



# RIGHT TO REPARATION FOR SURVIVORS

## RECOMMENDATIONS FOR REPARATION FOR SURVIVORS OF THE 1994 GENOCIDE AGAINST TUTSI

### DISCUSSION PAPER

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## I. Executive Summary

1. IBUKA, AVEGA, AERG, GAERG, AOCM, Duhozanye, Duharanire Kubaho, Barakabaho, the Survivors Fund (SURF) and REDRESS (“the Organisations”) submit this discussion paper to the Government of Rwanda to help progress discussions on reparation for survivors of the genocide with survivors, 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 rehabilitation, restitution and compensation.
2. Our main recommendation is to encourage the Government to consider establishing a *Reparation Task Force* to address the outstanding issues. This could 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) identifying awards made where perpetrators were too poor to compensate; (3) exploring possibilities for reparation for victims whose perpetrators have not been identified; (4) consulting with survivors and survivor organisations throughout Rwanda to identify their needs and determine adequate measures of reparation; (5) establishing criteria for beneficiaries of reparation in regards to indirect victims; (6) recommending the establishment of a reparation programme that includes forms of reparation and types of disbursement of such 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**

4. An estimated one million Tutsis, and numerous moderate Hutus were killed in the genocide, and the lives of survivors were destroyed. Survivors interviewed by organisations 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. 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,<sup>1</sup> 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.
7. This discussion paper is structured in four 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 <sup>2</sup>**

8. 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.<sup>3</sup> 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 8 of the Universal Declaration of Human Rights (UDHR), Article 14 of the UN Convention against Torture and other cruel, inhuman and degrading treatment or punishment (UNCAT), Article 39 of the Convention on the Rights of the Child, and Article 7 of the African Charter on Human and Peoples' Rights (ACHPR). 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* ('UN Basic Principles and Guidelines') are based on existing international obligations and emphasise that States have the responsibility to provide victims with "adequate, effective and prompt reparation"<sup>4</sup> which should be "proportional to the gravity of the violations and the harm suffered".<sup>5</sup>

9. Also very relevant to the Rwandan context, the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation,<sup>6</sup> 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.
10. 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. In the discourse on reparation in Rwanda, the term 'indemnification' is interchangeably used to mean various forms of reparation, including compensation, restitution and rehabilitation. To better reflect the different needs and rights of survivors to specific forms of reparation, this paper uses the overall term of reparation as referred to in the UN Basic Principles and Guidelines which provide the most detailed guidance of the different forms of reparation needed. We therefore encourage to apply the UN Basic Principles and Guidelines in the design of reparation measures for genocide survivors in Rwanda<sup>7</sup>:
  - *Restitution*: is 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*: should include 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.

Compensation is central to the right to an effective remedy and to reparation, particularly when restoring the victim to the situation before the gross violation took place is not possible. This is frequently the case in respect of many international crimes, such as those involving acts of rape or torture.

- *Rehabilitation*: should include medical and psychological care as well as legal and social services.<sup>8</sup>
- *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'**

11. 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 claim reparation as "partie civile" / civil party in the context of criminal proceedings.<sup>9</sup> This law also 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.<sup>10</sup>
12. From 1996 up to the establishment of gacaca courts in 2001, survivors participated in approximately two-thirds of all criminal cases before specialised chambers in ordinary courts as 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.<sup>11</sup> 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 (RWF) (approximately \$400 and \$13,000 USD), often without providing further explanation on how these awards were arrived at.<sup>12</sup>
13. Civil claimants also lodged claims for compensation against the Rwandan State. Even though the State was declared jointly liable with the accused in several cases, and compensation awards were made against the State, none of these civil verdicts against the State were enforced.<sup>13</sup>

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 the Organisations, perpetrators avoided payment by bribing those responsible for the enforcement of compensation awards.<sup>14</sup> Furthermore, none of the survivors and Government officials interviewed by the Organisations could 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 RWF 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."<sup>15</sup>

