

REPUBLIC OF RWANDA



OFFICE OF THE PRESIDENT

**RECOMMENDATIONS OF THE CONFERENCE HELD IN
KIGALI FROM NOVEMBER 1ST TO 5TH, 1995 ON:
"GENOCIDE, IMPUNITY AND ACCOUNTABILITY:
DIALOGUE FOR A NATIONAL AND
INTERNATIONAL RESPONSE"**

Kigali, December 1995

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PREFACE

In organising an International Conference on "Genocide, Impunity and Accountability: a Dialogue for a National and International Response", the Government of Rwanda wanted to associate the international community to its genuine search for a viable and coherent solution to the problems faced by Rwanda in the aftermath of last year's genocide. Genocide being a crime against humanity it requires a collective response from the international community.

The conference gave an opportunity to participants from all over the world to reflect on the causes, mechanisms and responsibilities in the Rwandese genocide and its social, political and economic consequences. More importantly, participants discussed strategies to bring perpetrators of genocide before justice and how to organise an efficient judicial system in Rwanda given the current circumstances. The recommendations adopted by the conference will certainly assist the government of Rwanda to find practical ways of dealing with the consequences of genocide.

On behalf of the government of Rwanda, we wish to thank all those who contributed to the success of this Conference and in particular, Dr. Charles MURIGANDE, Minister of Transports and Communications, for having prepared, organised and coordinated all the activities related to this Conference. We also wish to express our thanks to all the participants to the Conference, for their enriching contribution in the debates and their active participation in the discussions. The government of Rwanda received a great deal of cooperation which was indispensable in preparing and organising the Conference. In particular, we wish to express our gratitude to the United States Agency for International Development (U.S.A.I.D) and the Government of Ireland for the financial assistance they provided in order to organise the Conference. UNHCR, UNICEF, UNAMIR, UNDP, HRFOR also deserve the government's gratitude for various material assistance they provided during the conference.

His Excellency Pasteur BIZIMUNGU
President of the Republic of Rwanda

I. INTRODUCTION

The genocide which took place in Rwanda in the months of April to July 1994 has left Rwanda with seemingly unsurmountable problems.

Rwanda faces many challenges, including bringing hundreds of thousands of suspected perpetrators of genocide to justice; attending to the needs of survivors, many of them orphans, widows, widowers and raped women; repatriating and resettling over a million of refugees; and more importantly reconciling the society and creating conditions that would ensure that genocide will never happen again.

The Office of the President of the Republic of Rwanda organised in Kigali, from 1st to 5th November 1995 an International Conference on "GENOCIDE, IMPUNITY AND ACCOUNTABILITY: DIALOGUE for a NATIONAL and INTERNATIONAL RESPONSE" to reflect on these post-genocide challenges in order to find useful and practical strategies to address them.

The background and the overall and specific objectives of the Conference were consigned in a document released by the President's Office in August 1995 and are summarized below.

1.1 BACKGROUND AND SIGNIFICANCE OF THE CONFERENCE

Rwanda has recently suffered one of the most traumatic events in world history. Within the brief period of 4 months, from April to July 1994 an estimated one million Rwandans (approximately one seventh of the Rwanda's population) were massacred in an unprecedented genocide. The entire governmental apparatus including the Army and the local administration was used to carry out the genocide and to mobilize or even compel active involvement by a large percentage of the adult population.

Genocide is however a recent phenomenon in the history of Rwanda. For several centuries, we had successfully strived to build a nation called Rwanda and a people called Banyarwanda from many kingdoms and people. The first signs of ethnic divisions appeared at the turn of this century when racist theories were very popular in Europe and elsewhere. The first ethnic massacres, engineered by the authorities, in the history of Rwanda occurred in 1959 at the eve of independence.

Ever since 1959, there have been human rights violations on massive scale which have been characterized, even in the past, as genocide. Nobel prize winners Sir Bertrand Russell and Jean Paul Sartre called the massacres of Tutsi in December 1963 and January 1964 in Rwanda, the most barbaric and systematic acts of genocide committed since the holocaust of Jews by the Nazis during the Second World War.

In March 1993, an International Commission of Inquiry in the violations of human rights committed in Rwanda since October 1990 issued a report which characterized the massacres of Bahima in 1990, the massacres of Bagogwe in 1991 and the massacres of Tutsi in Bugesera in 1992 as acts of genocide.

Today Rwandans are unable to understand and believe what happened to them and are overwhelmed by a multitude of unanswered questions. Why have these massive human rights violations been repeatedly committed in their country? Should these be viewed as pilot projects for last year's genocide? Why this phenomenon of genocide in Rwanda and what are its causes? Has bad governance and bad leadership contributed to the genocide? Is the culture of impunity a factor that contributed to last year's tragedy? etc.

The massive participation of the population in the Rwandan genocide is virtually without historical precedent. The sheer numbers of potential defendants threatens to completely overwhelm the newly-emerging legal system. Yet the new Rwandan government and the international community have, under international law, an obligation to sanction those who perpetrated genocide. Justice is indispensable for healing and stabilizing the society and for uprooting the impunity. Can classical law enforcement mechanisms adequately deal with these issues of bringing justice and preventing impunity, while contributing to the stated objective of stabilising the society? What strategies to use to deal with this tremendous problem? What is the experience of other countries which experienced genocide and/or massive human rights violations? Are there alternatives to classical judicial systems that can suit the situation in Rwanda? Can classical and non classical judicial processes coexist in dealing with the crimes committed during last year's genocide?

Similarly, in the area of popular culture, the new government confronts a daunting challenge. The society has been seriously affected by the culture of human rights violations leading to genocide and its social consequences. A new culture emphasizing respect for the rights of all individuals, must be actively promoted.

We know that there will be no peace without reconciliation. We view the process of national reconciliation as the rebirth of the nation of Rwanda where all Banyarwanda have the same fundamental rights and enjoy the same opportunities and equal protection from the state. This process requires, Rwandans and the international community, acknowledge that terrible mistakes and crimes were committed in Rwanda and undertake courageously to repent and correct the mistakes of the past. How do we bring people to acknowledge their mistakes?

We also believe that we are under obligation to keep the memory of the victims. We have no right to obliterate the memory of a crime against humanity, a crime that violates international law. It is the denial of genocide which creates conditions of its recurrence. A comprehensive documentation of what happened should be part of this process of national reconciliation. How do we preserve the memory of what happened?

