REPUBLIC OF RWANDA

MINISTRY OF FOREIGN AFFAIRS AND COOPERATION

OFFICIAL GOVERNMENT OF RWANDA COMMENTS ON THE DRAFT UN MAPPING REPORT ON THE DRC

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ACRONYMS

AFDL	Alliance of Democratic Forces for the Liberation of Congo
APR	Armees Patriotique Rwandaise
DRC	Democratic Republic of Congo
FAB	Forces Armees Burundaises
FAR	Forces Armees Rwandaises (national army of Rwanda before July 1994)
FDLR	Democratic Forces for the Liberation of Rwanda
GoR	Government of Rwanda
MONUCO	United Nations Organization Stabilization Mission in the Democratic Republic of Congo
MRND	Mouvement Republicain National pour le Developpement
NGO	Non Governmental Organization
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
TOR	Terms of Reference (for The Draft Mapping Report)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UPDF	Uganda's People Defense Force

EXECUTIVE SUMMARY OF COMMENTS

The Government of Rwanda submits the following comments regarding the Draft UN Mapping Report on the DRC. Rwanda categorically states that The Draft Mapping Report is unacceptable. Rwanda's concerns relate to the entire report, and are not limited to narrow definitional issues or specific allegations. These serious concerns include:

1. The manipulation of UN processes by organizations and individuals—both inside and outside the UN—for purposes of rewriting history, improperly apportioning blame for the genocide that occurred in Rwanda, and reignite the conflict in Rwanda and the region.
2. The omission of the historical context, especially the immediate and serious threat posed by armed and ideologically charged refugees positioned right at the border of Rwanda and Zaire, as well as the nature of the conflict within Zaire at the time. This is despite the UN's knowledge of the situation and its blatant inaction.
3. The contradiction between the report and contemporaneous accounts of the situation from the UN Security Council, NGOs and many other eyewitnesses in the region who confirmed that genocidal forces, often posing as civilian refugees, were operating under the cover of UN refugee camps.
4. The flawed methodology and application of the lowest imaginable evidentiary standard.
5. The overreliance on the use of anonymous sources, hearsay assertions, unnamed, un-vetted and unidentified investigators and witnesses, who lack credibility; and allegation of the existence of victims with uncertain identity.
6. Failure to address the glaring inconsistency that claims of genocide are directly contradicted by Rwanda's extensive and coordinated efforts to repatriate, resettle and reintegrate 3.2 million Hutu refugees; efforts that were supported by the UN.
7. The dangerous and irresponsible attempt by the Report to undermine the peace and stability attained in the Great Lakes region, which directly contradicts the

very mission of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), and the UN generally.

Done at Kigali on September 30th, 2010

COMMENTS OF THE GOVERNMENT OF RWANDA ON THE DRAFT DRC MAPPING REPORT

1. The Draft UN Mapping Report on the DRC (The Draft Mapping Report) is cloaked in legal terminology, but provides nothing resembling due process to the member States mentioned in the report. The authors repeatedly acknowledge the cursory and superficial nature of their investigations as they simultaneously claim to have amassed a critical mass of "evidence" to satisfy some undefined standard of proof. This purported evidence was collected through politicized NGOs at the hands of unnamed investigators, relies on blatant hearsay from unnamed witnesses, about unidentified victims, and leveled against unnamed perpetrators. Despite this lack of transparency, the authors claim that their mandate required them to make 'legal qualifications' of crimes, yet no such requirement is found in the Terms of Reference of The Draft Mapping Report. To make assertions of the most serious international crimes based on such unreliable evidence in a non-judicial proceeding is an abuse of the mandate and, moreover, it is simply unfair.

2. Among the list of key facts omitted or summarily dismissed by The Draft Mapping Report is that from 1994 through 2003, Rwanda repatriated and reintegrated 1.5 million Hutu refugees from the former Zaire, and over 1.7 million refugees from Burundi, Tanzania, and Uganda alone. The return of millions of refugees to Rwanda is entirely inconsistent with the supposed finding of The Draft Mapping Report, yet this central fact is glossed over by the authors. Even more telling, the authors of the report conceal the real context of the events in Congo: the ex-FAR and *Interahamwe* were continually engaging in acts of terrorism, murdering innocent civilians, and attacking Rwanda. During this period, the ex-FAR and *Interahamwe* were actively preparing a major assault on Rwanda aimed at unraveling the reconstruction and reconciliation process in the country – with the final goal of completing the genocide. The authors ignore the failure of the international community to respond to repeated demands by the Rwandan government to stop the

rearmament of genocidal forces in Zaire, and liberate genuine Rwandan refugees taken hostage by those forces.

3. These comments contain only a brief review of the most egregious misrepresentations and omissions of fact, law, process, and mandate that The Draft Mapping Report employs to validate its 'double genocide theory'.[1] These comments first address the failure of the authors of The Draft Mapping Report to address the historical and military context surrounding Rwanda's intervention in the former Zaire. Second, the comments discuss the international law based justification for Rwanda's use of force to defend itself and its citizens in the former Zaire. Third, these comments analyze the flawed methodology behind The Draft Mapping Report, including the standard of proof, the excessive scope of the report, and the authors' complete failure to follow the Terms of Reference established for the mapping exercise. Fourth, these comments address The Draft Mapping Report's improper analysis of the facts in order to improperly manipulate them into a genocide charge.

