



GLOBAL VOICE OF RWANDAN REFUGEES

speaking out for the oppressed - the forgotten

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CONDEMNATION OF THE DENIAL OR TERMINATION OF HUMANITARIAN ASSISTANCE FOR THE CANTONED EX- COMBATANTS OF THE FDLR: A NOTE ON THE SITUATION

26 January 2018

VISION AND MISSION OF THE GVRR

Whilst the **vision** is to contribute to finding a durable solution to Rwandan refugee problem, the **mission** are threefold: (i) to speak out for atrocities being committed against the Rwandan refugees, in particular, those refugees who were abandoned and forgotten in the dense forest of the Democratic Republic of the Congo (DRC); (ii) to make their voice being heard at national and international platforms; (iii) and to advocate for the democratic participation of refugees in the decision-making processes that may have an adverse impact on their protection.

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Speaking out for the oppressed – the forgotten

[1] The Global Voice of Rwandan Refugees (“GVRR”) strongly condemns the continuing pattern of the denial of humanitarian assistance to the Ex-combatants of the *Forces Démocratiques de la Libération du Rwanda* (“FDLR”) and their families cantoned at camps of Lt. Gen. Bauma (Kisangani), Walungu and Kanyabayonga.¹ The denial of humanitarian assistance is being invoked by the international community, in particular, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), in order to coerce the cantoned soldiers and their families to return to Rwanda without the fulfilment of the peace process that was envisioned to take place. The GVRR urges the international community, in particular, the South African Development Community (“SADC”); the International Conference for the Great Lakes Region (“ICGLR”) and MONUSCO to encourage and support the noble action of laying down weapons with a view to engaging in the non-violence liberation struggle as it was unilaterally initiated by the FDLR under the Lusamambo Peace Offer Declaration of 30th December 2013. Under the Lusambo Declaration, the FDLR undertook to focus on peace process, which was viewed as a benchmark for the realisation of the long needed security and safety of the citizens of Great Lakes region and free, safe and secure political space in Rwanda in which all people of Rwanda will have an equal voice and rights of the citizenship.² The FDLR made it clear that it did not (and still does not) want war neither against the Democratic Republic of the Congo (“DRC”), nor MONUSCO nor RWANDA. It rather took cognisance of the importance of the peace, security and development in the region with anticipation that the international community will support its decision.³

[2] The laying down of weapons in favour of peace process is indeed a good gesture and a self-sacrificing action illustrating that members of the FDLR are non-violent, but peace-loving people who are ready and willing to sit at the negotiating table to find a durable solution to the Rwandan ethnic conflict that cost millions of lives of Rwandans and non-Rwandans. Such ethnic conflict has indeed left millions of others with serious physical and psychological injuries and thousands others as refugees. It has engendered an oriented-ethnic based political situation that oppresses and

¹ See, the letter of the FDLR with reference number 23122014FPP28122014 dated 23 December 2014, signed by Gen. Maj. Victor Byiringiro, inviting the international community to witness an event of laying down of weapons of the 2nd Contingent on 28th December 2014 (herein after, “the 2014 FDLR invitation”).

² See, the 2003 Lusambo Declaration and Open letter to the Heads of States, signed by Gen. Maj. Victor Byiringiro on 18 April 2014.

³ Paras 1-3 of the 2003 Lusambo Declaration.

suppresses citizens of Rwanda through discriminatory practices similar to South Africa's apartheid system and subjugates citizens of the Great Lakes region through proxies and random wars initiated by the Rwandan Patriotic Front (RPF) - *Inkotanyi* under pretext of fighting against "*interahamwe*" militia and FDLR combatants in Burundi and the DRC, respectively.

[3] The question the international community tends to skip is how the recurring cycle of conflicts and violence in the DRC started. It started with the hot pursuit of the Hutu refugees who sought sanctuary in the eastern DRC, immediately after the fall of Kigali in July 1994 in the hands of the RPF-*Inkotanyi*. In 1996, the RPF government's Rwandan Defence Force (RDF) crossed the Rwanda's borders with the DRC under the pretext of supporting "Banyamulenge" (the Tutsi from Rwanda) with a view to eliminating and neutralising the army of former Hutu majority regime. The same army is currently attempting to cross its border with Burundi under the pretext of stopping the "unreal" and "made-up" genocide against Tutsi in Burundi. President Kagame claims that the Hutu militias such as *interahamwe* and *imbonerakure* are being utilised by President Nkurunziza in Burundian violence. He claims that the lives of the Tutsi in that violence are the most exposed to threats and therefore has the right to intervene. In this context, acts of aggression are planned and implemented by the FPR/RDF under the pretext of preventing the genocide against the Burundian Tutsis. The usage of political narrative of Tutsi genocide is the root of the violence that the world sees in the Great Lakes region and is invoked to portray all Hutus as people who hate their Tutsi compatriots and who wish them dead. This is a misconceived perception of the UN Security Council and other international bodies.

[4] It is therefore trite to state that the Tutsi genocide is politically and judicially problematic. The issue of genocide needs to be articulated in order to illustrate its strong nexus with the denial of providing the cantoned combatants and their families with the food. It is believed that the cantoned combatants engaged either directly or indirectly in the commission of genocide in Rwanda. Therefore, feeding the cantoned combatants and their families is regarded as feeding *genocidaires*. The feeding should therefore – in the point of view of the UN Security Council – be discouraged as discussed in detail in the following paragraphs.

