indemnity. The legal successors proceed as follows in decreasing status, commencing from surviving spouse and finishing with aunts and uncles, encompassing children, ascendants, siblings and grand children. Legal successors may present a claim in concurrence with one another, or independently except where there exist legal successors who are before them in the order of priority (article 14).

#### **d) Indemnification (chapter 5)**

Indemnification is drawn from the physical or moral damage that the victim or his/her legal successors have suffered. It shall be accorded to the victim or equally to persons in his/her care or to legal successors who the law here present recognises as regards damaged or lost assets, including lost payments, according to the list determined by the Gacaca court of his/her cell conforming to article 35 of constituent law of Gacaca courts. (article 15 + Annexes A.I –A.VIII).

Working from this list and conforming with article 35 of their constituent law, the Gacaca courts and the common law courts shall offer a lump sum payment from within the margins set by the law here present; taking into account considerations of nature, age, state of repair, location or value of the damaged or lost asset, and accounting for the variation of prices on the local market.

In order to determine the aforementioned margins, the law draws upon legislative and regulatory texts or directives which have been applied in matters of indemnification. Also used are conclusions and recommendations arising from discussions held in various seminars and meetings dealing specifically with indemnification; considering cases of both physical harm suffered as a result of accidents or other physical attacks which have caused corporeal harm, or material damages paid out either by insurance companies or by courts such as the case which emerges from the annexed documentation. (Notably AM no. 18.08/1185 which fixes the indemnification rate for expropriation, for the purpose of public use. Ministerial directive no. 01/87 of 14/9/1987 on the determination of the material damages and interests in cases of loss of income and moral damages and interests, findings of a seminar on indemnification for victims of the genocide and massacres perpetrated in Rwanda between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 etc. as well as the practice of French courts in the determination of indemnification for corporeal damages). Indemnification as means of reparation for moral damages will take in account the victim him/herself or equally the legal successors or any dependant of the person making the claim. In the case of deceased victims, the law affords a lump sum payment to certain relatives or next of kin who have been particularly closely affected by the loss of their loved ones. As regards victims who are still alive, the gravity of any disability and age range of the claimants are taken into account by the law in setting the corresponding margins, which are determined on an inclusive basis, and again draw upon the precedents in the annexed documentation.

The law shall be carried out equally and in the same measure for legal successors of the victim who are either still alive or deceased. The previous order of priority amongst beneficiaries shall again apply, with heed paid always to the level of disability of the victim and the extent of closeness of kin which connects beneficiary and victim.

With regard to the determination of the level of disability in these cases, the victim shall consult a doctor designated or approved by the Government for an expert medical opinion. The victim or his/her legal successors shall present this to the court, which shall be responsible for ruling on the damages and interest which may be claimable (article 17). The victim, his/her legal successors or legal representatives (if the claimants are unable), may contest the level of disability determined by the doctor; in such cases there is provision for an appeal to attempt to reach a satisfactory conclusion (article 17.3). The case will be submitted to a medical panel which will settle the matter definitively. It shall be in the light of this definitive medical report that the court shall be able to allocate damages and interests, as set on an

inclusive basis by the law here present. The age band of the claimant/s shall always be considered, within the scope of the law's margins which are also set on an inclusive basis (article 16 + annexes C.1 – C.V111).

In the event that a medical opinion on the true level of a victim's permanent disability was not obtained whilst s/he was alive, and where despite this the legal successors or dependants claim damages and interests after his/her death, the courts shall reach a judgement independently of the legal directives; the law being unable to set a compensatory sum based upon abstract and imprecise accounts of circumstances (article 17.2). Clearly, the accumulation of material damages and interests envisaged by the law here present with damages and interests from cases outside its scope is not permitted (article 16.2).

So as not to risk an exhaustion of the Fund's coffers at any given time due to a large number of beneficiaries claiming payment, the apportioned damages and interests shall be disbursed in four payments of decreasing size which shall take account of the available reserves (article 18).

Costs incurred for medical care or other reasons, will likewise be reimbursed on the production of supporting documentation, and if it is established that said costs are genuinely a result of acts of genocide or of crimes against humanity perpetrated between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 (article 19).

Given that the Fund will pursue the recovery of damages and interests awarded by all courts: both of common law and Gacaca courts, it shall be necessary to have at its disposition records of judgements and rulings whose expedition it shall pursue. The Gacaca courts must make this information available under their constituent law; similarly it was necessary to plan for the same obligation on the part of the head of the common law courts (article 20).