I. THE REPORT FAILS TO EXPLAIN THE HISTORICAL CONTEXT OF THE GENOCIDE AND ITS AFTERMATH

4. The Draft Mapping Report addresses only a fraction of a complex history, and ignores publicly available information that seriously undermines its findings. The reader is left with a one-sided account, and provided no context with which to understand who each of these Rwandan actors were, and how they found themselves in the Congolese forests from 1994 to 2003. The historical and political context presented in The Draft Mapping Report deals exclusively with internal Congolese political dynamics.[2] The context below provides an entirely different reading of assertions put forward in The Draft Mapping Report.

[1] The double genocide theory is part of a political agenda seeking to absolve those who committed the 1994 genocide and to undermine the developments that have taken place in Rwanda by claiming that there is no difference between those who committed the genocide and those who stopped it; they are equally criminal.
[2] Of particular interest are Chapters I and II of The Draft Mapping Report.

5. Allegations of genocide are just as serious when leveled in the court of public opinion – as was done when a draft of the Report was "leaked" -- as when they are made in a competent court (which The Draft Mapping Report's authors, by their own admission, most certainly were not). The authors exploit this asymmetry, hoping perhaps that the gruesome nature of the charges will divert attention from the superficial nature of their work, and their confusion about the laws of armed conflict. In so doing, they have sacrificed truth and fundamental fairness on the altar of politics, tarnishing the United Nations.

THE 1994 RWANDAN GENOCIDE

6. The events described in The Draft Mapping Report grew out of the 1994 genocide in Rwanda in which one million ethnic Tutsi perished in one hundred days. As the war to stop the genocide progressed, the Rwandan Patriotic Army (RPA) pushed the bulk of the genocidal forces -- including the Forces Armees Rwandaises (FAR) and the *Interahamwe* and *Impuzamigabi* militias -- westward. These forces crossed into Zaire in June and July 1994, while other Rwandan refugees and a smaller number of the genocide forces crossed into Tanzania, Burundi and Uganda.

7. A safe zone created by the French military in the Southwest in June 1994, dubbed "Zone Turquoise", facilitated the flight of 300,000 people west towards the Zairean town of Bukavu in July and August 1994. On 18 July 1994, RPA forces captured the northwestern town of Gisenyi in Rwanda, which was the center of the genocidal provisional government. Its fall prompted over 800,000 Rwandans to cross into Goma, Zaire over a four day period in late July. Crossing into Zaire was a strategic choice by the ex-FAR/*Interahamwe* to facilitate their reorganization and rearmament easier in a vast, porous and (at that time) a highly dysfunctional country where they had government support. When the genocidal forces responsible retreated to Zaire, they used coercion and force to bring the civilian population along with them.

MASS PARTICIPATION IN THE GENOCIDE

8. During the democratization process (1991-1993), opposition parties emerged and almost physically expelled the ruling party from most of the Centre, the South and West of Rwanda. These parts of the country were dominated by the Mouvement Démocratique Républicain (in the Centre, South and West), and to a lesser extent by the Parti Social Démocrate (in the South) and encompassed about 80% of the Tutsi population. From 1991 to 1993, these political parties split into diverging factions, some of whom opposed the genocide. However, even the factions of these parties that participated in the genocide did not have strong militia movements, and any militia they had was concentrated in Kigali. This means that the bulk of the militias being from the ruling party MRND and its allies were concentrated in Kigali and in places where they were still strong (North, partially West and East) while the government army FAR was busy on the battlefield in the Northeast and in Kigali. In the country side, where the majority of the Tutsi population lived, there were no organized militia and few military personnel. Thus, while the security forces often initiated and directed the killings, the bulk of the actual killing was carried out by the general population – mostly by young men. The consequence of this was that besides the ex-FAR and the militias, there was, from the beginning, a category of people who were neither soldiers nor militia but who had been heavily involved in criminal violence.

THE REFUGEE CRISIS

9. In early July 1994, there was a massive – and well documented -- cholera outbreak in the refugee camps in Zaire, north of Lake Kivu. Over 50,000 people died from cholera and other opportunistic diseases. Those who perished were buried in mass graves located in the same vicinity where the authors of The Draft Mapping Report claim atrocities were committed.[3] International media coverage of this humanitarian crisis led to an unprecedented international mobilization with over 200 aid organizations rushing into Goma to establish an emergency relief operation.

[3] The Draft Mapping Report does not mention the cholera epidemic although it was a major cause of death of people buried in mass graves that can be mistaken for victims of killings.

THE MILITARIZATION OF THE CAMPS

10. The refugees who arrived in Zaire were well organized. In fact, they transplanted local Rwandan administrative structures into Zaire and kept the same leadership in place: individuals who were responsible for the genocide. Non-Governmental organizations and the UNHCR relied on these individuals to help distribute aid. The genocidal leaders, in turn, inflated the number of refugees to obtain additional aid, and used the surplus to finance the purchase of arms. Meanwhile, soldiers of the ex-FAR and the *Interahamwe* militia created armed outposts on the outskirts of the refugee camps. The former Rwandan government officials, who controlled the camps, passed out large sums of money to the militia to control the refugees on their behalf. Those who protested this preposterous state of affairs were either beaten into submission or killed. UNHCR officials wrote at the time, "[w]e are in a state of virtual war in the camps."[4] Accused of "feeding the killers", five major humanitarian organizations left Zaire including Médecins Sans Frontières, the International Rescue Committee, Oxfam, Save the Children and CARE.