[5] Actually, the question of whether there was the genocide against Tutsi civilians in Rwanda remains debatable given that the International Criminal Tribunal for Rwanda

(“ICTR”) noted with concern that the 1994 genocide was actually triggered by the RPF, which played a vital role in it. It did not stop it but fuelled it.⁴ This is the reason why the ICTR, in the cases of Col. Bagosora, Karemera and Maj. Gen. Ndindiliyimana, came to the following striking conclusion: there was no evidence to support the contention of the RPF that Hutu leaders planned or conspired to destroy Tutsi civilians simply because the ICTR prosecutorial team failed to discharge the onus to prove their guilt beyond reasonable doubt.⁵ The findings come with no surprise because even testimonies provided by senior leaders of the RPF – who fell out of President Kagame – reveal that the RPF planned and executed the shooting down of the former President Habyarimana’s plane and this was a trigger of Hutus’ reprisal attacks against Tutsi civilians.⁶ In light of this, the ICTR narrowly defines the Rwandan genocide as civilians of Hutu and Tutsi background who were caught up in war-time violence.⁷ Based on damning evidence, the ICTR found that the said reprisal attacks were somehow spontaneous with the RPF’s heinous atrocities.⁸ Drawing on the ICTR’s findings, it is wrong for the UN Security Council to refer to the leaders of the FDLR and their combatants as *genocidaires*. It is also wrong to deprive the cantoned combatants and their families of humanitarian assistance on the basis of understanding that they are perpetrators of the genocide against Tutsi civilians. This is wrong.

[6] It is not a right thing to deny them food and other necessities of life given that the narrative of the Tutsi genocide was established by the RPF regime, in collaboration with and supported by its powerful western partners for the purpose of, first,

⁴ JMV Ndagijimana *How Paul Kagame Deliberately Sacrificed the Tutsi* (2009, Orléans Cedex: Edition la Pagaie) and P Erlinder *The Accidental...Genocide* (2013, Chicago: Penknife Press).

⁵ Top Hutu leaders of the Hutu majority regime were classified by the RPF and international community as ‘ringleaders or architects of Tutsi genocide. However, they were acquitted for crimes of planning and conspiring to commit genocide against Tutsi: First, Brig. Gen. Gratién Kabiligi, the Rwandan Army General Staff, was, on 18 December 2008, acquitted by the Trial Chamber on all counts, see, *The Prosecutor v. Bagosora and Others* Case No. ICTR-98-41-T (Dec 18, 2008) para 2258. Second, the Appeal Chamber, On 14 December 2011, ruled that there was no sufficient evidence to convince it that Col Bagosora had intention to commit crimes of genocide, see, *Bagosora and Another v The Prosecutor* Case No. ICTR-98-41-A (Dec 14, 2011), paras 730,740. Third, the Appeal Chamber, on 11 February 2014, acquitted Maj. Gen. Ndindiliyimana and Maj. Nzuwonemeye, on all accounts, see, *Ndindiliyimana and Others v. The Prosecutor*, Case No. ICTR-00-56-A (Feb 11, 2014) paras 253,278,322,388). Fourth, the Appeal Chamber, very recently, held that Karemera and Ndirumapatse (Secretary and President of the former ruling party, respectively) did not conspire to commit genocide prior to the April 1994 assassination of President Habyarimana; rather they encouraged the commission of it a few days after such assassination; see, *Karemera and Another v. The Prosecutor*, Case No. ICTR-98-44-A (Sept 29, 2014), para 643.

⁶ AJ Ruzibiza *Rwanda, L’Histoire Secrete* (2005, Paris: Panama) and Erlinder (n4) 25-6.

⁷ In *The Prosecutor v. Bagosora and Others*, the Trial Chamber noted with approval that the RPF triggered the killings that followed assassination of President Habyarimana. It noted that killings against Tutsi were somehow spontaneous with the RPF’s killings (para 1996).

⁸ *The Prosecutor v. Bagosora and Others* para 1996.

maintaining the RPF-Tutsi minority regime on power and, secondly, to protect the true planners of mass murder and ethnic cleansing.⁹ Of concern is that the narrative is used as a pretext to invade the neighbouring countries whereby attacks against innocent Hutu refugees are launched. In the process of invasion, the natural resources of the DRC are devastatingly looted. These invasions and attacks are executed in violation of a number of international law and regional agreements, in particular, the 2003 Peace, Security and Cooperation Framework for the DRC (“the PSC Framework”).

[7] The denial of humanitarian assistance can be better understood if the situation is analysed from a historical perspective. Between 1996 and 2000, the RPF/RDF invaded the DRC under the pretext of protecting *Banyamulenge* community against the Hutu refugees, who sought a safe haven in the DRC. For that reason, when the RPF/RDF invaded the DRC, it had three objectives in mind: the destruction of the Hutu refugee camps; the destruction of former Hutu majority regime’s army structures and the overthrow of the Mobutu regime.¹⁰ Since then, the innocent Hutu refugees in the DRC are subjected to multiple attacks, which international community has turned a blind eye. For more than 20 years, these refugees have never enjoyed an international refugee protection as contemplated by the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugees Problem in Africa.

[8] Since the 1996 massive repatriation (which is indeed a crime against humanity), Hutu refugees in the DRC know nothing else but bombs and shells. No one has recognised the fact that they are survivors of the litany of atrocities committed against them prior to, during and after the 1994 genocide. Many documents – which are overlooked by the UN Security Council and other international institutions – assert that the RPF systematically murdered thousands of people – overwhelmingly Hutus, along with Tutsi, Twa and others – as it advanced across the country in 1994, thousands more in gruesome massacres and summary executions after coming on power, and tens of thousands during the 1996 military campaign to destroy Hutu

⁹ R Kintu “The truth behind the Rwanda tragedy”. The document prepared upon request and presented to the U.N. Tribunal on Rwanda, Arusha, Tanzania, March 20, 2005 at 18.

¹⁰ An interview with President Kagame, Washington Post of 9 July 1997.

refugee camps and the neutralisation of the vanquished army.¹¹ It is very sad that the international community supports the mass murder of both refugees and cantoned individuals through starvation in addition to suffering from the cycle of armed violence, instigated by the RPF/RDF.

