



**Submission to the Foreign Affairs Committee's
Annual Inquiry into the FCO's Human Rights Work in 2011**

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Survivors Fund (SURF) is rebuilding the lives of survivors of the Rwandan genocide.
The vision of SURF is a world in which the rights and dignity of survivors are respected.

SUMMARY OF SUBMISSIONS

- Survivors Fund (SURF) applauds the fact that “the UK is increasing its aid to Rwanda”, though we call on the FCO to support the Government of Rwanda in assisting genocide survivors, a particularly vulnerable and marginalised population in Rwanda, in particular in enforcing their right to reparation;
- Survivors Fund (SURF) challenges the assertion that the UN International Criminal Tribunal for Rwanda (ICTR) is “bringing justice to the Rwandan people.” The survivor’s organisations we represent, assert that the ICTR has failed resolutely to deliver restorative justice to survivors of the genocide in the form of reparation and we call on the FCO to work to address this shortcoming;
- The FCO’s failure to extradite suspected perpetrators of human rights abuses during the genocide living in the UK, or to prosecute them through UK Courts, is undermining the goal of ensuring that the UK is not a safe haven for such suspects;
- These failures detract from and undermine the FCO’s positive work.

INTRODUCTION

1. This submission is made in response to the Foreign Affairs Committee (FAC) call for submissions in respect of its inquiry announced on 25 April 2012 into the Foreign and Commonwealth Office’s (FCO’s) human rights work in 2011.
2. Survivors Fund (SURF) is the principal international organisation representing and supporting survivors of the genocide in Rwanda. Its support extends back to 1994, helping the first survivors to establish themselves into registered organisations in Rwanda, such as AVEGA (Association of Widows of the Genocide). Today, SURF partners with nine survivor’s organisations to deliver support to over 300,000 vulnerable survivors of the genocide in Rwanda. SURF advocates, fundraises and helps to develop, manage, monitor and evaluate programmes for these partner organisations, across all areas of need of their membership, from house building to healthcare, education to employment, even burying the dead with dignity. Our funders include Comic Relief and the UK Department for International Development.
3. All of the work is unified by a fundamental belief in the right of survivors of the genocide in Rwanda to restorative justice, to rebuild their lives. SURF recognises that it cannot deliver all this work alone, and as such leverages partnerships with an array of mission-aligned organisations, such as REDRESS. Together we are working to coordinate the advocacy of survivor’s organisations in Rwanda, most recently securing the amendment of draft legislation on compensation for survivors.¹ Our current future focus is on securing reparation for survivor of the genocide from the international community by the time of the closure of the ICTR branch of the International Residual Mechanism for Criminal Tribunals (IRMCT) in December 2014.
4. We note that the inquiry takes as its starting point the 2011 FCO Report “Human Rights and Democracy” (the “FCO Human Rights Report”) published on 30 April 2012. This submission relates specifically to the content of the report, in particular as it pertains to omissions relating to issues of justice for survivors of the genocide in Rwanda. Our comments related to three specific sections on the Case Study on Rwanda (page 35), the International Criminal Tribunals for the former Yugoslavia and Rwanda (page 51) and Human Rights offenders and entry to the UK (page 53).

¹ See IBUKA, SURF, REDRESS ‘Submission to Parliament of Rwanda on Draft Organic Law Terminating 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’, March 2012: <http://bit.ly/JQzVTR>

Case study: Rwanda (Page 35)