#### **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, contrary to international law,<sup>16</sup> the Organic 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.*"<sup>17</sup> This provision not only prevents survivors from claiming compensation from the State, but also led to the dismissal of compensation awards issued against the State by the specialised chambers as the law was applied retroactively. 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.<sup>18</sup>
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*".<sup>19</sup> 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. 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.<sup>20</sup>
19. In short, the promised Compensation Fund and the reference to a separate law on compensation were key components of the legislation establishing gacaca and could have helped survivors to obtain reparation.
20. However, as will be outlined further below, the Compensation Fund has still not been established. According to the National Service of Gacaca Jurisdictions (NSGJ), gacaca courts have not compiled a list of damages and losses.<sup>21</sup> The majority of survivors cannot enforce gacaca judgments and thus have not received any, or only a fraction of the actual compensation awarded for pecuniary damages. Research published in June 2012 by the Legal Aid Forum (Rwanda) based on interviews with over 2,700 claimants of compensation in Rwanda confirms that awards by gacaca courts are the “*hardest to enforce*”, with 92% of all genocide-related judgements yet to be enforced.<sup>22</sup>
21. All survivors interviewed by the Organisations expressed frustration about the lack of support when seeking to enforce gacaca awards. 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.”<sup>23</sup>

22. Since 2009, the right of survivors to take civil action against Category I suspects has been further curtailed 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.*”<sup>24</sup> 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 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.<sup>25</sup> 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.<sup>26</sup> The unconstitutionality as well as



discriminatory character of the FARG law has been challenged by IBUKA in a recent submission to FARG.<sup>27</sup>

## **V. Survivors' discontent and frustration with the status quo**

23. Gacaca courts closed officially on 18 June 2012. Remaining genocide cases are to be prosecuted before ordinary or, where applicable, 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. IBUKA tabled a submission on the new law on the termination of gacaca, seeking clarification on the proposed articles,<sup>28</sup> yet it appears that only a few of its concerns unrelated to reparation, were taken into consideration.

24. 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 reparation, including 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 the Organisations have expressed that justice has not been served, as it has not included compensation;
- Interviews and seminars organised by survivor organisations 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;<sup>29</sup>
- Survivors have expressed their fear that their right to compensation will never be addressed, especially now that gacaca has closed down and that the ICTR's mandate is coming to an end;<sup>30</sup>

## **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**

25. 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.<sup>31</sup>

26. 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.<sup>32</sup> The fund was to be established specifically to enforce judgments rendered by ordinary courts and gacaca courts.<sup>33</sup> Material and human losses were to be compensated, including death and injuries, as well as moral damages.<sup>34</sup>

27. 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 6<sup>th</sup> degree would be entitled to compensation in cases where the direct victim had died.<sup>35</sup>
28. Irrespective of the obstacles that ultimately prevented the adoption of the draft law, the majority of survivors' interviewed by the Organisations indicated that they believe that the Government is responsible for ensuring reparation. For them, a Compensation or Reparation Fund would still be the best option for delivering the various forms of reparation required by survivors, including restitution, rehabilitation and compensation 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.
29. 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 could 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 benefited 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.<sup>36</sup> 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.
30. 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.<sup>37</sup> The establishment of these Funds was the result of longer processes that involved the identification of specific reparation recommendations by Truth and Reconciliation Commissions (TRCs), and the design of often complex processes for claiming and implementing compensation and other payments (e.g. for rehabilitative services) from the Compensation/Reparation Fund.

31. 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.<sup>38</sup> Funding of \$100 million USD 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 RWF 2 million).<sup>39</sup> 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.<sup>40</sup> In addition, these payments fall short of the RRC's recommended reparation grant of 120,000 Rand (about RWF 8.5 million) for all individuals identified by the RRC.<sup>41</sup>
  
32. 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.<sup>42</sup>
  
33. In Sierra Leone, the establishment of a "*Special War Fund for Victims*" was envisaged in Article XXIX of 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.<sup>43</sup> The International Organisation for Migration (IOM) assists the National Commission for Social Action to carry out the reparations programme in its planning and implementation, and acts as a recipient agency for the grant of the UN Peacebuilding Fund.<sup>44</sup> However, despite these advancements, due to the lack of sufficient funding for the *Reparations Programme*, by the end of January 2012, approximately 10,753 victims had yet to receive any reparation.<sup>45</sup>
  
34. The funds and programmes put in place in South Africa, Morocco and Sierra Leone highlight in particular that many reparation measures are dependent on the existence of a well-resourced reparation fund. That also implies that a political commitment must exist to provide resources. Funding gaps can prevent the implementation of reparation measures. The experiences and lessons learned in other countries need to be explored further, with a view to identifying how they could be taken into account in the context of Rwanda, in particular if a decision was made to adopt a law on compensation so as to establish a Compensation Fund.