[9] Against the background of the RPF/RDF's intention to wipe out the entire population of Hutu refugees, the FDLR was, in 2000, created to defend the well-being, health, security and safety of the refugee population and to liberate Rwandans from the RPF tyranny. Accordingly, the FDLR combatants are freedom fighters whose spirit and objectives are conceived in the radical need to defend and preserve the sanctity of life of refugees and their family unity. The FDLR was born out of the need to resist the forced or involuntary massive repatriation of refugees which was taking place under the auspices of the UNHCR. In order to protect the sanctity of life of the Hutu refugees, it was necessary to resort to physical violence to repel the RPF/RDF attacks and to compel the RPF government to negotiate with the Hutu refugees for their return in Rwanda in dignity.¹² Within this spirit and objectives, the FDLR combatants, despite the persistent attacks against refugees, had taken a decision to lay down weapons and have shown their humanity and good heart through their willingness to commit themselves to peace processes.

[10] The GVRRC takes a serious note that the FDLR has faithfully committed to disarmament on 30th December 2013. This commitment was shown when some of the FDLR combatants laid down their weapons from 1st April to 30th May 2014 in KATIGU, North Kivu and on 28th December 2014 in BULEUSA in North KIVU and in KALALA in South KIVU, respectively. The laying down of weapons was followed by cantoning the combatants of the FDLR in three camps, namely, Walungu, Kanyabayonga and Lt. Gen. Bauma (Kisangani). This was done under the auspices of the international community, in particular, SADC, MONUSCO and the government of the DRC. On these two occasions, the FDLR made a call to the wide international

¹¹ P Pean *Noires Fureurs, Blancs menteurs* (2005, Paris: Les éditions Fayard); EW Collier & CR Strain (2014). *Religious and Ethical Perspective on Global Migration* (2014, London: Lexington Books) 72; M Wells & N Fellows *History for the IB Diploma Paper 1 Conflict and Intervention* (2016, Cambridge: Cambridge University Press) 61 and C Davenport & AC Stam "What Really Happened in Rwanda?" 2009, Specific Standards. Retrieved on 10 March 2016, from <https://psmag.com/social-justice/what-really-happened-in-rwanda-3432>.

¹² The founding members were, in establishing FDLR, convinced that it is time to fight against the RPF's strategies of violence and for allowing the people of Rwanda to be the main actors of their own destiny; they were persuaded that no Rwandan citizen, who love peace and his/her country and its people, can remain indifferent spectator of the Rwandan disaster that is still in the course since October 1990 (the FDLR Constitution of 2000).

community, inter alia, the ICGLR, the SADC, the UN; the European Union (EU), the African Union (AU), and all African Heads of States, more particularly, H.E Joseph KABILA, President of the DRC, the former President of Angola (H.E. Eduardo Dos SANTOS), H.E. Jacob ZUMA, President of South Africa, the former President of Zimbabwe (H.E Robert Mugabe), H.E. Uhuru KENYATTA, President of Kenya and the former President of Tanzania (H.E. Jakaya M. KIKWETE) to understand, assist, support the unilateral decision of the FDLR to pursue political liberation that could be initiated through disarmament, cantonment and peace negotiation initiatives (“DCPN Initiatives”).¹³

[11] The first step was to disarm. The disarmament initiatives were, without delay, initiated, but not fully completed as initially planned. Worth citing is that the disarmament initiative, which took place on 18th April 2014 was undertaken in the presence of Mr. Feller LUTAICHILWA (Premier of North Kivu Province); Mr. Mark POWER, (UK Representative), Mr. Thomas LYNCH (the UN Secretary-General Special Envoy in the Great Lakes Region), Ms. Jane Alison PORTER (the EU Representative), Col. Temporel (French Military Attaché); Mr. Anton JONGENNEL (US Embassy Chief of Political Bureau); and Lt. Col. Mandjani OMARI (SADC Representative). Witnessing the ceremony of handing weapons to the SADC, these officials promised the FDLR to support its DCPN Initiatives.¹⁴ It was clear from their speeches and declarations that they were in full support of a call made by the FDLR for the regional countries and international institutions to assist in the arrangements of an inclusive political dialogue, in which all opposing political parties will participate.¹⁵ This approach was viewed as prerequisite for the promotion of political rights in Rwanda. It is important to mention that the political space has been closed since the RPF came on power in July 1994. Therefore, the opening of political space in Rwanda was (and still is) viewed as an important element that will work to put an end to the flow of a growing number of people who are on the desperate journey to exile and to allow the safe and dignified voluntary return of all Rwandan refugees scattered around the world.¹⁶ Without opening the political space, it cannot be

¹³ The 2014 FDLR invitation.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ The letter of the cantoned combatants addressed to H.E Dr Stergomena (Executive Secretary of the SADC), signed on 25 August 2015 by Maj. Faustin Mugisha (Representative of the cantoned combatants and their families) and the letter of the cantoned combatants addressed to President Kabila, signed on 14 November 2015, by (Representative of the cantoned combatants and their families).

claimed that Rwandans are free as they are without a political voice and participation. There is no democracy, but totalitarianism.

[12] Major aspect that problematises the DCPN Initiatives to such a degree that the cantoned combatants and their families are denied public relief and assistance is the irrefutable fact that the FDLR took unilateral decision, which it cannot implement on its own. For its implementation, it must be supported. In this regard, the FDLR approached the SADC and made a humble request to support, oversee and monitor the DCPN Initiatives. In order to ensure the successes of the DCPN Initiatives, the MONUSCO and the government of the DRC were humbly asked by the FDLR to guarantee the security of those fighters who laid down their weapons. In other words, the SADC, MONUSCO and the government of the DRC are the main partners in the implementation of the FDLR's unilateral decision to stop an armed struggle for the sake of the political struggle through negotiated political settlement. This strong partnership is intrinsically reflected in and can be drawn from their pledges and promises made in their speeches, when stated that they were ready to support and promote the DCPN Initiatives. As noted, main aims of the DCPN Initiatives are twofold: To achieve a lasting solution to refugee problem through peaceful means (i.e. negotiated political settlement) and to contribute to the eradication of the cycles of the conflict and persistent violence in the DRC. On several occasions, the voluntary disarmament of combatants took place under the supervision of these three bodies along with other stakeholders. Weapons were always handed to the SADC.