5. Survivors Fund (SURF) applauds the fact that “the UK is increasing its aid to Rwanda”, though we call on the UK Government to support the Government of Rwanda in assisting the 300,000 survivors of the genocide², a particularly vulnerable and marginalised population in Rwanda, in particular in enforcing their right to reparation.
6. More than eighteen years have passed since the start of the Rwandan genocide in April 1994 in which an estimated one million mainly Tutsi women, men and children, as well as a number of Hutu and Twa opposing the genocidal regime, were massacred in only 100 days. The genocide left behind orphans, widows and severely handicapped and traumatised individuals. Aside from immense personal losses and physical and psychological suffering, the genocide also caused severe material damage to survivors, who have lost houses, livestock, farmland and other personal property. Many were displaced due to the genocide, widows lost their livelihoods and the education of orphans was severely disrupted. This has left many survivors today both vulnerable and marginalised.
7. The Government of Rwanda faced enormous challenges in the aftermath of the genocide, tasked with rebuilding a deeply divided country with a destroyed political and legal infrastructure. Faced with hundreds of thousands of potential perpetrators accused of crimes committed during the genocide, and an even higher number of victims, the majority demanding justice and accountability, the Government of Rwanda sought to hold as many perpetrators of genocide-related crimes to account as possible. Specialised chambers were established within ordinary courts that tried more than 10,000 persons accused of genocide. Following concerns about the increasing numbers of people imprisoned without trial, the Government introduced *gacaca* jurisdictions to handle the majority of genocide-related cases in a more swift and prompt manner. In that way, nearly 2 million cases have been handled by *gacaca* in some sort of judicial process.
8. On the international level, the United Nations (UN) Security Council established the International Criminal Tribunal for Rwanda (ICTR) in the immediate aftermath of the genocide, in November 1994, to try those most responsible for the genocide. The ICTR has since heard 65 cases and convicted and sentenced 38 perpetrators.³ Furthermore, genocide suspects found abroad have been brought to justice in Switzerland, Belgium, Canada, The Netherlands and Finland.⁴
9. These efforts are ongoing, and do reflect the need and indeed the obligation to ensure accountability for serious human rights violations and international crimes such as genocide, crimes against humanity, war crimes and torture. Accountability can be an important form of reparation for survivors, as it helps to establish the truth and acknowledges the crimes committed. However, concerns remain about survivors’ lack of agency in the discourse on justice and their lack of access to adequate reparation.
10. Aside from initiating a process to hold perpetrators accountable, the Government of Rwanda has sought to address survivors’ right to reparation, in particular in providing access to assistance and rehabilitation. However, in contrast to its far reaching accountability efforts, these steps have fallen short of expectations of survivors, and indeed, of Rwanda’s obligations under international law.

² The number of genocide survivors in Rwanda documented in the first official census of survivors in 2007 amounted to 309,368, though IBUKA estimates the number to be nearer to 400,000. <http://bit.ly/1QQsSQ>

³ At the time of writing, the Tribunal has convicted 38 perpetrators of the genocide, 19 convictions were pending before the Appeal Chamber, and 8 persons had been acquitted, see website of the Tribunal at <http://www.unictl.org/Cases/tabid/204/Default.aspx>

⁴ See for more details African Rights & REDRESS, ‘Extraditing Genocide Suspects from Europe to Rwanda- Issues and Challenges’, September 2008, at pp.52-60: http://www.redress.org/downloads/publications/Extradition_Report_Final_Version_Sept_08.pdf

11. Whilst the Government of Rwanda has established the FARG (“Fonds National pour l’Assistance aux Rescapés du Génocide”) which seeks to provide the most vulnerable survivors with access to medical care, housing and education, it has failed to address survivors’ demands for the restitution of their property and compensation for their losses. This is particularly frustrating for survivors as the Government had promised as early as 1996 that a specific law on compensation would be adopted with a view to establishing a compensation fund, though it has yet to deliver on that promise.⁵
12. It was, however, not only the Government of Rwanda that disappointed survivors’ hopes for reparation. The international community has established the ICTR, yet survivors cannot participate in proceedings and claim reparation before the ICTR. Despite proposals made by ICTR judges to the UN Security Council, as well as the interventions of IBUKA (a principal partner of SURF, and the umbrella association of survivor’s organisations in Rwanda) before the UN General Assembly, no compensation fund has been created by the UN.
13. For the past two years, Survivors Fund (SURF) and REDRESS, in collaboration with Rwandan civil society, have examined survivors’ perspectives and experiences in seeking to obtain reparation. The work has been shaped by the closure of *gacaca* in June 2012, as well as the ICTR in July 2012, and serious concerns among survivors that with the closure of both mechanisms, avenues for reparations would be closed, too, and their right to reparation would never be met. The need to “turn the page” and to look to the future was emphasized publicly by a variety of officials, yet for the majority of survivors, this was considered to be problematic if not impossible without reparation, in particular compensation and restitution of their property. Justice, according to some survivors, was only seen to be done if reparation formed part of the process, and to date, despite all efforts of the Government of Rwanda and the international community, that has yet to happen.

International Criminal Tribunals for the former Yugoslavia and Rwanda (Page 51)

14. The Report notes that the “UK supports the work of the ICTR in tackling impunity and bringing justice to the Rwandan people.”⁶ However, Survivors Fund (SURF) and the survivor’s organisations we represent, assert that the ICTR has failed resolutely to deliver restorative justice to survivors of the genocide in the form of reparation.
15. The establishment of the ICTR in November 1994, significant as it recognises the gravity and the scale of the human rights violations committed in Rwanda in 1994, had relatively little impact on survivors.⁷ 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 allow ICTR judges 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 relied upon its authority to order such restitution.⁸
16. Rule 106 of the ICTR’s Rules of Procedure and Evidence stipulates that survivors seeking compensation against a perpetrator convicted by the ICTR must apply to a court in Rwanda or “other competent body”, and that they may rely on judgments of the ICTR in such proceedings. The judgments of the ICTR are to be considered final and binding as to the criminal responsibility of the convicted person for such injury.⁹ In the absence of funds available to enforce any compensation awards, however, this has so far not assisted survivors in Rwanda.

