

**INTERNATIONAL COURT OF JUSTICE**

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**CASE CONCERNING ARMED  
ACTIVITIES  
ON THE TERRITORY  
OF THE CONGO**

**DEMOCRATIC REPUBLIC OF THE CONGO  
V.  
UGANDA**

**REJOINDER  
SUBMITTED BY  
THE REPUBLIC OF UGANDA**

**VOLUME IV  
ANNEXES**

**6 DECEMBER 2002**



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## **UR Annex 60**

**Excerpted testimony of  
Gen. James Kazini  
before the Porter Commission  
23 July 2001  
Part A**

23/7/01 (1)

**Lead Counsel:**

Please stand up.

**Brigadier J. Kazini:**

I solemnly swear that the evidence I shall give about the matters before this Commission shall be the truth, the whole truth, and nothing but the truth. So help me God.

**Justice D. Porter:**

Thank you. Please sit down.

Yes?

**Lead Counsel:**

Yes, please. Can you ...?

**Justice D. Porter:**

CW 1/3.

**Lead Counsel:**

CW1/3. Yes, My Lord.

Can you kindly give the Commission your full name, please? And your rank?

**Brigadier J. Kazini:**

My names are James Kazini, Army Rank Brigadier, Appointment Army Chief-of Staff, Uganda People's Defence Forces.

**Justice D. Porter:**

You are Chief of Staff?

**Brigadier J. Kazini:**

Yes, please.

**Justice D. Porter:**

For what?

**Brigadier J. Kazini:**

Uganda People's Defence Forces.



**Justice D. Porter:**

UPDF.

**Lead Counsel:**

Okay. Can you let the Commission know your age please?

**Brigadier J. Kazini:**

I was born in 1957, meaning that now I am 43 years and above, thereabout.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

And where do you reside?

**Brigadier J. Kazini:**

I reside in Kampala, but I work in Bombo and any other military areas relating to my course of duties.

**Justice D. Porter:**

Sorry. You reside in Kampala but what? But work in?

**Brigadier J. Kazini:**

I reside in Kampala and I work in Bombo Army Headquarters.

**Justice D. Porter:**

Could you get that microphone a bit closer to you?

**Brigadier J. Kazini:**

Yeah. I reside in Gaba, Kampala.

**Justice D. Porter:**

In Gaba. Oh, yes.

Yes?

**Brigadier J. Kazini:**

And I work in the army headquarters based at Bombo.

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**Justice D. Porter:**

Yes?

**Lead Counsel:**

And you are an employee of the Uganda People's Defence Forces. Is that correct?

**Brigadier J. Kazini:**

Correct.

**Lead Counsel:**

Where are you currently stationed?

**Brigadier J. Kazini:**

Currently, I am stationed in the Western region of the country. My operational tactical headquarters Kasese, overseeing the operations against the ADF in the Rwenzoris. So I am currently stationed in Kasese.

**Justice D. Porter:**

You are going to have to go a bit slower. I have to get this down on the ....

**Lead Counsel:**

Can you repeat that a bit slower, please.

**Justice D. Porter:**

Currently stationed in the Western division, yes?

**Brigadier J. Kazini:**

Western region

**Justice D. Porter:**

Western region. Right.

**Brigadier J. Kazini:**

Headquarters, my headquarters is situated in Kasese, overseeing and commanding the operations against ADF terrorists, under second division.

**Justice D. Porter:**

Yes?

Close to the border.

**Justice D. Porter:**

Yes. Government at that time in DRC was still Kabila?

**Brigadier J. Kazini:**

Yes, please.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

Now did you also agree to the number of troops that would be deployed?

**Brigadier J. Kazini:**

Yes.

**Lead Counsel:**

And what was the number of troops to be deployed at each of these posts?

**Brigadier J. Kazini:**

By our standards it was agreed that we deploy one battalion in all the three locations. And an infantry battalion is composed of say, 800 men. So divide 800 men by three.

**Justice D. Porter:**

Whoa, whoa, whoa. Stop, stop. Stop.

**Lead Counsel:**

I am sure there are a lot of questions.

**Justice J. P. Berko:**

We had one battalion ....

**Justice D. Porter:**

... for each location, that is, 800 men.

**Lead Counsel:**

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This 800 men, is it a standard measure or is it a UPDF measure that a battalion is 800 men?

**Brigadier J. Kazini:**

It is by establishment, by the law of Uganda. Establishment – the UPDF Establishment says an infantry battalion is composed of say, 800 men. It is in the books.

**Lead Counsel:**

Okay.

**Justice D. Porter:**

Funny, because the Minister of State said it was 763. Is that right or wrong?

**Brigadier J. Kazini:**

It is 756, the Establishment says so, but in terms of war situations there are other support elements, which makes it around that figure.

**Justice D. Porter:**

Oh. I see. Yeah.

Yes?

**Lead Counsel:**

Now are you aware of the reasons you deployed your men actually, in 1998? Are you aware of the reasons for our going into the Congo?

**Brigadier J. Kazini:**

I am aware.

**Lead Counsel:**

What were those reasons, please?

**Brigadier J. Kazini:**

To pursue and fight the bandits who were hiding in the DRC, that is one. Secondly to deny ...

**Justice D. Porter:**

Whoa, whoa. Stop.

**Justice J. P. Berko:**

Was aiding who?

**Brigadier J. Kazini**

ADF.

**Justice J. P. Berko:**

ADF?

**Brigadier J. Kazini**

ADF. Secondly, we got also our ....

**Justice D. Porter:**

Wait, wait, wait. Sorry. You say the most important things and then go rushing off and do not give us time to put it down

**Lead Counsel:**

Can you repeat what you said? A bit more slower, please.

**Brigadier J. Kazini**

Okay.

**Justice D. Porter:**

What was this document?

**Brigadier J. Kazini**

Document was a letter from the rebel commander Kabanda (called Kabanda) ...

**Justice D. Porter:**

Wait, wait. Named? I think I know, but spell it for me please?

**Brigadier J. Kazini**

Kabamba, Kabanda, writing to a colonel called Ebamba, who was ....

**Justice D. Porter:**

Wait. Writing to whom?

**Brigadier J. Kazini**

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Colonel Ebamba. E-B-A-M-B-A. (Spells it).

**Justice D. Porter:**

Yeah. Thank you.

**Brigadier J. Kazini**

Who was a Brigade Commander of FAC, this is Force Armé Congolais, in Beni.

**Justice D. Porter:**

Sorry. Who was the Commander of FAC?

**Brigadier J. Kazini**

FAC. Force Armé Congolais, in French.

**Justice D. Porter:**

Yes?

**Brigadier J. Kazini**

Telling him that they are still strong in the mountains, so the kind of help they want to bring, he will soon tell him ways on how to deliver the supplies.

**Justice D. Porter:**

I did not get all that. Are we going to be able to see this document?

**Brigadier J. Kazini**

Yeah. There is a letter, s.

**Justice D. Porter:**

Yes?

**Brigadier J. Kazini**

It is there.

**Justice D. Porter:**

Can we see it?

**Lead Counsel:**

Can we ...?



**Justice J. P. Berko:**

You have it?

**Lead Counsel:**

Do you have a copy?

**Justice D. Porter:**

Do you have it here?

**Justice D. Porter:**

Mr. Shonubi, I think we can carry on while the search is being ....

**Captain Kanyogonya:**

I have located it

**Brigadier J. Kazini**

He has seen it.

**Lead Counsel:**

He has located it.

**Justice D. Porter:**

Oh. You have got it?

**Brigadier J. Kazini**

Yeah.

**Lead Counsel:**

Let me have a look at it , please.

**Brigadier J. Kazini**

You can give it to them.

**Lead Counsel:**

Okay. Maybe you can look at it while ....

My Lords, it will be photocopied and presented to you at a later stage.

**Brigadier J. Kazini**

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It is dated 15<sup>th</sup> February '70, '98. 15<sup>th</sup> February '98.

**Justice D. Porter:**

Oh, that is before you went into the Congo?

**Brigadier J. Kazini**

Yeah.

**Justice D. Porter:**

Six months before you went into the Congo.

**Brigadier J. Kazini**

Yeah.

**Lead Counsel:**

And to whom is it addressed?

**Brigadier J. Kazini**

Colonel Ebamba.

**Lead Counsel:**

Colonel Ebamba. And who is Colonel Ebamba?

**Brigadier J. Kazini**

He was a Brigade Commander of the FAC in Kabila's government. There were two armies: Mobutu's army was called FAZ, then Kabila's army is called FAC (F-A-Z then this ...).

**Justice D. Porter:**

Yes. But FAC was the ....

**Brigadier J. Kazini**

Kabila's army.

**Justice D. Porter:**

The existing government's army?

**Brigadier J. Kazini**

Yeah, up to now. Exactly.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

And it was coming from whom?

**Brigadier J. Kazini:**

From Kabanda, a rebel chief.

**Lead Counsel:**

Okay. And you have said Kabanda was a rebel chief in the ADF. Is that correct?

**Brigadier J. Kazini:**

Exactly.

**Lead Counsel:**

And briefly, what was he telling him?

**Brigadier J. Kazini**

Pardon?

**Lead Counsel:**

What was he telling him, briefly?

**Brigadier J. Kazini**

Say,

*"Dear Sir, We are greeting you with much respect and honour. First we thank ...."*

I think you can read it by yourselves. I do not, I cannot ....

**Justice J. P. Berko:**

You just read it.

**Lead Counsel:**

We want you to identify it.

**Justice D. Porter:**

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Read it out.

**Justice J. P. Berko:**

Read it out.

**Justice D. Porter:**

So that everybody knows what is going on.

**Brigadier J. Kazini**

Okay.

*".... First we thank the Almighty God who enabled us to reach this time when we are still existing on this earth. Actually this is so great, we have to praise him and thank him each and every time, and we are sure that he will give us a joyful victory.*

*Dear Sir, since we heard that you were admitted this way again we were so glad to hear that news because we still hope that you never change your mind even if you are in another regime by now."*

So other things are not clear to me, maybe he can read them.

**Lead Counsel:**

Can we get a clearer copy?

**Brigadier J. Kazini**

There is an original copy, which is clearer.

**Justice D. Porter:**

Oh, this is a photocopy? We are going to need ....

**Brigadier J. Kazini**

And for your information, that document we got it from ....

**Justice D. Porter:**

Just a minute, please. We are going to need the original of this.

**Brigadier J. Kazini**

You need it?

**Justice D. Porter:**

Yeah.

**Brigadier J. Kazini**

He will bring it.

**Justice D. Porter:**

The copy is not good enough. Right? After lunch, please?

**Captain Kanyogonya:**

My Lord, I am not sure about where it is right now. The original is ....

**Justice D. Porter:**

Well, this is useless.

**Captain Kanyogonya:**

It is supposed to be with military intelligence. So I am not sure about access and whether ....

**Justice D. Porter:**

Well, perhaps you would like to give somebody some instructions to find out by 2:30.

Yes, Mr. Shonubi?

**Lead Counsel:**

Right. So you have explained that this was the reason for our moving further in?

**Brigadier J. Kazini**

Yeah. Because, you see, that document we got it in Beni. We did not get it with Kabanda, in Kabanda's camp. We got it after we had fought in Beni, in Ebamba's briefcase – that document.

**Justice J. P. Berko:**

Oh. I see.

**Brigadier J. Kazini**

Yes. That is for clarity.

**Justice D. Porter:**

We had better produce it and that would be number 9, I think?

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**Justice J. P. Berko:**

But you said you have not seen it.

**Justice D. Porter:**

For what it is worth, anyway.

**Justice J. P. Berko:**

And you say you found it in whose briefcase?

**Brigadier J. Kazini**

Colonel Ebamba's briefcase.

**Justice D. Porter:**

So that will be JK9.

Yes?

**Lead Counsel:**

Okay. Now ....

**Justice J. P. Berko:**

JK1/9.

**Lead Counsel:**

JK1/9.

**Justice D. Porter:**

Sorry. I was so worried about the exhibit, I did not hear. You found it where?

**Brigadier J. Kazini**

In Beni, in the briefcase.

**Justice J. P. Berko:**

They found it in the briefcase of Colonel Ebamba.

**Brigadier J. Kazini**

In Beni.

**Justice J. P. Berko:**



In Beni.

**Brigadier J. Kazini**

Yes.

**Justice J. P. Berko:**

Was he, had he been captured or he was killed?

**Brigadier J. Kazini**

No. He was not captured.

**Justice J. P. Berko:**

He was not captured?

**Brigadier J. Kazini**

He was not captured, but we captured the place and got some of his property in his house.

**Justice J. P. Berko:**

But he had disappeared?

**Brigadier J. Kazini**

He had run away, yes.

**Comm. John G. Rwambuya:**

You got the original of the letter, not the copy?

**Brigadier J. Kazini**

No. Original copy, original of the letter.

**Justice J. P. Berko:**

You said the original is with military intelligence?

**Brigadier J. Kazini**

Yes.

**Justice D. Porter:**

This is a faxed copy; that is why this has gone wrong.

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**Justice D. Porter:**

You are not aware?

**Brigadier J. Kazini**

No.

**Justice D. Porter:**

Then make him aware.

**Lead Counsel:**

Maybe, My Lord, I will refresh his memory.

If you could, first of all, just read paragraph 27.

**Justice J. P. Berko:**

Which paragraph?

**Lead Counsel:**

Twenty-seven (27), My Lords.

**Brigadier J. Kazini**

I read it?

**Lead Counsel:**

Yes, please. Read it loud, please.

**Brigadier J. Kazini**

*"Numerous accounts in Kampala suggest that the decision to enter the conflict in August 1998 was defended by top military officials who had served in Eastern Zaire during the first war, and who had a taste for the business potential of the region. Some key witnesses who served with the Rally for Congolese Democracy rebel faction in early months, spoke about the eagerness of Ugandan forces to move in and occupy areas where gold and diamond mines were located."*

**Lead Counsel:**

Okay. Maybe if you could stop there for the time being. So what we are asking ....

**Brigadier J. Kazini**

Yeah?

**Lead Counsel:**

This paragraph says that certain members of the Ugandan military who had been in the Congo earlier, or maybe while it was still Zaire, were extremely eager to move into the Congo during 1998.

**Brigadier J. Kazini**

Our forces, even during the war for fighting Mobutu, we did not take part. So which officers are they talking about? I am not aware about that. We, UPDF, ....

**Justice D. Porter:**

I thought you said that there was a deployment in 1996 over the border?

**Brigadier J. Kazini**

But that was a battalion.

**Justice D. Porter:**

In three towns?

**Brigadier J. Kazini**

A battalion, yes. That was one battalion and it still ....

**Justice D. Porter:**

So you were aware of ...?

**Brigadier J. Kazini**

And there was a Battalion Commander.

**Justice D. Porter:**

So you are aware of some of our forces who went over the border to the three places in 1996?

**Brigadier J. Kazini**

Yes.

**Justice D. Porter:**

These are the people, I think, we are talking about?

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**Lead Counsel:**

That is correct. That is correct, My Lord.

**Brigadier J. Kazini**

Yes.

**Justice D. Porter:**

All right?

**Brigadier J. Kazini**

No, no, no.

**Justice D. Porter:**

It is suggested in the UN Panel Report what you have just read there.

**Brigadier J. Kazini**

Yes?

**Justice D. Porter:**

That the officers who went over there discovered there were all sorts of commercial opportunities and were only too keen, in 1998, to go back so that they could exploit those commercial opportunities.

**Brigadier J. Kazini**

But to go back ....

**Justice D. Porter:**

Just a minute! That is what the UN Panel Report says.

**Brigadier J. Kazini**

But it is not correct.

**Justice D. Porter:**

Now what Mr. Shonubi is asking you is: were any of the officers involved in those three locations, those three battalions, part of the High Command which made the decision to go into the Congo? That is what he has asked you; could you please answer the question?

**Lead Counsel:**

Okay. Very good.

**Justice D. Porter:**

See how quickly these things can be done if you actually listen to the question?

**Brigadier J. Kazini**

Yeah.

**Justice D. Porter:**

Yes. All right?

**Brigadier J. Kazini**

I understand now the question.

**Lead Counsel:**

Okay.

**Justice J. P. Berko:**

Good.

**Justice D. Porter:**

Try to understand quicker, would you?

Yes, Mr. Shonubi?

**Lead Counsel:**

Since we were still on the issue of why UPDF was deployed to Congo, I would also like you to read paragraph 28, the first sentence there.

**Brigadier J. Kazini**

*"There are strong ...."*

Twenty-eight (28)?

**Lead Counsel:**

Yes, please.

**Brigadier J. Kazini**

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*"There are strong indications that if security and political reasons were the professed routes of the political leaders motivation to move into the Eastern Democratic Republic of Congo, some top army officials clearly had a hidden agenda: economic and financial objectives. A few months before the 1998 war broke out ...."*

**Lead Counsel:**

I think you can stop there for the time being.

**Brigadier J. Kazini**

Okay.

**Lead Counsel:**

Now that is the paragraph which we want to know much about. They are saying that the reasons ..., you have given us all the reasons that UPDF was employed, deployed in the DRC.

Now they are saying there that the underlying reasons were because some top military officials had other hidden agendas – those being economic and financial. And, in view of the fact that you were one of the commanders who later on went into the DRC and were in charge of the troops, what we are asking: is that a correct statement? What is your comment on that statement?

**Brigadier J. Kazini**

It is not correct.

**Lead Counsel:**

There were no other motives?

**Brigadier J. Kazini**

No.

**Lead Counsel:**

Okay.

**Brigadier J. Kazini**

There have never been any motives of that kind and it shall never be, I think.

