

LAW N° 33 bis/2003 OF 06/09/2003 REPRESSING THE CRIME OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES

We, KAGAME Paul,
President of the Republic;

THE TRANSITIONAL NATIONAL ASSEMBLY HAS ADOPTED AND WE SANCTION, PROMULGATE THE FOLLOWING LAW AND ORDER IT TO BE PUBLISHED IN THE OFFICIAL GAZETTE OF THE REPUBLIC OF RWANDA

The Transitional National Assembly, meeting in its session of July 15, 2003 ;

Given the Constitution of the Republic of Rwanda of June 4, 2003, especially in its Articles 9-1°, 13, 62, 90, 93, 108, 195 and 201 ;

Given the Geneva Convention of August 12, 1949 on the protection of civil persons in time of war ratified by the Republic of Rwanda on March 21, 1964 and its additional protocols ;

Given the Convention of December 9, 1948 repressing the crime of genocide and the Convention of November 26, 1968 on the imprescriptibility of war crimes and crimes against humanity as approved and ratified by Decree-Law n° 08/75 of February 12, 1975 approving and ratifying various international conventions on human rights, disarmament, prevention and repression of some acts likely to endanger peace among human beings and nations ;

Given the Decree-Law n° 21/77 of August 18, 1977 instituting the Penal Code ;

Considering that though Rwanda has ratified these conventions, it has not provided for sanctions applicable to those crimes ;

ADOPTS :

CHAPTER ONE : GENERAL PROVISIONS

Article One:

This law represses the crime of genocide, crimes against humanity and war crimes.

CHAPTER II : THE CRIME OF GENOCIDE AND ITS SANCTIONS

Article 2 :

The crime of genocide shall mean one of the following acts committed with intent to destroy, in whole or in part, a national, regional, ethnical, racial or religious group, whether in time of peace or in time of war:

- 1° killing members of the group ;
- 2° causing serious bodily or mental harm to members of the group ;
- 3° deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ;
- 4° imposing measures intended to prevent births within the group ;
- 5° forcibly transferring children of the group to another group.

Article 3 :

Shall be sentenced to death any person who will have committed, in time of peace or in time of war, the crime of genocide as defined in Article 2 of this law.

Article 4 :

Shall be sentenced to an imprisonment of ten (10) to twenty (20) years, any person who will have publicly shown, by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds, or any person who will have hidden or destroyed its evidence.

Where the crimes mentioned in the preceding paragraph are committed by an association or a political party, its dissolution shall be pronounced.

CHAPTER III : CRIMES AGAINST HUMANITY AND THEIR SANCTIONS

Article 5 :

The crime against humanity shall mean one of the following acts committed within the context of a widespread or systematic attack directed against the civilian population because of their nationality, political opinions, ethnic or religious origins:

- 1° murder;
- 2° extermination;
- 3° enslavement;
- 4° deportation or forcible transfer of population;
- 5° imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- 6° torture;
- 7° rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity;
- 8° persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious reasons or any other form of discrimination;
- 9° forced disappearance of persons;
- 10° the crime of apartheid;
- 11° other inhumane acts of a similar character intentionally causing great sufferings, or serious injury to body integrity or to mental or physical health

Article 6:

Shall be sentenced to death, any person who will have committed a crime against humanity provided for in point 1°, 2°, 3°, 6°, 7° or 9 of Article 5 of this law.

Shall be sentenced to life imprisonment or an imprisonment of ten (10) to twenty (20) years, any person who will have committed a crime against humanity provided for in point 4°, 5°, 8°, 10° of 11° of Article 5 of this law.

Where the crime against humanity provided for in the preceding paragraph is accompanied with inhuman and degrading treatment, the perpetrator shall be sentenced to life imprisonment.

Article 7:

Where the crime of genocide and the crime against humanity, provided for in Articles 2 and 5 of this law have been backed, by any means whatsoever, by an association or a political organization, its dissolution shall be pronounced.