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

35. The Rwandan Government has prepared a draft “Law on the Charter of Rights of Victims and Witnesses of Intentional Offences” (“Draft Law”).<sup>46</sup>
36. 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.<sup>47</sup> The Draft Law provides further that a compensation fund should be established under the “*supervision of the National Public Prosecution Authority*”.<sup>48</sup>
37. 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<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994 as beneficiaries of the Fund, as appropriate. Indeed, survivor organisations as well as individual survivors interviewed 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.<sup>49</sup>
38. 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.<sup>50</sup> 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 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 ICCPR.
39. Concerns also exist as to the most appropriate body to manage the compensation fund. Article 23 of the Draft Law names the National Public 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.<sup>51</sup>

## **c. International Trust Fund for Survivors**

40. The establishment of the International Criminal Tribunal for Rwanda (ICTR) in November 1994 had relatively little impact on survivors,<sup>52</sup> 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.<sup>53</sup>

41. Similarly, Rule 106 of the Tribunals Rules of Procedure and Evidence provides that for the purpose of claiming compensation "*in a national court*", the ICTR's judgment shall be final and binding as "*to the criminal responsibility of the convicted person for such injury.*"<sup>54</sup> To date, Rule 106 has not assisted survivors claiming compensation before national courts. Even though survivors in Rwanda are able to rely on judgments from the ICTR for the purpose of civil claims, the enforcement of any potential awards would likely be difficult given the insolvency of most of the perpetrators convicted by the ICTR and the absence of a Compensation Fund.
42. 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.<sup>55</sup> 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.
43. 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.<sup>56</sup> 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*".<sup>57</sup>
44. 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.
45. In the case of Rwanda, the General Assembly on 10 December 2004 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;*<sup>58</sup>

46. The resolution, which has been adopted at consecutive General Assemblies ever since, most recently at the 66<sup>th</sup> General Assembly in 2011, has never been meaningfully honoured.
47. The cumulative annual funding from UN agencies, funds and programmes for survivors' organisations in Rwanda amounts to less than \$250,000 USD annually (less than \$1 USD of aid for each survivor). In contrast, the appropriation of UN funds for the ICTR for 2012-13 is \$174 million USD.<sup>59</sup> In total, expenditure on the ICTR has amounted to over \$1 billion USD<sup>60</sup> (equivalent to almost \$30 million USD 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.
48. The lack of action by the ICTR and the UN in regards to reparation for Rwandan genocide survivors is in stark contrast to steps taken by the ICTR's 'sister tribunal', the International Criminal Tribunal for the former Yugoslavia (ICTY). The calls of former ICTY President Robinson for the establishment of a trust fund for victims led to, in 2011, an arrangement between the ICTY and the International Organisation for Migration to carry out a "*comprehensive assessment study aimed at providing guidance to the Tribunal on appropriate and feasible victim assistance measures and possible means of financing.*"<sup>61</sup> The assessment study was ongoing at the time of writing, yet no similar plans were underway in regards to the ICTR.
49. Furthermore, 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.<sup>62</sup> 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<sup>63</sup>
50. The Trust Fund is a historic institution essential for the realisation 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.<sup>64</sup>
51. 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 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 one of the main shortcomings of the ICTR.<sup>65</sup>
52. 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.

53. This could be done through an assessment study similar to the study currently carried out by the International Organization for Migration in collaboration with the ICTY, and 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'. The Organisations 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.<sup>66</sup> 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.
54. Survivors' organisations and political stakeholders consulted on first drafts of the comparative study<sup>67</sup> appear to support such an approach, in particular as many believe that the 'international community' has a responsibility towards survivors. 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)**

55. In May 2012, IBUKA made a submission on the law establishing FARG, outlining the main concerns expressed by survivors in respect of FARG.<sup>68</sup> While welcoming the assistance provided by FARG, many survivors stressed that FARG should not be considered as a measure of reparation.
56. 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 mechanism, that through the establishment of FARG the Government has recognised its (political) responsibility towards survivors and that therefore there is no need for additional reparation measures.<sup>69</sup>
57. 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.
58. Accordingly, further consultation with survivors and survivors' organisations would be required if FARG was to provide also reparation so as to ensure that a revised mandate of FARG would reflect and take into account survivors' perspectives and needs. 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.