**Justice D. Porter:**



Yes?

**Lead Counsel:**

Okay. Now when you went into the DRC, at the time you were deployed there, how many battalions were there? Were they still one or were they now more?

**Brigadier J. Kazini**

No. Of course when the intensity, when the conflict intensified we had to bring in more forces.

**Lead Counsel:**

Okay.

**Justice J. P. Berko:**

Let us start with when we moved in. What was the strength of the battalions? How many battalions were there?

**Brigadier J. Kazini**

The initial deployment ....

**Justice J. P. Berko:**

When you went there in August.

**Brigadier J. Kazini**

Three battalions.

**Justice J. P. Berko:**

Three battalions?

**Brigadier J. Kazini**

Yes.

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**Justice D. Porter:**

Yes?

**Lead Counsel:**

And by the time you left, how many battalions were ...?

**Justice J. P. Berko:**

And then, you said, the war intensified and therefore it increased to how many?

**Brigadier J. Kazini:**

Altogether, by the time I left, we had twelve battalions in the DRC.

**Justice D. Porter:**

How many?

**Brigadier J. Kazini:**

Twelve (12).

**Justice D. Porter:**

Twelve (12)?

**Brigadier J. Kazini:**

Yeah.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Now obviously, you had to ..., you now had several soldiers within the DRC. What steps did you take to ensure that there was no indiscipline among those soldiers?

**Brigadier J. Kazini:**

Yeah. Of course we took several measures. First we have got what we call an Operational Code of Conduct.

**Justice D. Porter:**

You what?

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**Brigadier J. Kazini:**

Operational Code of Conduct, which we were applying all the time like we are doing here. If you want to check the cases you can go to Makindye where we have got so many of our troops still under detention because of misconduct in DRC.

**Lead Counsel:**

Okay. We will get to that. So you had the Operational Code of Conduct?

**Brigadier J. Kazini:**

Yes.

**Lead Counsel:**

That is written down?

**Brigadier J. Kazini:**

Written down, yes.

**Justice D. Porter:**

And these troops that are in Makindye for misbehaving themselves in the DRC, what sort of things did they do that you had to imprison them for?

**Brigadier J. Kazini:**

Murder, rape, theft, like that. All sorts of categories.

**Justice D. Porter:**

Theft of what sort of things?

**Brigadier J. Kazini:**

At times personal property, at times money, at times ..., something like that. We can get details from our intelligence desks, they have the files.

**Justice D. Porter:**

Yes, Mr. Shonubi?

**Lead Counsel:**

Okay. So you had the Code of Conduct. What else did you have?

**Brigadier J. Kazini:**

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**Justice D. Porter:**

Yeah?

**Lead Counsel:**

Okay. So did you have any of these soldiers court-martialed?

**Brigadier J. Kazini:**

Well, they were .... Later on the case was solved because the engine was recovered and they were not court-martialed, but on returning back here they were pardoned.

**Lead Counsel:**

So what we are asking now is, generally those officers who were caught in these malpractices, and really we are referring to this business of engaging in business and exploitation of mineral resources – business like timber, gold, diamonds. So what we are asking specifically: were any of the UPDF soldiers ever found to be engaging in this kind of business?

**Brigadier J. Kazini:**

Never. There is one (only one) called Okumu, who was actually in Isiro that time; if you read my intelligence officer's report you can see what action was taken on him. He did not actually do the mining; he assisted the local people to do the mining and then when they exploded the ... (they did some explosions using those local people), there were some fatal casualties. So we arrested him, that was ....

**Lead Counsel:**

What is the name of that mine?

**Brigadier J. Kazini:**

Lt. Okumu.

**Lead Counsel:**

Yeah. The name of the mine where he was involved?

**Brigadier J. Kazini:**

I have to look. Can I look at my ...?

**Lead Counsel:**

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Yeah. Sure.

**Brigadier J. Kazini:**

This is the real report. Maybe you can have it.

**Lead Counsel:**

Sorry?

**Brigadier J. Kazini:**

For the intelligence officer. I do not think you have it in your records.

**Lead Counsel:**

Is that the report you were talking about?

**Brigadier J. Kazini:**

Yes, from the intelligence officer.

**Lead Counsel:**

Okay. I will come back to that because ... but if you can just finish on the point you were ....

**Brigadier J. Kazini:**

Okay. You can get the names of the mines, and I do not know them myself. You can read there what our IO wrote when I sent him to that general area of Isiro, and what action we took on the officer who was indulged in that kind of activity.

**Lead Counsel:**

And you have told us that this gentleman called Okumu was disciplined?

**Brigadier J. Kazini:**

Indisciplined.

**Lead Counsel:**

He was indisciplined, but what action was taken?

**Brigadier J. Kazini:**

He was arrested and brought to the military cells in Makindye. I do not know what followed after that.

23/7/01 (2)

So the UPDF has never supported any of these groups against the other, or factions of these groups against others?

**Brigadier J. Kazini:**

No.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

There were these rebellions referred to as 'Nia-Nia rebellions.' What were those about? Is it 'Nia-Nia' or 'Nai-Nai'? I do not know.

**Brigadier J. Kazini:**

Mayi-Mayi.

**Lead Counsel:**

There was 'Mayi-Mayi', but there was also, I think it is spelt N-I-A - N-I-A.

**Brigadier J. Kazini:**

Nia-Nia. I do not know. We have never, even during our exploitation into Congo, we never went to Nia-Nia; so maybe that question can be asked to other people. Our forces have never ever gone to Nia-Nia.

**Lead Counsel:**

Now you have already told us you were well within the Congo and you had the rebels there; did we play, or did you as UPDF, play any role – administrative role – in the Congo?

**Brigadier J. Kazini:**

No.

**Lead Counsel:**

I mean apart from your own troops, but administrative in the local government or anything?

**Brigadier J. Kazini:**

No. Never at all. No.

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**Lead Counsel:**

Now there has been, it has been stated that you yourself as a commander in the UPDF, were responsible for appointment of a person called Adela Lotsove as an administrative officer within the Congo. Can you kindly let us know if this is true or not and, if so, how it came about?

**Brigadier J. Kazini:**

Well, I did not appoint her as such, but there was a vacuum – a political vacuum – of running administrative affairs in Bunia.

**Lead Counsel:**

This was in which area? Bunia?

**Brigadier J. Kazini:**

Bunia.

**Lead Counsel:**

Is that Orientale province?

**Brigadier J. Kazini:**

That is Ituri, Ituri province.

**Lead Counsel:**

Ituri. Okay.

**Brigadier J. Kazini:**

So she approached me then she asked me to just .... Actually, my write-up was an introduction to the UPDF (the soldiers who were there) to recognize her so that she puts some structure in place. I do not know where she is now, but she can tell you exactly how she came to tell me to take on that appointment because there was a very serious vacuum. So my letter was ....

**Lead Counsel:**

Sorry. Before you go on, what was the nature of the vacuum?

**Brigadier J. Kazini:**

Of the vacuum? No, there was nothing: no administrator, no police, no nothing.

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**Lead Counsel:**

And you were aware that the lady had played a role, a similar role, during the Mobutu regime, I believe.

**Brigadier J. Kazini:**

No. I do not know. No. No, she did not tell me that.

**Lead Counsel:**

Okay. Can you go ahead, please?

**Brigadier J. Kazini:**

She told me that she was a born of the area.

**Lead Counsel:**

Okay.

**Justice D. Porter:**

She told me that she what?

**Brigadier J. Kazini:**

A born of the area, an indigene of the area.

**Lead Counsel:**

But she did not tell you that she had been employed by both the Mobutu and the Kabila administrations?

**Brigadier J. Kazini:**

No. She did not tell me that.

**Lead Counsel:**

Yes. So you can go ahead and tell us how exactly this was done.

**Brigadier J. Kazini:**

That was done? I just wrote a letter to her. I said that that is a provisional governor, telling the commander there that he should allow her to run her duties the way she wants.

**Lead Counsel:**

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And who were you telling?

**Justice D. Porter:**

Just a minute, please.

**Lead Counsel:**

Sorry. Who were you informing about this?

**Brigadier J. Kazini:**

The local commander, UPDF – our commander there.

**Lead Counsel:**

Of UPDF?

**Justice D. Porter:**

UPDF?

**Lead Counsel:**

Not the rebel commander?

**Brigadier J. Kazini:**

No. They were not there at that time.

**Justice D. Porter:**

Have you that letter?

**Justice J. P. Berko:**

To let her do what? You said you wrote to the commander to allow her to do what?

**Brigadier J. Kazini:**

To act as a provisional governor.

**Lead Counsel:**

To act?

**Brigadier J. Kazini:**

[Affirmative response], and I hope you understand when I say 'provisional', because one time it was asked that I appointed a Provincial Governor. No, it was provisional (something that may be, who is temporary – a temporary arrangement).

**Justice D. Porter:**

Have you got that letter?

**Brigadier J. Kazini:**

Pardon?

**Justice D. Porter:**

Have you got that letter?

**Brigadier J. Kazini:**

Yeah. I have got a copy but not here; it should be with my headquarters.

**Justice D. Porter:**

We would like to see it, please.

**Lead Counsel:**

Can you get us a copy this afternoon?

**Brigadier J. Kazini:**

Yes, I can.

**Lead Counsel:**

Good.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

How big is this Ituri province?

**Brigadier J. Kazini:**

I do not know.

**Lead Counsel:**

**Excerpted testimony of  
Gen. James Kazini  
before the Porter Commission  
23 July 2001  
Part C**

23/07/01 (4)

**Lead Counsel:**

... so as you probably are aware, this Commission of Inquiry was set up following the report of the UN Panel of Experts into the exploitation of natural resources and other resources in the Democratic Republic of the Congo. So as you mentioned before that you have read this report, and we would like you to respond to various allegations in that report.

First of all by, letting us know ....

**Justice D. Porter:**

You are going to leave that appointment question, are you?

**Lead Counsel:**

My Lord, after this the photocopies come back so that ...

**Justice D. Porter:**

You will come back to it?

**Lead Counsel:**

Yes. You will have the benefit of having the document. I have not read it myself.

**Justice D. Porter:**

Okay. Thank you.

**Lead Counsel:**

Yeah. There are various paragraphs which we would like you to respond to in that report, commencing with your meeting with the Panel. We assume you actually met with them because in their report they do mention they met with you.

**Brigadier J. Kazini:**

They have not.

**Lead Counsel:**

They never you?

**Brigadier J. Kazini:**

Never.

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Yeah.

**Justice D. Porter:**

And then there is some other reference, is there?

**Lead Counsel:**

Then there is some ....

**Justice D. Porter:**

Forty-three (43)?

**Lead Counsel:**

Then twenty-four (24), My Lord.

**Justice D. Porter:**

Is that right?

**Brigadier J. Kazini:**

The meeting ...when they were meeting the President I was there.

**Justice D. Porter:**

You were there?

**Brigadier J. Kazini:**

Yeah, but not the Minister.

**Justice D. Porter:**

Right. But you said that the Panel never met with you.

**Justice J. P. Berko:**

You said you had never met the UN Panel, you said you had never.

**Justice D. Porter:**

That is why we are asking.

**Brigadier J. Kazini:**

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When the Panel came to meet the President – that was ... their last meeting – I was just called in and then I remember the Head of State saying, "This is the Kazini you are looking for."

They never asked me anything, ....

**Justice D. Porter:**

Wait. Wait now, this is important for us.

**Brigadier J. Kazini:**

Yes.

**Justice D. Porter:**

When the Panel .... You say you were called in and what? And what, presented?

**Brigadier J. Kazini:**

The President said, "These are the Commanders". He said, " This is Saleh, this is Kazini whom you have been talking about." Then there was a kind of talk there (the meeting was a short one) then it ended.

But to say that the Panel had invited me to ask me, never. It was just like a courtesy call, it was not even a meeting – nobody taking minutes. It was just like a courtesy call on their last trip when they were finalizing with the Report.

**Justice D. Porter:**

Yes. Thank you.

**Lead Counsel:**

Now also in the Government response, I do not know if you have had an opportunity to look at it? Have you had an opportunity to look at that?

**Brigadier J. Kazini:**

I have not.

**Lead Counsel:**

Okay. Maybe let me read you the paragraph and you can respond to it.

**Brigadier J. Kazini:**

Yeah.

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**Lead Counsel:**

*"During this meeting Madame Ba-N'Daw raised a point of interest that Brigadier Kazini and General Salim Saleh had been active in taking natural resources out of the DRC. In response to this General Odongo expressed his willingness to be of assistance and invited the Panel to forward the list of specific questions which both Brigadier Kazini and General Saleh would be required to answer, even though General Saleh had retired from the army. This invitation to the Panel however, was never honoured."*

Now what we would like to know: were you ever given any form of questionnaire originating from the Panel for you to answer?

**Brigadier J. Kazini:**

No, please.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

And even at this meeting where you met them, no questions were put to you about your involvement in the Congo?

**Brigadier J. Kazini:**

I (we) did not say anything.

**Lead Counsel:**

Right. If you could look at paragraph 48 of the Panel Report.

**Justice J. P. Berko:**

Can we finish this 143, on this Ukrainian plane?

**Lead Counsel:**

I thought that would come under a different heading, My Lord, but I can ask the question now.

**Justice J. P. Berko:**

Okay. If you have it in mind that is okay.

**Lead Counsel:**

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## **UR Annex 61**



**UR ANNEX 61**

**Excerpted testimony of  
Hon. Kamanda Bataringaya  
before the Porter Commission  
24 July 2001**

24/7/01

**Lead Counsel:**

Yes My Lord, we have one witness for today, if he could stand up and take his oath.

**Justice J.P. Berko:**

The fourth witness?

**Justice D. Porter:**

Yah.

**Dr. Kamanda Bataringaya:**

I, Dr. Kamanda Bataringaya, solemnly swear that, the evidence I shall give, about the matters before this commission, shall be the truth, the whole truth, and nothing but the truth. So help me God.

**Justice D. Porter:**

Thank you very much.

Sit down, and feel comfortable.

**Lead Counsel:**

My Lord, I would believe, this is witness No. C01/04.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

C01/04.

Can you kindly, give the commission your full names, please?

**Dr. Kamanda Bataringaya:**

My names are Dr. Kamanda Bataringaya Cos.

**Lead Counsel:**

Doctor, what was the third name?

**Dr. Kamanda Bataringaya:**

Cos.

**Lead Counsel:**

Okay.

How old are you at the moment?

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**Dr. Kamanda Bataringaya:**

What?

**Lead Counsel:**

How old are you?

**Dr. Kamanda Bataringaya:**

I am 42 years old.

**Lead Counsel:**

What is your present occupation?

**Dr. Kamanda Bataringaya:**

I am a Member of Parliament, representing Bwamba County, at the same time I am one of the newly appointed Ministers.

**Justice J.P. Berko:**

You are a Minister designate.

**Dr. Kamanda Bataringaya:**

Yes.

**Lead Counsel:**

Okay, where do you reside?

**Dr. Kamanda Bataringaya:**

Here in Kampala I reside in Bukoto, but I am born in Bundibugyo District.

**Justice J.P. Berko:**

Your residence in Kampala. Where are you staying in Kampala?

**Dr. Kamanda Bataringaya:**

Bukoto.

**Justice J.P. Berko:**

Bukoto.

**Dr. Kamanda Bataringaya:**

Yes.

**Lead Counsel:**

You also mentioned, you are a Doctor, in what discipline?

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**Dr. Kamanda Bataringaya:**

In medicine.

**Lead Counsel:**

Doctor, were you formerly employed by the foreign service of this country?

**Dr. Kamanda Bataringaya:**

True. Up to now, I am a Uganda's Ambassador to Democratic Republic of Congo, since 1996.

**Justice J.P. Berko:**

Since what?

**Dr. Kamanda Bataringaya:**

Since 1996, that is since November 1996.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

And when did you cease to be Uganda's Ambassador to the DRC?

**Dr. Kamanda Bataringaya:**

Now I cease to be Ambassador because now I am a Member of Parliament, but I am the same person up to now, as I was the Ambassador to the DRC.

**Justice J.P. Berko:**

To the DRC?

**Dr. Kamanda Bataringaya:**

Yes.

**Lead Counsel:**

Now, at the time you were appointed Ambassador, who was the President of the DRC?

**Dr. Kamanda Bataringaya:**

When I was appointed Ambassador the President would be, by then it was Mobutu Tsetse Tseko Kuku; he was the President by then, the late.

**Lead Counsel:**

So you were actually there at the time the Mobutu Regime was overthrown?

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**Dr. Kamanda Bataringaya:**

True.

**Lead Counsel:**

And where were you based?

**Dr. Kamanda Bataringaya:**

I was based in Kinshasa.

**Lead Counsel:**

Now, in Kinshasa, were you there at the time the AFDL rebels stormed Kinshasa?

**Dr. Kamanda Bataringaya:**

Yes I was there, that was in May.

**Lead Counsel:**

May, of which year?

**Dr. Kamanda Bataringaya:**

1997.

**Justice J.P. Berko:**

AFDL?

**Dr. Kamanda Bataringaya:**

Yes, AFDL.

**Lead Counsel:**

And, were there any Ugandan troops with whom they stormed Kinshasa?

**Dr. Kamanda Bataringaya:**

There were no Ugandan troops when AFDL stormed Kinshasa.

**Lead Counsel:**

Now, how did you know, there were no Ugandan troops at the time?