11. When the ex-FAR crossed the border into Zaire, they brought with them tons of machine guns, grenades, mortars, and other light weapons.[5] They also brought with them their armored cars, field artillery, four operational helicopters, and a light fixed-wing attack aircraft. The ex-FAR forces received arms shipments in the camps, conducted military training exercises, recruited combatants and planned a 'final victory'. These *genocidaire*s "openly declared their intent to return to Rwanda and . . . kill all Tutsi who prevent us from returning" and to "wage a war that will be long and full of dead people until the minority Tutsi are finished and completely out of the country."[6] In 1995, these militants – from the cover of the UN refugee camps in which

[4] AFP (SWB/AFP 27 August 1994).
[5] (Yett 1996, 14).
[6] Human Rights Watch. "Rearming with Impunity". May 1995, pages 2-3.

they resided – regularly launched raids into Rwanda to destabilize the country by killing survivors of the genocide and local administrative officials.

12. In 1996, cross border attacks and terrorism intensified. Word of a major attack on Rwanda began to circulate in the latter half of 1996. Rwanda continually pleaded with the international community to move the camps away from the border, to disarm the militants, and to separate genuine refugees from the genocidal forces. These pleas fell on deaf ears. Joel Bouetroue, head of the UNHCR office in Goma, declared, "[W]e are headed for surge of violence and destabilization in the Goma region…Conditions are ripe for a disaster."[7]

RWANDA'S INTERVENTION IN EAST ZAIRE

13. In October 1996, a Zairian government official based in Bukavu declared that the *Banyamulenge* – primarily ethnic Tutsi – would be forced to leave the country. The rebel group Alliance of Democratic Forces for the Liberation of Zaire (AFDL), which included the Banyamulenge militias, began a campaign against the Zairian government. The mass movement of refugees and the accompanying risk of a humanitarian crisis were widely reported in the media. On 15 November 1996, the AFDL and the RPA moved against the ex-FAR and *Interahamwe* forces in the camps, and in the process, rescued and repatriated 600,000 Rwandan refugees in the course of four days from the Mugunga camp only. This spectacular return of refugees prompted the mass repatriation of Rwandan refugees from Tanzania and Burundi in the following weeks, allowing the bulk of the Rwandan refugee population to return home.[8]

CONCLUSION

[7] Reuters, 15 July 1995.

[8] According to Rwanda government figures, in 1994 1,208,000 refugees were repatriated from different countries; 338,825 in 1995; 1,362,273 in 1996; 219,750 in 1997 and 271,895 from 1998 to Mach 2010. MINALOC 2010.

14. First, any Rwandan involvement in the conflict that engulfed Zaire in 1996 was in self-defense against the perpetrators of the 1994 genocide. Those forces used Zaire as a staging ground to re-arm and continue their genocidal agenda against Rwanda (through cross-border attacks) and extend it to Zaire. Second, under terrorist attack and in the face of international inaction, Rwanda had no choice but to intervene in Zaire to neutralize the threat and resolve the refugee problem by rescuing its own citizens and facilitating their return and reintegration. Third, as in similar situations where terrorists groups and insurgents mix with civilians and refugees and do not wear uniforms or otherwise follow the law of armed conflict, the demarcation between illegal combatants and civilians was not always clear. This confusion was a by-product of the manner in which the genocide itself was carried out in 1994 – with the mass participation of the general population – as well as the military mobilization of refugees in the camps in Zaire, at times through coercion. The Draft Mapping Report took no notice of the dynamic situation in which Rwanda and other member states were operating.

II. RWANDA COMPLIED WITH INTERNATIONAL LAW GOVERNING THE USE OF FORCE

RWANDA'S REPEATED WARNINGS

15. The Government of Rwanda (GoR), beginning in late 1994, repeatedly warned the international community as a whole, and the Security Council in particular, that the ex-FAR/*Interahamwe* forces were preparing and carrying out attacks on the territory and people of Rwanda. In February 1995, the Rwandan Ambassador to the United Nations explicitly warned the Security Council of the events that would ultimately unfold, and encouraged them to engage in preventive measures.[9] In December 1995, these warnings were repeated.[10]

16. It was not just the GoR that raised its concerns about attacks during these Security Council meetings. Many other nations explicitly recognized that attacks were

[9] See U.N. Security Council 3604th Meeting, UN Doc S/PV.3504 (27 February 1995), page 4.
[10] See U.N. Security Council 3605th Meeting, UN Doc S/PV.3605 (12December 1995), page 15.

being orchestrated and carried out against Rwanda. In Security Council meetings throughout 1995, United Nations Ambassadors from a host of states acknowledged the attacks on Rwanda originating from the militarized refugee camps in the former Zaire.[11]

17. The Secretary General issued a progress report in August 1995 denouncing the attacks on Rwanda as well as the rearmament of the genocidal forces.[12] In December 1995, a Security Council resolution acknowledged that attacks had already taken place on the territory of Rwanda from armed combatants in the former Zaire residing in internationally funded refugee camps. It also noted that the same combatants were preparing further armed attacks against Rwanda. [13]

18. During the 48th session of the UNHCR Executive Committee, the High Commissioner acknowledged the total failure of the international community to address the refugee crisis in Eastern Zaire, and implicitly conceded to the legitimacy of Rwanda's military intervention based on self-defense:

> "The primary problem was the international community's failure to separate those who deserved international protection from those who did not, ensuring the physical security of the former and preventing the latter from committing violent attacks on both nationals and refugees…The rights of refugees to asylum and no blocking out were the foundation of the UNHCR mandate and UNHCR's commitment to defend and promote them was non-negotiable. However, those principles must be implemented in constructive, realistic and creative ways that took account of the legitimate concerns of States."[14]

CHAPTER VII: THE USE OF FORCE IN SELF-DEFENSE

[11] See UN Security Council Meetings 3542, 3566, 3574, and 3605 respectively S/PV.3542 (9 June 1995); S/PV.3566 (16 August 1995); S/PV.3574 (7 September 1995); S/PV.3605 (12 December 1995).
[12] See the Progress Report of the Secretary General on the United Nations Assistance Mission for Rwanda, UN Doc S/1995/678. (9 August 1995), paragraph 14.
[13] Security Council Resolution 1025 UN Doc S/RES/1029 (1995), page 1.
[14] UN Doc A/AC.96/SR.516, 17 October 1997.

19. Chapter VII of the United Nations Charter governs the use of force by member states. Though the organization's primary role is to settle threats to international peace and security, Article 51 clearly preserves a state's right to self-defense.[15] In the face of repeated attacks on Rwandan territory by ex-FAR/*Interahamwe* forces operating out of refugee camps in the former Zaire, the GoR repeatedly appealed to the United Nations Security Council for assistance. When these pleas were met with words not deeds, Rwanda, relying on Article 51 authority, employed proportional force to neutralize the threat.

20. Rwandans learned the hard way not to rely on empty promises from the international community. In 1996 the country sought an end to armed attacks on innocent Rwandan civilians, and moved to liberate innocent refugees who the Ex-FAR/*Interahamwe* cynically exploited as human shields. Rwanda's actions in this regard were well within its rights under Article 51 of the United Nations Charter.

EX-FAR/*INTERAHAMWE*: THE USE OF CIVILIANS AS A WEAPON OF WAR

21. The genocidal forces' tactical use of civilians in their military campaign complicated the situation in the former Zaire. As stated previously, the exodus of refugees into Zaire in the aftermath of the genocide was by all standards a political-military strategy to serve the purposes of the genocidal government in exile. The outflow was also highly organized, with administrative structures simply transferred across the border. There are several reasons why the Ex-FAR and *Interahamwe* had to coerce innocent civilians to go with them.

22. First, they wanted to use the refugees as a future military recruitment pool. Second, they intended to use them as human shields. Third, the presence of a large number of refugees offered convenient cover for their military actions. Fourth, by

[15] "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

holding a large number of refugees, they sought to discredit the GoR and, as a last resort, use them as bargaining chip for negotiations with the GoR. Fifth, they used the refugees to leverage aid from humanitarian organizations which they could use to support the war effort.

RESPONDING TO PARTICULAR ALLEGATIONS REGARDING THE USE OF FORCE

23. Responding to each allegation leveled in The Draft Mapping Report is not possible given its lack of transparency: unnamed victims, witnesses, perpetrators, and investigators. However, the GoR can only comment on those allegations based on documentation regarding specific regions at specific times. This section offers examples to clarify the record, and proof that an evaluation of the incidents, as reported by The Draft Mapping Report, was flawed.

24. Paragraphs 219, 220 and 221 of The Draft Mapping Report allege that the RPA indiscriminately fired heavy weapons at the Mugunga refugee camp. The intention of the RPA and the conduct of operations around the Mugunga camp aimed at liberating and repatriating innocent civilian refugees. In the conduct of operations, the RPA occupied positions that blocked exits farther inside the former Zaire, and left open safe corridors leading to Rwanda, but never fired any weapons into the camp. Loudspeakers were used to call upon refugees to return to Rwanda. This concept of operation applied to most camps occupied by large groups of refugees. In response to such measures, the ex-FAR and *Interahamwe* used the refugees as human shields.

25. The initial civilian casualties within Mugunga resulted from the shooting by the Ex-FAR/*Interahamwe*, who sought to prevent the refugees from returning to Rwanda. The subsequent civilian casualties resulted from the Ex-FAR/*Interahamwe* attempts to break through the RPA lines. The third group of casualties included Ex-FAR/*Interahamwe* and lamentably, civilian refugees held hostage, resulting from clashes between the Ex-FAR/*Interahamwe* and the Mai Mai along Sake-Masisi road.

26. In paragraphs 32 and 222, The Draft Mapping Report alleges that on the day of the fall of the Mugunga camp, 15 November 1995, the AFDL/APR units sorted refugees by age and gender, allowing the women, children and elderly to escape while killing the men. Again, the priority objective of the operation was to have all refugees return to Rwanda. In order to facilitate the return of hundreds of thousands of refugees, the APR formed a blocked corridor eastward from Lac Vert to Mugunga through Goma, and finally the border with Rwanda. This corridor kept the refugees from fleeing in the wrong direction, as well as protecting them from outside violence. At that point, there was no demarcation between the Mugunga and Lac Vert refugee camps.

27. The massive number of refugees – 600,000 – combined with the atmosphere of panic created by fighting against the ex-FAR/*Interahamwe* on the outskirts of the camps created a sea of refugees walking toward Rwanda. These conditions did not allow for screening of any sort, and, in fact, this incident resulted in the return of thousands of armed combatants to Rwanda who later initiated the insurgency in the North.