59. At present, the Board of Directors of FARG contains seven members appointed by the Prime Minister's Office.<sup>70</sup> Ideally, representatives appointed by survivors or survivors' organisations would also be represented in the Board, which is presently not the case.<sup>71</sup>
60. If such consultations with survivors and survivors' organisations were carried out, and such amendments were enacted, then FARG could potentially play a role in securing and disbursing compensation, in line with the recommendations of a Task Force on Reparation. 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.<sup>72</sup>

## **VII. Next steps and recommendations**

### **a. Establishment of a Task Force on Reparation in Rwanda**

61. 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 Reparation be established that would facilitate the establishment of a comprehensive reparation programme. Similar task forces were established elsewhere. In South Africa, a 'Committee on Reparation and Rehabilitation' was created to establish reparation policy proposals and to collect information from many different places to make these proposals, including victims and survivors, people who had made statements to the Truth Commission, representatives of NGOs, community based organisations, faith communities and academic institutions. The information collected enabled the Committee to identify the harm suffered, the needs and expectations of victims, establish criteria for identifying victims in immediate need and to make proposals for long term measures for reparation and rehabilitation.<sup>73</sup> In Sierra Leone, where a Truth Commission had made specific recommendations regarding reparation for victims, a Reparation Task Force was established to develop a reparation programme strategy and to identify victims.<sup>74</sup>
62. Accordingly, a Task Force on Reparation in Rwanda (TFRR) could
1. *Collect information:* The TFRR, if established, would not need to start from scratch, as a significant amount of information about crimes committed during the genocide, as well as harm suffered, and the identity of survivors, has already been collected through national court proceedings and in particular gacaca courts. As a starting point, the TFRR could therefore usefully examine past compensation and restitution awards of national courts and of gacaca that have yet to be implemented. The TFRR would also identify awards made against insolvent perpetrators and make recommendations on the victims whose perpetrators have not been known. This is of paramount importance as no register exists in regards to past awards. The Committee 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;<sup>75</sup>



2. *Consult widely*: Only where survivors are able to participate in the process of establishing a reparation programme and where they are partners, rather than only 'beneficiaries', will reparation be meaningful to them. The TFRR could therefore extend the consultation with survivors undertaken by the Organisations. This could 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. The TFRR could hold 'reparation hearings' throughout the country so as to enable survivors and organisations to provide information that is relevant for the design of a reparation programme. Countrywide consultation will also allow the TFRR to manage expectations of survivors by setting out what is possible taking into account existing resources;
  3. *Identify forms of reparation* that address survivors' needs, in close consultation with survivors and communities, including compensation, restitution and rehabilitation;
  4. *Identify methods of disbursement of reparation* and 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; this could include prioritising certain groups of survivors to benefit from immediate reparation measures, such as those who suffered sexual violence, children born out of rape, elderly and other most vulnerable survivors;
  5. *Assess eligibility criteria*: Research to what degree relatives of survivors could be considered beneficiaries of any reparation measure, taking into account existing resources;
  6. *Recommend reparation mechanism*: On the basis of the work, to recommend a mechanism of reparation which meets survivors' needs and is feasible and potentially can be funded. This could include recommendations as to the implementation of the mechanism and access of survivors, taking into account potential obstacles such as levels of literacy and access to reparation for survivors in remote areas of Rwanda. This recommendation should be made in the form of a final report for approval by the Parliament and presented to the President;
63. The TFRR could be composed of a 'multidisciplinary team of experts', including individuals with experience with survivors in Rwanda and an understanding of the genocide and its dimensions, a good sense of the types of harms suffered, as well as experts in reparation, in gender issues and international law. It could be modelled on the task force in Sierra Leone, which included a variety of stakeholders, including representatives from the National Commission for Social Action (which is in charge of the implementation of the reparation programme), the United Nations, and representatives from the Truth and Reconciliation Commission, and war victims.
64. The TFRR could therefore include a 'working party' of two international and two local consultants, which would be reporting into a 'steering committee' composed of an equal number of representatives from survivor's organisations and from government respectively. The steering committee could direct and guide the working party and