**Dr. Kamanda Bataringaya:**

Because, immediately the AFDL took power, because we as diplomats were called when the late President Kabila was being sworn in, and soldiers around him, of course being a Ugandan I could even know, this is a Ugandan or not. And I only saw, because we were interacting, most of them were these Banyamulenge, and I think they looked like soldiers from Rwanda. There were no Ugandans because if they were there they would have

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reported to me as the Ambassador, so that I know that they are in Congo, by then Zaire. But I never received any of them in my mission.

**Justice D. Porter: -**

You understand if you say that,

*"When President Kabila was sworn in, there were no Ugandan troops around".*

**Dr. Kamanda Bataringaya: -**

Yes.

**Justice D. Porter:**

They were?

**Dr. Kamanda Bataringaya:**

Most of them were Banyamulenge, that's what I used to call them.

**Lead Counsel:**

At the time this AFDL rebellion was going on, you were sitting in Kinshasa, and at that time the late President Mobutu was in power, did you receive any formal complaints or any informal complaints from that regime, about the role our troops were playing, in this rebellion?

**Dr. Kamanda Bataringaya:**

I recall one incidence in which, by then Zaire government expressed concern when the war was going on, before Kabila overthrew Mobutu, they just got the...

**Justice D. Porter:**

Is that what you asked, Mr. Shonubi?

You are talking about after, aren't you?

**Lead Counsel:**

No, My Lord, I am asking during the Mobutu regime, whether he received any formal or informal complaints, about the role of the UPDF, in the rebellion?

**Dr. Kamanda Bataringaya:**

You have said that, when there was the war to overthrow President Mobutu, which was going on, whether it was true or not, that one I cannot confirm but that showed about four people on the T.V. that they had got them from Kisangani front line, one was from South Africa, that's what they claim, another one .....



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**Justice D. Porter:**

Can you be more specific with your evidence? I am losing you totally. You said, while Mobutu was in power, you recall a complaint, is that right? That's what you have been asked.

**Dr. Kamanda Bataringaya:**

That's what I am just driving at.

**Justice D. Porter:**

I know, you are going all over the world to get to a simple answer. There was a complaint, was there?

**Dr. Kamanda Bataringaya:**

Just on Media not in written form.

**Justice D. Porter:**

Alright.

**Dr. Kamanda Bataringaya:**

Yes. That's why I said I recall "*On Media*".

**Lead Counsel:**

So there was no formal complaint?

**Dr. Kamanda Bataringaya:**

No formal complaint, but just on Media, that these are from Uganda, South Africa.

**Lead Counsel:**

Let's start with the formal complaint; there was no formal complaint.

**Dr. Kamanda Bataringaya:**

No formal complaint.

**Lead Counsel:**

Okay, was there any informal complaint, apart from Media, let's go to informal complaint.

**Justice D. Porter:**

From the Mobutu government?

**Dr. Kamanda Bataringaya:**

There was no also informal complaint.

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**Lead Counsel:**

Now, we can go to what you are talking about. Were there any accusations? I think you can now expand on that.

**Dr. Kamanda Bataringaya:**

When they got about four people whom they showed on the T.V, saying these ones were, they claimed that he was from South Africa, another one from Burundi, another one from Rwanda, then another one from Uganda. Said, these people had been caught on front line in Kisangani, and they were assisting the rebels, by then Kabila now. And that was all.

**Lead Counsel:**

Did you seek to establish the identity of the Ugandan, whether indeed he was actually doing what they said he was doing?

**Dr. Kamanda Bataringaya:**

Yes, we took the initiatives to enquire what exactly they said was true. But at the end of the day we never got any communication, to confirm, that what was said in the Media was true.

**Lead Counsel:**

Did you ever talk, to this individual?

**Dr. Kamanda Bataringaya:**

No.

**Lead Counsel:**

Do you know his name?

**Dr. Kamanda Bataringaya:**

I even don't know his name. As I told you that I just saw on the T.V. and read on the media, and just in press newspaper.

**Lead Counsel:**

And so, the individual I would assume also was never handed over to Ugandan authorities.

**Dr. Kamanda Bataringaya:**

Correct.

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**Lead Counsel:**

Would it not have been your duty as Ambassador to ensure that your nationals are not harassed, if indeed this man was a Ugandan, I agree it is your obligation to ensure that he was not harassed especially if he was not part of what he was accused.

**Dr. Kamanda Bataringaya:**

Of course, I took the initiative, we wrote a diplomatic note, since it was in the newspapers, to the Ministry of Foreign Affairs, saying that if he is a Ugandan, can we know his origin, where he comes from, from this part of Uganda, and we never got any response. So we took it, may be that it was a concoction.

**Lead Counsel:**

Can you also give the commission briefly, what your duties there, were? And a number of countries you had to look after?

**Dr. Kamanda Bataringaya:**

Of course, as Ambassador, a head of Mission, in representing His Excellency the President of Uganda, representing the Government of Uganda, and representing the people of Uganda, apart from DRC, I was also accredited to Congo Brazzaville, and Central Africa Republic.

**Lead Counsel:**

Can you, at least, explain a bit more about your duties; you've told us of where you are accredited, your duties? Yes please.

**Dr. Kamanda Bataringaya:**

I tell you that, I was a Head of Mission. And of course, as a Head of Mission, and then I told you that I was representing His Excellency the President, in that country, not only His Excellency the President, I was also representing the Government of Uganda and people of Uganda.

**Justice D. Porter:**

What he is asking, what did you do this awful day, with all these accreditations? If you would do it, talking to people, watching the Television, what did you do?

**Dr. Kamanda Bataringaya:**

No, no. Not watching the television.

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**Justice D. Porter:**

Some of them had what colour?

**Dr. Kamanda Bataringaya:**

Red colour.

**Justice D. Porter:**

The one, before?

**Dr. Kamanda Bataringaya:**

Silver. Metallic silver, yes.

**Lead Counsel:**

Were, any of those vehicles being used by the army at the time?

**Dr. Kamanda Bataringaya:**

They were being used by civilians.

**Lead Counsel:**

Did you have any similar problems of vehicles from the Congo being taken to Uganda?

Do you have any reports of that nature?

**Dr. Kamanda Bataringaya:**

I never had a report of that nature.

**Justice D. Porter:**

When you were saying, you visited this Congo, when was that? What year?

**Dr. Kamanda Bataringaya:**

That was in 1997, in December, then 1998. Twice, that is in February and May.

**Lead Counsel:**

You also mentioned, if you look at the next page again, Item Roman IV and Roman V, if you could kindly read those, please.

**Dr. Kamanda Bataringaya:**

Yah, say:

*"Negotiations with the authorities, for the recovery and return of any stolen vehicles, and other properties from Uganda, in the Republic of Congo back to Uganda."*

Then Roman V:

*"Promotion of trade".*

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**Lead Counsel:**

Okay.

Now, did you ever have any negotiations, to try and return the vehicles to Uganda?

**Dr. Kamanda Bataringaya:**

Yah, I took the initiative of requesting the authorities in Congo, through the Ministry of Foreign Affairs, because we had heard even, one of the vehicle stolen was that of the IGG, and it had also ended there.

So the Governors of Chief, the late Kanyamuhanga, plus the Governor of Upper Congo, that is Provincial Ryantaari, were willing to assist us in recovering such stolen vehicles.

**Lead Counsel:**

Now, you also mentioned in the next paragraph and in paragraph 3, you were talking about the Ugandan businessmen, and promotion of trade.

**Dr. Kamanda Bataringaya:**

Yes.

**Lead Counsel:**

You see that?

**Dr. Kamanda Bataringaya:**

Yes. Oh, this promotion of trade you see as I told you, as commercial diplomacy, now, when I went there, there was trade, trying to normalizing it this way, as we had Ugandan Airline flying up to Kinshasa, flying up to Goma, Ugandans were able to take the merchandise up to Kinshasa, that's meat, fish, eggs, which were really by then selling, they were using Uganda Airline, even up to Goma. And those even these lorries, some of them, our people who are in West Nile, they were using those which used to go to Bunia, the market, and these also the Congolese, even Beni, bring their goods also to Bwera, Kasese. So, that's how we were trying to encourage that trade.

**Lead Counsel:**

So, the trade was basically, in terms of, as we shall say things like eggs, fish, meat.

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**Dr. Kamanda Bataringaya:**

Eggs, fish, meat, soft drinks like Coca-Cola, Pepsi-Cola, Beers. I would see them even exchanging in bringing Pilsner in Uganda, our Bell in Congo. Those are the things, they are.

**Lead Counsel:**

And how were most of those things getting to the DRC?

**Dr. Kamanda Bataringaya:**

They were, just, say in Kinshasa, they were using the Uganda Airlines, by the way it was and Goma also. And these near-by places were using lorries, and other small vehicles. And sometimes, boats, for example on Lake Albert.

**Lead Counsel:**

Now, that was the trade, as opportunity of our traders taking goods there?

**Dr. Kamanda Bataringaya:**

Yes.

**Lead Counsel:**

Were there any Congolese businessmen, bringing goods to Uganda?

**Dr. Kamanda Bataringaya:**

Ah, that one was not possible, but I would see some also Congolese, were bringing these Bitenge in Kinshasa, on their way also to Dubai, because they used to use the Uganda Airline. They used to bring some Bitenge actually, Congolese to sell.

**Lead Counsel:**

Was there any trade in other items, such as timber?

**Dr. Kamanda Bataringaya:**

Ah, that one I never saw it. I never saw that one, trade in timber.

**Lead Counsel:**

Did you help any trade in minerals, like Diamonds and Gold?

**Dr. Kamanda Bataringaya:**

No.

**Justice D. Porter:**

Just go back to timber, was there trade in timber within the Congo?

## **UR Annex 62**

**Excerpted testimony of  
Hon. Ben Mboye  
before the Porter Commission  
25 July 2001**



25/7/01 (1)

CW01/05

**Lead Counsel:**

I already have one witness for this morning. And I ask him to be sworn in.

**Dr. Mbonye:**

I, Dr. Ben Mbonye, solemnly swear that the evidence I shall give about the matters before this Commission, shall be the truth, the whole truth, and nothing but the truth. So help me God.

**Justice Porter:**

Thank you.

**Lead Counsel:**

Can you give the Commission your full name, please.

**Dr. Mbonye:**

My name is Dr. Ben Mbonye.

**Lead Counsel:**

What is your age?

**Dr. Mbonye**

I am 54.

**Lead Counsel:**

And where do you reside?

**Dr. Mbonye:**

I reside at Plot No. 14 Akii Bua Road, Nakasero - Kampala.

**Justice Porter:**

Thank you.

**Lead Counsel:**

And what is your present occupation?

**Dr. Mbonye:**

I am deployed as a Secretary in the Office of the President.

**Lead Counsel:**

And before that - what was your occupation, before that?

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**Dr. Mbonye:**

Before that I worked as a Permanent Secretary in the Ministry of Defence.

**Lead Counsel:**

When did you start that? Which period were you employed as a Permanent Secretary

**Dr. Mbonye:**

I started working as a Permanent Secretary in the Ministry of Defence from 1991 up to 2000, July.

**Lead Counsel:**

To 2000 July?

**Dr. Mbonye:**

Yes my Lord.

**Lead Counsel:**

And what were your duties as a Secretary for Defence?

**Dr. Mbonye:**

I was its Accounting Officer - the Accounting Officer for the Ministry and I also had administrative responsibilities for the Ministry headquarter staff.

**Lead Counsel:**

Now, would those duties include the regulation of the expenditure and the administration of the budget of that Ministry?

**Dr. Mbonye:**

Yes my Lord.

**Lead Counsel:**

Would you recall what the budget for the Ministry of Defence was in the year 1998/99?

**Dr. Mbonye:**

If am shown the document I definitely, will recall that.

**Justice Porter:**

This would be BN1 and Nos. ... 15 I think

**Lead Counsel:**

Is that the Defence budget?

**Dr. Mbonye:**

Yes my Lord

25/7/01 (1)

**Justice Porter:**

Is it 15

**Lead Counsel:**

It is 15 My Lord

**Justice Porter:**

Yeah. One five.

**Lead Counsel:**

So according to that, what was the total amount allotted to Ministry of Defence in the year 1998/99.

**Dr. Mbonye:**

The total amount allotted according to this document is - was 145, 624,479,000.

**Lead Counsel:**

And can you tell us, whether at the end of that period that that amount had proved sufficient for the needs of your Ministry.

**Dr. Mbonye:**

What I recall during that year of 1998/99, I recall that we utilized more funds than had been provided, and the Ministry of Finance I think did provide extra funding during that year.

**Lead Counsel to Justice Porter:**

My Lord if we could tender that before we proceed on more questions.

**Justice Porter:**

We will do that, yes.

**Lead Counsel:**

Much obliged

**Lead Counsel to Dr. Mbonye:**

Now, looking again at the same document, can you tell us how much was spent on the NRA land forces during that year?

**Dr. Mbonye**

This document wouldn't reveal that. These are the budget estimates which are provided at the beginning of the Financial Year. There should be a document that reflect the outturn during that Financial Year.

**Lead Counsel:**

Would that document assist you?

**Dr. Mbonye**

The document reflects the budget estimates at the beginning of the Financial Year and the last column reflects what the accumulative expenditure was at the time the analysis was made which was in June of the following year 1999. But sometimes the...

**Justice Porter:**

Just a minute. Can we still have this document?

**Lead Counsel:**

Yes My Lord

**Justice Porter:**

What is it?

Yes Mr. Shonubi, we are going to put this in, this document?

**Lead Counsel:**

Yes My Lord, I think let us put it in

**Justice Porter:**

Alright. So that's going to be BM1 16

And what is it, what do you call it?

**Lead Counsel:**

Can you describe and give us the details – what is this document?

**Dr. Mbonye:**

This is a document I think which was worked out analyzing what expenditure had actually been incurred by the 30<sup>th</sup> of June, 1999. It reflects the items spent on, it reflects the estimated amount at the beginning of the Financial Year and it also indicates cumulative expenditure at the end of the Financial Year.

**Lead Counsel:**

So looking at those two documents, how much by how much - or what was the deficit between the difference between what was actually budgeted and what was actually spent in the overall Defence budget?

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**Dr. Mbonye:**

The estimated amount spent at the beginning of the Financial Year was 145 billion as stated earlier, and the figure we have at the end of the Financial Year is 117 billion plus 67.

**Justice Porter:**

Wait, wait

There was how much? Hundred.....?

**Dr. Mbonye:**

There are still lots of figures my Lord. The first figure of the non-wage bill was 117, 999,735,316 and then the wage bill was 67,886,313,826. Then there was a capital development expenditure of 7,627,749,770. This however would seem to be the total expenditure for the UPDF land forces excluding the Ministry of Defence headquarters internalizes their three programmes under the Ministry: Prog. 01, Prog. 02, Prog. 03 and Prog. 01 is expenditure on the Ministry headquarters; it is not reflected in these figures. But this is the total expenditure outturn as according to this document at the end of that Financial Year My Lord.

**Justice Berko:**

Can you give us the total please?

**Dr. Mbonye:**

I am just trying to total it up.

**Justice Berko:**

Okay.

**Justice Porter:**

Just looking at the billions... Oh you are doing it.

**Dr. Mbonye:**

I have a total of 193,512,000,000 with some other figures. I have not added the other smaller figures.

**Justice Porter:**

Alright.

**Lead Counsel:**

Now that represents a difference of approximately 47 billion.

Is that correct?

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**Dr. Mbonye:**

That's correct My Lord. About 47 billion shillings of expenditure.

**Justice Porter:**

Yes, go on.

**Lead Counsel:**

And you have mentioned that this did not include Programmes 02 and 03, I believe?

**Dr. Mbonye:**

Prog. 01

**Lead Counsel:**

Prog. 01 and Prog. ....?

**Dr. Mbonye:**

No. Just Prog. 01

**Lead Counsel:**

Just Prog. 01

**Dr. Mbonye:**

But normally that wouldn't be very much. It is just money spent on the Ministry headquarters for staff and a few procurements. It would not weigh heavily on this figure.

**Lead Counsel:**

But it would actually mean this 47 billion would actually increase slightly.

**Dr. Mbonye:**

I will give you an example for instance that during that Financial Year the estimated expenditure – the budgeted amount for expenditure on the headquarters, was 1,811,240,000. That's the estimated amount that was supposed to be spent that year. So it is very little, compared with the rest of the budget for the army. And normally it was never overspent.

**Justice Berko:**

And you said excess was financed from the Ministry of Finance?

**Dr. Mbonye:**

That's correct My Lord

**Justice Porter:**

This is the first time I've ever heard of anything of one billion of anything described as a very small amount. It is actually quite a lot of money, isn't it?

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**Dr. Mbonye:**

I am talking about that as small compared with what was spent on the land forces My Lord.

**Justice Porter:**

It would be about a million dollar something?

**Dr. Mbonye:**

No, one billion would be – yes that would be....

**Justice Porter:**

Roughly..

....approximately a million dollars. That's right My Lord

**Justice Porter:**

Yes?

**Lead Counsel:**

Now, could you kindly look at the 1999 budget?

**Justice Porter:**

What are the estimates?

**Lead Counsel:**

Yeah. The estimates.

**Justice Porter:**

Again this would be 17: Estimates for Defence Ministry 1999/2000. Exhibitor DM1 17

Yes?

**Lead Counsel:**

Now, again what we really want to know is what the budget was and what the actual expenditure was. So you can start by letting us know, for that year, what was the actual budget? The one budgeted?

**Dr. Mbonye:**

The actual budgeted My Lord according to this document was Shs. 188,434,762,000.

**Lead Counsel:**

And the actual amount spent? Maybe you ...

**Lead Counsel to Justice Porter:**

It's another exhibit My Lord

**Justice Porter**

There is another analysis, is it there?

