

Excellences, Dear Ladies and Gentlemen,

Thank you for this opportunity to share with you my presentation entitled “**Survivor’s perspectives on justice for the 1994 genocide committed against Tutsi in Rwanda**”

To preface my presentation I would like to give you a sense of what is Survivors Fund (SURF):

**About Survivors Fund (SURF):**

Survivors Fund (SURF) is the principal international organization representing and supporting survivors of the genocide. Since 1997 it has delivered support for survivors including housing and healthcare, education and employment, and is now focusing on restorative justice. Today SURF partners with nine survivors organizations to deliver support to over 300,000 vulnerable survivors of the genocide in Rwanda. The focus of our advocacy at present, in partnership with REDRESS, is on securing reparation for survivors of genocide from the international community and the Government of Rwanda. We believe that with the right support, this may even be possible by the time of the closure of the ICTR branch of the International Residual Mechanism for Criminal Tribunals in 2014.

**1. Introduction**

Almost eighteen years have passed since the start of the 1994 Tutsi genocide in which an estimated one million Tutsi and Moderates Hutu were massacred in only 100 days. In an attempt to render justice to victims in the aftermath of genocide, the government of Rwanda experimented with a number of justice mechanisms: At the outset, specialized 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. Nearly 2 million cases were heard before *gacaca*. With the closure of *gacaca* in July 2012, the cases that were in the competence of *gacaca* shall be referred to Rwanda’s ordinary courts. On the international level, the United Nations (UN) Security Council established the International Criminal Tribunal for Rwanda (ICTR) in November 1994, to try those most responsible for the genocide.

In my presentation I focus on survivors’ experiences and perspectives seeking justice especially in form of reparation with the different justice processes, mainly the recently closed *gacaca* courts, the ordinary court systems in Rwanda and I will also touch on ICTR, and conclude by sharing survivor’s hopes as to the way forward.

**2. Survivor’s experience and perspectives seeking justice in the form of reparation**

In the immediate aftermath of genocide, survivors had a profound need for an effective justice system. Survivors welcomed the establishment of specialized chambers in Rwanda’s courts dealing with genocide cases, *gacaca* courts and the establishment of the International Criminal Tribunal for Rwanda (ICTR) in November 1994, which marked the official recognition of the gravity and the scale of the human rights violations committed in Rwanda in 1994.

One point of commonality between these processes established in response to the genocide, is the almost exclusive focus on retributive justice as opposed to restorative justice.

*Retributive vs. Restorative Justice*

Although holding accountable perpetrators of genocide is important, retributive justice *alone* remains an incomplete form of justice. Accountability is important too as it helps to establish the truth and arguably serve as a measure of deterrent. However it is not enough.

Retributive justice does not ensure that genocide survivors are housed and clothed, that they have access to education and a decent living and adequate nutritional provisions, and that they receive the health care and psycho-social support services they need to rebuild their lives and to rehabilitate their communities. It concerns itself with a very narrow and exclusive remit: to punish perpetrators. By failing to provide reparation to survivors of the genocide and to protect them from the negative impacts of genocide, it does nothing to mitigate the effects of the violence and injustice from which they suffered and which continue to have a debilitating, often disabling, and marginalizing impact upon them.

## **2.1. Survivors experiences before specialised courts**

Many survivors had high expectations of the 1996 Organic Law establishing specialized chambers, which for the first time in Rwanda's law repressed genocide.

For example, Jeanne in Kigali was largely pleased with both the process and the outcome. When as a survivor he was called to testify, he was proud to do so and felt supported by other survivors. The investigators from the public prosecutor's office also carried out their own inquiries in the field to find out what had happened. It is true that the trials were very slow, but in many cases the final decisions satisfied the victims.

In addition, many victims felt encouraged and protected by the lawyers and the public prosecutor. Also, for the most part, the judges did not have a strong relationship with the accused or the civil party, and as such, there was less opportunity for corruption. Louis, the then IBUKA paralegal, noted the strengths of the conventional courts in contrast with gacaca.

The civil party had confidence in this system, contrary to what is happening today where the accused and the judge can often be blood relatives or friends, or when gacaca judges suffer from an inferiority complex as they have a lower standard of living than that of the accused. I can give an example of a servant who was responsible for judging his former boss.

In the conventional courts, the judges were in a position of strength vis-a-vis the accused. 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. 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. To date, none of the compensation awards by national courts against individual perpetrators and/or the State have been fully enforced.

## **2.2. Gacaca courts**

Many positively acknowledged that gacaca jurisdictions had given them the opportunity to clarify the truth and to determine how their loved ones perished during the genocide. The gacaca trials helped to gather information, which until then had largely remained unknown.