28. The Draft Mapping Report alleges, in paragraphs 200 and 202 respectively, that "On 20 October 1996, units of the AFDL/APR from Bwegera and the Rwandan town of Bugarama attacked the Kamanyola refugee camp in the Walungu territory, killing an unknown number of refugees…" and "… On 2 November 1996, AFDL/APR units attacked the Kashusha/INERA camp in the Kabare territory with heavy weapons, killing hundreds of refugees…" In line with the RPA's concept of operation, the refugee camps were never attacked as such. The setup of the refugee camps in South Kivu was such that the Ex-FAR/*Interahamwe* provided a perimeter defense with trenches. There were also inner defensive positions inside the camps. Whenever an RPA advance was detected, the Ex-FAR/*Interahamwe* forward defenses would attack the advancing RPA force to avoid being encircled. In the process, the refugee

population would flee. This is precisely what happened in Kamanyola, Kashusha, Inela, ADI-Kivu and other camps. The casualties reported in those particular camps were a result of fierce fighting between the RPA and the Ex-FAR/*Interahamwe*.

29. It is alleged in paragraph 245 that "…22 April 1997, AFDL/APR units, accompanied by villagers, killed at least 200 refugees in the Kasese I and II camps, in the presence of several APR senior figures." However, the RPA never carried out any operations in Kasese during the first military campaign in Zaire.

30. More generally, allegations are made throughout The Draft Mapping Report that the RPA employed the use of edged cold weapons.[16] A conventional fighting force such as the RPA would never carry these types of primitive weapons while traversing a vast country during a military campaign. Theses types of cold weapons would simply add unnecessary baggage. This is an attempt by the authors of The Draft Mapping Report to mirror-image the methods, tools and cruelty used by the perpetrators of the 1994 genocide.

CONCLUSION

31. In order to accurately understand the incidents leading up to the use of force in the former Zaire, the complications confronted during the military campaign due to the use of civilians as a weapon of war on the part of Ex-FAR/*Interahamwe* forces, and details of specific battles, the authors of The Draft Mapping Report would have benefited greatly from consulting the militaries of each nation involved in the military struggle from 1993 – 2003.

32. The Draft Mapping Report systematically extracts the events it refers to from their military context. It is despicable that civilians were used as a weapon of war, and that innocent Rwandan lives were lost as collateral damage in a military

[16] See, for example, The Draft Mapping Report paragraphs 213, 221, 251, 253, 255, and 287.

campaign to disarm combatants. However, to characterize this use of force now as war crimes, crimes against humanity, or even genocide ignores all of the realities surrounding the combat in Zaire.

III. THE DRAFT MAPPING REPORT'S METHODOLOGY IS DEMONSTRABLY FLAWED

33. The methodology employed in The Draft Mapping Report, a creation of the authors themselves, is deeply flawed and one-sided. The following analysis into the scope of the mapping exercise, the quality of its sources, the standard of proof and the lack of transparency presents serious questions about the credibility and reliability of its conclusions. Some of the misrepresentations can hardly be unintentional, such as the constant assertion that the Terms of Reference for the mapping exercise require that they make legal qualifications – which they do not.

SCOPE: SEVEN MONTHS TO COVER TEN YEARS

34. The Mapping Team had just under seven months, from 17 October 2008 to 15 May 2009 to (1) create a chronology of events through the analysis of 1500 documents which covered alleged atrocities committed throughout the DRC (a country ninety times the size of Rwanda)[17], and (2) once this timeline was created, five teams of three people – fifteen people in total –verified as many incidents as possible throughout the DRC. Each incident recorded in the timeline had to be verified by only "one independent source in addition to the primary source".[18] As will be discussed below, the "primary source" – the 1500 documents used to create the timeline – was collected from NGOs, the Congolese government and the media – none of whose credibility or bias has been assessed.[19]

[17] The Draft Mapping Report, paragraph 109.
[18] The Draft Mapping Report, paragraph 116.
[19] The Draft Mapping Report, paragraph 114.

35. Given the constraints of such a compressed amount of time combined with a broad geographical (the DRC) and temporal (ten years) mandate, it is not surprising that the authors of The Draft Mapping Report wrote the following:

> "The choice of priority areas for investigation and the main incidents for verification was also influenced by the short timeframe – six months – allocated to the implementation of the Mapping Exercise itself. Investigations that would take too long to achieve the anticipated findings that would feature in the final report were not included."[20]

Given that the authors conclude this report by making an initial hypothesis of genocide, the GoR believes that no investigation should have been spared to get the facts correct before making such a serious allegation. According to the authors of The Draft Mapping Report, investigations were abandoned or simply not included if they could not be resolved in six months, what seems to be an impossible timeframe given the mandate.

CRIMES COMMITTED MANY YEARS PRIOR: THE UNRELIABILITY OF WITNESS STATEMENTS

36. The scope of this investigation is complicated further by the fact that these rapid fire investigations were conducted between five to fifteen years after the alleged commission of the atrocities. The GoR, in prosecuting crimes from the 1994 genocide, is acutely aware of the difficulties in investigating crimes committed over a decade prior. Identifying and procuring reliable witnesses is complicated by death (especially in war ravaged areas), relocation, and the dilution of accurate memory. The Draft Mapping Report itself acknowledges the unreliable nature of their 'sources' statements:

> "It is very hard to determine how many people died in the first few months of the conflict. Every community has its own version of the facts and its own estimate of the number of victims. Furthermore, killing sprees often occurred at very heavily dispersed sites that are hard to access even now. Where it is possible to visit these sites, it is rare to find first hand witnesses to the events, because the successive wars that ravaged the province often entailed the displacement of the people in the villages that came under attack."[21]

[20] The Draft Mapping Report, paragraph 104.
[21] The Draft Mapping Report, paragraph 154.