**Dr. Mbonye:**

That is another analysis for that particular year

**Justice Porter**

Okay, so that would be Exhibitor DM1 18 for 2000.

**Dr. Mbonye:**

My Lord again this analysis refers to Prog. 02 and Prog. 03 of the UPDF and the non-wage expenditure while at the outturn, cumulative expenditure, that is at the end of the Financial Year. This analysis was as at 30<sup>th</sup> of June, 2000 was Shs. 88,939,822,792 and the capital development outturn was Shs. 3,736,979,999. And the wage bill My Lord was - the outturn was Shs.100,099,837,741.

The total outturn My Lord for the land forces for that Financial Year - the total I have is Shs.192,776,638,542.

**Lead Counsel:**

Would this amount again exclude Prog. 01?

**Dr. Mbonye:**

This, My Lord would also exclude Prog. 01 which was - where the expenditure was estimated at Shs 1,806,563,000. So if we assume that there was no over-expenditure on Prog. 01 and we added 1.8b to 192b we would probably end up with 194b as the outturn - as the estimated outturn for that Financial Year.

**Justice Porter**

So that is the expenditure of 6...

**Dr. Mbonye:**

About 6b My Lord

**Lead Counsel:**

Now if we could also look at 2000/2001?

**Dr. Mbonye:**

My Lord I do not know whether I should answer questions on this because by that time I had already left the Ministry.

**Lead Counsel:**

In 2000?



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**Dr. Mbonye:**

2000/2001 - I had left the Ministry of Defence.

**Justice Porter:**

Had you prepared the estimates for 2000?

**Dr. Mbonye:**

I did My Lord but by the time the budget was passed by the Parliament I had left the Ministry. But I did participate in its preparation My Lord.

**Justice Porter:**

And these amount tackles the draft estimates.

**Dr. Mbonye:**

Yes they are draft estimates My Lord

**Justice Porter:**

Is that probably what you prepared?

**Dr. Mbonye:**

These would be what I prepared. Because by the time I left we had already submitted to the Ministry of Finance.

**Justice Porter**

Well, can you just give us evidence in regard to 2000/2001? ... and we have to look elsewhere for the years of the document.

**Dr. Mbonye:**

My Lord the estimated overall budget for the Ministry of Defence for the year 2000/2001 was Shs. 187,748,181,000.

**Justice Porter:**

Right... Suggest to the summing up what you said, you are talking about an over-expenditure of about 30% in 1998/99 - a much smaller over-expenditure of 5% in 1999/2000.

**Dr. Mbonye:**

That's correct My Lord

**Justice Porter:**

That's roughly right.

**Dr. Mbonye:**

That's roughly right.

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**Justice Porter:**

Are you able to assist us as to why there was such a bigger expenditure in. 1998/99.

**Dr. Mbonye:**

My Lord I think that is the time when we had increased activities/operations within the army.

**Justice Porter:**

That's right.

Had the army started to move in August, 1998 into the Congo I think?

**Dr. Mbonye:**

That's correct My Lord.

**Justice Porter:**

Yes. It is interesting that the estimate for peace is only ceded by a third when Uganda goes to war. And I thought war is more expensive than peace.

**Dr. Mbonye:**

I haven't got your question My Lord.

**Justice Porter:**

Well, when the estimates for Financial Year 1998/99 were prepared, nobody was expecting to be in the DRC.

**Dr. Mbonye:**

That's correct My Lord

**Justice Porter:**

And it was 145b. Now then ...when the UPDF did go into the DRC the result was an over-expenditure of only 30%.

**Dr. Mbonye:**

That's the figure that we have My Lord.

**Justice Porter:**

It doesn't seem to make sense to me. Peace time army for surely is cheaper than war time army?

**Dr. Mbonye:**

Yeah, it should be - a peace time army should be cheaper My Lord, and war time army...

**Justice Porter:**

Yes, but a lot cheaper and not 30%. That's expensive.

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**Dr. Mbonye:**

Well, the 47b overspent, I think most of this went to the movement of troops and food, and other logistics that the forces required.

**Justice Porter:**

Yes?

**Dr. Mbonye:**

I think the other reason perhaps why we ended up with a smaller overrun. the following Financial Year, was because forces had stabilized and the first year we used to airlift all the food supplies to them and that caused us heavy expenditure on transport. But we changed the system the following years if I recall well, and instead of ferrying food from Uganda, we'd send money into the DRC and the troops would buy food locally. So that cut down on our expenses. Plus the fact that we had also included some budgetary provisions before it.

**Justice Porter:**

Yeah, that doesn't quite go with what we have been told by the actual military people on the ground. They said that three battalions went in August, 1998 and it was a year before there was movement across the Congo and further battalions were brought in. Any comment on that?

**Dr. Mbonye:**

I wouldn't know about the movements of troops and what strength were all the troops were inside, and - but we were simply responding to demands for logistical support. We wouldn't be aware of why various troops went in and what strength was inside.

**Justice Porter:**

Okay

**Lead Counsel:**

The difference in 1998/99. What would you think should have attributed you to the movement into the Congo?

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**Dr. Mbonye:**

Movements, purchase of the food for them, and other logistic provisions, like fuel for vehicles which were inside. That's what I would attribute it to My Lord. Because we had not budgeted for it.

**Lead Counsel:**

So, after you had overspent in 1998/99 and the Treasury had catered for the difference - your budget for the following year was obviously taken into account, your over-expenditure in the previous year would now be the wiser for your next budget. Is that not be correct?

**Dr. Mbonye:**

That's correct My Lord

**Lead Counsel:**

So you then were presented with the budget of 188 - approximately 188 billion.

**Dr. Mbonye:**

That's correct My Lord

**Lead Counsel:**

So the question is: Why did that again not suffice because again you had a deficit of that particular year?

**Dr. Mbonye:**

The estimates for.....

**Justice Porter to Lead Counsel::**

I don't see why you are asking Mr. Shonubi, but we are talking about 5% - and 5% overruns on unpredictable situations is acceptable I would think, don't you?

**Lead Counsel:**

In the budget.

**Dr. Mbonye:**

That's correct. We also have to look into what overruns we used to experience in the previous years. Because there would always be some degree of overruns because we were never provided with adequate funds. Even with the previous years we used to experience some overruns of about 5%, 10%. So that would be taken care of that way.

**Justice Berko:**

Dr. would you be able to tell us what percentage of the budget went into the Congo war?

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**Dr. Mbonye:**

Well, it would be difficult for me to know precisely what percentage went into the Congo because for us we would get demands from the army, and some of these demands sometimes would go for operations within Uganda and some of the provisions would go to Congo. And that sub-division for instance if it was for requirement of food would be carried out by the army headquarters. So I wouldn't know what percentage would go into Congo and what percentage would remain here.

**Justice Porter:**

What most ministries have is quite a lot of control over the expenditure of the people that they serve. That's not so as far as the Ministry of Defence is concerned. Is that right? You get a demand, you pay.

**Dr. Mbonye:**

We get a demand and provided the demand is supported by adequate documentation. We release the funds and then we expect accountability of the funds and we are satisfied with that. We do not follow into detail how the expenditure is carried out right deep in the smallest units in the field. That would probably be carried out by the Finance Officers under the army. So we look after the gross at macro level rather than micro level of the expenditure in the units.

**Lead Counsel:**

How did you cater for operations se....., I believe you were still Permanent Secretary that time.

**Dr. Mbonye:**

Yes I was, and again these demands would come in through the army headquarters not directly to us. It would be submitted. The submissions would be made to the Chief of Logistics and the Chief of Logistics would then submit together with other provisions through the Chief of Staff or the Army Commander to the Ministry headquarters for us to make provisions.

**Lead Counsel:**

And in these operations, let's say an operation sent h..... the only source of funding to the troops was from your Ministry.

**Dr. Mbonye:**

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It was my Lord because we would be told that some of these provisions were supposed to support the troops in Congo. And those would be for food, for chartered aircrafts and fuel provisions, and things like that. So we did provide their support from our normal budget My Lord.

**Justice Porter:**

You didn't expect the troops on the ground to fund themselves, by trading or doing whatever.

**Dr. Mbonye:**

No, no. I don't recall having a...

**Justice Porter:**

Leaving off the land and...

**Dr. Mbonye:**

No. We were always asked to make provisions for them.

**Lead Counsel:**

You were aware that there were certain rebel groups operating within the Congo?

**Dr. Mbonye:**

Yes I heard about it My Lord.

**Lead Counsel:**

Well, were the troops in the Congo at any time, in particular I am referring to some of the Colonels – were they at any time paid their salaries by the rebel groups in the Congo?

**Dr. Mbonye:**

I am not aware of that My Lord

**Lead Counsel:**

Was your budget at any time supplemented by other sources other than the Treasury?

**Dr. Mbonye:**

No My Lord, I don't recall getting any funds from any other sources other than the Treasury. We never did.

**Lead Counsel:**

Did troops in the Congo, who were deployed in the Congo, were they paid salaries above what was paid to the troops which remained within the country?

**Dr. Mbonye:**

No they were paid just the same salaries as their colleagues in Uganda.

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**Justice Porter:**

So, the rations in the end were paid in cash. So that would look like an increase.

**Dr. Mbonye:**

I think in some of the areas we paid them, rations in cash so that they could buy food themselves internally. And then in some units there would be stock-piling by buying food locally from within. We found it much cheaper and cost effective.

**Lead Counsel:**

Were they paid allowances separate from the troops which remained in Uganda?

**Dr. Mbonye:**

I don't recall that. I don't recall there were any extra allowances.

**Lead Counsel:**

You have also mentioned that at some point, what you were doing was to ferry, monitor the troops to be able to buy the food to sustain themselves as a post ration. Is that correct?

**Dr. Mbonye:**

That's correct

**Lead Counsel:**

Now, you will recall that at one point there was an incident involving one of the officers - I think his name was Byakutaaga. Do you recall that incident?

**Dr. Mbonye:**

Yes I do recall the incident. I saw it in the newspapers just like you did.

**Lead Counsel:**

Had you left the Ministry at that time?

**Dr. Mbonye:**

When the story came out I had left the Ministry, that's true.

**Lead Counsel:**

Your initial expenditure when the UPDF had just moved into the Congo, how many battalions did you have to cater for, initially?

**Dr. Mbonye:**

I wouldn't know how many battalions went in at that time at any particular time. I was....

**Dr. Mbonye:**

Oh, they might have got this information from those who had it. They definitely didn't get it from me, because I didn't have it myself. So, they might have found this figure from people who had this information.

**Lead Counsel:**

Okay, suppose you can proceed to 116 as the Commissioners don't have any questions on that.

**Justice Berko:**

What is surprising is that you are sitting here as PS, Financial Officer of the Ministry and you don't know the figures, and somebody coming all the way from New York is able to get the figures, then I don't seem to understand. If somebody from outside can come and get the figures of the soldiers we have here, and those we have in Congo, then I cannot understand why you, sitting here as a PS cannot get these figures for us?

**Dr. Mbonye:**

My Lord, the experts might have had some avenues of getting this information direct from some Operation Commanders and such places, but I didn't have the figures My Lord.

**Justice Berko:**

Were these Operation Commanders not under the Ministry of Defence?

**Dr. Mbonye:**

They are - were not directly answerable to me. They are directly answerable to the Army Commander. They are different structures My Lord. The Ministry civilian staff are separate from the Army. The Army has got its own leadership and its own operations.

116 My Lord reads:

*"According to various sources, UPDF has an average of 10,000 in the Democratic Republic of Congo out of 50,000 total. Indeed the budget line for pay alone for a year is about \$41m for 50,000 Ugandan soldiers. If a bonus of \$20 is paid to each of the 10,000 soldiers, that would amount to \$200,000 per month in 1988/99 - a total of 2.4m per year."*

**Justice Porter:**

There are wrong about these bonuses. It is not such a thing, is that right?



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**Dr. Mbonye:**

I am not aware of these bonuses My Lord

**Justice Porter:**

You see, as Permanent Secretary you should be aware.

**Dr. Mbonye:**

I should have been aware, but I don't recall that each soldier was being paid a bonus of \$20. I don't recall that.

**Justice Porter:**

You keep saying you don't recall. Are you prepared to say it did not happen?

**Dr. Mbonye:**

Because I do not know the source of this information - because I did not pay. I did not.

**Justice Porter:**

Come on, you are a Permanent Secretary of the Ministry of Defence, you sign the cheques, don't you, - don't you?

**Dr. Mbonye:**

My Lord I did not sign payment bonuses for.....

**Justice Porter:**

You sign the cheques from the Ministry, that's part of your job.

**Dr. Mbonye:**

That's correct.

**Justice Porter**

Yes. Now, don't tell me you don't know whether bonuses were being paid over and above the ordinary pay of the army, I just don't believe it, I am sorry.

**Dr. Mbonye:**

I did not pay bonuses to soldiers.....

**Justice Porter:**

So you are prepared to say that these bonuses were not paid?

**Dr. Mbonye:**

I did not pay bonuses to soldiers.....

**Justice Porter:**

Right. So paragraph 116 alleging that bonuses paid to 10,000 soldiers in the DRC is incorrect and irrelevant, is that right?

**Dr. Mbonye:**

I look at it that way My Lord. It is incorrect.

**Justice Porter:**

I don't care how you look at it, I want some evidence please, is that paragraph...

**Dr. Mbonye:**

I did not pay...

**Justice Porter:**

Incorrect and irrelevant so far as your Ministry is concerned?

**Dr. Mbonye:**

Yes My Lord

**Justice Porter:**

Thank you.

**Lead Counsel:**

Can you read paragraph 117 please?

**Dr. Mbonye:**

*"On the basis of a rate of \$2000 per hour, and six hours on the average for a return journey, and 3 rotations a day, UPDF spent on average \$12.96m per year on transport alone. Other expenses for purchases, maintenance and replacement of equipment are important. According to some sources, Uganda spent \$126m on its armed forces in 1999 and over-spending of about \$16m."*

This calculation My Lord seems to assume that there were three trips per day on a journey of six hours. I would need to calculate this into more detail My Lord - before me to ascertain that this figure would be correct.

**Justice Porter:**

The witness wants to do some calculations, I think?

**Dr. Mbonye:**

This My Lord...

**Justice Porter:**

Just a minute, I think we will retire and let him do it and come backing 20 minutes.

**Lead Counsel:**

Much obliged My Lord.

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After 20 minutes

**Justice Porter:**

You said that you wanted to do your own calculations, and you said that there was an assumption that there were three rotations a day – six hours for a return journey. That's what the Panel said. You had a chance to look at all this?

**Dr. Mbonye:**

Yes I did My Lord – the calculation here My Lord states that there was a \$2000 charge per hour for a return journey of six hours and three rotations in a day. That would come to about -first of all that comes to about 18 hours per day. If you consider that they would first load the aircraft, and I recall they would load until about 10.00 o'clock, 11.00 o'clock before departure, and at the same time they were not supposed to return at night from what I recall, it would not be true that they would fly at night. It was not true that they would use 18 hours in one day. They would definitely use less. And they wouldn't....

**Justice Porter:**

Right. So you what are saying that the calculation ..... is quite wrong?

**Dr. Mbonye:**

It's wrong My Lord.

**Justice Porter:**

And it is shown to be wrong by the figures which you've been producing to us?

**Dr. Mbonye:**

Yes My Lord, because it also assumes that they were flying three trips per day for 365 days in a year. I recall that they were not flying everyday. And even when they flew, from what I recall, it would be difficult for them to make two trips in a day; not even three. So the calculations My Lord in that provision is quite wrong. In 117.

**Justice Porter:**

Thank you

**Lead Counsel:**

The last sentence

**Dr. Mbonye:**

My Lord the paragraph reads...

**Lead Counsel:**

Maybe not the whole paragraph. If you could read the second last sentence which is the fourth line from the bottom of that paragraph?

**Dr. Mbonye:**

It is not quite eligible in this document.

**Lead Counsel:**

Okay

**Justice Porter:**

Indeed part of the funds go...

**Lead Counsel:**

My Lord that paragraph, yes, refers to taxes

**Justice Porter:**

A... tax collection?

**Lead Counsel:**

Yes My Lord

**Justice Porter:**

Is that what you want?

**Lead Counsel:**

That's correct My Lord

**Dr. Mbonye:**

That sentence reads as follows My Lord:

*"In the case of the former RCD-ML and MLC, not only was part of the taxes was sent to Kampala, but also individual colonels would claim direct payment from RCD-ML."*

I never received any taxes in the Ministry of Defence from these institutions My Lord.

**Lead Counsel:**

Paragraph 135

**Dr. Mbonye:**

The paragraph reads as follows My Lord:

*"Uganda, unlike Rwanda did not set up an extra budgetary system to finance its presence in the DRC. The regular defence budget is used, and broadly the deficit is handled by the*

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*Treasury. However the Ugandan economy benefited from the conflict through the re-exportation economy. In turn, the Treasury benefited and this allowed an increase in the Defence budget."*

**Lead Counsel:**

Okay, I think that's the part we are interested in. I am just asking you to confirm. I think you may have said this before - about the deficit. How the deficit was catered for.

**Dr. Mbonye:**

My Lord the deficit was covered by - this was in 1989/1990 when we had a big overrun because we had not budgeted for the operations, and we were covered by the Ministry of Finance.

**Lead Counsel to Judges:**

My Lords I don't have any more questions unless the Commissioners do have some questions for the witness.

**Justice Porter:**

That would be by a supplementary budget, wouldn't it?

**Dr. Mbonye:**

Yes My Lord. Some of this would come in as supplementary budget and some of it would be handled through domestic arrears. In other words, it would be paid from the following Financial Year. In both cases it would come from the Ministry of Finance.