[13] In addition to the problem defined under para 12 above, the DCPN Initiatives were slowed down by the RPF government's refusal to recognise such initiatives. The reluctance of the RPF government to come to the negotiating table was supported by the UN Security Council. In the Security Council Press Statement on DRC, issued the 3rd October 2014, by then Council President María Cristina Perceval, stated in strongest terms that the UN Security Council "rejected any call for political dialogue with the FDLR."¹⁷ The rejection of the political dialogue was justified on two reasons: (i) leaders and combatants of the FDLR are perpetrators of the 1994 genocide against the Tutsi civilians and (ii) the FDLR is a group under UN sanctions for committing ethnically based and other killings in Rwanda and in the DRC.¹⁸ The

¹⁷ SC/11586-AFR/2984.

¹⁸ The Statement by the President of the Security Council of 4 November 2014 (S/PRST/2014/22).

UN Security Council rather supported the military action as a durable solution to the cycle of ethnic conflicts between Hutu and Tutsi. It therefore gave a green light to the Forces of the Intervention Brigade (“the FIB”) established within the MONUSCO framework and the DRC government to immediately carry operational plans for military action out. These operational plans supposed to be launched no later than January 2015.¹⁹ The view of the UN Security Council holding that leaders and combatants are *genocidaires* is, firstly, not supported by and inconsistent with the findings of the ICTR’s Appeal Chamber in the judgements of *Bagosora and Another v The Prosecutor* (handed down on 18 December 2008), *Ndindiliyimana and Others v The Prosecutor* (handed down on 11 February 2014) and *Karempera and Another v The Prosecutor* (handed down on 29 September 2014) as discussed under para 5 above. Secondly, there is no combatant of the FDLR, who is on the list of those fugitives wanted by the ICTR. Accordingly, the GVRP calls upon the UN Security Council to take into account the findings of the ICTR and to refrain from assuming that people are guilty of certain crimes prior to the handing the judgement of the court over. The criminal justice principle of presumption of innocence until proven guilty must be respected at all times.

[14] The GVRP is deeply concerned that in addition to the position of the UN Security Council, the ICGLR unilaterally gave the FDLR a framework of six months to disarm or face the military action consequences. The timeframe stretched from 2 July to 2 December 2014.²⁰ This condition failed to take into account that the laying down of weapons was initiated by the FDLR voluntarily and lacked regional and international support. Instead of focussing on removing barriers to make the DCPN Initiatives work, the ICGLR gave an ultimatum to the FDLR to complete the first step of its initiatives or face the wrath of the international community. This is clear indication that the ICGLR sided with the UN Security Council and the RPF government. The FDLR’s failure to meet the ICGLR’s condition was used as an excuse to take action to attack the combatants of the FDLR and to refuse to provide the cantoned combatants and their families with the basic humanitarian, social and economic support and assistance.

[15] In the political context, the consequences of these decisions of the UN Security Council and the ICGLR had the following implication. There has been the soft hand

¹⁹ SC/11586-AFR/2984.

²⁰ The Statement by the President of the Security Council of 4 November 2014 (S/PRST/2014/22).

of the international community with respect to employing the political influence to make the RPF Government understand the reason why the negotiated political settlement is vital.²¹ Instead of supporting and building on the efforts of the FDLR, the international community rather confined the cantoned combatants and their families in their camps and subjected them to ill-treatment of all sorts including the denial of humanitarian assistance such as medicines, food, water and fire-woods. Subjecting them to ill-treatment has an impact of discouraging the FDLR combatants to continue to implement the first step of the DCPN Initiatives, that is, disarmament initiative. The ill-treatment of the cantoned combatants and their families has potential implication of fuelling ambition in the combatants to continue with the armed struggle. Account is given to the fact that the deprivation of basic necessities of life is essentially employed as a mechanism to coerce the cantoned combatants and their families to return to Rwanda without the peace negotiation processes.

[16] The act of coercing combatants and their families to return, coupled with the call of the UNHCR to implement the cessation clause on the Rwandan refugees with a view to forcing them to return to their persecutor has the potential of motivating and encouraging Rwandan refugees to go and join the resistance movement (i.e. FDLR) to fight for their cause of returning home in peace and dignity; for claiming their rightful place in Rwanda and judicial justice for all Rwandans who perished on the territory of Rwanda and foreign countries; and for establishing the democratic governance and social justice for all. Nonetheless, the FDLR strongly believes that these goals can be attained through negotiated political settlement, which must be initiated concurrently with the disarmament process as this would create an opportunity for the DCPN initiatives to be achieved.²² The successfulness of the negotiated political settlement is therefore a cornerstone of the continuation of the processes of the disarmament, cantonment and repatriation of the combatants and their families. It will motivate all refugees scattered around the world to repatriate to their motherland voluntarily, without use of coercion or duress.

[17] Despite the difficulties arising from the resolutions taken by the UN Security Council and the ICGLR, the FDLR continued to demonstrate, in its communiqués to the public and its correspondences addressed to the UN, the SADC and the government of the DRC, the willingness to devote to peace and security processes.

²¹ The letter of cantoned combatants addressed to H.E. Dr Stergomena and the letter of cantoned combatants addressed to President Kabila (n16).

²² The FDLR invitation.

