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**THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION**

Joint written statement* submitted by Association of American Jurists,

a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 February 2003]

*This written statement is issued, unedited, in the language(s) received from the submitting

non-governmental organization(s).

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Violation of human rights in Rwanda and its occupied part in Congo, including the looting of natural resources

Despite governmental propaganda of normality in Rwanda, the American Association of Jurists in coordination with a broad number of grass-root as well as European NGO's¹ wants to draw the attention of the Commission on Human Rights to make a serious follow-up of the human rights abuses in this country and to include Rwanda again in the list of countries to bring to the attention of the Commission this human rights situation which has reasonable cause to be considered as a consistent pattern of violations of human rights and fundamental freedoms. The American Association of Jurists (AAJ) bases its denounce on the following facts:

I.- Violation of the right to self-determination of every country:

1.- As it is well known, Congo area under the Rwandan Patriotic Army's (RPA) control is far from becoming a self-defence Rwandan policy and essentially consists of economic exploitation of wealth from this region. Credible reports indicates that Rwandan Patriotic Army and Rassemblement Congolais pour la Démocratie (RCD)/Goma forces have staged some conflicts in the region to discourage the United Nations Peace Observation Mission in Congo (MONUC) deployment to the area, since their presence could also put an end to this economic looting.

2.- Similarly, the third and last United Nations report of the Panel of Experts on Illegal Exploitation of Natural Resources and other forms of Wealth of the Democratic Republic of Congo (DRC) in 2002² has brought more evidence that Rwandan armed forces are not protecting Rwanda against hostile groups and that Rwanda Patriotic Army is not only involved but leading the process of exploiting coltan and other valuable minerals in that area. Some reports even involve child labour in the extraction of coltan³ and even inmates from Rwanda. It is stated that 80% of Rwanda Patriotic Army's global expenditure is provided from its Congo's Desk and that only foreign armies get benefit from the coltan obtained in the Eastern area of the Democratic Republic of Congo. This mineral is then sent to Kazakhstan, United States of America, Europe (Bayer branch in Germany) or China to be processed in different ways and uses. In annex III of the referred report one may find a list of Business Enterprises considered by the Panel to be in violation of the Organization for the Economic Cooperation and Development Guidelines for Transnational Corporations. Another outstanding case of economic exploitation is Eagle Wings Resources (joint venture of Chemie Pharmacie Holland and Trinitech) which trades in coltan for several uses (nuclear reactor storage tanks/ gas pipelines/ electronics) and whose manager in Rwanda has close links to the regime and a privileged position derived from his condition of *comptoir*.

3.- Rwandan Patriotic Army is, therefore and regretfully, also responsible of violations of human rights occurring in the area under its control.

II.- Impunity of the violations of human rights committed in Rwanda since 1994:

4.- Rwandan Patriotic Army units operating in the Democratic Republic of Congo committed deliberate extrajudicial killings and other serious abuses, and impunity remains a problem.

5.- As reported in 1998 by the United Nations Secretary's Research Team in Democratic

Republic of Congo (S/1998/581), some of the killings and massive executions perpetrated in 1996 by the Rwanda Patriotic Army and its allies could become genocide, in legal terms, according to its intention to destroy an ethnic group, or at least, war crimes or crimes against Humanity (cases of refugees camps in Mugunga, South Kivu, Tingi-tingi, Kasese or Obirto). All these facts still remain in the purest impunity.

6.- There were also several credible reports of disappearances in 2001.⁴ There continued to be reports throughout the year of killings and other human rights abuses by both pro-Democratic Republic of Congo and anti-DRC government forces, including the Rwandan Patriotic Army, in the conflict in that area. Verification of these reports was extremely difficult, particularly those originating from remote areas and those affected by active combat in the eastern part of the Congo. Independent observers often found access difficult due to hazardous conditions, as well as frequent bureaucratic impediments imposed by authorities. There were other reports of extrajudicial killings committed either by elements of the *Rassemblement Congolais pour la Démocratie*, which the Rwandan Patriotic Army materially supported and in some respects often directed, or in which direct involvement by Rwandan Patriotic Army soldiers could not be clearly established by persons who found it difficult to distinguish between *Rassemblement Congolaise pour la Démocratie* and Rwandan Patriotic Army forces. Some of these reports of Rwandan Patriotic Army killings surfaced in Kinshasa, media directly or indirectly controlled by the Democratic Republic of Congo Government; however, other such reports emerged from international religious or humanitarian organizations and were based on the accounts of multiple witnesses or photographic or other evidence. The Rwandan Government has admitted that human rights abuses have occurred in territory under Rwandan Patriotic Army control, but claimed that these were acts committed by individuals, not by the military as an institution. There were no reports of any action taken against the responsible soldiers; according to the Government, some arrested were awaiting trial in military prisons. Despite these arrests, no action has been taken against the majority of alleged offenders from the security services, and impunity remains a problem, following such United Nations reports and United States of America State Department informations. No action was known to have been taken against the Rwanda Patriotic Army soldiers responsible for the following 2000 killings in the Democratic Republic of Congo: The March executions in Kilambo of numerous persons suspected of collaborating with the Interahamwe; the February killings and rapes of civilians in Kilambo village; and the January killing of a Congolese soldier. Some other extensive reports⁵ express the tragedy in Congo under Rwanda control from August 1998, speaking about more than 2.5 million dead, direct or indirectly caused by hostilities by different armed groups, Rwandan Patriotic Army and *Rassemblement Congolais pour la Démocratie*/Goma widely involved.