**Justice Porter:**

Yes.

Right. And thank you very much for your assistance. We are very grateful to you for sparing your time. We would adjourn to...

**Lead Counsel:**

2.30 My Lord

**Justice Porter:**

There is another witness?

**Lead Counsel:**

Yes My Lord

**Dr. Mbonye:**

Thank you My Lord.

## **UR Annex 63**

**Excerpted testimony of  
Gen. Katumba Wamala  
before the Porter Commission  
25 July 2001**

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**Justice D. Porter:**

Yes, the witness to be sworn, please?

**Major General Katumba Wamala:**

I, Katumba Wamala, Major General, solemnly swear that, the evidence I shall give, about the matters before this Commission, shall be the truth, the whole truth, and nothing but the truth. So, help me God.

**Justice D. Porter:**

Thank you. Sit down.

**Lead Counsel:**

Can you give the commission your full names, please?

**Major General Katumba Wamala:**

My full names are Edward Katumba Wamala.

I am a Major General, by rank.

**Lead Counsel:**

And where do you reside?

**Major General Katumba Wamala:**

I reside in Mukono, in a village called Nabuti.

**Lead Counsel:**

And what is your present status as far as employment is concerned?

**Major General Katumba Wamala:**

I am presently the Inspector General of Police, of the Uganda Police Forces.

**Lead Counsel:**

Can you also give the commission your age, please?

**Major General Katumba Wamala:**

I am 45 years old.

**Justice J.P. Berko:**

45?

**Major General Katumba Wamala:**

45, yes.



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**Lead Counsel:**

Now, what were your duties before you took up that post? Where were you employed before you took up that post?

**Major General Katumba Wamala:**

Before I took up the present appointment I was in the DRC as the head of the operations sector.

**Justice D. Porter:**

As a what?

**Major General Katumba Wamala:**

As Operations' Commander of Operations Sector.

**Lead Counsel:**

And that was from which date to which date?

**Major General Katumba Wamala:**

I was from early August 2000 to April 2001.

**Lead Counsel:**

And before this date had you been involved in UPDF operations in the DRC?

**Major General Katumba Wamala:**

I was involved partly but not in the operations, if I could talk a little bit. In 1997 I was operating in West Nile, as the Operations' Commander of West Nile Operations. And so it happened that ....

**Lead Counsel:**

You need to go a bit slowly.

**Major General Katumba Wamala:**

And at that time we were operating against West Nile Bank Front. This is a rebel group in West Nile. And time and again this rebel group used to launch attacks on the areas of Arua. Especially in the areas of Maracha, ...

**Justice D. Porter:**

Oh, wait a minute.

Especially, in the areas of?

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**Major General Katumba Wamala:**

At that time, my instructions were that, already the Lusaka agreement had been signed and I also had to ensure that the Lusaka agreement is not violated, and that we defend what was in the Lusaka agreement. And at the time I went there, there was a threat on Gbadolite itself, from Kabila forces.

**Justice D. Porter:**

Threat, from whom?

**Major General Katumba Wamala:**

From the Kabila forces, from the Congolese or Kabila forces.

**Lead Counsel:**

Now, during the time you were there was any assistance, by way of military assistance, given to the rebels in the Congo?

Did the UPDF render any military support to them?

**Major General Katumba Wamala:**

In terms of combat?

**Lead Counsel:**

In terms of combat, yes.

**Major General Katumba Wamala:**

Not really.

**Justice D. Porter:**

What do you mean by "*Not really*"?

**Major General Katumba Wamala:**

Well, we were not involved in combat with them. For us, our main concern was protecting. If you realize most of those places, what is there, are the big airports, and that's where all our troops were concentrated. For us we were securing those supply lines.

**Lead Counsel:**

Now, in this handover report, that you were given when you took over, was there anything as far as the discipline of the troops in the Congo is concerned?

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**Major General Katumba Wamala:**

Yes, the instructions were that we had to have very, very strict control over the troops. And this was right from the Commander in Chief. And that the operational Code of conduct would apply to any member of the force, who would act in a manner that would bring disrepute to the force.

**Lead Counsel:**

So, what I am asking is, in that report, were there any incidents that were reported to you of indiscipline or any areas of which you should be particularly careful in the report?

**Major General Katumba Wamala:**

No.

**Lead Counsel:**

So, what steps did you take, having taken over to ensure that you would have discipline?

**Major General Katumba Wamala:**

First of all, when I took over I called, all my sector commanders in the different sectors, and we went over what was expected of us and I told them why we were there. And that was for our national interest. That's why we were in Congo. And whatever we were to do was to be in line with protecting our national interest, which was our national security. And that was all.

**Lead Counsel:**

During your time you were there, did you have any incidents, where UPDF troops got involved in business?

**Major General Katumba Wamala:**

Not as a force.

**Lead Counsel:**

Not as a force.

**Major General Katumba Wamala:**

Yah.

**Lead Counsel:**

Did you have any incidence, where they got involved as individuals?

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activity. The areas where mining activity are the areas of Isiro and Watsa, where I never went. So, I can't say whether there was any movement of minerals from Congo or not.

**Lead Counsel:**

Now also during this time, the rebel forces, that is the RCD, were probably collecting taxes, on various transactions in their area of operation. Were any of the proceeds of these taxes paid to the UPDF or to any of the Colonels directly, individual Colonels directly?

**Major General Katumba Wamala:**

Not that I know of, because for us, all our requirements were coming from Kampala. What we couldn't get, like the time when food became very bulky to carry, we were all given our ration cash allowance and we used to buy food locally, on the ground. So we never relied on the tax collections of the rebel groups. I was getting my operational fund directly from my ... at the army headquarters. So we never relied on the tax collection. This was purely, their own management.

**Lead Counsel:**

I was particularly referring actually, to paragraph 68.

**Justice D. Porter:**

I forgot to ask before, and I do not think I would have got an answer; how much was this ration allowance?

**Major General Katumba Wamala:**

It was 510 Shs. per person per day, which was converted in dollars here and then sent to us.

**Justice D. Porter:**

What was that in dollars?

**Major General Katumba Wamala:**

Eight dollars.

**Justice D. Porter:**

Eight dollars?

**Major General Katumba Wamala:**

Yes. That's what it came to in total.

**Justice D. Porter:**

And senior officers were not expected to eat any more than junior officers?

**Major General Katumba Wamala:**

No, in the UPDF, we all have the same rations.

**Justice D. Porter:**

So, you are looking at paragraph what?

**Lead Counsel:**

60, My Lord.

**Major General Katumba Wamala:**

Do I have to read that paragraph?

**Lead Counsel:**

No, you can respond to it because the question we are going to ask you is basically, what we were trying to find out, if there were any direct payments to Colonels and whether these taxes being raised were being used to finance or support the whole effort as alleged in that paragraph.

**Major General Katumba Wamala:**

Whether they have been used to support the rebels?

**Lead Counsel:**

Both for the rebels and the payments to UPDF?

**Major General Katumba Wamala:**

Well, as I said, we had no business in what they were collecting, their taxes, and how they were using them. We didn't have any hand in that. And we were not at all involved in the collection and use of taxes.

**Lead Counsel:**

Now, there were aircraft coming from Entebbe to the Congo, and you told us that most of these aircrafts were bringing logistics, were there anything on these aircrafts, not related to military?

25/7/01 (2)

**Major General Katumba Wamala:**

They had their own way of doing business. They had their own way of supplying their own troops. They had their way of getting their logistics. We didn't manage their logistics at all.

**Lead Counsel:**

Now, during the time you were there, in the Congo, did you make any administrative appointments? Local administration.

**Major General Katumba Wamala:**

Local Administration?

**Lead Counsel:**

Yah.

**Major General Katumba Wamala:**

No.

**Justice J.P. Berko:**

Congolese people.

**Major General Katumba Wamala:**

Congolese people?

No, not at all.

**Justice D. Porter:**

Why not? Why would you not do that?

**Major General Katumba Wamala:**

My orders never told me to go out there and appoint leaders for the Congolese people, because it is not part of my mission.

**Lead Counsel:**

Did you know of a gentleman called Roger Lumbala?

**Justice D. Porter:**

Which paragraph?

**Lead Counsel:**

Paragraph 180, My Lord.

25/7/01 (2)

Look at that.

May be you can read that loud. What I am asking you is that you went into the Congo in 2000 August?

**Major General Katumba Wamala:**

Yes.

**Lead Counsel:**

Now, if you look at that, it talks about an incident, which occurred in October.

**Major General Katumba Wamala:**

The Nia, Nia confrontation?

**Lead Counsel:**

Called the Nia, Nia confrontation.

**Major General Katumba Wamala:**

Yes.

**Lead Counsel:**

Can you tell us whether that confrontation ever took place, and in what nature was that?

**Major General Katumba Wamala:**

Actually this was, there was no UPDF involved in that confrontation. What happened was that a gentleman called Roger Lumbala, I think was one of the people on leadership in RCD, had kind of fallen out with Wamba dia Wamba, and the RCD main stream. So he tried to attack Wamba dia Wamba's forces, which were guarding that Nia Nia Bridge. And the UPDF's response was to deny them the clashing, and we advised them to sit on the table and solve their differences, politically.

**Justice D. Porter:**

So, what did UPDF do?

**Major General Katumba Wamala:**

UPDF separated the two groups. And we advised the leadership to sit down and solve their problem, politically.

**Lead Counsel:**

Were there UPDF troops on both sides of this conflict?

25/7/01 (2)

**Major General Katumba Wamala:**

No, not on both sides.

**Lead Counsel:**

So, maybe you can show a bit of more light to that.

**Major General Katumba Wamala:**

This kind of clashes...

**Lead Counsel:**

You were supporting actually UPDF as, you were supporting both sides, as it were before, we were supporting Wamba as well as, I don't know about Roger Lumbala.

**Major General Katumba Wamala:**

Yes, that's what I am saying that Roger Lumbala was one of the leaders in RDC. Then he fell out and he had a small group. So he tried to attack Wamba dia Wamba's forces. This kind of clashes was common, in the areas of Bunia and even when in Buta. And Wamba tried to fight, again we had to come and stop the fighting. So it was one of those occasions.

**Lead Counsel:**

This area is supposed to be rich in Coltan. You know the meaning of Coltan?

**Major General Katumba Wamala:**

I have heard about Coltan but I have never seen it with my eyes. And that's one area, which is, it's kind of remote area on Isiro road.

**Lead Counsel:**

And so this conflict, according to you, was not about Coltan? Not about the deposits of Coltan in that area, Bafwasende and the Nia-Nia area?

**Major General Katumba Wamala:**

That area Nia Nia is very far from Bafwasende. It's not near Bafwasende. But these conflicts were mainly; I think it was a kind of Leadership in the RCD.



25/7/01 (2)

**Justice J.P. Berko:**

If you read this one, they are saying, that the conflict was rather between UPDF Kazini and Roger Lumbala, and they fought another group of UPDF, for the control of these mine areas.

**Major General Katumba Wamala:**

My Lordship, at that time General Kazini was out of Congo. Was long out of Congo. Was not commanding that force.

**Justice D. Porter:**

He was the over all Commander, wasn't it?

**Major General Katumba Wamala:**

No, he wasn't. By that time he wasn't overall Commander. General Kazini was already in the Western side. He was commanding the operations against ADF.

**Justice J.P. Berko:**

So what they are saying in the report that the confrontation was rather between Kazini's group and another group of UPDF, cannot be true?

**Major General Katumba Wamala:**

Your Lordship, it cannot be true. I am telling you because I moved into Bunia and we sat down with Mr. Wamba that time when this conflict, and the one which followed, the one of Mbusa when those two came out, I moved into Bunia and we sat down with Mr. Wamba, and we advised that you sit down with your leadership and solve these wrangles, instead of each one of you resorting to unseat the other by force. It had nothing to do with Kazini.

**Justice D. Porter:**

So, this paragraph is nonsense. It comes from nowhere.

**Major General Katumba Wamala:**

In my own opinion Sir, I know what was on the ground, having been there at that time, this paragraph is misplaced. It's not true.

**Justice D. Porter:**

Alright.

25/7/01 (2)

**Lead Counsel:**

Paragraph 180.

They are training different Hema and Lendu, and manipulating those groups to fight each other. And they also mentioned Colonel Peter Kerim, assisting in training the Lendus. Did the UPDF ever get involved in training these separate groups?

**Major General Katumba Wamala:**

No, but by the time I went to Congo, Lt. Col. Kyakabale, Aroja and Col. Kerim were not in Congo. So I can't say whether they did the training, I can't answer for them. But I didn't see the evidence of this.

**Lead Counsel:**

What I was trying to find out whether it was a policy, but if it was a policy, even if they had gone it would have continued when you were there.

**Major General Katumba Wamala:**

No, it wasn't a policy.

**Lead Counsel:**

Now, you have heard of this UN panel report, which you've just been looking at. Were you ever summoned by this panel to be interviewed?

**Major General Katumba Wamala:**

No, I just heard about the panel. I was never summoned by the panel.

**Lead Counsel:**

I don't have more questions unless the commissioners have some more.

**Justice D. Porter:**

Thank you very much for your assistance. I don't think we shall need you actually, if we do you may respond. But for this summons you are released. Thank you for help.

**Lead Counsel:**

My Lords, I have no more witnesses for today.

I do have a witness tomorrow, and I do believe it is a short witness.

**Justice D. Porter:**

Thank you very much.

We adjourn to 9 o'clock tomorrow morning.

## **UR Annex 64**

Excerpted testimony of  
Hon. Ralph Ochan  
before the Porter Commission  
27 July 2001  
Part A

27/7/01 (1)

*Witness: Ralph Ochan CW/01/07*

**Justice D. Porter:**

Good morning everybody.

**Mr. Ochan:**

I Ochan Ralph solemnly swear that the evidence I shall give about the matters before this Commission shall be the truth, the whole truth and nothing but the truth so help me God.

**Lead Counsel:**

Can you give the Commission your full names please?

**Mr. Ochan:**

My full names are Ralph Ochan

**Lead Counsel:**

And what is your age?

**Mr. Ochan:**

53, my Lord.

**Lead Counsel:**

Can you tell us where you reside.

**Mr. Ochan:**

I reside at Plot 9 Martyrs lane in Ntinda Kampala.

**Lead Counsel:**

Where do you work and what is your profession?

**Mr. Ochan:**

Currently I am the Permanent Secretary Ministry of Foreign Affairs.

**Lead Counsel:**

For purposes of this Commission I will ask you what your profession is or what you are by training.

**Mr. Ochan:**

I am a Lawyer by profession I practice in Foreign Services.

**Lead Counsel:**

You have said you are the Permanent Secretary in the Ministry of Foreign Services, is that correct?

**Mr. Ochan:**

Yes my Lord.

**Lead Counsel:**

For how long have you been in this post?

**Mr. Ochan:**

Since September 1998.

**Lead Counsel:**

What are your duties?

**Mr. Ochan:**

I am responsible for the supervision of our Foreign Policy Institutions those at home and abroad. Also I am the Principal Advisor to the Minister of Foreign Affairs on matters of Foreign Policy.

**Justice J.P. Berko:**

I presume you are also the Accounting Officer Sir.

**Mr. Ochan:**

Yes indeed I am also the Accounting Officer, sorry my Lord.

**Lead Counsel:**

In your ministry who is responsible for communications and correspondence, for example, with the United Nations.

**Mr. Ochan:**

I am responsible for that.

**Lead Counsel:**

And communications with for example the UN Security Council.

**Mr. Ochan:**

Yes I am responsible for communications for UN Security Council.

27/7/01 (1)

**Lead Counsel:**

Now I will take you to the period in 1996 and I appreciate that you were not in the office at that time but I assume you have updated yourself with your records. Are you aware when the Uganda People Defence Forces first entered the Democratic Republic of Congo?

**Mr. Ochan:**

I have established that on the record.

**Lead Counsel:**

So can you tell us when that was please?

**Mr. Ochan:**

By an agreement dated 27<sup>th</sup> of April 1998 the form of understanding was reached by the government of the DRC and the government of Uganda on the deployment of the UPDF inside the DRC.

**Lead Counsel:**

When was that? When did the troops enter Congo from your records or from your recollection?

**Mr. Ochan:**

From my recollection it would have been prior to the day when this agreement was signed.

**Lead Counsel:**

So this document you are referring to is what decrees the stay in Congo?

**Mr. Ochan:**

Yes.

**Lead Counsel:**

I would like you to look at this document and inform the Commission whether this is the document you are referring to. Exhibit SBK 1/3.

**Mr. Ochan:**

Yes, my Lord this is the document I am referring to.

**Lead Counsel:**

So this was the legal basis. So prior to that, are you aware of the time the UPDF first went to the Congo?

**Mr. Ochan:**

No I have no recollection of the precise date.

**Lead Counsel:**

Would you be able to re-collect the year?

**Mr. Ochan:**

I can re-collect in broad terms the timing. I may recall that there was a rebellion in DRC and by the Congolese Patriots against the regime of Mobutu. I will have to check with my records and give the Commission the precise date and time when the rebellion began. I believe that it would have been at the end of the rebellion when a new regime was established in Congo that negotiations started with that regime which resulted in this document. So the UPDF would have entered around that time.

**Lead Counsel:**

During the course of this rebellion was the UPDF inside the Democratic Republic of Congo?

**Mr. Ochan:**

I cannot say I am confident to speak on that. I have a general idea my task in this business has been strictly on the diplomatic end of this.

**Lead Counsel:**

Okay. We go back to the protocol. Now you have said that this was the legal basis for our entering in Congo.