37. The authors note two huge, separate problems that speak to the absolute necessity of verifying allegations by more than only one 'independent' source. First, "every community has its own version of the facts". Given this admission, only one possible version of events can be the "truth". More likely, none of the versions of the event is the absolute truth, but instead contains elements of truth. Thus, many "version[s] of the facts" are simply not true, and knowing that, the authors of The Draft Mapping Report never should have allowed incidents to be included that were validated by only one independent source.

38. Second, "it is rare to find first hand witnesses to the events…" The authors of The Draft Mapping Report admit that the one outside source that was consulted very likely was not a first hand witness to the events. Do the witness' accounts come from things they have heard from others, years prior? Is all of the "evidence" hearsay? Even initial hypotheses of such serious allegations should be confirmed by evidence more credible than that.

THE TERMS OF REFERENCE

39. The Terms of Reference (TOR) that govern the objectives of The Mapping Exercise state three main objectives: (1) to conduct a mapping exercise; (2) to assess the justice system of the DRC; and (3) to suggest appropriate transitional justice mechanisms.[22] However, on multiple occasions, the authors assert that the TOR requires them to make legal classifications of crimes saying, "[n]onetheless, as described previously, the Terms of Reference of the Mapping Exercise required it to carry out a general legal classification of the crimes committed, including genocide."[23]

40. These classifications, allegedly "required" by the TOR, formulate the entirety of Chapter V of The Draft Mapping Report. However, in reviewing the entire TOR, it at

[22] The Draft Mapping Report, paragraph 2.
[23] The Mapping Exercise, paragraph 509. See also paragraph 462.

no time requires the mapping team to make such a classification. In fact, the words "legal classification" are nowhere to be found in the TOR. Furthermore, the TOR explicitly recognizes the limits of this mapping exercise, stating "[i]t should gather basic information…and not replace in-depth investigations into the incidents uncovered."[24]

41. Given this mandate, legal classifications of crimes were in no way required by the TOR as written. Further, given the language of the TOR, a legal classification is beyond the scope of the objectives of a mapping exercise, in so much as that objective is, as stated, to "gather basic information". The authors of The Draft Mapping Report went beyond the terms of their mandate, indeed beyond the logical application of the quality of evidence gathered in making such legal classifications, especially as they relate to genocide.

DEFINING A MAPPING EXERCISE

42. Again, the first of the three defined objectives for The Draft Mapping Report is to "[c]onduct a mapping exercise of the most serious violations of human rights and international humanitarian law…" The methodology behind the mapping exercise is a tailor-made creation of the authors themselves, based in no precedent or legal standard whatsoever. The report first unsuccessfully seeks to shed light on the nature of a mapping exercise, describing it as "a generic expression implying no predefined methodology or format"[25]. Despite this recognition of the term's utterly amorphous and malleable nature (or perhaps with this recognition), the authors go on to define a mapping exercise as requiring "various activities to be carried out, including the collection, analysis and assessment of information contained in multiple reports and documents from different sources, meetings and witness interviews, as well as consultation with field experts and consultants."[26] This is the first indication

[24] See the Terms of Reference, section 4.2.
[25] The Draft Mapping Report, paragraph 4.
[26] The Draft Mapping Report, paragraph 4.

that the authors did not feel that consultations with the implicated governments or militaries was a required activity to be carried out during a successful mapping exercise.

DELEGATING THE INVESTIGATION TO POLITICIZED NGOS

43. Faced with a large task and a limited timeframe, but also wanting to make their point, the authors of the report delegated the initial investigation to politicized Congolese NGOs who provided many of the 1500 primary source documents which laid the foundation for future investigation.[27] Illustrating the circular nature of information gathering, these same NGOs provided access to witnesses who later served as independent confirmation of their own primary source documents.[28]

44. The investigation relied disproportionally on the information provided by Congolese NGOs whose bias and credibility is never assessed by The Draft Mapping Report. Anyone familiar with the dynamics of Congolese civil society knows that NGOs did not remain politically neutral during the conflict. Many of these NGOs took vocal political sides, some even actively diffused messages of intolerance against Congolese Tutsi in North and South Kivu, and Rwandans. Not only does The Draft Mapping Report fail to disclose the identity of the NGOs associated with the investigation, but considering the particular socio-political situation in the region, the authors put no distance whatsoever between their investigations and these strongly politicized organizations.

ASSESSING THE PURPORTED EVIDENCE

45. The Draft Mapping Report states that "[a]ssessing the reliability of the information obtained was a two-stage process involving evaluation of the reliability and credibility of the source, and then the validity and truth of the information

[27] The Draft Mapping Report, paragraph 114.
[28] The Draft Mapping Report, paragraphs 11 and 112.

itself."[29] The credibility of each source was determined using the "admiralty scale".[30] Once again, the authors fail to explain the "admiralty scale" or cite to any source whatsoever. Apparently, in employing this scale, the authors assess the "nature, objectivity and professional standing of the source", the "methodology used", and the "quality of prior information obtained from that source".[31] Despite this explanation, it is difficult to assess how credibility was measured without further explanations of these terms or reference to any precedent or rules of evidence. First, objectivity is crucial and, in a criminal proceeding, the defense would bring to light any bias on the part of the witness. In assessing methodology, this is an admission that work was delegated out to other NGOs, and no where do the authors say how they assessed the methodological standards of over 200 NGOs and 1500 documents. Finally, the reference to prior information given suggests that at least some individuals or sources provided "evidence" in reference to multiple alleged incidents. Thus, if one source were later found to be unreliable, it would taint the account of every alleged incident he/she reported.