ultimately would be responsible for the delivery of the TFRR's final report. The consultants of the working party, which will be in charge of carrying out countrywide consultations, could be from the International Organization for Migration (IOM) which has carried out similar tasks in Sierra Leone, the former Yugoslavia and elsewhere, or any other organisation or individual with required skills and experience. Local consultants could be one expert nominated by survivor's organisations with another expert nominated by the Government.

65. Should a TFRR be established along the lines of what is suggested above, it will be important that the working party is and is seen to be independent and expert by survivors, Government and the international community (which could increase the possibility for funding of the TFRR). The working party could report back to the steering committee on a fortnightly basis during the field work period which would allow the TFRR to address concerns/issues as they arise. It would also help to ensure that the TFRR is delivering its work in a timely fashion. Monthly reports could be published so as to guarantee transparency and ensure that survivors and other stakeholders are informed about the progress of the TFRR.
66. Once established, the TFRR could complete an initial countrywide consultation period in ten weeks, with the working party holding at least two one day consultation workshops in each province. A period of report writing will also be required. It could also be necessary for the working party to report back to the communities it initially consulted, which could require another 5 weeks. In total, the TFRR's mandate, once established, could be for an initial 5 months and be subject to extension if required.
67. Based on the above, the consultants of the working party would be contracted to work full time over the period of 4 months, which will include field work as well as report writing. The steering committee could be operating in a voluntary capacity as its time commitment will be far less than that of the working party. Ideally, the TFRR would be established by and report back to the President. Its budget could be funded by Government, possibly out of the under spend of FARG. Additional funding possibilities could be explored with the ICTR's legacy programme, in light of a similar reparation study currently being out by the ICTR's sister tribunal for the former Yugoslavia.

## **Annex and consulted materials**

### **Submission to the President of the Republic of Rwanda on Reparation for Survivors of the 1994 Genocide**

1. IBUKA and its constituent Member Organisations, 'Submission on the FARG Draft Report compiled by GPO Partners, Rwanda (May 2012)', Addendum 'Submission on No 69/2008 of 30/12/2008 Law relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organisation, powers and functioning'.
2. IBUKA submission to the 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, 26 March 2012'.
3. Organic Law No. 08/96 of August 30, 1996 on the Organization of Prosecutions for Offences constituting the Crime of Genocide or Crimes against Humanity committed since October 1, 1990.
4. Organic Law No 40/2000 of 26/01/2001 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.
5. Organic Law No 16/2004 of 19/6/2004 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.
6. Law No 69/2008 of 30/12/2008 relating to the establishment of the fund for the support and assistance to the survivors of the Tutsi Genocide and other crimes against humanity committed between 1<sup>st</sup> October 1990 and 31<sup>st</sup> December 1994, and determining its organisation, competence and functioning.

#### **Further Material referred to in this Discussion Paper:**

7. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law [available here: <http://www2.ohchr.org/english/law/remedy.htm>].

8. Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation of 2007 [available here: [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php)].
9. Promotion of National Unity and Reconciliation Act 34 of 1995 [available here: [http://www.saflii.org/za/legis/num\\_act/ponuara1995477/](http://www.saflii.org/za/legis/num_act/ponuara1995477/)]
10. 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 [available here: <http://www.un.org/Docs/sc/letters/2000/sglet00.htm>]
11. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985 [<http://www2.ohchr.org/english/law/victims.htm>]

## Endnotes

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<sup>1</sup> Ibid; Conference Background Note at [http://www.redress.org/downloads/17August2011\\_Torture\\_Survivors\\_Conference\\_BackgroundNote.pdf](http://www.redress.org/downloads/17August2011_Torture_Survivors_Conference_BackgroundNote.pdf).