**Mr. Ochan:**

Yes my Lord.

**Lead Counsel:**

Which provision in that protocol would you say there was permission to go and enter the Congo?



27/7/01 (1)

**Mr. Ochan:**

First of all my Lord this document was if you like negotiated by representatives who work under tremendous pressure at the time to deal with the terrible situation that existed between around the common borders.

**Lead Counsel:**

I am sorry to interrupt the question is simple, which provision in the protocol was used to enter the Congo? If you can answer that one then you can explain.

**Mr. Ochan:**

As you can see from the document my Lord it is not even numbered but I would say at the bottom of page one, the two security services concurred in strengthening cooperation in the common word. That is the broad provision that provided for our operations.

**Lead Counsel:**

Could you please read that one now for us.

**Mr. Ochan:**

I will read the last two paragraphs. *"The two parties recognized the existence of enemy groups which operate on either side of the common border. Consequently the two armies agreed to cooperate in order to ensure security and peace around their common borders"*.

**Justice D. Porter:**

And the next one.

**Mr. Ochan:**

And the next one, *"the two security services concurred to strengthening their cooperation"*.

**Justice D. Porter:**

Our problem has been first of all we see an agreement to cooperate to ensure security and peace around the common border. We see no provision to cross that border and that has been a problem for us.

**Mr. Ochan:**

My Lord the problem was ultimately addressed on signatory on the 10<sup>th</sup> of July by the Heads of States of the region in the Lusaka cease-fire agreement.

**Justice D. Porter:**

Yes we will come to this in due course: that was April 1999 and immediately before or immediately after this Protocol UPDF stationed three battalions in Congo, there is no question when that happened. Is there any provision in the Protocol for that to be done?

**Mr. Ochan:**

You have to read the Protocol very boldly my Lord. And if you like I will give you the background to the provision that I have just read out.

**Justice D. Porter:**

The background is irrelevant we want you to reduce to an agreed document. I suppose all sorts of things go wrong but it is the contract that we will look at and this is the International document but it does not seem to say anything about crossing the border. I can understand if the Congolese army is the one at the border and the UPDF on the other side, they could agree to cooperate with the information while guarding the border so that rebels from one side did not cross the border, I can understand that. But what I cannot understand is the UPDF going to the Congo. Could you put it the other way, did the Congo army come to Uganda?

**Mr. Ochan:**

Not to the best of my knowledge.

**Justice D. Porter:**

Not to the best of ours either. If you look at article 51 of the charter it is very plain the borders should not be crossed without certain conditions being observed and the purposes of the protocol between two countries will be to comply with those conditions. I would say precisely it was agreed.

**Mr. Ochan:**

The circumstances my Lord under which the agreement was written must be taken into account in trying to interpret it in terms of the roots of the Public International Law. There is a whole volume of the argument that our submission are prepared in the case which is now before the International Court of Justice on this matter, I would not wish to go into those arguments but I can show you that the point is addressed.

**Justice D. Porter:**

We just really wanted the explanation of the problem.

27/7/01 (1)

**Mr. Ochan:**

My explanation of the problem is really straightforward, there were incursions in Uganda, schools were burnt down, school children were killed, 83 of them were burnt in Kicwamba, there was a massive invasion at Mpondwe. So this agreement meant that in effect the UPDF was permitted to ensure that they go to the root cause, to the homes, to the bases of these perpetrators of this on the western border. This is the background my Lord.

**Justice J.P. Berko:**

Mr. Ochan, you see before this protocol was negotiated or was agreed upon, Congolese had security concerns in their area and Uganda had security concerns in their area. Now fill in these agreements Uganda had been in Congo but Congolese had not been in Uganda. So the way you see it is that Congolese interpreted to mean that they have to be in their country to secure the border there and then UPDF will be on our side to secure the border.

**Mr. Ochan:**

That is not correct my Lord.

**Justice J.P. Berko:**

What did this mean?

**Mr. Ochan:**

First of all the reason it was easy for rebels to cross over into Uganda and burn down schools and kill school children because there was no effective administration in the eastern part of the Congo. The basis of this agreement is that UPDF would cross over and maintain Law and order and make sure that the homes where the rebels were found and Congolese stayed free, the problem was addressed by our own troops my Lord it is common knowledge that the DRC did not have any effective administration and that explains why rebels could have come and could train there, could fly equipment there to cross into Uganda and cause extermination. The Congolese recognized this and allowed our people. The problem was in the homes of the rebellion where the rebels committed murder in the eastern part of the DRC.

Excerpted testimony of  
Hon. Ralph Ochan  
before the Porter Commission  
27 July 2001  
Part B

27/7/01 (2)

**Justice D. Porter:**

And what was the position with regard to private people living in Congo.

**Ochan:**

You know my Lord there has been trade in this central part of the region since before these countries were established. And nobody absolutely says; that is illegal or that is unlawful. The people in the Eastern Congo have been buying and selling from their brethren in Uganda, in Sudan, in Rwanda. Nobody has suggested that this trade is unlawful, nobody has suggested that there is something wrong with this. I know for a fact that manufactured products the major exports and imports of Eastern Congo all transit through Uganda and through Kenya through the port of Mombasa. It is impossible for them to go through Kinshasha because of transport difficulty, this has been a well established way of trade for the population of the Eastern part of Congo. To the best of my knowledge there are no manufacturing establishments in the Eastern parts of Congo for even the most basic commodity. Somebody has to sell it to them. In fact my President said it is unpatriotic to allow Africans in one area to starve because some resolution says you should not trade with them, the resolution is anti-people.

**Lead Counsel:**

Mr. Ochan taking you back to this resolution you have confirmed of course what the Commander in Chief said. My concentration was the political side and the diplomatic side, had you by this time received any reports that here is your country, your country is exploiting the DRC natural resources.

**Ochan:**

No, we were hit by this resolution. The final establishment of the panel is the culmination of the process.

**Lead Counsel:**

Now you also realized that soon before this resolution, that the Kisangani clashes occurred and this resolution at the same time does condemn that particular clash between Rwandan and Ugandan forces in Kisangani in the DRC which begun on 5<sup>th</sup> June 2000. Do you recall these clashes?

**Ochan:**

Attachment one is the Congolese letter.

**Justice J.P. Berko:**

Attachment one is the Congolese letter. Okay. And I believe attachment two is the UN resolution.

**Ochan:**

Yes.

**Justice J.P. Berko:**

What was the attachment one about?

**Ochan:**

He was complaining that the Security Council has not done enough to condemn Uganda and Rwanda.

**Justice J.P. Berko:**

This was the Congo representative and representing the government of the DRC.

**Ochan:**

Yes.

**Justice J.P. Berko:**

So this was now a complaint by the DRC to the UN about Uganda.

**Ochan:**

Yes.

**Lead Counsel:**

Can you look at page 2 of that document (attachment one), paragraph 2. Can you read it please.

**Ochan:**

*What used to be described as a war triggered by security concerns of Rwanda and Uganda has now clearly proven today to be a war for the control of gold, diamonds, timber and other natural resources of the Democratic Republic of Congo by both Rwanda and Uganda.*

27/7/01 (2)

**Lead Counsel:**

Did your Ministry make a response on receiving this because the allegations now were in black and white from the DRC itself to the UN security.

**Ochan:**

I think by now the panel had already been established but the Congolese wrote these letters as the matter of their daily work to UN in keeping with their strategy of ensuring that the real problem that needs to be addressed is obscured. There is this lettering every single day of the week, you cannot really respond to all of it, you just focus on the real work at hand mainly trying to live up to the obligations we committed ourselves to under Lusaka. But you cannot respond to every accusation, in fact in open meeting we don't even respond to the insults and abuses of the Congolese representatives because it is not helpful to sit there and try to respond to everything they say. But of course you realize in the end our own Head of State could no longer take these insults anymore and made the drastic decision.

**Lead Counsel:**

Which drastic decision are you referring to?

**Ochan:**

To pull out of Congo, completely and the same Security Council would dance around and write to you and say please don't do it because it is going to cause more problems than to solve problems, stick to Lusaka.

**Lead Counsel:**

But it was Uganda's obligation under the Lusaka Agreement actually to withdraw.

**Ochan:**

According to the timetable drawn out here.

**Lead Counsel:**

So it was not really a drastic decision.

**Ochan:**

It was, to withdraw outside the context of the Agreement, that was the decision.

**Lead Counsel:**

There is a letter which has been mentioned by another witness, who wrote this letter?

**Ochan:**

It is the Secretary General who wrote it.

**Lead Counsel:**

Do you have a copy?

**Ochan:**

Yes.

**Justice D. Porter:**

What is the date of that letter?

**Lead Counsel:**

My Lord it is dated 4<sup>th</sup> May 2001.

**Justice D. Porter:**

From where?

**Lead Counsel:**

From the Secretary General of the United Nations, Koffi Annan. And you were saying that this letter was asking what?

**Ochan:**

To stay engaged within the Lusaka Peace Agreement.

**Justice D. Porter:**

Engaged with who?

**Ochan:**

Within the peace process, within the context of the Lusaka peace Agreement.

**Justice D. Porter:**

Mr. Ochan what I read here is to engage with the International Community and the United Nations in particular, and the paragraph says; Can you read it please.

**Ochan:**

Can I read it out? *"At this particularly sensitive and delicate stage in the DRC peace process, I believe it is crucial that Uganda and all the other signatories to the Lusaka agreement stay fully engaged with the International Community and the United Nations in particular".*



27/7/01 (2)

**Justice D. Porter:**

*Fully engaged with the International Community and the United Nations in particular.*

**Ochan:**

Indeed because the United Nations adopted the Lusaka peace Agreement.

*As together we seek to consolidate the recent positive trends in the DRC. I am confident of your commitment to search for peace in the DRC. In this regard I wish to encourage you to continue with the withdrawal of Ugandan troops in the context of the disengagement process.*

**Ochan:**

But what our President had announced was incomplete the unilateral withdrawal outside the disengagement process, outside Kampala and Harare disengagement plan. So that is the incomplete departure from the agreement. Can he say don't depart from the agreement.

**Justice D. Porter:**

And the agreement requires you to stay.

**Ochan:**

To withdraw as per the disengagement plan and surpass all the parties.

**Justice D. Porter:**

They don't call a spade a spade.

**Ochan:**

They usually don't.

**Justice J.P. Berko:**

So I take it that it is on the basis of this letter that Uganda is still in DRC.

**Ochan:**

Well as you know the Army Council, the High Command, the Cabinet and Parliament all resolved that we should stay within the process under the Agreement. In other words the Secretary General managed to persuade them to side with him.

**Justice D. Porter:**

Withdrawal had taken place, hadn't it?

**Ochan:**

Yes, but within the Lusaka.

**Justice D. Porter:**

That was 79 kms or something, actually on the way home.

**Ochan:**

Yes, that is still very much with in the disengagement plan.

**Justice D. Porter:**

What we were told by UPDF Army Officers was that in fact the forces withdrew (UPDF) from all except over three sites and those sites were on the border, the northern parts of the Rwenzori.

**Ochan:**

That is right.

**Justice D. Porter:**

Is that what you understand to be the situation?

**Ochan:**

I understand it to be so because the other aspects of the Agreement are also now beginning to move. The preparation for the dialogue is going on, President Masire has been allowed to come in to the villages in the DRC, and our friends in Ministry of Defence have reported that they have made progress in ensuring that the safe havens for perpetrators of crime are no longer made available to them. So basically the circumstances from their perspective is probably most right for this process to even move a little faster than they would have been under the Lusaka plan.

**Excerpted testimony of  
Hon. Ralph Ochan  
before the Porter Commission  
27 July 2001  
Part C**

27/7/01 (3)

**Lead Counsel:**

Lastly on this particular letter from the Permanent Mission you will notice on page 3 that; the DRC Permanent Mission recommends adoption of sanctions against Rwanda and Uganda for the systematic plundering of Congolese natural resources which is the reason for their allegation against RCD. And you have also told us you did not bother to respond to all this.

**Ochan:**

We worked more within the contacts of the Security Council to ensure that the resolution that came out on the establishing of the panel did not include items on sanctions.

**Lead Counsel:**

Okay. We can leave this matter alone. You have looked at the report of the panel.

**Ochan:**

Yes I have.

**Lead Counsel:**

Were you at anytime interviewed by the panel prior to this report?

**Ochan:**

Yes.

**Lead Counsel:**

What was the nature of your interview or your meeting with them?

**Ochan:**

The panel did not seem to know what they wanted. They wanted to meet with ministers and exchange views with them. They had no work programme, they had no prepared text, they did not even seem to know really their terms of reference. So we encouraged them to organize themselves better to try and draw up a work programme that addressed their mandate and to talk to people in this country and elsewhere whom we thought would be able to provide them the kind of the information they needed. So we placed at the disposal of the panel the complete array of technical and political leadership in this country. They met with all officials that remotely had anything to do with trade, with minerals, with our economic policy, with our economic situation, with our file of

resources in and outside. I am sure my Lord we offered complete and unreserved cooperation to the panel. They met at the end of the day the Head of State, the army at least offered them free transport to those parts of the DRC where we were. They declined to take this, even when they left we again wrote to them and said; if you want to come back and go to visit the areas in question we are still prepared but they did not respond. We offered complete and unreserved assistance to the panel. We answered all the questions that they put to us both in interviews and in a written form.

**Lead Counsel:**

Okay. You have now probably read the report.

**Ochan:**

I have read it.

**Lead Counsel:**

So my question was, what was your reaction.

**Ochan:**

My reaction is that these people must have written their report before they came here. They did not talk to us. I know for a fact that when they landed in Harare they were met by a second Secretary, in Namibia they were not even met by anybody. So they don't have any cooperation at all, those countries did not even receive a paragraph. We answered all the questions, we received the loudest condemnation, it's an incredible method of work.

**Lead Counsel:**

Did you as the Government of Uganda ever make a formal reaction to their report?

**Ochan:**

We did, I hope you have a copy of our formal response my Lord if you don't have it I think we will avail it to the Commission. We made a formal response and presented it to the Security Council and that resulted in the Security Council calling on the panel to revisit its work and as my Lord you know a panel has been reconstituted under a new Chairperson, I can't remember the gentleman's name but he is an Egyptian National, who is now going to chair the panel, I suppose we shall cooperate with them again.

27/7/01 (3)

**Lead Counsel:**

My Lord I do believe there should not be any need to attend this response I will seek advice whether I will need to exhibit the response, the Government response.

**Justice D. Porter:**

I don't think it should be exhibited but I think Mr. Ochan should just look at it and tell us the details of the response.

**Lead Counsel:**

And the gist of that response is what you have already told us.

**Ochan:**

Yes.

**Lead Counsel:**

We will be grateful if at some point you can send us an unmarked copy.

**Ochan:**

I will be happy to do that.

**Justice D. Porter:**

And Mr. Ochan one of the problems this Commission has is that; in the panel report, there were all sorts of sources, reliable sources and very reliable sources that were meant to settle these things, but we have actually no idea who these sources are and whether they are able to talk to us and whether we have any to chance to call them before us. This is extremely difficult and I just wanted to put that on record because it is very hard for us to be able to say that with the exception of one or two names that specific people were supposed to have done specific things at specific time, it is very difficult. And as you know a Commission like this can only rely on sworn evidence. It may hear of all sorts of things. But unless somebody is prepared to come here and give evidence we in our report cannot I think take any notice of that; I think you have understood the situation.

**Ochan:**

That is entirely correct my Lord, I can only add that if there are reliable sources that do not wish to give you evidence here, we will try to do what we can so they can give you evidence wherever they feel safe to give you evidence.

## **UR Annex 65**

Excerpted testimony of  
Hon. Amama Mbabazi  
before the Porter Commission  
2 August 2001  
Part A



02/08/01

**Amama Mbabazi:**

I, Amama Mbabazi, solemnly swear that the evidence I shall give about the matters before this Commission shall be the truth, the whole truth and nothing but the truth. So help me God.

**Justice D. Porter:**

Thank you. You may have a seat. Please sit down.

This is still Brief One now?

**Lead Counsel:**

Brief One, My Lord.

**Justice D. Porter:**

The witness number is what?

**Lead Counsel:**

It is 1/8, I believe. C1/8.

**Justice D. Porter:**

Yes, carry on.

**Lead Counsel:**

Right. Can you give the Commission your full names, please?

**Amama Mbabazi:**

Amama Mbabazi.

**Lead Counsel:**

And how old are you?

**Amama Mbabazi:**

I am fifty-two (52).

**Lead Counsel:**

Okay. Where do you reside?

**Amama Mbabazi:**

In Kololo, Kampala. Kololo, Kampala.

**Lead Counsel:**

And what is to your occupation?

**Amama Mbabazi:**

I am Minister of Defence, of Uganda.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

And what post did you hold prior to that?

**Amama Mbabazi:**

I was Minister-of-State for Foreign Affairs in charge of regional cooperation.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

And for how long did you hold that post?

**Amama Mbabazi:**

Nearly three years, very close to three years.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Can you give a specific ...? From around which date? Which year to which year?

**Amama Mbabazi:**

I think I was appointed, I am not sure whether it was 29<sup>th</sup> or 31<sup>st</sup> of July, 1998. I took over the Ministry on 2<sup>nd</sup> August, 1998, three years ago exactly, today.

**Justice D. Porter:**

So it is. Yes?

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**Amama Mbabazi:**

So these were known to us, and since it was the Rwandese who were involved in Congo directly, we introduced these to the Rwanda Government ; and the Rwanda Government, which in turn, had contact with ....

**Justice D. Porter:**

Wait. You are going too fast. There are all sorts of things that we have to ask you about. Since it was the Rwandese involved in Congo directly, you said, what?