CHAPTER IV: WAR CRIMES AND THEIR SENTENCES

Article 8:

The war crime is one of the following acts committed during armed conflicts when they target persons or property protected by the Geneva Convention of August 12, 1949 and its additional protocols I and II of June 8, 1977:

- 1° wilful killing;
- 2° torture or other inhuman treatments, including biological experiments;
- 3° wilfully causing great suffering, or serious injury to body or health ;
- 4° extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully such as premises devoted to religion, charitable organizations, schools, historical premises dedicated to arts and scientific experiments;
- 5° compelling a prisoner of war or other protected person to serve in intelligency service or administration of belligerent parties;
- 6° wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial ;
- 7° unlawful deportation, transfer or confinement ;
- 8° taking of hostages and subjecting them to terrorist acts ;
- 9° intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread long - term and severe damage to the natural environment and which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated ;
- 10° making improper use of distinctive emblems of humanitarian organizations or other protective signs of persons or objects recognized by the international law, with intention of killing, wounding or capturing the enemy ;
- 11° attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives ;
- 12° practices of apartheid and other inhuman and degrading practices, based on racial discrimination, which give rise to attempts to human dignity;
- 13° the transfer, by the occupying power of the whole population or its part into the occupied territory, or deportation or transfer of the whole population or its part of within or outside the occupied territory without considering the population's interests ;
- 14° any unjustified delay in the repatriation of war prisoners or imprisoned civilians, after the end of active hostilities;
- 15° the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court and without affording all judicial guarantees which are generally recognized as indispensable ;
- 16° killing or wounding a person knowing he or she is not involved in hostilities, or who laid down his or her weapons in case he or she was fighting, or no longer having means for self defence.

Article 9:

Shall be liable to the following penalties, any person having committed one of the war crimes provided for in Article 8 of this law:

- 1° a death penalty or life imprisonment where he or she has committed the crime provided for in point 1°, 2°, 3°, 9°, 11° or 16° of Article 8 of this law;
- 2° an imprisonment sentence of ten (10) to twenty (20) years where he or she has committed the crime provided for in point 6°, 7°, 8°, 10° or 12° of Article 8 of this law;
- 3° an imprisonment sentence of five (5) to ten (10) years where he or she has committed the crime provided for in point 4°, 5°, 13°, 14° or 15° of Article 8 of this law.

Article 10:

“War crime” shall also mean any of the following acts committed in armed conflicts:

- 1° employing poisoned weapons or other arms designed to cause unnecessary suffering;
- 2° pillaging public or private property;
- 3° collective penalties;
- 4° attempts to human dignity, in particular rape, sexual slavery, forced prostitution, and any form of indecent assault;
- 5° enslavement and slave trade, practices linked to slavery and hard labour in all their forms;
- 6° using human shields;
- 7° acts of violence meant to inspire or terrorize the whole or part of the population;
- 8° forcing civilians, including children under eighteen (18) years, to take part in hostilities or to conduct works for military purposes;
- 9° starving the civil population and preventing humanitarian aid to reach the population;

- 10° separating deliberately children from their parents or persons in charge of their security and welfare;
- 11° refusal to cater for the wounded, patients, shipwreck victims and persons deprived of their freedom for reasons linked to armed conflicts;
- 12° subjecting detainees or prisoners to bad treatments.

Article 11:

Any one who commits one of the war crimes provided for in Article 10 of this law, shall incur the following penalties:

- 1° death penalty or life imprisonment where he or she has committed the crime provided for in point 1°,4°,5°,6°,9° or 10° of Article 10 of this law;
- 2° an imprisonment sentence of ten (10) to twenty (20) years, where he or she has committed the crime provided for in point 3°,8°,11° or 12° of Article 10 of this law;
- 3° an imprisonment sentence of five (5) to ten (10) years, where he or she has committed the crime provided for in point 2° or 7° of Article 10 of this law.

Article 12:

Those persons protected by the Geneva Conventions of August 12, 1949 and its additional protocols are as follows:

- 1° civil population;
- 2° civilians under the power of belligerent parties;
- 3° the wounded, patients, civilians and servicemen who survived a shipwreck;
- 4° members of religious, medical and hospital staff not directly involved in hostilities;
- 5° war prisoners and imprisoned civilians;
- 6° civilians and servicemen detained for reasons relating to armed conflict;
- 7° servicemen put outside combat whatever the cause .

Civilians behaving as servicemen shall not be protected by this article.