<sup>2</sup> For further information on the right to reparation, see: Redress. *Reparation: A sourcebook for victims of torture and other violations of human rights and international humanitarian law*, 2003. Available at <http://www.redress.org/downloads/publications/SourceBook.pdf>; REDRESS, 'Implementing Victims' Rights- A Handbook on the implementation of Basic Principles and Guidelines on the Right to a Remedy and Reparation, March 2006, available at <http://www.redress.org/downloads/publications/Reparation%20Principles.pdf>; see also Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, at <http://www2.ohchr.org/english/law/pdf/victims.pdf>.

<sup>3</sup> Ibid

<sup>4</sup> 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

<sup>5</sup> Ibid, principle 18

<sup>6</sup> See, [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php).

<sup>7</sup> UN Basic Principles and Guidelines, principles 19-23.

<sup>8</sup> For a comprehensive analysis of the right to rehabilitation under international law, see REDRESS, 'Rehabilitation as a Form of Reparation Under International Law, December 2009, at <http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf>.

<sup>9</sup> Organic Law No. 08/96 of 30 August 1996 on the Organisation of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since October 1, 1990, Article 29 (1), (2), (3), ANNEX 3.

<sup>10</sup> Ibid, Article 32.

<sup>11</sup> International Crisis Group, Africa Report No 30, 7 June 2001, p.33, at [http://www.crisisgroup.org/~media/Files/africa/central-africa/rwanda/International%20Criminal%20Tribunal%20for%20Rwanda%20Justice%20Delayed.pdf](http://www.crisisgroup.org/~/media/Files/africa/central-africa/rwanda/International%20Criminal%20Tribunal%20for%20Rwanda%20Justice%20Delayed.pdf).

<sup>12</sup> Stef Vandeginste, 'Reparation pour les victimes de genocide, de crimes contre l'humanite et de crimes de guerre au Rwanda', in 'L'Afrique des Grands Lacs. Annuaire 2000-2001', p.10.

<sup>13</sup> Ibid, pp.12-13.

<sup>14</sup> Interview with survivor, Kigali, 10 December 2010; interview with a civil party, Kigali, 21 December 2010.

<sup>15</sup> Interview with one of the civil parties, Kigali, 21 December 2010.

<sup>16</sup> According to the principle of continuity, successor States can be held accountable for violations committed by the predecessor State, see for instance Menno T. Kamminga, 'State Succession in Respect of Human Rights Treaties', in *European Journal of International Law* (1996), pp. 469-484.

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<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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, ANNEX 4.

<sup>20</sup> 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, Art. 75, ANNEX 5.

<sup>21</sup> Interview with Interview with Domitilla Mukantaganzwa, Executive Secretary NSGJ, Kigali, 28 March 2012.

<sup>22</sup> Power Point Presentation at Conference convened by the Legal Aid Forum, Kigali, June 2012, copy on file with the organisations.

<sup>23</sup> Interview with a survivor, 2 December 2010

<sup>24</sup> Organic Law No 69/2008 of 30 December 2008 relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organisation, powers and functioning, Article 20, ANNEX 6.

<sup>25</sup> Constitution of the Republic of Rwanda, 4 June 2003, Article 19; REDRESS/ African Rights workshop organised with Kigali based lawyers, 15 August 2011.

<sup>26</sup> See for instance Law No 13/2004 of 17 May 2004 Relating to the Code of Criminal Procedure, O.G. Special No of 30 July 2004, Articles 9-17, at [http://www.amategeko.net/display\\_rubrique.php?ActDo=ShowArt&Information\\_ID=1333&Parent\\_ID=30693517&type=public&Langue\\_ID=An&rubID=30693524#30693524](http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=1333&Parent_ID=30693517&type=public&Langue_ID=An&rubID=30693524#30693524).

<sup>27</sup> IBUKA and its constituent Member Organisations, 'Submission on the FARG Draft Report compiled by GPO Partners, Rwanda (May 2012)', Addendum 'Submission on No 69/2008 of 30/12/2008 Law relating to the establishment of the Fund for the support and assistance to the survivors of the Tutsi genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994, and determining its organisation, powers and functioning ANNEX 1.

<sup>28</sup> IBUKA submission to the 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, 26 March 2012, ANNEX 2.