**Amama Mbabazi:**

We introduced these groups, Kabila and Kiasse, to Rwanda Government. The Rwanda Government ....

**Justice D. Porter:**

You see, that is ....

**Amama Mbabazi:**

Sorry?

**Justice D. Porter:**

That is our difficulty at the moment. We are trying to work out whether Uganda was directly involved in the overthrow of Mobutu; that is what we are trying to work out.

**Amama Mbabazi:**

No, ....

**Justice D. Porter:**

And it would be nice if somebody could come up and say: yes, we were or no, we were not.

**Amama Mbabazi:**

No, we were not.

**Justice D. Porter:**

And it would help us if you were prepared to say we were not involved in the overthrow of Mobutu. Is that right?

**Amama Mbabazi:**

**Excerpted testimony of  
Hon. Amama Mbabazi  
before the Porter Commission  
2 August 2001  
Part B**

02/08/01 (3)

**Amama Mbabazi:**

Yes.

**Justice D. Porter:**

Now then, ....

**Lead Counsel:**

They also give you a background if you look at the same paragraph 26.

**Justice D. Porter:**

*"By the time ...."*

**Lead Counsel:**

*"By the time the August 1998 ...."*

If you could read that one also.

**Justice D. Porter:**

If you read it out loud.

**Lead Counsel:**

If you read it aloud.

**Justice D. Porter:**

It is probably fair on those who are listening to us, to understand what is going on.

**Lead Counsel:**

From the word, "By", if you could read that then give your comments.

**Amama Mbabazi:**

I thought you would read it.

*"By the time the August 1998 war broke out, Rwandans and Ugandans (top officers and their associates) had a strong sense of the potential of the natural resources and their locations in eastern Congo."*

**Justice D. Porter:**

Go on.

**Amama Mbabazi:**

*"Some historians have argued that Ugandan forces were instrumental in the conquest of areas such as Wasta, Bunia, Beni and Butembo during the first war."*

**Justice D. Porter:**

Right. Now is this correct?

**Amama Mbabazi:**

No. I have answered that. It is absolutely incorrect. It is wrong; it is false.

**Justice D. Porter:**

Who actually did conquer ...? They were conquered, so who did it?

**Amama Mbabazi:**

The forces which were there; the AFDL, the Rwandese were in Congo. By the time Kisangani fell there were forces from Angola.

**Justice D. Porter:**

Yeah?

**Lead Counsel:**

Okay. Can you read paragraph ...?

**Amama Mbabazi:**

But we did not have UPDF.

**Justice D. Porter:**

In those areas?

**Amama Mbabazi:**

In those areas. Not the UPDF – the army. There was no order that they get involved at all. I hope there were no individuals who were privately involved.

**Lead Counsel:**

Yeah. Can we move to paragraph 27? If you could kindly read that one also.

**Amama Mbabazi:**

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I had read it.

**Lead Counsel:**

This "*Numerous accounts ....*"

You had read that one?

**Amama Mbabazi:**

I read it aloud. Read it out again.

**Lead Counsel:**

Okay. No problem.

So what they are saying here is that the reason we entered the conflict in August '98 – this is now talking about August '98 if you remember – was defended by some top military officials who had served in eastern Zaire during the first war and had a taste of the business potential. So they are saying that the reason we actually went there was for purposes of exploiting the business potential of the region.

**Amama Mbabazi:**

That is what they are saying, yes. And, of course, it is wrong; it is not true. In the first place ....

**Justice D. Porter:**

But in that they have a problem because, according to your evidence, these top military officials did not serve in eastern Zaire, they served in northeastern Zaire so far as UPDF is concerned

**Amama Mbabazi:**

That is right.

**Justice D. Porter:**

And therefore, would not have had a taste of the business potential of the region of eastern Zaire?

**Amama Mbabazi:**

No.

**Justice D. Porter:**

That is what your evidence amounts to, I think.

**Amama Mbabazi:**

That is correct.

**Justice D. Porter:**

Yes.

Yes?

**Lead Counsel:**

Now they also talk about eagerness to occupy areas where gold and diamond mines were located. As you probably know, UPDF later on moved farther inland into the DRC.

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

And they allege that these were areas which were, mostly, where the gold and diamond mines were located. Now is that statement true that there was eagerness to occupy these areas? And were these areas occupied?

**Amama Mbabazi:**

No, it is not true. Our forces advanced in areas where the enemy had a presence. I do not know any place where they went because there were minerals and there was no enemy present.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Okay. Then I will take you to paragraph 28, which is also on the same – just basically on the same. They say that

*“... if security and political reasons were the ones professed by the political leaders as the motivation to move into the eastern Democratic Republic of*



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*Congo, some top army officials clearly had a hidden agenda: economic and financial objectives."*

**Amama Mbabazi:**

Yes?

**Lead Counsel:**

So what they are saying is much as you the politicians may have had security and political reasons in mind ....

**Justice D. Porter:**

I do not think he can help us here because if there was a hidden agenda it would be hidden from him.

**Lead Counsel:**

Probably it would be hidden from him.

**Justice D. Porter:**

And he is one of them, yeah. I do not think he can help.

**Lead Counsel:**

Okay. So let us go back to the main brief.

**Amama Mbabazi:**

No, but I can comment on it.

**Justice D. Porter:**

You can comment, by all means. I did not think you would be able to.

**Amama Mbabazi:**

Yes. I can only say like I did at the United Nations that first of all, these are statements for which there is no evidence to back them up. I do not know why anyone would take them as they are. They are hanging statements, they have not produced any evidence, credible or not credible actually, to back these conclusive statements they are making; and really at the United Nations we simply dismissed them.

rebellion. And we really had to choose what to do because these were the forces – the same forces – we were operating with against ADF, and we either had to oppose their mutiny in support of the authority in Kinshasa or take a neutral stance and let the Congolese resolve their own internal differences.

**Justice D. Porter:**

Right. Could we just slow that down a bit? You were operating with what forces?

**Amama Mbabazi:**

Our two battalions in Congo were operating together – jointly.

**Justice D. Porter:**

With?

**Amama Mbabazi:**

With the AF ... the Congo Government Force.

**Justice D. Porter:**

The Congo army, yes.

**Amama Mbabazi:**

Yeah.

**Justice D. Porter:**

And then you said what? That they rebelled?

**Amama Mbabazi:**

Then they mutinied.

**Justice D. Porter:**

Yes? And then?

**Amama Mbabazi:**

So we were faced with a situation of mutiny in the whole brigade, not only the battalions but the whole brigade, and we had to make a decision whether to go against them, whether to try and put down the mutiny or not; and we chose not to interfere because we did not think it was our business to do so.

**Justice D. Porter:**

Yeah? Yes?

**Lead Counsel:**

Now they, of course, later organised themselves into an organisation which has come to be known as RCD.

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

Okay. **Now** did you have any formal arrangement, once they established that authority, with them by way of protocol or other agreement?

**Amama Mbabazi:**

Yeah. When the rebellion broke out, it spread quickly. And although it broke out in the east, the main fighting and attack came from the west of Congo – from the port of Matabi side towards Kinshasa; and there were very quick developments because .... Then there was a regional meeting – there was a summit on this, then in quick succession, I would say, President Kabila flew into Khartoum and, like his predecessor, forged an alliance with Khartoum to come to his aid militarily.

So we, therefore, realised that there was greater danger facing us from Congo than we had originally envisaged, with the coming in of the Sudan. There was intensified supply of arms and deployment of armed rebel groups – Ugandan rebel groups, some of whom had been trained in Sudan and were flown into eastern Congo. There was consistent supply mainly from the air, by the Sudan, of the ADF and a pro-Idi Amin army or armed group that had now been organised in northeastern Congo as well. So it was obvious that we had a fight at our hands and we decided therefore, to commit more troops into the situation in Congo.

Well, of course, by then, the Zimbabwean ... the Angolan, Namibian and Zimbabwean forces had been committed ... well, were also sent into Congo. So a situation – a new situation – had developed, and we decided to respond to it by sending more forces into Congo. Now that, therefore, we were going to

have more forces in Congo, it was imperative that we discuss with the other forces on the ground in Congo, which meant the R ....

**Justice D. Porter:**

Sorry? Imperative you discuss?

**Amama Mbabazi:**

It was imperative that we discuss with the other forces, which were in Congo: that is, the Rwandese Patriotic Army and the RCD, in order to have a clear understanding about our presence there.

**Lead Counsel:**

Okay. Which brings ....

**Amama Mbabazi:**

Now you are asking about a protocol ....

**Lead Counsel:**

It brings us back to the question whether you had ... you put anything to writing?

**Amama Mbabazi:**

I do not remember that we did at that stage. Subsequently, I think in September, a decision was made between Uganda and Rwanda at a summit here in Kampala, I think, that we should closely coordinate our operations in Congo. And, of course, because already – because of that lack of close cooperation, we were beginning to get reports of disharmony.

So a Joint Ministerial ... well, call it a Joint Inter-Governmental Committee was established, which I co-chaired with a Rwandese minister, to look into ...well, it had specific references. I did not come with it; I can bring it maybe in future, if you wish. To look into the ... into operational issues, the question of administration in areas where we had military presence, and the question of command during war and code of conduct of our forces while in Congo. And some ....

**Lead Counsel:**

So this was the ....

**Amama Mbabazi:**

Some of these, I think, are in writing, but the initial things are not in writing.

**Lead Counsel:**

So you did sign something with the Rwandese, but what about the RCD rebels; was anything signed – anything in writing signed?

**Amama Mbabazi:**

Not to my recollection, not to my immediate recollection.

**Lead Counsel:**

Are you aware if we gave any active support to the RCD rebels during our stay in the Congo?

**Amama Mbabazi:**

Subsequently.

**Lead Counsel:**

Subsequently?

**Amama Mbabazi:**

Yeah.

**Lead Counsel:**

What would be the nature of that support we gave?

**Amama Mbabazi:**

Well, immediately after the rebellion broke out, as I said, the region tried to find an answer – tried to resolve the problem. So meetings were held and we helped the RCD in the process of negotiations: I mean, on positions that were being presented, on ...; giving them technical expertise in these areas – in the field of negotiations. Of course, subsequently, they also developed internal strife and we tried to bring them together; and, as you know of course, they eventually ....

**Justice D. Porter:**

What Mr. Shonubi is specifically trying to ask you is whether any military assistance was given to the RCD. Is that right Mr. Shonubi?

**Lead Counsel:**

That is correct, My Lord.

**Amama Mbabazi:**

Oh! Not at the beginning, no.

**Justice J. P. Berko:**

But did you later on give assistance?

**Amama Mbabazi:**

Yes. To the RCD faction called RCD-Kisangani. We trained their forces.

**Lead Counsel:**

This was the support?

**Justice D. Porter:**

Did you get further than that? Military involvement in fighting with the RCD?

**Amama Mbabazi:**

We trained, I said. We trained.

**Justice D. Porter:**

I know what you said. I am asking you: was there also ... did UPDF fight on behalf of RCD?

**Amama Mbabazi:**

No. Not on behalf ....

**Justice D. Porter:**

Together with or on behalf of?

**Amama Mbabazi:**

Together with, yes, but not on their behalf.

**Justice D. Porter:**

You can explain that in a minute.

Now what do you mean by that?

**Amama Mbabazi:**

I mean that the RCD had an agenda which was different from ours: Ours was restricted to taking action which was calculated to defend ourselves against any security threat emanating from Congo. RCD had the specific objective of capturing power in Kinshasa; we were not party to that.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Right. Now, having gone through that, around this time is when you had the ... started having objections by the Congolese Government to your presence in the Congo. Is that correct?

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

And soon after this, of course, you had what we call the 'Kisangani clashes'. You recall those?

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

You have talked about your joint arrangement with the Rwandese forces, and now you were in a situation where you had a clash with those same forces with whom you had an agreement. Can you tell the Panel the reason ... oh, sorry, the Commission, the reason for those clashes?

We have several Panels here. The reason for those clashes, please?

**Amama Mbabazi:**

**Excerpted testimony of  
Hon. Amama Mbabazi  
before the Porter Commission  
2 August 2001  
Part C**



Okay. We can move on ....

**Justice D. Porter:**

You said now it is going better with the younger Kabila?

**Amama Mbabazi:**

That is correct.

**Justice D. Porter:**

Yes.

**Amama Mbabazi:**

And another meeting, the second attempt, is slated for 20<sup>th</sup> this month – August and we are all hopeful that this time round it will happen.

So that was the other area where implementation was supposed to happen but had not happened for those reasons.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Now soon after this is probably when the main allegations of exploitation of the resources of Congo by Ugandan forces as well as Ugandan civilians started. Is that correct?

**Amama Mbabazi:**

Soon after?

**Lead Counsel:**

Around this time, let us say, that is when the allegations started: the allegations that are the subject of this commission.

**Amama Mbabazi:**

Well, the ... I cannot point to a date when they started.

**Lead Counsel:**

Maybe let me ask: when did you first begin to hear of allegations of this nature?

**Amama Mbabazi:**

Right from the beginning.

**Lead Counsel:**

Right from the beginning?

**Amama Mbabazi:**

Yes.

**Justice J. P. Berko:**

And when was your beginning?

**Amama Mbabazi:**

Beginning of the war.

**Justice D. Porter:**

1998?

**Amama Mbabazi:**

Which meant 1998 August. And, in fact, at a sitting of the two Presidents – actually President Museveni and Vice President Kagame then, I think it was in September 1998, I had mentioned the decision to establish this Joint Ministerial Committee of which I was co-chair. One of the things we were to look into were these allegations that some of our officers were involved in trade.

At that summit, I do not remember the precise date but I think it was September 1998, the following decisions were made: one, that the question of administration and the control of economic activities in the areas where our forces were would be under the control of the rebel authorities; and Ugandan and Rwandese military forces – officers and men – were strictly prohibited from engaging in any of such activities. And, as I said, ....

**Justice D. Porter:**

Just before the temptation passes, could you show him JK1/11, please?

Have you seen that before?

**Amama Mbabazi:**

Yes, I have. I think so.

**Justice D. Porter:**

In view of what you have just said it is quite an interesting document.

**Amama Mbabazi:**

Have I seen this? Can I just ...?

**Justice D. Porter:**

By all means, yes.

**Amama Mbabazi:**

... peruse it and see?

**Justice D. Porter:**

Yes. But just to assist, it is headed "*Appointment as Provisional Governor of Ituri and ...*", I cannot pronounce it properly, of one "*... Madame Lotsove Adele by James Kazini, Brigadier – Commander Safe Haven.*"

And you have just said that UPDF was strictly enjoined from getting involved in that sort of thing?

**Amama Mbabazi:**

Yeah. Yes, this ... it is true this happened and ....

**Justice D. Porter:**

So this is a straight breach of instruction by ...?

**Amama Mbabazi:**

Yes.

**Justice D. Porter:**

By Brigadier Kazini.

**Amama Mbabazi:**

Yes, and Brigadier Kazini was reprimanded for it.

**Justice D. Porter:**

He was reprimanded?

**Amama Mbabazi:**

Yes, in a Uganda ....

**Justice D. Porter:**

Yeah. And ....

**Amama Mbabazi:**

In a military ....

**Justice D. Porter:**

When he was reprimanded, was the so-called appointment withdrawn? I do not think it was because, I think, she is still there, isn't she?

**Amama Mbabazi:**

No, I do not think so.

**Justice D. Porter:**

She is not. But she was for a long time?

**Amama Mbabazi:**

She was there in the sense of a physical presence, ....

**Justice D. Porter:**

Yes?

**Amama Mbabazi:**

... but not in recognised administrative capacity.

**Justice D. Porter:**

Right. Yeah.

Yes? Thank you.

**Lead Counsel:**

Okay.

**Amama Mbabazi:**

And, of course, you must ... I read in the papers that Kazini appeared before you?

**Justice D. Porter:**

Yes.

**Amama Mbabazi:**

So I suppose he explained this. Of course ....

**Justice D. Porter:**

No. Not satisfactorily, no.

**Amama Mbabazi:**

Oh.

**Justice D. Porter:**

He tried but I think he admitted in the end that he was wrong. Yeah?

**Lead Counsel:**

That is correct, My Lord.

**Justice D. Porter:**

Yes.

**Amama Mbabazi:**

Yes. The reason for it was – the reason why he acted like this, from what he explained, was because of this split in RCD, because ....

**Justice D. Porter:**

I think what he said was that there were two warring factions of the RCD and they could not agree on who was going to be the Provisional Governor, so he ....

**Amama Mbabazi:**

Yes.

**Justice D. Porter:**

He just picked this lady on information that he had and made the appointment over their heads.

**Amama Mbabazi:**

So the intention was good. By Kazini, obviously, the intention was good, it was warranted by the circumstances; but he acted out of ....

**Justice D. Porter:**

He acted contrary to his instructions ...?

**Amama Mbabazi:**

... his authority.

**Justice D. Porter:**

Contrary to his orders?

**Amama Mbabazi:**

That is right.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

I think, My Lord, while we are still on that point we can ask him to react to paragraph 71 of the Report, which is ....

**Justice D. Porter:**

Yeah.

**Lead Counsel:**

... on the same point.

**Amama Mbabazi:**

71 of UN Panel?

**Lead Counsel:**

71 of the UN Panel.

**Justice D. Porter:**

About halfway down, 18<sup>th</sup> of June 1999.

Oh, sorry.

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

If you could kindly read the paragraph?

