



**IN ORDER
TO FINISH
WITH
THE «CULTURE
OF L'IMPUNITY»
IN
RWANDA AND BURUNDI**

*Position of the "Listening and reconciliation group
for the Great African Lakes Region"*

Graduate Institute of Development Studies, IUED, Geneva, Switzerland

Document approved by consensus

**The "Listening and reconciliation group
for the Great African Lakes"**

The IUED is concerned by Rwanda and Burundi since the years 1960 : students and collaborators, studies and international cooperation programmes.

In June 1994, students, former students, IUED collaborators have decided to form a group aimed to a mutual listening and to the preparation of reconciliation with other members of the diaspora of the great African lakes living in Geneva and in Lausanne : the "Listening and reconciliation group for the Great African Lakes".

Men and women from Rwanda, Burundi, Zaïre, Uganda, students, professors, diplomats, international officials, former refugees as well as new ones, involved persons and observers, all persons who do not fear to say what they have lived and how much they have suffered, who do not fear to hear their compatriots and their neighbours telling their suffering, all persons of good will who discuss regularly in the same circle for already six months in order to prepare the future.

These last three months have mainly been devoted to the setting of a text on impunity in Rwanda and in Burundi. This text has been adopted by consensus on December 14th, 1994.

This text is a declaration of judicial and political principles that will serve as a basis to discussions between nationals of the great African lakes region, principally Rwandese et Burundese. It takes resolutely place in a regional approach of the problems.

The "Listening and reconciliation group for the Great African Lakes" hopes that this text will be largely spread, particularly in the great African lakes region, as well as to every person or organism working for the future of Africa. All reaction, critique or commentary, are welcome and will be brought to the knowledge of all members of the group.

The "Listening and reconciliation group for the Great African Lakes"

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**LIST OF MEMBERS OF THE "LISTENING AND
RECONCILIATION GROUP FOR THE GREAT
AFRICAN LAKES REGION"**

A n i c e t B A N K A B I G E R O
A n g e l o B A R A M P A M A
J e a n n e E G G E R
D a n i e l F I N O
D o m i n i q u e F R O I D E V A U X
J u s t i n G A H I G I
J a m e s G A S A N A
J e a n - P i e r r e G O N T A R D
J u s t i n K A H A M A I L E
P i e r r e K A R E M E R A
J é r ô m e K A R I M U M U R Y A N G O
A n i c e t K A Y I G E M A
J e a n - L u c M A U R E R
E m i l i e n n e M U K A R U S A G A R A
M a r y M U K A Y U H I
D a m i e n N G A B O N Z I Z A
T h a r c i s s e N K A N A G U
H u g u e s N O U M B I S S I E
M a r i e - J o s é p h i n e N S E N G I Y U M V A
P a s t e u r N S H I M I R I M A N A
D a p h r o s e N T A R A T A Z E B A R A M P A M A
S p e s C a r i t a s N U R W A H A
V e n a n t W E G E N Z O M W I T A
M é l a n i e U W A M A L I Y A

IN ORDER TO FINISH WITH THE «CULTURE OF L'IMPUNITY» IN RWANDA AND BURUNDI

*Position of the "Listening and reconciliation group
for the Great African Lakes Region"*

Impunity has been general in Rwanda and in Burundi for several decades. This "culture of impunity" is the main factor of the actual crisis.

During the next months, the judicial systems of Rwanda and Burundi will have in priority to allow instruction of the four following offences :

- **genocides**
- **murder of Statesman**
- **crimes of blood**
- **occupation of land and of real estates**

1. Genocides

Rwanda

The crime of genocide is recognised by the international community regarding Rwanda. The following tasks must be accomplished rapidly.

1.1. Identification and localisation of presumed offenders

Identification, as well as constitution of files including testimonies and relevant documents, must be accomplished by the Rwandese authorities with the cooperation of civil society organisations and non governmental organisations specialised in the promotion of human rights. The national authorities and NGOs of other countries and in particular those of neighbouring countries must contribute to these steps.

1.2. Special court of justice : internationalised national court of justice

In default of an efficient and fast international court of justice, it is in the interest of the people of the region and of humanity in its whole that a special national court should treat the documented files in the shortest possible time. It could be an internationalised national court of justice by adjunction of judges and defenders extraneous to Rwandese magistrates and defenders. If necessary such an internationalised national court of justice could judge certain responsables of genocide by contumacy.

1.3. Extradition and/or judgement outside Rwanda

Certain responsables of genocide are located outside the country. They must be placed at the disposal of the Rwandese justice.

The absence of a bilateral convention should not be a pretext preventing arrest and surrender of presumed offenders of genocide to the concerned authorities.

In the case of certain countries which cannot or do not want to extradite the presumed offenders of genocide, it is important that these should be judged for genocide according to the laws of the country where they are located.

1.4. Prescription and amnesty

Crimes of genocide are neither prescriptible, nor amnestiable.

Burundi

1.5. In the case of Burundi, we know that massacres ethnically organised and targeted have taken place since 1965. These belong to the concept of genocide. Consequently, the same principles apply in Rwanda and in Burundi : international cooperation for investigation, internationalisation of national courts of justice, extradition, no prescription and no amnesty.

Regarding responsables of acts of genocide residing outside Burundi, they must be held at the disposal of the Burundese justice.

If it is not possible, it is very important that they should be judged in the country of residence, under international conventions on human rights and, if necessary, against torture.

2. Murder of Statesman

Two Presidents of Burundi and one President of Rwanda have been assassinated between October 1993 and April 1994. These crimes belong to the penal and constitutional plans . They have been unpunished at this day.