III.- Situation of the administration of justice in Rwanda:

7.- Security forces beat suspects, and there were some reports of torture. Prison conditions remained life threatening and prisoners died of starvation and preventable diseases. Most of the prisoners housed in jails and local detention centres (*cachots*) are accused of participating in the 1994 genocide; many have been detained for up to 7 years without being charged. Arbitrary arrest and detention, and prolonged pre-trial detention, remained serious problems. The judiciary is subject to executive influence and does not always ensure due process or expeditious trials. The Government continued to conduct genocide trials at a slow pace. The Government released some detainees whose files were incomplete, who were acquitted, or who were ill or elderly. Police forcibly entered the home of an opposition politician. In April 2000, the above mentioned reports accused the Rwandan Patriotic Army of forcibly returning to the country and mistreating former soldiers and others alleged to have helped political opponents leave the country. All detainees cited in those reports were released in August 2000. The Government consistently denied the

allegations of Rwandan Patriotic Army torture and in June 2000 refuted such claims in a written response to Human Rights Watch.

8.- The justice system is collapsed and used as a system of oppression for a huge collective. The Government does not have the capacity to ensure that provisions in the Constitution are enforced or that due process protections are observed. The fundamental law provides for an independent judiciary; however, the Government does not respect this provision in practice. The judiciary is subject to executive influence and also suffers from inefficiency, a lack of resources, and some corruption. There were occasional reports of bribery of officials ranging from clerks to judges. Unlike in the previous year, there were no reports that magistrates and prosecutors were suspended or dismissed on corruption charges during the year. There also were no reports that magistrates were removed during the year following "not guilty" verdicts of suspects alleged to have participated in the 1994 genocide or for false charges of genocide. The fundamental law provides for a system of communal courts, appeals courts, and a Supreme Court of six justices. The President nominates two candidates for each Supreme Court seat, and the National Assembly may choose one or reject both; however, the latter is not known to ever have happened.

9.- The law provides for public trials with the right to a defence, but not at public expense. The shortage of lawyers and the abject poverty of most defendants make it difficult for many defendants to obtain legal representation. It is estimated that less than 50 percent of prisoners have defence counsel. New court officers continued to be sworn in and assigned to courts across the country, but the Government does not have sufficient prosecutors, judges, or courtrooms to hold trials within a reasonable time.

10.- Gacaca courts, a grass-root and informal participatory form of justice, will serve as the Government's primary judicial process for adjudicating genocide cases. Gacaca (a traditional system which was experienced to deal with small domestic conflicts and familial small disputes) proposes now to handle 110,000 cases of allegedly genocide crimes. Despite these non judicial courts combine participatory justice and reconciliation techniques exercised at the local level, they have been appointed as judicial power. Gacaca proposes to handle 110,000 cases and has become operational on the 5th November 2002. The Gacaca law provides for reduced sentences for cooperation and credit for time served; lawyers are not permitted to participate officially in Gacaca.

11.- Recently, President Kagame has decided to release around 30.000 prisoners who will accept to confess their charges. Some innocent prisoners accepted to do so just avoiding to languish in jail.

IV.- Traces of corruption in the country:

12.- Names as Gahima, Rudasinga, Nziza, Inyumba, Masozera, etc... are families names of returnees from Uganda or Burundi. after 1994 and who constitute a network of interests and relationship to run the power in the country. For example, Eagle Wings of Rwanda Metals employs Alfred Rwigema (Kagame's brother-in-law) who, according to the UN, plays a central role in the exploitation of the natural resources of the Democratic Republic of Congo.

V.- The forced return of refugees:

13.- The so-called peace agreement signed last summer and which is still to be put into force has provoked the forced return of Rwandan hutu refugees from countries such as Tanzania or Zambia in terms of recuperating the democratic normality at the end of year

2002, beginning of 2003. Nevertheless, the situation in Rwanda with scarce democratic guarantees and complete lack of reconciliation among ethnic groups, as we have analysed above, does not lead us to think in a peaceful scenery. United Nations High Commissioner for Refugees is well aware of the risk for their human rights integrity that refugees may suffer, as it happened to occur in 1996-1997. Then, Tanzania made about 500.000 refugees return to Rwanda and they gradually disappeared after some months, appearing a real business of chasing up refugees which were reaching again the country⁶, being tortures, in jail without charges or recruited for the Rwandan Army. However, United Nations High Commissioner for Refugees does not consider the situation to merit a suspension of the process of return until human rights guarantees in Rwanda are already fixed, in contravention with United Nations High Commissioner for Refugees' own first aim and the Statute of Refugees. Repatriation should always be on voluntary basis.

14.- Therefore, we insist that the situation in Rwanda continues being a real and consistent pattern of violations of human rights and fundamental freedoms and should be included in the list of countries which need specific follow-up in these matters.

15.- We would also urge the Government of Rwanda to invite the Special Rapporteur on Independence of lawyers and judges, Mr. Param Cumaraswamy, and the Subcommission expert on discrimination in the administration of justice, Ms. Leila Zerrougi to visit the country in the exercise of their relevant mandates.

NOTES

1. Assistance aux victimes des conflits en Afrique Centrale -AVICA (Brussels), Fundació S'Olivar (Mallorca) and Inshuti (Catalunya).
2. S/2002/1146, para. 66, 71, 72, 75, 76, 79, 80, 83 and following, among others. Letters sent from Rwanda Patriotic Army's office on behalf a private mining company (Maniema Mining Company) are clear examples of what is said.
3. UN Report E/CN4/2001/40.Add1 issued by the Special Rapporteur for the Democratic Republic of Congo, Mr. Roberto Garretón.
4. USA State Department's report released by the Bureau of Democracy, Human Rights and Labour - 2001.
5. International Rescue Committee. Mortality in Eastern Democratic Republic of Congo. 1999.
6. UMUTESI M-B., Fuir ou mourir au Zaïre. Le vécu d'une réfugiée rwandaise. L'Harmattan. Paris 2000.