⁵ See Heidi Rombouts, ‘Victim Organisations and the Politics of Reparation: A Case-Study on Rwanda’, 2004, pp 411-449

⁶ Report, page 51

⁷ See African Rights and REDRESS, ‘Survivors and Post-Genocide Justice in Rwanda’, November 2008, pp.55-72:

<http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf>

⁸ See Article 23 (3) of the ICTR statute and Rule 105 of the Rules of Procedure and Evidence

⁹ Rule 106 of the ICTR’s Rules of Procedure and Evidence: <http://www1.umn.edu/humanrts/africa/RWANDA1.htm>

17. 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.¹⁰ 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.
18. It was feared that for the ICTR to handle compensation claims would severely hamper the everyday work of the Tribunal and would be “highly destructive” to the mandate of the Tribunal, also taking into account that the resources available to the Tribunal would not allow it to properly handle claims for compensation in a timely fashion.¹¹ The Judges of the ICTR therefore proposed to consider other options, including a specialised agency set up 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”.¹²
19. Subsequently, neither the proposal nor the ICTR’s judges’ call for a greater role of the UN in providing compensation to victims of the genocide were addressed, and no steps were taken at UN level to assist survivors in obtaining compensation. A resolution adopted by the General Assembly on 10 December 2004 on the “[A]ssistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence” does not address the right to compensation and restitution. Though even that 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.
20. The cumulative annual funding from UN agencies, funds and programmes for survivor’s 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 the biennium of 2012-13 is \$174 million.¹³ In total, expenditure on the ICTR has amounted to over \$1 billion¹⁴ (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.
21. In comparison to the ICTR, Article 75 of the Rome Statute (1998) for the International Criminal Court (ICC) allows for enforcement of restorative justice for survivors of human rights violations. The Trust Fund for Victims (TFV) is the main mechanism for doing so, along with the ICC’s legal mandate to require convicted individuals to compensate victims with their own assets which it does in DRC and Uganda.¹⁵
22. The Trust Fund is an historic institution essential for the realization of the ICC’s progressive mandate towards victims and is an acknowledgment that justice for genocide, crimes against humanity and war crimes cannot be met by retribution alone. It works alongside the Court’s reparative function to benefit victims. It acquires its assets from donations made by States and non-State entities.
23. As the Statute does not apply retrospectively, there is no such fund for victims of crimes heard at the ICTR. However there is a mandate for one to be established, as declared in the Rwanda Constitution and UN Resolution A/RES/66/228. Judge Pillay and Judge

¹⁰ Statement by Judge Navanethem Pillay, President of the ICTR, to the United Nations Security Council, 29 October 2002, at <http://www.unict.org/tabid/155/Default.aspx?id=1086>

¹¹ Letter dated 9 November from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary- General, U.N. Doc. S/2000/1198, 15 December 2000, ANNEX.

¹² Ibid, page.5.

¹³ See Financing of the International Criminal Tribunal for Rwanda, December 2011: <http://bit.ly/JH6VbA>

¹⁴ How Rwanda judged its genocide, Phil Clark, Africa Research Institute, April 2012, page 7

¹⁵ See Trust Fund for Victims: <http://www.trustfundforvictims.org/two-roles-tfv>

Byron, both former Presidents of the ICTR, have stated that the lack of reparation for genocide survivors is a serious shortcoming of the ICTR.