Most of survivors of genocide live in absolute poverty as a result of having lost their properties and their relatives. We believe that reconciliation would be facilitated by a judicial process that include compensation for the victims. How do we compensate the victims? What is the moral and legal obligation of the international community to assisting us in this exercise? What is a realistic expectation for such support?

1.2 OVERALL OBJECTIVE OF THE CONFERENCE

The Conference's overall objective was to provide for the Rwandan government and the Rwandan society a forum for developing a viable and coherent national policy to respond to the genocide in a manner that, on one hand re-establishes accountability and uproots impunity and on the other hand enable us to stabilise the society quickly. This was intended to be achieved by holding an International Conference with the participation of leaders from countries which have experienced massive violations of human rights, including genocide, human rights and legal experts, journalists and historians. The debate and conclusions of this conference would help the relevant national policy-making institutions to elaborate policies and strategies to respond to the various problems facing the Rwandese society in the aftermath of genocide, in particular the problems of the concept of justice and national reconciliation, social problems of survivors, and the repatriation of refugees. Seminars to disseminate the debates and discussions and to explain the national policy developed by national policy-making institutions would also be organised nationwide and in the refugee camps, as a follow up to this international conference.

1.3 SPECIFIC OBJECTIVES

The specific objectives of this Conference were:

Understand how the genocide in Rwanda was conceived, planned and carried out. Analyse the birth and causes of ethnic divisions which led to mistrust and animosity in the Rwandese community. What are the factors that contributed to the genocide? What are the responsibilities? What is the psychology of a "genocider" and that of the victim? How did the Rwandans get conditioned to kill their neighbours? What are the social consequences of genocide (orphans, raped women, widows, traumatized population: victims and victimizers alike, etc)? Did past impunity facilitate the development of genocide? What are the social consequences of impunity? How do we prevent impunity? How can we make sure that genocide never happens again in Rwanda?

What are the obligations under international law of governments which succeed governments which have committed massive human rights violations? What mechanisms exist to deal with these massive human rights violations when those who perpetrated them enacted laws that ensures their impunity and when we have the principle of no retroactivity of laws? Compare and contrast the experiences of other countries which have gone through political transitions from regimes which engaged in gross violations of human rights to successor governments committed to promoting the respect for human rights. What lessons can be drawn for Rwanda?

What are strategies for bringing perpetrators of genocide to justice in the case of Rwanda where all spectra of the society participated.

- a. Analyze the prosecution strategy for genocide cases in the classical system. How do we apply laws designed to deal with a normal situation to exceptional circumstances generated by the genocide? Stimulate the necessary legal reforms to attach criminal sanctions to violations of existing international human rights law including genocide.
- b. Examine alternatives to the classical legal system for sanctioning participation in the genocide, with the objectives of establishing the truth, bringing people to acknowledge their wrongs and repent, thus facilitating national reconciliation. These alternatives include for example:
 - exploring the use of Rwandan customary law;
 - initiation of plea bargaining to obtain guilty pleas;
 - seeking alternative sanctions (e.g. establishing work camps to rebuild infrastructure mechanisms for the rehabilitation of participants especially the children);
 - establishing a Special Prosecutor's Office;
 - creating para-legal mechanisms such as a Truth Commission.
 - Role and responsibility of the international community in punishing genocide. What strategies can be developed to make this role effective?

The importance of preserving the memory of the victims and how to achieve it?
 How to document the genocide? Is compensating the victims important and how to do it?

What is the meaning of national reconciliation after a tragedy like genocide and how to achieve it?

II. ORGANISATION OF THE CONFERENCE

The Conference brought to Rwanda worldwide University scholars and practitioners with expertise in the History of Rwanda and the region, the law of impunity for human rights abuse and crimes against humanity, Holocaust and Genocide Studies, Memory preservation, Nazi hunters, and human rights activists, etc. They met for 5 days with members of the Rwandese government, the National Assembly, the local and central administration, the judiciary, the security organs and representatives of the Rwandan civil society including Churches, Human Rights organisations, Associations of survivors, political parties, University of Rwanda, and Non-Governmental organisations.

The first two days consisted of plenary sessions held at the National Assembly Building, where a number of presentations were made by some of the participants on the following themes:

- a) Causes, role and responsibilities for the genocide in Rwanda;
- b) Social political and economic consequences of the Genocide;
- c) Addressing the problems of the survivors of genocide;
 Bringing the perpetrators of genocide before justice: Classical judicial systems and alternatives;

- d) Role and responsibilities of the international community in addressing the post-genocide situation.

The plenary sessions were followed by two days of focused discussion on each theme in smaller working groups. On the fifth and last day of the Conference a summary of the working group's discussions and recommendations were presented in a plenary session. Each group's presentation was followed by a debate and the group's recommendations were amended and adopted by the Conference. The full text of the recommendations is in chapter III and the list of participants is given in the annex.

III. RECOMMENDATIONS OF THE CONFERENCE

III.1 GROUP I: GENOCIDE IN RWANDA: CAUSES, MECHANISMS AND RESPONSIBILITIES

Group I, charged with reflecting on the causes, mechanisms and responsibilities with regard to genocide in Rwanda made the following recommendations which were adopted by the conference:

I. RESPONSIBILITIES OF THE ETHNIC IDEOLOGY AND WAYS OF REMEDYING IT

1. The Conference denounces the basic role played by the ethnic ideology and calls upon the Rwandese Authorities to resolutely undertake the struggle against this ideology through all possible ways, especially through education programmes adult education; the media and political and diplomatic speeches.
2. The Conference requests rigorous enforcement of existing Rwandese laws which suppress racism and ethnic considerations and recommends just like in the case of French and Belgian laws banning the negation of the Jewish genocide, the adoption of a law prohibiting any Rwandese citizen or foreigner residing in Rwanda from denying or relativising the 1994 genocide; with due respect to internal regulations connected with the freedom of expression. This law will also apply to organisations and associations established in Rwanda; violations of this law may lead to sanctions or expulsion from the Rwandese territory.
3. The Conference calls on the political class to avoid succumbing to temptations to ethnic fundamentalism, not to aggravate any particularism whatsoever and not to allow ethnic displays.
4. The Conference requests the Christian Churches to really ponder on the close correspondence between evangelistic message and fetichization of the ethnic group as it emerges from speeches and actions of a number of their pastors and their congregations, in such a way as to contribute to the pacification of hearts and minds. The Conference expects from the churches a soul-searching examination of attitudes likely to explain the way so many worship places and religious symbols were blasphemed by genocide perpetrators. Finally, it would like the Rwandese

churches to assume their own moral responsibilities in this crisis, without the supervision of foreign religious networks claiming to speak on their behalf.