This was a key concern of most, who were particularly interested in the information-gathering phase of the gacaca proceedings. Alphonse in Butare called the collection of information "very effective." A related benefit of the system was the possibility of learning where certain the bodies of certain victims were buried, in order to rebury them in dignity.

Despite these achievements, gacaca left behind several outstanding issues: lack of enforcement, lenient sentences, suspicion, and inadequate reparation, to mention but a few.

Here are some of survivor's voices in May 2010 shortly before the gacaca courts wound down:

*"Gacaca released most of the perpetrators pretending that they have confessed. Yet they lied, or confessed only partly, as victims could not be aware of every single detail that happened when they were being hunted out during the genocide." Mukansanga, Ruhango District*

*"I live far from the centre in the midst of those who killed my family. They pretended to have confessed and were immediately released from prison. I always feel insecure because anything can happen to me any time." Fidele, Ntongwe Sector*

*"I thought gacaca will be closed when it had resolved all the cases submitted to it including property issues and execution of its own judgments" Pierre, 30 years old, Nyagatare district*

*"According to Rwandan culture, whenever someone lost their people, s/he would be given some moral and material help (peteroli) to comfort her/him. So why can't government compensate us at least on that basis?" Pelagie*

*"Our beloved who have been killed in a very horrific way cannot come back to life, but they should at least rehabilitate our property damaged" Nyirumuringa, Ngoma district*

*"I am now living in an extreme misery that I would not be experiencing if the government would have enforced the gacaca verdict in relation to my property damaged" Mukansanga Goretta, 56 year old, Gasabo district.*

*"Some cases in gacaca have not been handled well, and the few that has been well tried, their judgements have never been enforced." Leonidas, 72 years old, Ruhango district*

*"If the government can successfully make people pay tax, it can also get those convicted of genocide in gacaca to pay for what they have damaged." Goretta, 56 years old, Kicukiro district*

*"Gacaca does not leave any peace behind. Killers did not pay us for our lost properties yet we have thousands of copies of its verdicts awarding restitution. It has only divided people." Damascene, Gikondo, Kigali*

*"The reason why many perpetrators and local authorities in charge of enforcement are reluctant to pay us is that they believe that the closure of gacaca will imply the end of everything." Egide, Muhanga*

*"I could not file my claim for bodily harm before gacaca. I was beaten by soldiers. Would I sue Col. Bagasora who was the military's head at the time? Would I sue the government? I just don't know?" Karamaga, Kigali*

*"Gacaca has left us disunited because now people know who reported them and this might bring problems to us." Mukarigande*

*"I have not been able to identify the people who killed and destroyed my property because of perpetrators' strategy during gacaca called 'association ceceka' (conspiracy to keep silence and never reveal anything)." Antoine, 74 years old, Nyarugunga sector, Kigali*

*“The Government should secure one officer in charge of monitoring the gacaca awards enforcement process alongside the cell secretary at each and every cell.” Pelagie, 71 years old, Ruhango district*

### **2.3. International Criminal Tribunal for Rwanda (ICTR)**

Victims' perceptions of justice, as they relate to the ICTR, have been complicated from the outset. Many harboured suspicions about a United Nations court from the very beginning, given that the United Nations had abandoned them in their most urgent time of need by failing to act to prevent or stop the genocide. They saw it then as an institution set up, in the wake of the genocide, by an international community that was more interested in symbolic responses rather than in meaningful justice. However, precisely because they continue to yearn for both justice and acknowledgment, many have withstood the ordeal and repercussions of testifying in Arusha. What most found, however, is that the ICTR, by and large, failed to specifically address and take into account their needs, broadly speaking, and that it has only minimally satisfied their hopes and expectations including reparation.

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.

### **2.4. Survivor's hopes as to the way forward**

Survivor's organisations in Rwanda are urging the Government of Rwanda to honour its promises and adopt legislation specifically providing for survivors' rights to reparation. In October 2012, a range of survivor's organisations, in collaboration with SURF and REDRESS, submitted a discussion paper to the Government outlining a variety of options and recommendations for reparation for survivors. Their main recommendation focused on the establishment of a Task Force on Reparation for Rwanda (TFRR) which could assist in addressing some of the outstanding issues, particularly (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 organizations 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. Conclusion**

The closure of gacaca and completion of the ICTR's mandate opens up a new space for discussion on reparation for survivors. While the previous focus of the Government of Rwanda, and the international community, was on accountability of perpetrators, the focus should now shift to the survivors. They not only have a right to reparation under international law, but they were also instrumental in ensuring the various judicial procedures accomplished there. We call on East African countries including Rwanda and the international community to support the call for reparation for survivors of the genocide in Rwanda, which truly will deliver justice for survivors largely denied to them through the limited mandate of the ICTR.