46. The validity of the information was "evaluated through comparison with other data on the same incidents to ensure cohesion with other verified elements and circumstances."[32] The authors state that each incident is backed by at least two independent sources. This statement is misleading in two ways. First, collection of the primary source documents and access to witnesses were both facilitated by the same NGOs, thus raising legitimate concerns about the interconnectedness of the primary and confirming source. Second, an incident was reported if it was alleged in documentation obtained from an NGO, Congolese government or the media plus "one independent source in addition to the primary source".[33] Given that the authors met with 1280 witnesses relating to over 600 reported incidents, it either implies that –

[29] The Draft Mapping Report, paragraph 7.
[30] The Draft Mapping Report, paragraph 101.
[31] The Draft Mapping Report, paragraph 7.
[32] The Draft Mapping Report, footnote 15.
[33] The Draft Mapping Report, paragraph 116.

with very few exceptions – *at most* two independent sources validated each incident *or* that the authors relied on the same sources repeatedly in relation to multiple incidents who continually validated one another. Either way, this raises serious questions regarding the validity of information.

THE UNRECOGNIZABLE STANDARD OF PROOF

47. The authors assert that a mapping exercise does not require the collection of evidence meeting the criminal law standard of proof "beyond reasonable doubt". The purpose of the mapping exercise, it seems, is to formulate "initial hypotheses", and the standard of proof required is that of "reasonable suspicion". Reasonable suspicion is defined as "a reliable body of material consistent with other verified circumstances tending to show that an incident or event did happen."[34] The citation at the end of this definition is to the authors themselves, and states an alternative definition: "reliable and consistent indications tending to show that the incident did happen." The authors cite no outside support of any kind for this formulation of the standard of proof. "Reasonable suspicion" has, however, been defined by the U.S. Supreme Court and is the absolute lowest evidentiary standard articulated in U.S. law.[35] Put into context, in order of reliability, it is a lesser standard of proof than "probable cause"[36], "preponderance of the evidence"[37], "clear and convincing evidence"[38], and "beyond reasonable doubt"[39]. It is fitting that the authors chose the term "reasonable suspicion", as the quality of the evidence merits, at most, cursory attention.

Conclusion

48. These methodological weaknesses highlight the inherent conflict of interest created where both the standard of proof and the reliability indicators are defined and assessed by the same individuals who conduct the investigations and write the

[34] The Draft Mapping Report, paragraphs 5 & 7.
[35] See generally Terry v. Ohio, 392 U.S. 1 (1968).
[36] United States v. Sokolow, 490 U.S. 1 (1989).
[37] Santosky v. Kramer, 455 U.S. 745 (1982)
[38] Schlup v. Delo. 513 U.S. 298 at 327. The standard is defined as "more likely than not".
[39] Johnson v. Louisiana, 406 U.S. 356, at 360.

conclusions. Anathema to transparency, this system lacks any sort of checks on the authors and investigators themselves, or on their sources. This becomes especially egregious considering that neither the alleged perpetrators nor their governments were ever consulted for input.

IV. THE UNSUPPORTED GENOCIDE CLAIM FAILS AS A MATTER OF FACT AND LAW

49. Rwanda, having been the victim of one of the most intense modern genocides, cannot allow the crime of genocide to become a political tool in the hands of individuals who seek to manipulate it. This does not honor or bring justice to any victim, past or future.

50. By addressing the charges of genocide specifically, the GoR is in no way conceding to the accusations of war crimes and crimes against humanity, or ignoring the gravity of such accusations. However, given the lack of transparency in the report in terms of anonymous witnesses, victims, perpetrators and investigators, we are simply unable to address those charges in an informed manner.

LACK OF IDENTIFICATION OF ALLEGED VICTIMS AND PERPETRATORS

51. The Draft Mapping Report documents alleged crimes committed against a broad array of unidentified victims – Rwandan and Congolese, Hutu and Tutsi alike – by a large number of state armies and armed insurgencies. In this sense, it serves to illustrate that in war, as opposed to genocide, there are casualties on all sides.

52. The Draft Mapping Report fails to distinguish between alleged perpetrators. In most of the alleged incidents, the authors lump together the RPA with AFDL, FAB and UPDF. Such lumping at best serves to create confusion. Where the RPA is bundled with FAB and sometimes UPDF, it is on record that the RPA forces never carried out any joint operations with either FAB or UPDF in the first war in the DRC, the same

time period that gives rise to most of the allegations of genocide in The Draft Mapping Report.

RWANDA'S SUCCESSFUL NATIONAL INTEGRATION FROM 1993 TO 2003

53. During the period of The Draft Mapping Report, there were millions of Rwandan Hutu citizens living in Rwanda freely. Moreover, prior to the Rwandan intervention, in 1995, the Rwandan forces integrated 2,000 ex-FAR.[40] The Security Council noted this reintegration, saying that "[t]he Security Council welcomes progress made by the GoR in the reconciliation process, including the integration of more than 2,000 members of former Rwandan Government Forces (RGF) troops in to the Rwandan Patriotic Army (RPA)." These new recruits were deployed to the former Zaire. As such, if the Rwandan forces are being accused of committing genocide, the argument follows that these ex-FAR, then integrated into the RPA, targeted their former comrades with genocidal intent.