<sup>29</sup> Interview with Kigali based lawyer, 5 January 2011; workshop organised by SURF, African Rights, REDRESS with IBUKA, AVEGA, AERG, GAERG, Solace Ministries, Kigali, on 8 November 2010; workshops organised by SURF and REDRESS with IBUKA in March 2012.

<sup>30</sup> Interview with IBUKA, Kigali, 4 November 2010; interview with AVEGA, Kigali, 4 November 2010.

<sup>31</sup> 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

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genocide and other crimes against humanity, committed between October 1, 1990 and December 31, 1994, Article 90.

<sup>32</sup> Projet de Loi No.....Du..... Portant Creation, Organisation et Fonctionnement du Fonds D'Indemnisation des Victims des Infractions Constitutives du Crime de Genocide ou de Crimes Contre l'Humanite commises entre le 1<sup>er</sup> Octobre 1990 et le 31 Décembre 1994 (copy of draft law available with the signatory organisations of this discussion paper).

<sup>33</sup> Chapter I, Article 2.

<sup>34</sup> Chapter 5, Articles 16-19.

<sup>35</sup> Ibid, Article 14; Interview with government officials, Kigali, 17 November 2010.

<sup>36</sup> Interview with embassy official, Kigali, March 2012.

<sup>37</sup> See Carla Ferstman, Mariana Goetz, Alan Stephens (eds.), 'Reparations for Victims of Genocide, War Crimes and Crimes against Humanity- Systems in Place and Systems in the Making, Martinus Nijhoff Publishers, 2009, pp. 385-541; Priscilla B. Hayner, 'Unspeakable Truths- Transitional Justice and the Challenge of Truth Commissions', Routledge, 2011.

<sup>38</sup> Promotion of National Unity and Reconciliation Act, 1995 (Act No 34 of 1995), section 42.

<sup>39</sup> President's Fund Annual Report for 2010/2011- The Department of Justice and Constitutional Development, p.4. .

<sup>40</sup> See Lovell Fernandez, 'Reparations policy in South Africa for the victims of apartheid', Law, Democracy & Development, Vol 3 (2), 1999, University of Western Cape [http://www.idd.org.za/images/stories/Ready\\_for\\_publication/V3-2\\_Reparations\\_policy\\_SA.pdf](http://www.idd.org.za/images/stories/Ready_for_publication/V3-2_Reparations_policy_SA.pdf); see also Khulumani Support Group, Letter sent to the President of South Africa on 7 February 2012, at <http://www.khulumani.net/khulumani/documents/category/7-engaging-state.html?download=89%3Akhulumani-submission-to-president-zuma-for-his-sona-7-february-2012>.

<sup>41</sup> Ibid.

<sup>42</sup> United States Institute for Peace, 'Truth Commission: Morocco', at <http://www.usip.org/publications/truth-commission-morocco>

<sup>43</sup> International Organization for Migration, 'IOM Provides Technical Assistance to Reparations Programme for Victims of Sexual Violence in Sierra Leone', 22 March 2010, at <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/cache/offonce?entryId=27138>; see also Priscilla B. Hayner, 'Unspeakable Truths, Transitional Justice and the Challenge of Truth Commissions, third edition, 2011, p.176; for the input of the UN Peacebuilding Fund see <http://www.unpbf.org/countries/sierra-leone/>. .

<sup>44</sup> International Organisation for Migration, Support for Sierra Leone Reparations Programme, at <http://www.iom.int/jahia/Jahia/support-for-the-sierra-leone-reparations-programme>.

<sup>45</sup> UN Peacebuilding Fund, 'Project Document, 30 January 2012, at <http://mptf.undp.org/document/download/8202>.

<sup>46</sup> Copy available with the signatory organisations

<sup>47</sup> See Articles 4-11 of the Draft Law.

<sup>48</sup> Ibid, Article 23.

<sup>49</sup> Ibuka, SURF and REDRESS workshop with survivor organisations, Kigali, 20-21 March 2012;

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<sup>50</sup> See above for discrimination of FARG law, para. 22.

<sup>51</sup> Ibuka, SURF and REDRESS workshop with survivor organisations, Kigali, 20-21 March 2012.