5. The Conference requests communication professionals to avoid falling prey to the ethnicism trap in their remarks and to contribute to the development of a critical mind towards any racist manipulation.

6. The Conference calls upon intellectuals to devote themselves to the task of finally writing the country's history in a critical and documented manner in accordance with methods befitting this discipline, so as to come out of mythological and ideological reconstructions.

7. The Conference solemnly invites the authorities to urgently gather all documentations on the 1994 genocide and crimes against humanity in order to fight the negationism.

II. FUNCTIONING OF THE STATE

8. Considering the habits of passiveness towards violations of human rights, the Conference requests the authorities to encourage civic commitment at all levels of the society.

9. The Conference requests the authorities to ensure the diffusion of a culture of human rights encouraging the citizens to take over the legal instruments for the protection of fundamental rights.

10. The Conference requests the Government, the National Assembly and legal officers to watch over the independence of the judiciary and the promulgation of a law establishing a bar of lawyers.

11. The Conference requests the authorities to think about the opportunity of a mediation institution likely to encourage the citizens' access to their rights when they think they have been denied justice.

12. The Conference invites the entire Rwandese society to reflect on the nature of power and its management, taking into account the previous negative monopolization and exclusion experiences which led to genocide, and to promote a democracy based on debate of ideas and opinions.

III. INTERNATIONAL RESPONSIBILITIES

13. The Conference requests the Rwandese authorities to take necessary measures in order to insert the Convention against genocide and the other Geneva Conventions into the internal order.

14. The Conference invites the Rwandese Government to set in motion a diplomatic action with the creation of a permanent International Penal Tribunal in mind, making it possible to fight against international mechanisms of impunity;

15. Desirous to involve the international community in the fight against the logic of genocide, the Conference requests foreign countries not to allow a revisionist propaganda, not to provide support or protection to perpetrators of genocide and to recognize special responsibilities of certain governments, parties and organisations in the preparation and implementation of genocide, and to consider corresponding compensations. In particular, it recommends to Belgium, the former colonial power, to acknowledge its historic responsibility in the genesis of ethnistic ideology. Furthermore, it requests France and all other countries, including African countries which contributed to the arming and protection of genocide perpetrators, to stop all possible support to the latter and contribute instead to adequate compensation to the Rwandese state and the victims of genocide and crimes against humanity committed in Rwanda.

16. The Conference would like the Security Council to make it mandatory for all the United Nations Organisation member States to arrest the people accused of genocide and to provide for their trial, either with International Tribunal on Rwanda or with national courts of law.

17. The Conference requests the International Community donors and Internal financial institutions not to compel Rwanda to adopt economic policies that are likely to accentuate inequalities, sharpen tensions between citizens and weaken state institutions. It requests the government to foresee measures likely to prevent political marketeering and uncontrolled search for profit.

18. The Conference recommends that it is desirable, in order to keep the "fire burning" to replace the planned monitoring commission, by a body institutionalizing the Conference, that might be called "THE CONFERENCE OF KIGALI ON GENOCIDE". This institution would have its headquarters in Kigali. Its permanent secretariat will see to it that all the recommendations approved by the current conference are implemented, without restrictions to its activities, all connected with genocide. Its management team would also play a permanent early warning role in liaison with all the members of the Conference.

III.2 GROUP II: GENOCIDE IN RWANDA: MANAGEMENT OF THE SOCIAL, POLITICAL AND ECONOMIC CONSEQUENCES

The Working Group II was entrusted with the task of identifying, scrutinizing, discussing and recommending a plan of action on the management of the social, political and economic consequences of genocide. The Working Group II made the following recommendations which were adopted by the Conference.

1. The Conference submits that the genocide in Rwanda must be appreciated within its unique context where over one million people were massacred within a period of four months.
2. The Conference agreed that this crime of genocide was planned and executed by a government which was supposed to protect the people. Furthermore, the whole machinery of government that could not be taken out of the country was systematically and deliberately destroyed. On the pretext of ethnicism the criminal leadership mobilized a section of the population to exterminate another section. Likewise it also mobilised neighbors and relatives to kill each other because of different political views. This made it easy for a big section of the population to follow them outside the country thereby aggravating the refugee situation.
3. The Conference agreed that the unique challenge facing the Rwandese people is that the survivors and a large number of suspected perpetrators have to live together as one people in the post-genocide era.

I. SOCIAL CONSEQUENCES OF GENOCIDE IN RWANDA

4. The Conference identified the following major social consequences of the genocide in Rwanda:

- a. The re-integration of survivors and returnees inside the country on one hand and repatriation and resettlement of refugees on the other;
- b. The social dislocation of families;
- c. The physical, psychological, moral and spiritual destabilization of the population.
- d. The disillusionment with the educational system.

5. The Conference submits that the overall objectives in addressing the above-mentioned consequences should be the stabilization of the population for re-integration and development.

6. The Conference recognises the need for an immediate, medium, and long-term plans. It also recognizes that returnees are categorized into the old caseload and the new caseload.

7. For the survivors the Conference recommends:

- a. The provision of immediate material assistance such as food, clothing and shelter.
- b. The provision of preferential treatment regarding access to social services such as health and education.
- c. The provision of psychological and rehabilitation skills.

8. The Conference recommends the establishment of a National Council for Victims of Genocide, run by the survivors to coordinate national and international efforts geared toward the above objectives.

9. The Conference recommends also the creation of a National Fund to deal with the problems of survivors.

10. For the returnees, the Conference recommends:

- a. The provision of immediate basic assistance especially in areas of food and shelter.
- b. Provision of essential community-based services such as water, health education.
- c. To provide the basis for sustainable economic activity.

11. For the refugees, the Conference recommends that the government reaffirm the principle of repatriation and reintegration.

12. The Conference recommends the reassessment and review of the education and information systems in order to bring them up to the challenges of post-genocide Rwanda.