It was not deterred by these resolutions supporting one party to the conflict. Rather, it continued to echo its sentiments of peace and to remind the international community that the successfulness of the implementation of the DCPN Initiatives was dependent on foreign and international institutions' good will and political willingness to use their political influence to appeal to the RPF government to sit together with its opponents for the sake of peace and security in Rwanda, in particular and in the region, in general.²³

[18] The reluctance to support the political negotiations requested by the FDLR frustrates the regional responses to the conflict which is deeply fuelled by the Rwandan conflict. The proposed regional response to the armed violence in the DRC is reflected under the PSC Framework, concluded in Addis Ababa and signed on 24 February 2013 by Heads of state of DRC, Central African Republic, Angola, Burundi, Congo-Brazzaville, Rwanda, South Africa, South Sudan, Uganda, Zambia and Tanzania. The conclusion of the PSC Framework was witnessed by the UN (Mr. Ban Ki-moon), the AU (Dr. Nkosozana Dlamini-Zuma) and the SADC (Mr. Armando Emilio Guebuza). Under the PSC Framework, these countries demonstrated a deep concern with regard to the continued suffering of the Congolese people from the recurring cycles of the conflict and persistent violence of the armed groups, both Congolese and foreign."²⁴ Therefore, they recognised that a concrete action was needed by the DRC, with the support of partners, countries in the region, and the international community to build on the efforts of the ICGLR and the SADC for the peace, security and development to take its course in the region.²⁵

[19] Under the PSC Framework, the commitment to promoting peace, security and development was renewed to ensure their long term sustainability. The regional oversight mechanism to oversee and guarantee the implementation of the PSC Framework was entrusted with the parties to it as well as the UN, the AU, the SADC, and the ICGLR.²⁶ The parties to the PSC Framework recognised that their contribution to peace and security processes was indeed needed to support the existing regional security efforts previously initiated by the AU, the SADC and the ICGLR, as well as those of other international partners, including the EU, Belgium,

²³ See, for example, Open letter to the Heads of States, signed by Gen. Maj. Victor Byiringiro on 18 April 2014.

²⁴ Para 2.

²⁵ Para 4.

²⁶ Para 7.

France, the United Kingdom (UK), the United States of America (USA).²⁷ The PSC Framework did not take or support the view that the peace and security in the Great Region will be brought about through the barrel of a gun. The 30 December 2013 decision of the FDLR to lay down arms and concentrate on political struggle was in line with the PSC Framework, even though the FDLR was not a signatory to it. The PSC Framework seeks to achieve peace through non-violence mechanisms.

[20] In a nutshell, the PSC Framework requires the DRC to focus on deepening security reform, decentralisation of power and to further the agenda of reconciliation, tolerance and democratisation. It prohibits the regional countries (including Rwanda) from engaging in any activity that undermines or interferes in the internal affairs of neighbouring countries or in the sovereignty and territorial integrity of neighbouring countries. It obligates them to facilitate the administration of justice through judicial cooperation within the region. With respect to the international community, it required the UN Security Council to renew its commitment to support the wide commitment of the regional countries for the long-term sustainability of the DRC and the Great Lakes region. It further required the UN Security Council to appoint a UN Special Envoy “to support efforts to reach durable solutions in multi-task plan that allows the convergence of all initiatives in progress.”²⁸ It is important to note that after eight months of the signing of the PSC Framework, the FDLR also took unilateral decision – in good faith – to lay arms down and hand them to the SADC. To that end, the FDLR’s unilateral decision contributed to the achievement of aims and objectives of the PSC Framework. The salient question is: why the regional countries and institutions did not express its happiness with respect to the FDLR’s DCPN Initiatives.

[21] The first step of the UN Security Council to support the implementation of the PSC Framework was establishment of the FIB. It felt that there was a need of deploying a peace-enforcement force to address the threat posed by armed rebel groups, including the FDLR. The decision was taken on 27 February 2013, that is, three days after the signing of the PSC Framework. The UN Security Council claims that the FIB was established based on the idea initially conceived by the ICGLR and supported by SADC.²⁹ Whether this is true or not, what matters to us is that the FIB was therefore given the mandate to neutralise the negative forces on the territory of

²⁷ Para 8.

²⁸ Para 5.

²⁹ S/2013/119.

the DRC, including the Rwandan proxies.³⁰ The FIB was composed by the forces from Tanzania, Malawi and South Africa which operated within the MONUSCO. Although the forces of the Tanzania formed part of the peace-enforcement force, the former President of Tanzania, H.E. Jakaya Mrisho Kikwete, was of the view that the negotiated political settlement was an ideal mechanism to achieving a long term sustainable peace and security in the region. Attending the 21st AU Summit in Addis Ababa, on 26 May 2013, he publicly announced that the FIB was a good mechanism to enforcing peace, but it was not a good solution to the core problem of the conflict, which was political in various respects. In his view, there should be political negotiations with different rebel groups. The reaction of the President Kagame to the Kikwete's humble opinion and advice was that he will kill him (Kikwete) for suggesting such advice, whereas President Museveni welcomed the call to sit and negotiate with the Ugandan rebel groups.³¹ The threat of killing H.E Kikwete serves to confirm the brutality and cruelty meted out to all Rwandans who dare to speak out or criticise the RPF regime.

[22] The above analysis is important to illustrate: (i) the fact that the UN Security council has preferred the route of war instead of the agenda of political negotiation as contemplated by the 1945 Charter of the United Nations and (ii) leaders of regional countries and institutions fear that President Kagame will, perhaps, do something to harm them physically, should they support the agenda of negotiated political settlement. For example, it has been revealed that owing to the fear of being invaded by President Kagame, countries of Burundi and Tanzania took a decision to force Hutu refugees to repatriate between 1996 and 2002.³² To this end, one may not hesitate to conclude that the denial of humanitarian assistance is a gesture of showing President Kagame that they are also distancing themselves with the DCPN Initiatives. It is very sad and disappointing when international or regional institutions to which the vulnerable people look for protection of their human rights turn against them.