54. Hutu civilian refugees were being repatriated and reintegrated into Rwandan society by the millions from 1993 to 2003. At one point The Draft Mapping Report states "that certain elements could cause a court to hesitate to decide on the existence of a genocidal plan…several tens of thousands of Rwandan Hutu refugees, many of whom had survived previous attacks, were repatriated to Rwanda with the help of the AFDL/APR authorities and that hundreds of thousands of Rwandan Hutu refugees were able to return to Rwanda…" This information would lead a court to do more than just hesitate. The Draft Mapping Report trivializes the repatriation, reintegration and reconciliation process that was central to the policy of the GoR throughout the entire region. The numbers of refugees repatriated and reintegrated from across the region are as follows:

Year	Congo	Burundi	Tanzania	Uganda
1995	73,367	39,649	125,521	100,288
1996	719,307	150,000	483,443	9,521
1994	450,000	338,000	210,000	210,000
1997	176,428	5,579	25,656	9,640

[40] S/PRST/1995/53

1998	2,323	1,257	2,505	4,306
1999	36,558	477	1,056	580
2000	21,659		2,091	
2001	16,778	36	4,687	32
2002	14,050	354	25,288	17
2003	18,156		11,443	2,400
Total	**1,528,626**	**535,352**	**891,692**	**336,784**

Source: MINALOC 2010

55. A total of 1, 528,626 Hutu refugees were repatriated and reintegrated from the former Zaire, and 1,763,828 refugees were repatriated and reintegrated from Uganda, Burundi, and Tanzania alone. There have never been any allegations of genocide, war crimes or crimes against humanity commit against the returning Hutu refugees from countries other than the former Zaire. The critical difference between Zaire and these other nations is that there was a war in the former Zaire. The casualties did not result from a genocidal plan; rather, the casualties resulted from combat between armed combatants who were intent on finishing the genocide, Rwandan government forces, and other government forces and informal military groups.

CONCLUSION

56. These numbers illustrate that the GoR did, indeed, have a clear policy from 1994 through 2003, and that policy continues today: to bring home all Rwandan refugees. This applies to refugees who have never taken a part in the hostilities, and combatants who have chosen to lay down their arms and return. During the timeframe that The Draft Mapping Report alleges genocide, the GoR repatriated over three million Hutu refugees and began down the path of reconciliation with the participation of an additional number of Rwandan Hutu, Tutsi and Twa citizens numbering in the millions who remained in the country.

V. CONCLUSION: THE DOUBLE GENOCIDE THEORY MUST BE REJECTED

57. The real motive behind The Draft Mapping Report was made clear when the lead investigator, Luc Cote, gave an interview one day after the leak of the report

saying that the wars in Congo were similar in their "pattern of targeted, widespread and systematic attacks" to the events in Rwanda in 1994.[41] Where Mr. Cote seeks to compare the alleged deaths of at most "several tens of thousands, all nationalities combined" during a decade of war to the murder of one million unarmed civilians in one hundred days, he only succeeds in trivializing genocide. His personal bias is exposed and, in this context, the countless flaws in The Draft Mapping Report cannot seriously be considered as purely unintentional.

58. The desire to validate the double genocide theory is consistently present throughout The Draft Mapping Report by 'mirror-imaging' the actors, ideology, and methods employed during the 1994 Rwandan genocide. The Draft Mapping Report, from its failure to address the context of the war in the former Zaire, to its flawed methodology, to the dismissal of mitigating facts, seeks to undermine the legitimacy of the Rwandan military campaign in Congo. The authors of The Draft Mapping Report are not hindered by the fact that the tactical means to achieve their goals endanger hard won peace and stability in the East African Region, manifested by political and economic integration. The relationship between Rwanda and the DRC is the strongest and healthiest it has been in decades.

59. Sadly, the conflict in DRC continues. We need look no further than recent events as proof. The Democratic Forces for the Liberation of Rwanda (FDLR), with their origins rooted firmly in the 1994 Rwandan genocide, were accused last month (August 2010) of raping an estimated 240 women, girls and babies in an area under protection of the peace keeping mission MONUC.[42] The FDLR is still led by the same genocide perpetrators who militarized the refugee camps in the former Zaire, and utilized innocent civilian refugees as shields. Their tactics have not changed.

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[41] AFP, 27 August 2010.

[42] "Congo Mass Rape Numbers Rise to 240 – UN". 2 September 2010. BBC News Africa available at http://www.bbc.co.uk/news/world-africa-11162177.

60. The incapacity of MONUC – a peacekeeping mission that costs one million dollars a day and which has been given a mandate authorizing the use of force – to protect innocent Congolese is the best defense of the RPA's intervention in Congo. The continuing violence directed against the civilian population illustrates that in dealing with a pernicious terrorist group like the FDLR – whose trademark tactic is to utilize civilians as a weapon of war – large amounts of money, preparation and goodwill are not sufficient to prevent collateral damage. The experience of MONUSCO today, like that of the RPA during two wars in the DRC, demonstrates that even when the best and most well-intentioned efforts are made to prevent civilian deaths, they unfortunately occur regardless such efforts. This has long been recognized by the law of armed conflict, and it is wholly irresponsible for The Draft Mapping Report to ignore it.

61. The Government of Rwanda categorically rejects this report.