II. POLITICAL CONSEQUENCES OF GENOCIDE IN RWANDA

13. The Conference identified the following major political consequences of the genocide in Rwanda:

- a. The insecurity arising from the sanction and support given to the defeated army by the government of Zaire, Togo, Kenya and France. In blatant disregard of the Convention on the prevention and punishment of the crime of genocide, France, Togo, Zaire and Kenya overtly harbor, train, equip and support the political and military establishment responsible for genocide in Rwanda.
- b. The hostile attitude and pressure by some members of the international community.

- c. The total destruction of the state machinery and other institutions.
- d. A climate of suspicion and lack of confidence among sections of the society.
- e. The necessity to work out a relevant system of governance for post-genocide Rwanda.
- f. The necessity for political commitment by the international community in punishing the perpetrators of genocide.

14. The Conference calls for the strengthening of state institutions in order to guarantee security, the rule of law and fundamental freedoms and solicit international support for the disarmament and trial of the perpetrators of genocide. This calls for training and equipping organs of state involved in law and order and administration of justice.

15. The Conference calls on governments and international institutions to collaborate with the International Tribunal for Rwanda and the Government of Rwanda in bringing to justice the perpetrators of genocide.

III. ECONOMIC CONSEQUENCES OF GENOCIDE IN RWANDA

16. The Conference identified the following major economic consequences:

- a. An economy dominated by humanitarian assistance.
- b. Systematic destruction of all mechanisms of production of goods and services.
- c. Re-allocation of resources from development to humanitarian needs arising from genocide.
- d. Some problems related to property rights.

17. The Conference recommends the overall objective in addressing these economic consequences in order to restore the infrastructure and build the capacity of the economy to be self-sustaining.

18. The Conference calls on the donors who pledged funds at the Geneva round Table to disburse the funds.

19. The Conference recommends the international community to direct the humanitarian assistance through government rather than NGOs.

20. The Conference recommends to rationalize the optimal utilization of land as the major resource in Rwanda. The government should study the possibility of carrying out land reform and the problem of land ownership.

21. The Conference recommends the setting up of a national committee to reverse the implementation of the resolutions of this conference recognizing the fact that the success in managing the consequences of genocide in Rwanda requires the political will of the international community and the people of Rwanda.

III.3 GROUP IIIa: BRINGING THE PERPETRATORS OF GENOCIDE TO JUSTICE: CLASSICAL JUDICIAL SYSTEMS AND ALTERNATIVES

The working group IIIa tackling the various issues involved in bringing the perpetrators of genocide to justice met for 2 days and exchanged various views and opinions and made the following recommendations which were adopted by the Conference.

1. The Conference stressed the vital need of bringing perpetrators of genocide to justice as an uncompromising step to take in order to combat the tragic history of impunity that has led to repeated genocide in Rwanda. The Conference rejects any consideration of blanket amnesty which would imply continued tolerance of impunity.
2. The Conference observed that perpetrators of genocide must be dealt with in accordance with the rule of law in an appropriately formed courts of law with opportunity of defense for the accused to the extent that resources of the State permit.
3. The Conference observed that a classical judicial system is not adequate and that alternative judiciary as well as prosecutorial institutions should be established.
4. The Conference agreed on the need for establishing a specialised appropriate judicial mechanism. The Conference discussed two alternative proposals of specialised tribunals, namely the INDEPENDENT SPECIALISED TRIBUNAL and THE SPECIALISED CHAMBER within the judicial system, respectively.

I. INDEPENDENT SPECIALISED TRIBUNAL

5. The establishment of a Specialised Tribunal is dictated by the fact that genocide is an extraordinary crime and thus the prosecution of it in ordinary courts of law will not be appropriate.

6. Due to the need for flexibility and speed such a court will have to be empowered to make its own rules of procedure and rules of evidence, which will be easier in a new institution than as part of the regular courts. Example of a Special rule of evidence is for an Interahamwe to be considered guilty of genocide and the onus be on each individual Interahamwe to prove the contrary.

7. When such a Special Tribunal is set up it will create a Prosecutor's Office that will prepare charges against defendants.

8. To facilitate prosecution activities, the Prosecutor will have the power to make preventive detention without filing charges up to 18 months.

9. The Prosecutor will have the power to plea-bargain with some suspects. A mechanism of voluntary plea-bargain, which could be done within a specified time, should ease prosecutorial activity and would assist in gathering information. The guilty plea should be rewarded by reduced sentences.

10. Appeal from the final judgments of the Special Tribunal must be narrowed to cases of serious mistakes of law and facts which occasioned miscarriage of justice. Such arrangements will make case movements fast and fair.

11. It is argued that it would be easier to set up the Specialised Tribunal than to rebuild the whole of the independent judiciary while facing a high volume of cases. A draft proposal is available.

Those who oppose the creation of an independent Specialised Tribunal argue that the creation of a dual judicial system for Rwanda will hurt the independence of the judiciary. Moreover, another separate institution will stretch existing limited material and human resources.

II. SPECILIASED CHAMBER

12. As an alternative to establishing an Independent Specialised Tribunal the Conference suggested the establishment of a Specialised Chamber in the Judiciary. Even though it is true that genocide is an extraordinary criminal activity, this peculiar characteristic can be accommodated by the judiciary.

13. The Specialised Chamber will be given some of the special powers it needs. This arrangement will preserve the integrity of the judiciary and enable an economical use of material and human resources.

14. There is a need for a Prosecutor's office which can be empowered to plea-bargain or accept guilt-plea confession with the power to agree to a lesser punishment.

Those who oppose the creation of a special chamber argue that the special chamber is within ordinary courts system which tends more to ordinary rules and regulations and thus might prove to be slow, burdensome and inefficient considering the huge amount of work of trying genocide cases.

Which of the two systems will be more legitimate in the eyes of the Rwandan people and the international community? The Conference agreed to present both proposals for the relevant Rwandan authorities to take final decisions after more technical work is done.

III. THE OFFICE OF THE SPECIAL PROSECUTOR

15. The Conference agreed that the commencement of prosecutorial activities is of utmost importance for the prosecution of genocide perpetrators.

16. The Conference agreed that effective prosecution will be possible only when the National Assembly creates an independent Special Prosecutor's office with full authority to prosecute genocidal cases.