With regard to rulings and judgements which are already in force at the time when the law establishing the Compensation Fund comes into effect, in cases where the recovery of damages and interests is placed in the hands of the state, the Fund shall calculate damages and interests already accorded by the courts on the basis of the elements defined by chapters 4 and 5 of its enshrining law, as provided for by article 93 of the constituent law of Gacaca courts (article 21).

## **ARTICLES OF THE LAW pp. 7 -13**

### **Chapter 1: The establishment and objective of the Compensation Fund**

#### **Article 1**

A Compensation Fund is hereby established <victims of acts constituting the crime of genocide or of crimes against humanity between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994>, referred to hereafter as the 'Fund'.

The Fund is accorded legal status.

The Fund is established for an indeterminate duration.

## **Article 2**

The objective of the Fund is to disburse, without prejudice and on the basis of judgements rendered by the common law courts and Gacaca courts, monies collected as means of indemnification to the victims of constituent acts of genocide and of crimes against humanity committed in between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994, and in accordance with the laws and the general interest of the country.

## **Chapter 2 : The base, administration, organisation and operation of the Fund**

### **Article 3**

The base of the Fund is established in Kigali. It may however open operating branches anywhere else in the territory of the Republic where it may judge that this is necessary for the realisation of its objectives.

The Fund is placed under the stewardship of the Minister holding social affairs in his/her portfolio. The Minister for Justice shall regularly monitor the expedition of judgements rendered in matters of indemnification for victims of constituent acts of genocide or of crimes against humanity committed between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994.

### **Article 4:**

The constituent bodies of the Fund are:

1. The Council for Administration
2. The Permanent Secretariat
3. The Supervisory Commission

### **Article 5:**

The Council for Administration of the Fund shall be comprised of the following members:

- A representative of the Minister for Social Affairs: President
- A representative of the Minister for Justice: Vice President
- A representative of survivors' organisations (survivors of the genocide or of crimes against humanity committed in Rwanda between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994).
- A member of the Commission for Unity and National Reconciliation
- A member of the National Commission for Human Rights
- A representative of Human Rights organisations in Rwanda

The members of the Council for Administration shall be appointed by decree of the Prime Minister on the recommendation of the organisations and bodies that are to be represented.

The mandate of the members of the Council for Administration is of four years duration and is renewable once only.

## **Article 6**

The Council for Administration shall command all the necessary powers for the realisation of the Fund's objective. It shall exercise the following notable remits:

- To seek and collect monies for the Fund
- To follow up on the expedition of decisions made by both common law and Gacaca courts concerning damages and interests for which those convicted of constituent acts of the crime of genocide or of crimes against humanity committed between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 are liable.
- To draw up the internal code of practice for the Fund for submissions to the Minister for Social Affairs
- To devise and publish the Fund's programme of activities
- To take stewardship of the annual budget of the Fund and to monitor regularly to ensure its appropriate implementation
- To approve the annual accounts and report on activities of the Fund
- To set out the recruitment policy and conditions of employment for the Fund's staff

## **Article 7**

Decisions taken by the Council for Administration which are contrary to the laws, court rulings or general interest of the country may be overturned by the Council of Ministers on the appeal of the Minister for Social Affairs.

## **Chapter 4: Fund beneficiaries**

### **Article 13**

The beneficiaries of the Fund are:

- The victims themselves of constituent acts of the crime of genocide or of crimes against humanity committed between the 1<sup>st</sup> October and 31<sup>st</sup> December 1994
- Legal successors as defined in article 14 of the law here present in cases where the victim is deceased.

### **Article 14**

The following are considered legal successors:

1. Non divorced widows or widowers
2. The children of the deceased, be they legitimate offspring, children legally adopted by the deceased, or natural children recognised by the deceased in line with civil law or in light of the ruling of a competent tribunal
3. Direct ascendants of the 1<sup>st</sup> degree or adoptive parents
4. Direct ascendants of the 2<sup>nd</sup> degree, unless claims are made by those classed as 1,2 or 3 above
5. Siblings, unless claims are made by those classed as 1,2, 3 or 4 above
6. Grand children, unless claims are made by those classed as 1,2, 3, 4 or 5 above
7. Aunts and uncles unless claims are made by those classed as 1,2, 3, 4,5 or 6 above