<sup>52</sup> 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>

<sup>53</sup> See Article 23 (3) of the ICTR statute and Rule 105 of the Rules of Procedure and Evidence, at <http://www.unictr.org/Portals/0/English%5CLegal%5CROP%5C100209.pdf>.

<sup>54</sup> Ibid, Rule 106.

<sup>55</sup> Statement by Judge Navanethem Pillay, President of the ICTR, to the United Nations Security Council, 29 October 2002, at <http://www.unictr.org/tabid/155/Default.aspx?id=1086>

<sup>56</sup> 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.

<sup>57</sup> Ibid, page.5.

<sup>58</sup> A/RES/66/228. See: <http://survivors-fund.org.uk/wp-content/uploads/2012/05/UN-Resolution-66-228.pdf>

<sup>59</sup> See Financing of the International Criminal Tribunal for Rwanda, December 2011: <http://bit.ly/JH6VbA>

<sup>60</sup> How Rwanda judged its genocide, Phil Clark, Africa Research Institute, April 2012, page 7

<sup>61</sup> ICTY, 'President Robinson's address before the United Nations General Assembly', 11 November 2011, at <http://www.icty.org/sid/10850>.

<sup>62</sup> See for the ICC's reparation mandate, REDRESS, 'Justice for Victims: The ICC's Reparations Mandate, May 2011, at [http://www.redress.org/downloads/publications/REDRESS\\_ICC\\_Reparations\\_May2011.pdf](http://www.redress.org/downloads/publications/REDRESS_ICC_Reparations_May2011.pdf).

<sup>63</sup> See Trust Fund for Victims: <http://www.trustfundforvictims.org/two-roles-tfv>

<sup>64</sup> 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.

<sup>65</sup> 9<sup>th</sup> Annual Ruth Steinkraus- Cohen International Law Lecture "Lessons learned from the Rwanda Criminal Tribunal", London, 16 March 2011.

<sup>66</sup> A draft of the findings is on file with the authors.

<sup>67</sup> Consultation undertaken in the SURF / REDRESS workshop in March 2012 in Kigali, Rwanda

<sup>68</sup> Supra, n.29.

<sup>69</sup> See interview with Justice Minister and Attorney General Tharcisse Karugarama, New Times, 18 June 2012.

<sup>70</sup> Supra, n.27, Article 8, ANNEX 6.



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<sup>71</sup> On the importance of victim representation see REDRESS, 'Conference: Reparations for Victims of Genocide, Crimes against Humanity and War Crimes: Systems in Place and Systems in the Making, The Hague, 1-2 March 2007', Lisa Magarrell, International Centre for Transitional Justice, ICTJ, 'Outreach to and engagement of victims on reparations- Lessons learned from truth and reconciliation processes, at:

<http://www.redress.org/downloads/events/OutreachEngagementLM.pdf>.

<sup>72</sup> New Times, Rwanda: Local Govt Allocates Lion's Share of Budget to Survivors, Veterans, 8 June 2012

<sup>73</sup> See Ministry of Justice, South Africa, 'Report of the Reparation and Rehabilitation Committee', Volume Six, Section Two, Chapter One, at Committee on Reparation and Rehabilitation', at [http://www.justice.gov.za/trc/report/finalreport/vol6\\_s2.pdf](http://www.justice.gov.za/trc/report/finalreport/vol6_s2.pdf); see also Ministry of Justice, South Africa, 'A summary of reparation and rehabilitation policy, including proposals to be considered by the President, at <http://www.justice.gov.za/trc/reparations/summary.htm>.

<sup>74</sup> Awareness Times, 'Taskforce on Reparation starts work in Sierra Leone', 30 January 2007, at <http://news.sl/drwebsite/exec/view.cgi?archive=4&num=4639&printer=1>; for further information on reparation for victims in Sierra Leone, see REDRESS, 'Implementation of the Sierra Leone Truth and Reconciliation Commission (TRC) Recommendations on Reparations- Preliminary Options Report', 30 January 2007, at <http://www.redress.org/downloads/publications/Draft%20Options%20Report%2030%20Jan%202007.pdf>.

<sup>75</sup> 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 Mukantanzwa, Kigali, 28 March 2012.