17. The office of the Special Prosecutor (OSP) will be accountable to the National Assembly.

18. The OSP should have power to investigate all allegations of genocide. It will have the responsibility of collecting evidence and all relevant information regarding the genocide including the power to call witnesses and arrest suspects.

19. The OSP will have the power to accept a guilty plea with an announced specific time limit. The OSP can plea bargain in those cases it has determined that justice will be served.

20. The OSP will formulate its own working rules and will have the power to assemble needed material and human resources.

IV. OTHER IDEAS DEBATED DURING DISCUSSIONS

21. Plea-bargaining: In this system, not only can prosecutors negotiate charges with defendant, but also the defendant can come out straight and bargain for guilt or association with genocide. The usefulness of such a strategy would depend on a wide range of imagination. (A draft proposal of the use of a strategy of plea bargaining was proposed).

22. Guilty-Plea: It is possible to draw-out criminals by this method of confession which will be rewarded by lesser punishment if done within the announced time limit.

23. The court system could consider the use of laymen whose integrity and moral character is of high standing. The jury can also be a combination of laymen and assessors or legal professionals.

24. Complaint Office: Such an office can be established to process genocidal acts. It can be done in combination with the office of the Special Prosecutor or with the chosen court system.

25. Military Justice for Soldiers: Military courts for members of the military can be established as a specialised court of the normal judiciary.

26. Categorisation of guilt: Acts of genocide range widely: planning, executing, inciting, killing, raping, looting, destruction of property, etc. For the purpose of stabilisation of the society, one suggestion is that the Government decides a policy; defining the extent of prosecutable crimes. It is suggested that rape, murder and similar serious crimes be prosecuted. The rest, such as burning houses, destroying cattle, etc. will have to be addressed by some kind of non-detention mechanism of customary settlements.

27. Compensation: In principle the Conference agrees that victims be entitled to compensation. As funds are needed, the proposed exploration of possible confiscation of property from perpetrators who have fled after conviction. Assistance can be rendered to track the assets belonging to perpetrators of genocide in foreign countries. Raising funds from the International Community and asking the perpetrators to do public works such as building houses, burying the dead and building the roads (Draft proposal for creating a corporation for compensation was submitted),

28. National Legislation implementing the International Humanitarian Law: The Conference recommends to enhance the Rwandan laws by the implementation of the international humanitarian law: The four Geneva Conventions of 1949 and its two additional protocols of 1977 as well as the Convention on Genocide of 1948 requires national legislative measures to render effective the system of repression of war crimes and crimes against humanity embodied in these international treaties to which Rwanda is a party.

29. Extradition: Observing that, in many cases, genocide perpetrators are harboured in foreign countries, the Conference recommends that the Rwanda government should make extradition requests. If foreign countries refused to do so, a court action against them at the International Court could be considered.

30. Cooperation with the International Tribunal for Rwanda: The Conference recommends that a system be established for the sharing of information between the International Tribunal for Rwanda and authorities of the National Judicial system.

31. There should be a consistent presence of Rwandans, representatives of the ministry of Justice and Groups of Survivors, at the International Tribunal's court when it is in session.

32. The authorities of the National System of Justice should request a copy of the Computer database system that the International Tribunal has established.

III.4 GROUP IIIb: BRINGING THE PERPETRATORS OF GENOCIDE TO JUSTICE: CLASSICAL JUDICIAL SYSTEMS AND ALTERNATIVES

The working Group IIIb was also asked to reflect on how to tackle the various issues involved in bringing the perpetrators of genocide to justice. The group which met for two days made the following recommendations which were adopted by the

conference. The Conference subscribes to the following cardinal principles concerning the genocide carried out in the Rwandan Republic.

1. There shall be no impunity for these crimes. Those who are guilty have a rendez-vous with justice.
2. Any regime of accountability must seek to balance the imperative need for justice with the stability of the society and the inevitable limitations of resources.
3. Given the enormity of the crimes, the finite resources available to the government of Rwanda and the need to act with dispatch, it is necessary to prioritize the demands of justice and, in appropriate circumstances, to enlist alternatives to the traditional system of criminal trials.

The Conference made the following recommendations which are designed to implement these cardinal principles:

I. CATEGORIZATION AND ELIGIBILITY FOR ALTERNATIVE FORMS OF JUSTICE.

4. Those who are complicit in the crime of genocide in Rwanda shall be categorized according to the degree of their responsibility.

Category I: Those who acted on the international, national or regional level to instigate, organise, incite, or supervise the execution of genocide.

Category II: Those whose participation in the crime demonstrates one or more aggravating factors. Aggravating factors include, but are not limited to the following:

- a) supervision at the local level of those who carried out the crime;
- b) the issuance of orders or encouragement to carry out the crime;
- c) the imposition of threats or duress to bring about the execution of the crime;
- d) the commission of crimes that were particularly atrocious or extensive;
- e) the betrayal of positions of trust or responsibility. Such positions include, but are not limited to, police, gendarmerie, clergy, spouse, and parents.

Category III: All others who took part in the crime of genocide or crimes associated with the campaign of genocide:

5. In placing individuals into the above categories, the following principles apply:

- a) Those who incited genocide, or who aided, abetted or assisted the commission of crimes, or who conspired to commit any of the foregoing acts, shall be accountable as principals.
- b) Accountability is determined by the acts of the individual, and not solely by the title, position, or affiliation of the individual. However, title, position or affiliation may be considered in determining accountability.

6. Susceptibility to prosecution and alternative forms of justice:

1. Those individuals whose actions placed them in category I are not eligible for alternative forms of accountability. They are subject to prosecution to the full extent of the law and, upon conviction, are subject to the maximum punishment decreed by law.
2. Those individuals whose actions place them in category III are eligible for alternative forms of justice, as set forth below.
3. Those individuals whose actions place them in category II shall be treated as follows:
 - a) Those whose crimes are the most serious shall be subject to prosecution and punishment to the extent that available resources allow, as determined by prosecutors after due consideration of the facts and circumstances in individual cases. In this respect, they are assimilated to individuals in category I.
 - b) Those whose crimes are of lesser degree may be declared eligible for alternative forms of accountability as prosecuting authorities determine. In this respect, they are assimilated to individuals in category III.