24. In March 2004, the UN Secretary General Kofi Annan, who was head of the UN peacekeeping agency at the time of the genocide, acknowledged institutional as well as personal blame for the genocide. Under general rules of international law, the UN as an entity benefits from extensive immunities, which will make it virtually impossible for it to be successfully sued. Yet, the acceptance of institutional failure of the UN in 2004, the proposals made by the ICTR judges, as well as the recognition of moral responsibility by the UN inquiry on the Rwanda genocide, has not resulted in reparation for survivors.
25. In contrast, the UK Government has never accepted any responsibility for the extent of the genocide, nor apologized for its role in limiting intervention, unlike the UN, or the US under President Clinton.¹⁶ The genocide occurred under a Conservative Party Government¹⁷, and it was under instruction of the Government that the UK Permanent Representative to the United Nations, David Hannay, supported Resolution 912, passed on 21 April 1994, which reduced the UN Assistance Mission for Rwanda (UNAMIR) from 2,500 troops to just 270.¹⁸ Lt-Gen Romeo Dallaire, who led the mission, has always held that a troop presence of only 5,000 could have prevented the genocide, a conviction backed up by the 2005 Report of the Commission for Africa, which noted ““Just 5,500 troops with robust peace enforcement capabilities could have saved half a million lives in Rwanda.”¹⁹
26. Apportioning blame though will achieve nothing in rebuilding the lives of survivors of the genocide, which requires aid. Ultimately survivors of the genocide in Rwanda want to be independent and self-sufficient. However, to return them to their socio-economic position before the genocide (and in so doing, deliver restorative justice) requires access to funding to rebuild their houses destroyed during the genocide, to complete education interrupted during the genocide, to re-establish livelihoods lost in the genocide and to ensure access to medical treatment to treat ailments resulting from the genocide.
27. 2014 is the twentieth anniversary of the genocide, and will mark the closure of the ICTR branch of the IRMCT. This presents a unique opportunity to deliver the restorative justice for which the Government of Rwanda does not have the resources, and that the ICTR does not have the mandate. Though it would be of symbolic importance for the UK Government to follow the UN and the US in issuing an apology for its inaction during the genocide, there is a more important gesture possible. As such, we call on the UK Government to support the call for reparation for survivors of the genocide in Rwanda, which truly will deliver justice for the Rwandan people largely denied to them through the limited mandate of the ICTR.

The UK as a safe haven for suspected perpetrators of human rights abuses (Page 530)

28. The Report raises an important aspect of the campaign against torture and other international crimes such as genocide, crimes against humanity and war crimes, under the heading “Human rights offenders and entry to the UK” where it is said: “Where there is independent, reliable and credible evidence that an individual has committed human rights abuses, the individual will not normally be permitted to enter the United Kingdom.”²⁰ There is no reference to the law, practice or policy concerning suspects who are present or residing here.

¹⁶ See New York Times, 26 March 1998: <http://nyti.ms/JHbpir>

¹⁷ For further exposition see Linda Melvern in Genocide Studies and Prevention, ‘The UK Government and the 1994 Genocide in Rwanda’, Winter 2007, <http://utpjournals.metapress.com/content/k465197778m14430/fulltext.pdf>

¹⁸ See Adam LeBor, ‘“Complicity with Evil”: The United Nations in the Age of Modern Genocide’, 2006, pp 172-181

¹⁹ See 2005 Report of the Commission for Africa, <http://www.commissionforafrica.info/2005-report>, page 39

²⁰ Report, page 53.

29. There are outstanding warrants for the arrests of four suspected Rwandan genocidaires living freely in Britain, namely:
- Vincent Bajinya
 - Celestin Ugirashebuja
 - Charles Munyaneza
 - Emmanuel Nteziryayo
30. Survivors Fund (SURF) is appealing for justice for survivors by the simple act of allowing the extradition of these four men to face the charges levied against them by their countrymen, in Rwanda. A similar request was made to the previous government who agreed to extradite them but this was overturned by the High Court in 2009 on the grounds that they would not receive a fair trial in Rwanda.
31. Rwanda has made leaps forward in bringing itself in line with international standards of justice, not least in terms of its rule of law as the Report attests, and these men would receive as fair a trial there as they would anywhere else.
32. In fact, the ICTR has begun transferring cases from Arusha, as well as other jurisdictions such as Canada, to Rwanda on the grounds that that suspected genocidaires can now and will receive a fair trial. The UK should now follow suit.
33. However, if their cases are not extradited to Rwanda, then the Crown Prosecution Service has a responsibility to prosecute to ensure that their cases are heard in UK courts. The worst case scenario is as present, when neither alternative is pursued. As such, the four of them are allowed to remain in Britain and continue to live in impunity, while there are strong cases against them that they are not being required to answer.
34. Apart from the need for justice for the Rwandese, the UK should not be seen as a safe-haven for suspected perpetrators of human rights abuses.

RECOMMENDATIONS

The FAC should:

- call on the FCO to support the Government of Rwanda in assisting the survivors of the genocide in Rwanda through increase aid for this most vulnerable and marginalised target population, and foster the legislative and fiduciary environment for the enforcement of the rights of genocide survivors to reparation.
- call on the FCO to support the delivery of the UN General Assembly resolution requesting the Secretary General to encourage relevant United Nations agencies, funds and programmes to provide assistance in the areas of education, medical care, skills training and microcredit programmes aimed at promoting self-sufficiency for survivors of the genocide in Rwanda, which will deliver restorative justice for the Rwandan people denied to them through the limited mandate of the ICTR.
- call on the FCO to actively support the extradition of the suspected genocide suspects back to Rwanda, or else call on the Crown Prosecution Service to open prosecutions to ensure that their cases are heard in UK courts, and in so doing making the UK a non-safe haven for suspected perpetrators of human rights abusers.

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