³⁰ The UN Security Council has given Forces Intervention Brigade (through the MONUSCO) a mandate to neutralize armed groups operating in the East of the DRC (see, S/RES/2098 (2013) and S/RES/2147 (2014)).

³¹ Kagame speaks out on Kikwete's call for negotiations with FDLR rebels. By EMMANUEL RUTAYISIRE, Special Correspondent. Posted Monday, June 10 2013 at 18:32 <http://www.theeastafrican.co.ke/news/Kagame-hits-back-at-Kikwete-over-FDLR-spat/-/2558/1878194/-/80j0daz/-/index.html> .

³² The wave of massive expulsion of Hutu refugees in Burundi and Tanzania was actually triggered by the RPF's invasion of the DRC in 1996 whereby Hutu refugees were repatriated by means of a barrel of a gun, See BE Whitaker "Changing Priorities in Refugee Protection: The Rwandan Repatriation from Tanzania" (2002) 21(1) *Refugee Survey Quarterly* 328, 330.

[23] In the GVRR's view, both SADC and the ICGLR had to play a vital role to ensure that the security and safety of the people who do not pose a threat to national, regional and international security are secured and maintained. Among these people are the combatants of the FDLR, especially, those who are cantoned of Lt. Gen. Bauma, Walungu and Kanyabayonga. The SADC and the ICGLR should take steps that would ensure that the peace and politically-negotiated process between the Rwandan government and the FDLR are ensued. The FDLR maintains that, for the implementation of the DCPN Initiatives and to consecrate on political struggle, the SADC should be entrusted with the mandate of the supervision and the management of the DCPN Initiatives on the basis of understanding that, from the outset, weapons had been handed to the SADC. There had been good relationship between the FDLR and SADC in that the SADC representatives had been conducting regular oversight visits over the camps of cantoned combatants until May 2015.³³ It was until the SADC decided to stop the oversight visits that the cantoned combatants started experiencing intolerable conditions, including separation of the cantoned combatants from their families or dependents and isolating leaders from the rest.

[24] Under various correspondences, the cantoned combatants lodged complaints with the SADC and requested it to take an action to address the situation. However, there has been no response from the SADC regardless of such painful situations that they had been living in since June 2015 until now.³⁴ The list of complaints included the lack of provision of social, economic and humanitarian components including toiletries, sanitation, food parcels, baby formulas, clothing, healthcare attention and education of children. There has been a horrible situation of non-management of gynaecological and obstetric care since October 2016. This was reported to be the wreaking havoc in the camps of cantonment where the number of cases of abortions and stillbirths are alarming.³⁵ Today, there are a total of 1 386 cantoned population. This figure encompasses 299 men; 233 women and 854 children. These children do not receive the basic education which is important to their moral, mental and

³³ The letter of cantoned combatants addressed to H.E. Dr Stergomena (n16); the letter of cantoned combatants addressed to President Kabila (n16); Memorandum of cantoned combatants addressed to the government of the DRC, UN, SADC, ICGLR, and MONUSCO, signed on 13 May 2016, by Maj Faustin Mugisha and Memorandum of cantoned combatants addressed to the government of the DRC, UN, SADC, ICGLR, and MONUSCO, signed on 01 March 2017, by Maj Faustin Mugisha

³⁴ Ibid.

³⁵ Ibid.

intellectual development in addition to being deprived of adequate food, water and clothing.

[25] Instead of improving their conditions, the SADC suggested that the Ex-combatants should be resettled to another host country for security purposes.³⁶ This suggestion or offer was rejected by the FDLR. The question of resettling the FDLR combatants to a third country also works to frustrate the DCPN Initiatives.

[26] The following are the FDLR's efforts to implement the DCPN initiatives, but which were halted by the lack of political support from the regional countries and institutions:³⁷

- On 1 May 2000, the FDLR made a call to the Rwandan government to come on table of dialogue with the FDLR along with all other opposition parties;
- In 2001, a year after the establishment of it, the FDLR, on the first time, agreed to embark on the voluntary disarmament. As a result, it placed more than 2 500 fighters in the KAMINA military base;
- In May 2002, the FDLR destroyed 1 000 weapons in KINSHASA. The destruction was witnessed by the representative of the EU and four UN Security Council members, representing the countries of the USA, France, UK, and Germany;
- From 30 September to 10 October 2002, the FDLR sent its delegation in Rwanda on oversight mission with a view to examining and evaluate aspects related to security, political, social and economic development in order to encourage and facilitate the return of its combatants and refugees. After such oversight mission, the FDLR made multiple calls for an inclusive political dialogue in which political, security and socio-economic problems prevailing in Rwanda could be discussed. Without a highly inclusive, fair and frank political dialogue, it was not safe for refugees and combatants to return;
- In 2005, the FDLR was, for the first time, invited to attend the political dialogue in Rome, Italy. The resolutions taken from this dialogue are known as "the Declaration of Rome of 31st March 2005." The Rome Declaration is supported by the accompanying Protocols of 2nd April 2005. Under the Rome Declaration and its Protocol, emphasis was placed on arrangements of

³⁶ Ibid.

³⁷ Scanteam "Project Review of repatriation of refugees and combatants from DRC to Rwanda ECC-PYM: Final Report, December 2014.

politically negotiated settlement toward the finding of sustainable solution to the Hutu-Tutsi conflict. The negotiated political settlement was seen as viable and nuanced peaceful mechanism to getting to the nature, origin and consequences of the Rwandan ethnic problem;

- From 6 to 14th of January 2008, the FDLR indirectly engaged and participated in the Goma Conference for peace, security and development. Its indirect contribution was considerably noted and welcomed;
- In the end of January 2008, the FDLR delegation directly engaged and participated in the Chambucha peace meeting, organised by the Church of Christ in Congo (i.e. ECC);
- On 6th August 2008, the FDLR delegation directly engaged and participated in Nyabiondo peace meeting, jointly called and organised by the EEC and the DRC government;
- In 2011, the FDLR and local civil societies, initiated the Ntoto discussions in which it clearly outlines its legitimate ambition to engage in political struggle for a peaceful return of combatants along with their dependants as well as refugees under its protection.