(Note: The purpose of this provision is to separate the categorization from the prosecution decision. All individuals should be categorized. The decision to prosecute, however, will depend on a number of variable factors over time. Category II is, in effect, an interim category, requiring prosecutors to make a further determination - when time allows - as to whether the individual be deemed eligible for alternative forms of justice).

II. TRIBUNALS AND JURISDICTION

7. The Conference recommends that a specialized Tribunal be established, whose jurisdiction shall extend exclusively to those individuals charged with genocide or crimes associated therewith. This Tribunal should be composed of a main court and local branches.

8. Main Court: The Main Court should sit in Kigali, with jurisdiction over category I defendants.

9. Local Branch Courts: Branches of the court should be established at appropriate local levels throughout the country, so as to be as close to the people as possible. The local branches should have jurisdiction over those Category II and III defendants who are rendered for trial. To the extent possible, defendants should be placed on trial in the places where their acts are alleged to have taken place. The branch courts may be presided over by magistrates.

10. Appeals: defendants who are convicted at branch courts may appeal their convictions or sentences to the main courts under standards and procedures to be determined by the main court; provided however, that there shall be no right of appeal for any defendant who pleads guilty, nor for any defendant whose sentence does not include incarceration. There shall be no interlocutory appeals. The Supreme Court of Rwanda may allow appeals from decisions of the Main Court's original jurisdiction under standards that the Supreme Court shall determine.

11. Other Provisions: Any defendant may choose to plead guilty, and may negotiate with prosecution authorities as to the disposition of any such case. No court shall accept a plea guilty, nor any confession, except upon satisfactory proof that the plea is made knowingly and willingly and without duress or threat.

12. Special Prosecutor: The Conference recommends that an office of special prosecutor for crimes of genocide be established, with jurisdiction exclusively over such crimes.

III. THE RIGHTS OF DEFENDANTS

13. The Conference advises the authorities of Rwanda to incorporate fully the protections to defendants set forth in article 20 of the Statute of the International Tribunal for Rwanda, subject only to the accommodations of Rwandan law explicitly set forth in this paragraph. The rights of defendants include equality before the law, a fair and public hearing, the presumption of innocence, notice of charges and an opportunity to prepare a defense, trial without undue delay, the assistance of counsel, the summoning and examining of witnesses, the cross-examination of witnesses, and the exclusion of forced self-incrimination and forced confession.

14. Counsel to the indigent defendants: The Conference reaffirms the importance of the right to counsel to defendants facing serious criminal charges and sentences, and also reaffirms the importance of providing such counsel to defendants who cannot afford to retain their own.

15. Recognising that Rwandan law does not provide for the assistance of counsel to indigent criminal defendants, and that the provision of such counsel in an extensive program of prosecutions can represent a substantial expense, the Conference calls attention to Article VIII of the Genocide Convention and urges that the Government of Rwanda and the international community commit themselves to finding the means to provide counsel to indigent defendants accused of genocide.

16. Right to Trial in One's Presence: Trials in the absence of the defendant are acceptable provided that any such trial be without prejudice; that is, an accused

convicted **in absentia** shall have the absolute right, upon apprehension, to trial **de novo** on request.

IV. ALTERNATIVE FORMS OF JUSTICE

17. Alternative forms of justice are those procedures, other than criminal trial, that are designed to mete out justice to those who took part in the genocide but who cannot feasibly be tried because of the limitations of the criminal justice system.

Eligibility for alternative forms shall extend to Category III individuals and those individuals in category II assimilated to them under 6.3.b.

18. The Conference does not, at this time, recommend exhaustive or detailed procedures for alternative forms of justice. Indeed, the Conference believes that more than one such form might be appropriate. This decision can best be left to Rwandan authorities to determine as they develop further information on the extent of the genocide and the number of persons for whom alternative justice might be appropriate. In particular, the Conference urges that in cases not involving crime against the person, customary Rwandan procedures such as the AGACACA be used, or adapted, to the extent possible. Within this context, the Conference suggests the following broad principles to govern the operation of alternative forms of justice.

19. First, prosecution authorities shall announce the general terms of eligibility in sufficient details to allow individuals to determine whether they are prima facie eligible for it.

20. Second, the burden is upon those who are eligible for alternative forms to come forward, identify themselves, and provide a full and truthful account of their actions, omitting no material detail. They must answer, fully and truthfully, any question put to them by investigating authorities, any failure in this respect renders them ineligible for alternative forms of justice.

21. Third, there shall be a specific period during which eligible persons may enlist in this process. The period shall be of reasonable length and shall be uniform throughout the country. At the termination of the period, all persons who have not enlisted forfeit their eligibility for it.

22. Fourth, the account provided by those who enlist shall be subject to full public disclosure so as to allow those witnesses with knowledge of the individual's role in the genocide to come forward and provide additional information on that individual. The Prosecuting authorities may use any information so gathered for any purpose, including prosecution of third persons.

23. Fifth, the prosecuting authorities shall determine, after all relevant information is gathered, whether the individual is eligible for alternative forms of justice.

24. Sixth, such individuals shall be subject to accountability as appropriate authorities may direct after consultation with the victims, or the survivors of deceased victims.

Such forms of justice may include:

- a) Public acknowledgement of complicity to genocide;
- b) Apologies to the victims of their acts;
- c) Appropriate financial compensation or reparations to the victims of their acts and/or to the community in which their acts took place, taking into account the resources of the individual;
- d) Appropriate labor or service to the community in which their acts took place;
- e) Education and training on the subject of human rights;
- f) A term of incarceration not exceeding a defined term of years.

V. THE DETERMINATION OF THE TRUTH

25. The Conference believes it is imperative that the people of Rwanda and the world know how such a grievous crime was conceived, planned, and executed.

26. The Conference recognises that, while criminal prosecution and gathering of information for alternative forms of justice can be useful to this end, there remains an overriding need for a process whose sole and exclusive objective is the full documentation of the Rwandan genocide.

27. The Conference, therefore, recommends that there be appointed a committee of distinguished persons to compose a definitive and objective record of this crime, A **MEMORIAL AUTHORITY OR A DOCUMENTATION CENTER**, or other appropriate means.

28. The Conference recognizes that such a task will be complex and difficult. Likewise, it recognises that such a committee must gather evidence when investigators are doing the same for the purpose of criminal and that parallel efforts will present questions of whether information one purpose may be used for the other. Nonetheless, the Conference recommends that the Rwandan Government takes every feasible step to ensure that those who suffered and died at the hands of their countrymen be accorded, at least, the dignity of memory and truth.