2.1. Identification of murderers and investigation

It is necessary to identify the executors and their accomplices, national or international, as well as the sleeping partners of these crimes. The investigations belong to the national authorities, with or without the help of civil society.

It is possible that the national authorities do not have neither means, nor interest to carry out these investigations. In this case, help from extraneous organisms, regional or international (OAU, UNO, etc.) is necessary.

Proportionally to the gravity of the crime and to the difficulties to bring this kind of investigations to a successful issue, the assassination of Statesman should not be prescribed before 15 years.

2.2. Judicial framework

The national law constitutes the judicial framework of reference.

According to the case, it can be an existing court of justice (supreme or constitutional) or a court of justice specially created for the circumstance. The independence of the judges and the publicity of the trials are essential. The presence of observers of the region and of international specialised organisms must be guaranteed.

2.3. Penalties and enforcement

The penalties are those planned by national law. Amnesty for assassination of Statesman is excluded, for the sleeping partners as well as for the executors.

2.4. Extradition

Th absence of bilateral extradition convention should not be a pretext preventing arrest and surrender of presumed offenders of murder of Statesman to the concerned authorities.

3. Crimes of blood

Tens of thousands of men and young people have committed and still commit crimes of blood. They belong to a national penal jurisdiction (Rwanda, Burundi, Zaire, Tanzania). They must be punished. They are entitled to a serene and fair procedure.

3.1. Identification of presumed offenders and instruction files

Identification of presumed offenders and responsables has already started and should continue in the respect of peace-time procedures.

Instruction of files should be made by national magistrates temporarily helped by exterior means and by African colleagues. Every accused person should be the subject of a written file, and be arrested only upon order of a civilian magistrat.

3.2. Trial

For the time being, magistrature independence is guaranteed neither in Rwanda, nor in Burundi.

A balanced recruiting which takes into account the pluralism of the societies of the region, matched with a rapid adequate training, should improve the situation. Confidence of the population in judicial systems and in their impartiality is at this price.

Defendants are currently materially unable to organize their defense (scarcity of lawyers, exorbitant costs). Penal courts of justice should admit that certains defense fonctions usually taken upon by a lower could be assumed by representatives of human rights defense organisations.

3.3. Penalties and enforcement

The list of penalties planned by national laws should be completed by other possibilities. In addition to the usual penal penalties, the judges could condemn to : indemnify families of victims, deprivation of civic rights, lasting public disgrace, or assignment to residence, etc.

4. Particular case of minors presumed guilty of genocide and of crimes of blood

Thousands of minors (children and adolescents) have participated to genocides and to assassinations. Adults bribed them, drogued them, held them under influence, in order they should vulgarize the act of killing. Many have been incorporated to militia and to the army. They lost all notion of respect of human life.

Just as for adults guilty of such crimes, these minors "executioner-victims" must be identified and judged.

They should in any case profit of a therapy aiming at their reeducation and their social rehabilitation. A pure and simple internment would make these "executioner" children still more violent and would represent a great potential danger for the societies of the region.

The problem in hand is sharp and requires a quick setting of specialised hospitality structures.

5. Occupation of land and of real estates

The principle of perennality of owners' rights must be confirmed by the governments of the region.

The principle of legitimacy of temporary occupation of houses and of vacant lands exploiting can be accepted only if it is bound to a legislative adequate and controlled framework. An administration in charge of the management of vacant properties should be rapidly set in Rwanda and in Burundi. Only the persons in a necessity situation would be allocated temporarily the use of a roof or a field.

The principle of the right of war victims to get indemnity should be stated. Priority will be given to compensation by the offence or crime offender. A complement, or occasionally an indemnity by the State, will have to be considered, in priority in the field of urban and rural settlement. An international fund equally managed (State, civil society, contributors) will have to be rapidly constituted.

Only land and real estate conflicts for which no conciliatory arrangements between the parties directly concerned could be found will be entrusted to the judicial system.

6. Sensitization to human rights

The suggested measures to break with the "culture of impunity" must be bound to measures of sensitization to human rights and to fundamental liberties.

In accordance to the «Banjul Appeal» issued in 1989 by the African Association of International Law, this sensitization is built on the following lines :

- spread the informations on human rights in all sectors of the society;
- organize teaching of human rights and promote it at all levels of educational and professional structures;
- translate in local languages and allow every national to know the Universal Declaration on human rights and the African Charter of human rights and rights of people.

This sensitization must also be applied in emergency to clear the elements of local traditions carrying universal values of respect of human rights and of human dignity.

This sensitization belongs at the same time to the States (educational and judicial systems) and to private national and regional organisms, with the help of international organisations if necessary.

The nationals must be informed alike in a simple and accessible way on their rights and duties according to the legislation of their country, on the guarantees offered by the judicial system if they are accused or placed in detention, and on the possibilites to resolve conflicts by judicial means rather than by violence.

7. Spreading

The "Listening and reconciliation Group for the great African lakes" hopes that this text will be largely spread, particularly in the great African lakes region, as well as to every person or organism working for the future of Africa. All reaction, critique or commentary, are welcome and will be brought to the knowledge of all members of the group. □

**The "Listening and reconciliation Group for the great African lakes"
Text approved by consensus.**

Geneva 14/12/1994

The Graduate Institute of Development Studies (IUED), founded in 1961, is involved in development problems in their universality. Teaching is based on interdisciplinarity, joining theory to practice, and putting the accent on the diversity of values, intercultural relations and different systems of thinking.

The IUED conducts applied researches in the fields of health, rural development, hydraulic and handicraft.

The IUED runs cooperation programmes for the Swiss government and executes mandates for several development agencies.

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