Article 13:

Shall be punished by an imprisonment sentence of seven (7) to twenty (20) years, any person who uses or orders to use against the enemy methods and means of war expressly banned by laws and practices applicable in armed conflicts as well as international conventions to which Rwanda is signatory.

Where methods and means used or ordered to be used have resulted in the death of one or more persons, the culprit shall incur a life imprisonment or a death penalty.

CHAPTER V: OFFENCES TO HUMANITARIAN ORGANISATIONS

Article 14:

Shall be punished by an imprisonment of six (6) months to five (5) years and a fine of fifty thousand Rwandan Francs (50,000 Frws) to one hundred Rwandan Francs (100,000 Frws) or one of these penalties only, any person who:

- 1° will engage in hostile acts against persons belonging to Red Cross and Red Crescent organizations in their humanitarian activities;
- 2° will have willingly destroyed or damaged, during hostilities, equipment, installations or warehouses pertaining to such an organisation or placed under its protection.

Article 15:

The use of the logo of humanitarian organisations is exclusively reserved for health services as well as the staff and equipment of the International Committee for the Red Cross, the International Federations of Red Cross and Red Crescent as well as National Societies of the Red Cross and Red Crescent which are entitled to it under the Geneva Conventions of 1949 for the protection of victims in wartime.

Article 16:

He who, willingly and without being entitled to it, will have borne or flown the logo of humanitarian organisations, or any other sign which is an imitation or is likely to cause confusion, shall be punished by an imprisonment sentence of six (6) months to five (5) years and a fine of fifty thousand Rwandan francs (50,000Frw) to one million Rwandan Francs (1000,000Frw), or one of these penalties only.

Courts shall, in addition, pronounce confiscation of objects marked with the logo, and order destruction of instruments that will have served to produce the illegal marking.

CHAPTER VI : MISCELLANEOUS AND FINAL PROVISIONS

Article 17:

Without prejudice to the provisions of the Penal Code relating to the attempt and criminal participation, the following acts shall be punished by penalties provided for by this law:

- 1° an order, even where not followed by an execution, to commit one of the crimes referred to by this law;
- 2° a proposal or an offer to commit such a crime and the acceptance of such a proposal or offer;
- 3° incitement, by way of speech, image or writing, to commits such a crime, even where not followed by an execution;
- 4° an agreement in order to commit such a crime, even where not followed by an execution;
- 5° complicity to commit such a crime, even where not followed by an execution;
- 6° failure to act, within the limits of one's possibility to act, on the part of those who had knowledge of orders given in order to execute such a crime or acts that prepare its execution, and could prevent its consummation or put an end to it;
- 7° an attempt to commit such a crime.

Article 18:

No interest can justify committing crimes provided for by this law.

The official status of an accused at the time of committing a crime shall not exempt him or her from his or her criminal liability and shall not be a reason to benefit from mitigating circumstances.

The fact that any of such crimes provided for by this law has been committed by a subordinate shall not exempt the authority which is his or her superior from his or her criminal liability if he or she knew or had reasons to know that the subordinate was preparing to commit that act or had committed it and that the authority superior in hierarchy has not taken the necessary and reasonable measures to prevent the said act from being committed or to punish their perpetrators, and to inform the relevant authorities.

The fact that the accused has acted upon the order of the Government or of his or her superior authority shall not exempt him or her from his or her criminal liability where, patently, the order could lead to perpetration of one of the crimes punishable under this law.

Article 19:

From the phase of preliminary investigations up to the final judgement, the president of the relevant jurisdiction may, upon a written request by the injured party or the Public Prosecution, take any protective measures needed to safeguard the interests of the injured party as to civil liability.

Article 20:

Legal proceedings as well as penalties pronounced for the crimes of genocide, crimes against humanity and war crimes are imprescriptible.

Article 21:

All previous legal provisions contrary to this law are hereby abrogated.

Article 22:

This law comes into force on the date of its publication in the Official Gazette of the Republic of Rwanda.

Kigali, on 06/09/2003

The President of the Republic
KAGAME Paul
(sé)

The Prime Minister
MAKUZA Bernard
(sé)

The Minister of Justice and Institutional Relations
MUCYO Jean de Dieu
(sé)

Seen and sealed with the Seal of the Republic:

The Minister of Justice and Institutional Relations
MUCYO Jean de Dieu
(sé)