VI. OTHER RECOMMENDATIONS

29. The Conference recommends that the authorities of the Rwandan and the International Tribunal work cooperatively and professionally, to ensure that all available information be shared for their respective purposes.

30. The Conference recommends that the National Assembly enacts legislation implementing Genocide Convention, to which Rwanda is a signatory, and such other legislation as may be appropriate to implement recommendations of the Conference.

VII. RECOMMENDATIONS ADDED BY THE CONFERENCE

31. The Government of Rwanda should prepare criminal files of institutions which organised the genocide and massacres, such as MRND, CDR, RTLM, INTERAHAMWE, IMPUZAMUGAMBI, MDR-POWER, PL-POWER and small parties allied with MRND, so as to initiate civil lawsuits against them for compensation of the victims and survivors.

32. The Government of Rwanda should initiate civil lawsuits against the estates of all perpetrators, including those believed to be deceased, to seize their assets. Those assets should be placed in a fund for the compensation and reparation of victims and survivors of the genocide.

33. A memorial and documentation authority shall document and publicise the truth about the acts of deceased perpetrators. The information and documentation collected by the Memorial Authority may be utilised as supporting evidence in the criminal prosecutions or civil actions against living perpetrators.

III.5 GROUP IV: ADDRESSING THE PROBLEMS OF THE VICTIMS OF GENOCIDE

The Working Group IV studied how to address the problems of the victims of genocide and made the following recommendations which were adapted by the Conference.

I. A STRUCTURE TO DEAL WITH THE PROBLEMS OF THE SURVIVORS OF THE GENOCIDE

1. The Conference agreed that the problems resulting from the consequences of genocide are immense. The country has also enormous social problems currently managed by various government departments. There is a real risk that the country's social problems could overwhelm any other problems resulting from the genocide. It is recommended that a **National Commission on Genocide** be created which would act independently of state administrative structures. This should be composed of representatives of survivors' organizations and should be under the auspices of the President's Office.

2. The survivors' associations must organize themselves in such a way as to contribute to the overall management of the situation.

3. The Conference recommends, as well, the creation of a National Fund earmarked for genocide survivors which would underwrite the new structures cited above.

II. JUSTICE

4. The Conference concurs that the pursuit of justice constitutes the most urgent need, in terms of rehabilitating survivors' morale. Thus, it recommends that the preparation of criminal files be accelerated so that the justice process can begin.

5. The Conference recommends a national inquiry in order to identify the instigators of the genocide.

6. The Conference concurs that there is a need for special legislation on genocide.

7. The Conference recommends that survivors of genocide be provided with legal counsel assistance. The existing project in that regard should be provided with sufficient means.

8. The Genocide Commission should focus its efforts on coordinating information collection on genocide.

III. REHABILITATION

9. The Conference defined rehabilitation as the act of reconstituting the moral, physical, socio-economic and psychological values of survivors.

10. As a practical approach, the Conference prioritized the following categories of survivors:

1. mutilated and the aged;
2. orphans;
3. widows and widowers;
4. women either raped or taken hostage;
5. all the others; and recommended the following actions:

11. Provide basic needs for the most vulnerable groups: i.e. food, clothes, etc...

12. Provide long-term social assistance for these vulnerable groups.

13. Create revenue-generating projects.

14. Provide construction materials and begin rehabilitating the country. In urban areas, provide housing for the survivors using the former homes of genociders.

15. Conduct a socio-demographic survey of survivors.

16. Provide health care for those who sustained physical mutilation and/or logical trauma.

17. Create a special medical unit for the treatment of difficult cases.

18. Guarantee the security of the survivors perhaps through relocation.

19. Revise the laws so that they offer better protection to the most vulnerable (women, children, old people).

20. Protect the properties of the survivors of genocide and exploit them to their benefit (land, buildings, equipment,..).

IV. COMPENSATION

21. The Conference agrees that it is the duty of the state, the instigators of the genocide, and the international community to compensate the survivors.

22. The government of Rwanda must take concrete steps to guarantee compensation to survivors of the genocide.

23. The needed within the survivors' community should benefit from free social services: i.e. health care, education, public transport.

24. The property belonging to the instigators of the genocide should be sold or worked for the benefit of the survivors. A law dealing with this matter should be enacted and enforced.

25. At the international level, a fund should be organized to compensate survivors of the genocide in Rwanda. France and the UN, in particular, should recognize their implication in the genocide, and, as a consequence, offer an equitable compensation. The same goes for Belgium who played a major role in the history of Rwanda, and whose actions encouraged the bloody confrontations which ultimately led to the genocide.

26. The international community should also contribute to the National Fund for support for the survivors of the genocide.

V. MEMORY PRESERVATION

27. The Conference has learnt about the on-going work of the government's ad-hoc commission, but in addition, the Conference made the following suggestions:

- a. Construction of a National Memorial of the genocide;
- b. Construction of monuments at the sites of the worst massacres;
- c. Preserve the remains of the victims of genocide in at least every commune;
- d. Carry out a thorough documentation of the genocide and publish it widely;
- e. Draw up a map of Rwanda highlighting areas where the genocide took place;
- f. Commemorate "Memorial Day" on the 7th of April each year;
- g. Integrate the theme of genocide into cultural programs.

VI. MEANS TO EFFECT THE ABOVE

28. The above-mentioned projects will require substantial resources, in particular money. The Conference suggested the following ideas for raising money for the National Fund for the support of genocide victims:

- a) Take a percentage of the taxes collected on beer, lemonade, tobacco, etc.;
- b) Ask citizens to contribute 2% of their income or salaries;
- c) Use the income earned from the sale of perpetrators' properties;
- d) Seek special contributions from the population in the form of gifts, etc.;
- e) Seek contributions from funding agencies that specialize in rehabilitation, as in the case of Rwanda.

VII. ACTION PLAN

29. The Conference recommends that the National Commission on Genocide be operational within one month. The first item on its agenda should be the elaboration of a detailed, comprehensive action plan, which should include the following:

- a. Gather information on the instigators of the genocide;
- b. Concrete actions for the rehabilitation of the survivors;
- c. Work out precise terms of compensation for the victims;
- d. Establish a fund to support survivors of genocide;
- e. Devise a system for collaboration and coordination among genocide survivors associations.