[27] Pursuant to the above discussion and the analysis made throughout this document, barriers to the FDLR's effort for its political struggle endeavours can be articulated as follows:

- International community assists the RPF government to sell its genocide narrative to the international public. In favouring such narrative, the international community portrays the combatants and refugees as dangerous criminals that must be repatriated to face prosecution in Rwanda.
- The regional and international bodies do not challenge the RPF's concocted political strategies replete of vast campaigns of disinformation, propaganda and demonisation of the Hutu refugees, the FDLR and its combatants. They buy these fabricated political stories that portray objectives of the FDLR as malicious and evil.
- The bias nature of the decisions of the UN Security Council and the ICGLR serves to establish a wall of prejudice which precludes regional and international institutions from any objective assessment of the positive actions of the FDLR in its efforts to contribute to peace, security and development in Rwanda and in the region.

- Owing to the RPF's political manoeuvres, a UN sanction was imposed against the leaders of the FDLR and this led to arrest and detention of its President, Dr Ignace Murwanashyaka and 1st Vice President, Mr Straton Musoni in Germany,³⁸ whereas its Secretary General, Mr Callixte Mbarushimana was arbitrarily arrested and then released by the International Criminal Court (ICC) on the basis that there was no case against him;³⁹
- Several military operations such as Kimya I, Kimya II and Amani Leo had been conducted by the RPF/RDF along with or allied with the armed forces of Burundi, Uganda and the DRC, with the support of the MONUSCO.
- The bombings against 2 500 FDLR combatants cantoned in the KAMINA military base in 2002 in a joint operation involving the RPF/RDF, armed forces of the DRC, and MONUSCO.
- The sustenance of violence by the international companies which loot the natural resources through funding national rebel groups such as LDF Raia Mtomboki, NDC Sheka.
- Furtherance of violence in the region through the proxies created, trained and funded by the RPF government such as the *Congrès National pour la Défense du Peuple* (CNDP) and M23.

[28] The GVRP is deeply concerned that the use of the force to resolve the Rwandan conflict is at odds with the Charter of the United Nations which proclaims that armed force shall not be used, save in the common interest.⁴⁰ Rather, the conflict should be resolved by means of pacific settlement mechanism including negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement.⁴¹ The Charter obligates the UN Security Council to use its political influence to call on warring parties or disputants to settle their disputes through peaceful means.⁴² We are therefore convinced that the Rwandan ethnic problem is, in essence, political and a solution can be sought through negotiated political settlement. Judging from the recent development in Africa, we attest that the use of force has never brought a durable solution in Mali, Central African Republic, Somalia, Libya, Ivory Coast and Sudan. The situation in these countries has been aggravated resulting in increase in human

³⁸ On September 28, 2015, a German court in Stuttgart, convicted Dr Murwanashyaka and Mr Musoni and sentenced them to 13 and 8 years in prison, respectively for leading a terrorist organisation.

³⁹ On 23 December 2011, Mr Mbarushimana was released from the ICC custody after the Pre-Trial Chamber I declined to confirm the charges against him.

⁴⁰ The Preamble.

⁴¹ Art 33(1).

⁴² Art 33(2).

suffering. We take this opportunity to call on the UN Security Council, the AU, the SADC, the ICGLR and regional countries to refrain from using force or duress mechanism against the FDLR combatants, the cantoned combatants and refugees as whole in their efforts to find a sustainable solution to the Rwandan ethnic problem and the cycle of violence in the eastern of the DRC. As citizens of this world, refugees and the cantoned combatants are entitled to enjoy those rights contemplated in the human rights texts and humanitarian texts. In particular, refugees should be protected in accordance with the international refugee texts. On this note, the cantoned combatants are not refugees per se to whom international refugee law apply. They should be treated differently as they form part and parcel of the peace process initiative. In fact, the FDLR combatants have shown that they are in support of peace, security and development and that they do not pose a threat to anyone. Given the nature of the DCPN initiatives, the cantoned combatants should not be confused with the FDLR combatants falling within the framework of the Disarmament, Demobilization, Repatriation, Reintegration and Resettlement (DDRRR). The cantoned combatants cannot be subjected to the ordinary demobilization and repatriation procedures as contemplated by the DDRRR framework. To make it more clear, after the December 2013 Lusambo Declaration, the FDLR combatants are no longer to disarm and repatriate under the DDRRR framework, but to be cantoned in a group along with families and to repatriate in accordance with outcomes of the political negotiations between the Rwandan government and its opposition parties.

[29] The principles of supporting the PSC Framework and the FDLR's DCPN Initiatives can be realised if the following responsibilities and commitments are undertaken in good faith:

For the RPF government:

- To open a political space in Rwanda and to allow a freedom of speech in the country;
- To work on furthering the agenda of genuine reconciliation through a highly inclusive, frank and sincere political dialogue;
- To dismantle the state security structures that are used to oppress Rwandans on the daily basis;
- To refrain from crossing the borders with the DRC for the purpose of bombing and killing refugees in the dense forest of the DRC;

- To refrain from fuelling and furthering war on the territory of the DRC through proxies;
- To respect and meet obligations outlined in the PSC Framework;
- To give attention to the call of the FDLR and the former President Kikwete to resolve the Rwandan ethnic problem through negotiations.