III.6 GROUP V: THE ROLE AND RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY IN ADDRESSING THE POST- GENOCIDE SITUATION

The group deliberated for two days on the role of the international community in the post-genocide situation in Rwanda and made the following recommendations which were adopted by the conference:

I. PREAMBLE

1. The conference recognizes that the genocide which occurred in Rwanda in 1994 was a crime against humanity, and therefore implicates the international community, defined both as states and governments, and as the individuals represented by non-governmental organisations.

2. The Conference submits that the occurrence of this crime in Africa was a result of a silence and complacency on the part of the international community, despite clear and consistent early warnings provided to the international community.

The conference also believes that this negligence on the part of the international community to act reflects the marginalisation and unsympathetic attitude to African interests. However, despite this lack of political will, the Conference maintains that the crime of genocide imposes moral and legal responsibility.

3. The Conference recognises the importance of encouraging the participation of the governments of the world in the interdiction of those responsible for the crime of genocide. The Conference urges the agencies responsible for disseminating information concerning the genocide in Rwanda to refrain from simplifications, such as constructed ethnic dichotomies, in determining the causes and circumstances of the genocide.

II. THE LEGAL AND MORAL RESPONSIBILITIES FOR THE GENOCIDE

4. The Conference agrees, pursuant to paragraph 148, of the Preliminary Report by the independent Commission of Experts, 4 October 1994, that "After careful deliberation, the Commission of Experts has concluded that there exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic and methodical way. Abundant evidence shows that these mass exterminations perpetrated by Hutu elements against the Tutsi group as such, during the period mentioned above, constitute genocide within the meaning of article II of the convention of the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948". The evidence of a planned and systematic campaign of genocide is also given in the report of the Special Rapporteur on Rwanda, Professor Degni Segui, of 26 June 1994.

5. Therefore, the Conference urges the international community to ensure that it observes its obligations under international law.

II. ACCOUNTABILITY AND CREDIBILITY

II.1. General Accountability

6. The Conference notes that the international community's abandonment of Rwanda before and during the genocide and the withdrawal of the United Nations following the events of April 1994 damaged the credibility and reputation of the international community.

11.2. Specific accountability

7. The Conference notes the specific accountability of the United Nations and the Security Council during the period of the genocide, and its failure to inform the people of the impending danger. The Conference notes that the Secretary General had publicly acknowledged that the United Nations had failed at the time of crisis in Rwanda.

8. The Conference notes that those state Governments with specific direct and indirect complicity in the genocide, in particular the Government of France, must be held legally accountable, under international law. The Government of Belgium through its divisive colonial policies, must be held morally and legally accountable, under international law.

9. These states must be held legally accountable, under international law; to pay compensation to the victims of the genocide and the crimes against humanity. The Conference suggests the setting up of a compensation fund to complement, and not substitute, assistance programmes already in place.

10. The Conference notes that the extensive destruction of Rwanda public and private property during the Turquoise Operation by the Government of France and urges that appropriate compensation be provided.

11. The Conference expresses concern over the silence of the Church, which the Conference finds is both generally and specifically accountable for its role during and after the genocide.

12. The Conference urges the Church to take seriously its moral responsibility and to make public acknowledgement of and restitution for its role.

III. EXTRADITION OF PERPETRATORS OF GENOCIDE

13. The Conference urges, pursuant to the United Nations Resolution 978 (1995) "States to arrests and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal or Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda".

14. The Conference submits that those state Governments which continue to aid and abet the perpetrators of the genocide, such as France, Kenya, Togo, and Zaire are morally and legally responsible to institute all measures, such as the freezing of assets of perpetrators of the genocide in Rwanda harboured within their territories, to extradite those perpetrators. The Conference also urges those state Governments to formally accept their responsibility.

15. The Conference recommends that the Government of Rwanda consider the following measures with respect to the extradition of the perpetrators of genocide presently within foreign territory:

- a) Publication of a list of perpetrators which would be submitted to the United Nations;
- b) Preparation of dossiers on each of those individuals;
- c) The Rwandan Government should engage in bilateral extradition treaties;
- d) A call upon the Security Council to adopt a resolution under Chapter VII of the United Nations Charter obliging States to apprehend perpetrators of the genocide in Rwanda found on their territory;

- e) Serious attention should be given to the institution of sanctions against those Governments which do not comply to the above-mentioned resolution, including the cutting of aid or the expulsion of member States;
- f) The Government of Rwanda should make efforts to involve the Parliament of the European Union as an essential element in its attempt to apprehend the perpetrators of genocide abroad.

IV. PREVENTING ANOTHER GENOCIDE

16. The Conference notes the continued militarisation of parties whose interests are contrary to the Rwandan State, and whose presence on the borders of Rwanda constitutes a continued threat to her security and her effort towards rehabilitation.

17. The Conference suggests that the following measures be undertaken by the international community and the Rwandan Government:

- a) The need to permanently monitor the weapons flow both at site and at source;
- b) The submission of evidence to the United Nations High Commissioner on the arms situation within the camps bordering Rwanda;
- c) A call on the international community to strengthen the enforcement of laws which sanction hate propaganda through popular media.

V. REFUGEES

18. The Conference recognizes the willingness of the Government of Rwanda and the steps it is taking to welcome refugees back to their country. It is therefore urged that the Recommendations of the Conferences on refugees held in Nairobi and Bujumbura be speedily implemented.

VI. HOW TO ACHIEVE THESE OBJECTIVES

19. The Conference submits the following measures for the consideration of the government of Rwanda and the international community in fulfilling its moral and legal obligations to ameliorate the consequences of the genocide, and to ensure non-repetition within the family of nations:

- a) To develop a systematic campaign for sensitising the world community on the causes, aspects and efforts of genocide. This should encourage ordinary citizens to participate in the identification and apprehension of perpetrators of crimes against humanity.
- b) The Rwandan Government should develop a strategy to provide for an effective leadership within the continent of Africa and all other States.

- c) It is also urged that focal points called the "Friends of Rwanda" be established in different parts of the world.
- d) The international community should be urged to rapidly disburse those funds it has pledged.

20. The Conference suggests that this Conference constitutes a permanent body and a Steering Committee be formed to follow-up the resolutions of this Conference.

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