For the DRC government:

- To support the call of the FDLR through calling the regional and international countries and institutions to support such a noble cause;
- To protect and guarantee the safety and security of the cantoned combatants including the facilitation of humanitarian workers' access to the camps of refugees and cantoned combatants;
- To refrain from subjecting the cantoned combatants to confinement circumstances under which they are separated from their families and deprived of communications means with outside world;
- Collaborate with and facilitate the regional and international institutions to grant to the cantoned combatants an alternative legal status that would allow them to sojourn freely in the country;
- To call upon the international community, in particular, the UNHCR to assist and support refugees falling in its mandate;
- To call upon the international institutions whose mandate is humanitarian in nature to assist and support both refugees and the cantoned combatants;
- To take a leading role in initiating the political dialogue between the government of Rwanda and the FDLR, along with all opposition parties

For the SADC and ICGLR

- To ensure that the principles outlined in the PSC Framework are adhered to by the signatories;
- To fund, politically support and promote the FDLR's DCPN Initiatives;
- To use their competence and their influence to consider the cantoned combatants' concerns and grievances in a fair and proper way;
- To play a leading role in the supervision and the management of the process of voluntary disarmament and cantonment of the FDLR's combatants and in the initiation of a highly inclusive, frank and sincere political dialogue;

- To ensure that both refugees and cantoned combatants are supplied with the basic necessities of life whilst awaiting the conclusion of the political dialogue and implementation thereof;
- To ensure that the return of the refugees and the cantoned combatants is in line with the outcome of the politically negotiated settlement.

To the MONUSCO and the FIB

- To consider the FDLR as a liberation movement whose aims and objectives are to liberate Rwandans from the totalitarianism and thus be part of the solution in a fair and impartial manner;
- To refrain from using military action against the FDLR rather support and promote the FDLR's DCPN Initiatives whose aims and objectives are in line with the PSC Framework and the Charter of the United Nations;
- To immediately stop its malicious acts of coercing the cantoned combatants to return through encouragement of deprivation of humanitarian relief and assistance;
- To consider and address the complaints and grievances raised by the cantoned combatants in various letters addressed to it;
- To recognise that the cantoned combatants are people in the camps due to the implementation of the FDLR's DCPN Initiatives and whose treatment differ from those individuals falling within the framework of the Disarmament, Demobilization, Repatriation, Reintegration and Resettlement (DDRRR) and the applicability of the UNHCR cessation clause;

To the UN

- To recognise that the voluntary disarmament and cantonment diametrically differ from a pure and simple surrender and that the return of the cantoned combatants is subject to the outcome of the political negotiated settlement to be initiated by regional countries and institutions, in collaboration with the UN, AU and EU as well as other concerned international stakeholders;
- To play a leading role in encouraging the warring parties to resolve their conflict by means of peaceful mechanisms;
- To support and facilitate the implementation of the FDLR's DCPN Initiatives whose aims and objectives are in line with the spirit and purports of the Charter of the United Nations;

- To impose UN sanctions on the government of Rwanda for violation of the territorial integrity of the DRC and flagrant violation of human rights law and humanitarian law;
- To lift embargo imposed on the FDLR leaders and to cease from viewing these leaders and combatants of the FDLR as perpetrators of the 1994 genocide; rather, as freedom fighters;
- To condemn in the strongest terms the heinous acts committed by the RPF/RDF on the territory of the DRC and to establish the international judicial system to hold to account the perpetrators of the atrocities recorded in the UN Mapping Report and other UN Special Rapporteurs' documents;
- To set up a UN Special Commission to investigate the shooting down of the plane carrying President Habyarimana of Rwanda and President Ntaryamira of Burundi, that took place on 06 April 1994;
- To set up a UN Special Commission to investigate the killings of internally displaced people between 1990 and 1996, including ethnic violence in the northwest of Rwanda between 1996 and 2000;
- To desist from calling the combatants of the FDLR to surrender unconditionally to the hands of the oppressor and persecutor of the majority of Rwandans;
- To desist from taking side in the Rwandan ethnic-based conflict and fairly intervene on the basis of the core principles of the Charter of United Nations supporting dialogue and negotiations.
- To review the UNHCR resolution on the implementation of the Rwandan refugee status cessation clause by 31st December 2017, which is regarded as a premature and unfair resolution that is replete with inconsistencies and contradictions.

To the AU and regional countries

- To object to the UN Security Council approach of utilising the military action in an effort to find a durable solution to Rwandan refugees as well persistent violence in the eastern of the DRC;
- To recognise and financially and politically support the FDLR's DCPN Initiatives which are cornerstone to the restoration of the security, peace and development in the region;
- To condemn in the strongest terms the heinous acts perpetrated by the Rwandan government on the territory of the DRC though its acts of

aggression contrary to international law and in violation of the PSC Framework;

- To remind the UN Security Council that the leaders of the FDLR and its combatants are not on the list of fugitives wanted by the ICTR, that it is wrong in the criminal justice to disregard the principle of presumption of the innocence; and that it should desist from allocating collective guilt to the Hutus as a group in order to portray the FDLR combatants as *genocidaires*;
- To recognise that, for the achievement of greater unity and solidarity between the African countries and the peoples of Africa, the conflicts between ethnic groups, religious groups or warring parties should be best resolved by means of peaceful mechanisms such as dialogue and negotiated political settlement;
- To play a major role in initiation a peace process similar to the 1993 Arusha Peace Process in which the Habyarimana's regime, opposition parties and the then RPF rebel group participated in;
- To keep safe the international refugee protection extended to the Rwandan refugees and to disregard the decision of the UNHCR to implement the cessation clause whose implementation may result in aggravating violence in Rwanda in particular and the Great Lakes region in general;
- To note that the Tutsi refugees returned without any coercion or duress whatsoever in that the Hutu refugees will return voluntary, without any coercion whatsoever;
- To call on humanitarian agencies to support and assist the cantoned combatants so that they should continue to commit themselves to peace process; hence their withdrawal from it may lead to renewal of violence in the region.

This note is issued on 26 January 2018, in Cape Town, South Africa

Jean-Marie Vianney Nyilimbilima
GVRR Chairperson