**Justice D. Porter:**

It says,

*"18 June 1999, Ugandan General Kazini appointed as Governor of this Province, Adele Lotsove, a Congolese who had already been employed by the Mobutu and Kabila administrations. Information gathered clearly indicates that she was instrumental in the collection and transfer of funds from her assigned administrative region to the Ugandan authorities in 1999. According to some sources, she also contributed to the reallocation of land from Lendus to Hemas."*

That is it. Well, the first part of it is true, we know.

**Amama Mbabazi:**

Yeah.

**Justice D. Porter:**

I do not know whether she had been employed by Mobutu and Kabila administrations, but I suppose if she had it would be a recommendation, I suppose. Do you know anything about her collecting and transferring funds to the Ugandan authorities in 1999?

**Amama Mbabazi:**

No.

**Justice D. Porter:**

No.

**Amama Mbabazi:**

She could not do that.

**Justice D. Porter:**

What about reallocation of land from Lendus to Hemas? There was later a flare-up between the Lendus and Hemas over land, wasn't there?

**Amama Mbabazi:**

Yes.

**Justice D. Porter:**

Do you know about this?

**Amama Mbabazi:**

Yes.

**Justice D. Porter:**

Is it possible that she was involved in ....

**Amama Mbabazi:**

No.

**Justice D. Porter:**

... reallocating land and causing problems?

**Amama Mbabazi:**

Not to my knowledge.

**Justice D. Porter:**

Not to your knowledge?

**Amama Mbabazi:**

I never heard that she was involved until this report came up.

**Lead Counsel:**

Okay.

**Justice D. Porter:**

Yeah. That is his reaction, Mr. Shonubi. Yes?



**Lead Counsel:**

Okay. Much obliged.

Now we were on the reports of exploitation, when you received these reports. We asked you when you first received these reports and you said right from the very beginning. Now what was your reaction? What steps did you take?

**Amama Mbabazi:**

Well, first of all we instituted ... I would not call it a commission of inquiry but our Joint Committee; one of the tasks we were given was to investigate this matter with particular reference to some diamond mines in Kisangani – somewhere around Kisangani. And we did.

And, as I said, as a consequence of that ... well, in fact, it was because of the reports that that decision was made, especially by Uganda later on, to say: no soldiers – officers and men, no political leaders should engage in any business in Congo.

**Justice D. Porter:**

And that was expressed in the radio message that President Museveni gave to the forces?

**Amama Mbabazi:**

Yes, for the army. But the decision was communicated to me, for instance, as Chairman – Co-Chairman – of that Joint Ministerial Committee.

**Justice D. Porter:**

Yes.

Yes?

**Lead Counsel:**

So this was ... the President's message was subsequent to those allegations being received? That issued that message?

**Amama Mbabazi:**

[Affirmative response].

**Justice J. P. Berko:**

Mr. Minister, what came out of the investigation relating to the ... you said the diamond mine near Kisangani?

**Amama Mbabazi:**

Oh, that it was not true.

**Justice J. P. Berko:**

If it was not true, why then did you have to issue ...?

**Amama Mbabazi:**

The issuance ....

**Justice J. P. Berko:**

... the communication you said, that they should not engage in mining if the allegation was false?

**Amama Mbabazi:**

Well, the allegation simply helped to make the point that we needed to have clear instructions about the code of conduct of our soldiers while in Congo. And so whether it had happened or not, a decision was taken that they should not involve themselves in business.

**Justice J. P. Berko:**

Okay.

**Lead Counsel:**

Now subsequent to that there was, of course, the Panel of Experts, which was set up by the UN Security Council; and you are aware that they came out with a report?

**Amama Mbabazi:**

[Affirmative response].

**Lead Counsel:**

Okay. Now before I ask you your reaction to the Report, can you tell us whether you were ever interviewed by them?

**Amama Mbabazi:**

No, I was not.

**Lead Counsel:**

Did you ever meet them?

**Amama Mbabazi:**

I was not.

**Lead Counsel:**

You did not?

**Amama Mbabazi:**

No.

**Justice D. Porter:**

When they were here, what position were you actually holding?

**Amama Mbabazi:**

I was in charge of Regional Cooperation, I was still Joint Chairman of – I was Co-Chairman of that Joint Ministerial Committee in Congo, I was the Chairman of the Political Committee, I was everything that was in a position to know what was happening in Congo.

**Justice D. Porter:**

So you would have expected to have been interviewed?

**Amama Mbabazi:**

Surely. Yes.

**Justice D. Porter:**

Yeah.

**Amama Mbabazi:**

I had represented Uganda in the debate of the Security Council when a decision to set up this Panel was made; and we had made a presentation strongly supporting the establishment of such a Panel in order to clear the air of all these rumours.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Would that have been the reason for your correspondence with a Mr. Richard Holbrooke? Did you correspond with Richard Holbrooke on this matter?

**Amama Mbabazi:**

On that one?

**Lead Counsel:**

On that matter, yes.

**Amama Mbabazi:**

I must have. Do you have ...?

**Justice D. Porter:**

Yes?

**Lead Counsel:**

This was 26<sup>th</sup> January, 2000.

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

And also on ... there was one on 30<sup>th</sup> January, 2000.

**Amama Mbabazi:**

Yes.

**Lead Counsel:**

What was the reason for that correspondence, please? The reason for that correspondence, what ...?

**Amama Mbabazi:**

We, I think, we had been invited as a Political Committee, to hold a joint session with the Security Council in New York; and we did hold meetings with

the Security Council and there were a number of points on which there was no unanimity. So I think my correspondence to him, in his capacity as the President of the Security Council then, was to make our position known and recorded.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

Of course this was not the first time you had written to him; you had written to him about two ....

**Amama Mbabazi:**

Previously, yes. I had

**Lead Counsel:**

About two or three, two days before on the same subject. Is that correct?

**Amama Mbabazi:**

On 26<sup>th</sup>.

**Lead Counsel:**

26<sup>th</sup>?

**Amama Mbabazi:**

Yeah. Four days.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

My Lord, could we tender those two documents as one?

**Justice D. Porter:**

So this would be ... 56, I think. What were the dates?

**Lead Counsel:**

26<sup>th</sup> of January 2000 and 30<sup>th</sup>.

**Justice D. Porter:**

2000 and?

**Lead Counsel:**

And 30<sup>th</sup> of January, 2000.

**Amama Mbabazi:**

Do you have a copy of that?

**Lead Counsel:**

Yes, I have.

**Amama Mbabazi:**

26<sup>th</sup>?

**Lead Counsel:**

26<sup>th</sup>, yes.

**Amama Mbabazi:**

Okay.

**Justice D. Porter:**

Yes?

**Lead Counsel:**

Maybe you would like to quickly tell us what you were ...?

**Justice J. P. Berko:**

What number? What number did you say? Exhibit number?

**Justice D. Porter:**

I am sorry?

**Justice J. P. Berko:**

Exhibit number.

**Justice D. Porter:**

Oh, I am sorry, 55.

Yes?

**Lead Counsel:**

You have seen what you needed to add to your first letter?

**Justice D. Porter:**

It is 56 I think.

**Amama Mbabazi:**

[Negative response]

**Lead Counsel:**

Okay. So ....

**Amama Mbabazi:**

Yes. This is it.

**Lead Counsel:**

That is the letter?

**Amama Mbabazi:**

[Affirmative response].

**Lead Counsel:**

Okay, that is it. So the question was really that after receiving or reading this Panel Report, what did you proceed to do? What did you do about it?

**Amama Mbabazi:**

We prepared our response to it because they were making recommendations, among other things, to the Security Council that they impose sanctions on Uganda; so we had to defend ourselves.

**Lead Counsel:**

Okay.

**Amama Mbabazi:**

And we did.

**Lead Counsel:**

## **UR Annex 66**



**Excerpted testimony of  
Lt. Col. Andrew Lutaya  
before the Porter Commission  
3 September 2001**

03/09/01

**Lt. Col. Andrew Lutaya:**

I Andrew Lutaya solemnly swear that the evidence I shall give about the matters before this Commission shall be the truth, the whole truth, nothing but the truth. So help me God.

**Lead Counsel:**

My Lord this is witness; CW/01/16.

**Justice D. Porter:**

Yes. Carry on.

**Lead Counsel:**

Can you give the Commission your full names please

**Lt. Col. Andrew Lutaya:**

My names are Andrew Lutaya Lugobe.

**Lead Counsel:**

How old are you?

**Lt. Col. Andrew Lutaya:**

46 years.

**Lead Counsel:**

And where do you reside?

**Lt. Col. Andrew Lutaya:**

I reside in Gaba, Buziga.

**Lead Counsel:**

And what is your current occupation?

**Lt. Col. Andrew Lutaya:**

A Contractor.

**Lead Counsel:**

And have you ever been in the UPDF?

**Lt. Col. Andrew Lutaya:**

Yes I have been in the UPDF.

**Lead Counsel:**

Are you still in the UPDF?

**Lt. Col. Andrew Lutaya:**

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Yes, I am still in the UPDF

**Lead Counsel:**

Okay. What rank do you hold?

**Lt. Col. Andrew Lutaya:**

I am a Lieutenant Colonel.

**Lead Counsel:**

Now in your role as a UPDF Officer, have you ever been deployed in the Congo?

**Lt. Col. Andrew Lutaya:**

Yes I have been deployed in Congo.

**Lead Counsel:**

When was this?

**Lt. Col. Andrew Lutaya:**

This was in March 1997.

**Lead Counsel:**

And what were you deployed to do in Congo?

**Lt. Col. Andrew Lutaya:**

I was requested by the RPA, Maj. Gen. Paul Kagame to go and assist them in the rapid deployment on the waters and in the air through the Army Commander, Maj. Gen. Mugisha-Muntu by that time.

**Lead Counsel:**

And were these the areas of your specialty, where were you requested to actually go and help in those particular areas?

**Lt. Col. Andrew Lutaya:**

I worked with Maj. Gen. Paul Kagame for quite sometime when he was still in the forces in Uganda and so many other Officers. So they were aware about my capability on the waters that is why I was deployed to assist.

**Lead Counsel:**

That was in the UPDF.

**Lt. Col. Andrew Lutaya:**

NRA.

**Justice D. Porter:**

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And you said, and so many others.

**Lt. Col. Andrew Lutaya:**

Yes My Lord.

**Justice D. Porter:**

Also knew you?

**Lt. Col. Andrew Lutaya:**

Yes My Lord.

**Justice D. Porter:**

Who are now RPA?

**Lt. Col. Andrew Lutaya:**

Who are now RPA.

**Justice D. Porter:**

Yes.

**Lead Counsel:**

You have also said that they knew of your capabilities on water, and also in the air, is that correct?

**Lt. Col. Andrew Lutaya:**

Yes, that is correct.

**Lead Counsel:**

Do you have any particular training in these areas?

**Lt. Col. Andrew Lutaya:**

I am a Pilot by profession.

**Lead Counsel:**

So what were you doing with the RPA, what role were you playing?

**Lt. Col. Andrew Lutaya:**

My role was to organize the troops i.e. the troops of RPA and the Congolese as soon as possible to the frontline.

**Lead Counsel:**

Which particular Congolese were these?

**Lt. Col. Andrew Lutaya:**

These are the late Kabila group, and the current President now, Joseph Kabila.

**Lead Counsel:**

And where was this frontline at the time, that you are talking about?

**Lt. Col. Andrew Lutaya:**

Well, there were several frontlines, but where I operated most was from Lubumbashi towards Kinshasa, Kananga, Kikwikiti, Bandundu and Kinshasa.

**Lead Counsel:**

And these troops you were with, did they eventually get to Kinshasa?

**Lt. Col. Andrew Lutaya:**

Yes, they did.

**Lead Counsel:**

And you were with them when they did.

**Lt. Col. Andrew Lutaya:**

Yes, I was with them.

**Lead Counsel:**

Were there any other Ugandan troops with you?

**Lt. Col. Andrew Lutaya:**

Not at that time.

**Lead Counsel:**

To your knowledge, did any other Ugandan troops play part in this war which led to the fall of Kinshasa under Laurent Kabila?

**Lt. Col. Andrew Lutaya:**

Not in the sector where I was, there were no Ugandan troops.

**Lead Counsel:**

And since then have been back to the Congo?

**Lt. Col. Andrew Lutaya:**

No, I have never been back to Congo.

**Lead Counsel:**

What was the nationality of the troops that were being transported by yourself?

**Lt. Col. Andrew Lutaya:**

They were Rwandese and Congolese.

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**Lead Counsel:**

What kind of Aeroplane was being used?

**Lt. Col. Andrew Lutaya:**

Several types of Aircrafts were used including a C130H, if I talk about C130, it is not the Ugandan Air Cargo, 727, and other small light Aircrafts.

**Lead Counsel:**

These belong to the RPA?

**Lt. Col. Andrew Lutaya:**

I found the C130 in Congo.

**Lead Counsel:**

No more questions for this witness unless the Commission has more.

**Justice D. Porter:**

There is nothing further you can assist us with in relation to the UPDF being in the Congo.

**Lt. Col. Andrew Lutaya:**

No.

**Justice D. Porter:**

Thank you Mr. Lutaya, you are released.

## **UR Annex 67**

**UR ANNEX 67**

**Excerpted testimony of  
Hon. Crispus Kiyonga  
before the Porter Commission  
7 September 2001**



7/09/01 (1)

**Justice D. Porter:**

You seem to have said : President Yoweri Museveni has no control over the UPDF. We have listened to our record of the proceedings and he said no such thing. What he said was, the President Museveni has no control over Congolese and we are very concerned that, that should be corrected. And we are therefore announcing it publicly in this days proceedings. We would ask that, that correction be made.

**Lead Counsel:**

I have noted that My Lord the Journalists from the Monitor are around, and I will also talk to them after these proceedings.

**Justice D. Porter:**

Thank you, and you last said the New Vision said no such a thing.

**Justice J.P. Berko:**

May be if he is in doubt he can go with you and check the tape itself.

**Justice D. Porter:**

Yes, Good morning Dr. Kiyonga. Can you take the oath please.

**Dr C. Kiyonga**

I Dr. Crispus Kiyonga solemnly swear that the evidence I shall give about the matters before this Commission shall be the truth the whole truth and nothing but the truth. So help me God.

**Justice D. Porter:**

Yes please, sit down make yourself comfortable.

**Lead Counsel:**

CW/01/17 . Can you give the Commission your full names please.

**Dr C. Kiyonga**

My names are Dr Crispus Kiyonga

**Lead Counsel:**

How old are you?

**Dr C. Kiyonga**

I am 49 years.

**Lead Counsel:**

Where do you reside?

**Dr C. Kiyonga**

I reside in Kampala because that's where I work.

**Lead Counsel:**

Where in Kampala can you be slightly more specific?

**Dr C. Kiyonga**

I live in Kisugu, this is South Eastern part of Kampala

**Lead Counsel:**

What is your occupation?

**Dr C. Kiyonga**

Currently I am a Minister in the Government of Uganda and also the acting National Political Commissar for the National Movement and I represent Bukonzo county West in Parliament

**Lead Counsel:**

Now before that what were you doing?

**Dr C. Kiyonga**

Before July or up to the Middle of July I had been the Minister for Health in the Government for the past five years.

**Lead Counsel:**

That was July which year?

**Dr C. Kiyonga**

July this year 2001

**Justice D. Porter:**

And Bukonzo county is Kasese district, which is close to the border of the Congo.

**Dr C. Kiyonga**

Yes, my my, the area I represent borders, the DRC on the Eastern part of DRC.

**Justice D. Porter:**

Thank you. How long have you been a member of parliament?

**Dr C. Kiyonga**

Since 19...elected member of Parliament for that area since 1989.

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we don't see an alternative. We are not convinced that there's going to be peace in Congo without an effective force we have not seen yet an alternative to the UPDF.

**Justice D. Porter:**

Now are your people suffering now?

**Dr C. Kiyonga**

Yes, although the suffering has markedly been reduced as I have told you My Lord 40 years is been displacement of people. Firstly those who live on the mountain ranges. Even from 62 there schools were closed no health services these schools got reopened in the middle of the 80's so you have generations who have missed education and also have lost their production. Then since 96 many more got again re-displaced to come to the low lands. But when the UPDF pursued these enemies and occupied parts of the mountains and went to the Congo they are now going back to reopening their land they have not yet fully reached the height where they normally reside because they are still conscious but over the last one year or so the situation has markedly improved, markedly improved.

**Justice J.P. Berko:**

Can you tell us something about say cross border trade between the two countries?

**Dr C. Kiyonga**

Yes My Lord and I think this will be helpful because many people I think they talk from hear-say but for me I live in that area.

**Justice D. Porter:**

That's why we wanted you to come and talk to us.

**Dr C. Kiyonga**

Yes. In 1960 when Congo got independence I was a young boy in P.4 no in P.2 in 1960. In 1962 I saw Bakongo coming to Uganda as refugees when the fighting started across there and I also saw our people in Kasese some traders getting rich in 1960, 62, 63 by trading in coffee which was coming from Congo. The Bakongo peasants more traders were bringing their coffee to Uganda for a long time I think up to may be the late 60's. the coffee was coming from Congo and bought by our people and exported by our people either through cooperatives or private traders. Then I think during Amin's time I can't remember exactly the time because I was now in secondary school not staying in the village but definitely there was a reversal our people started taking their coffee to Congo

took to Congo, took to Congo even when we took over power here in 86 I was made Minister in charge of marketing. So I used to go my area there appeal to the people that please don't take coffee they would pretend to corporate with me but they were taking coffee at night big big numbers of people now they can tell me freely because the situation has changed. We would put troops on the border they would find a way of going. So until we had reforms here economic reforms and the pay to the peasants started making meaning they now started selling coffee here and the Bakongo started now also bringing their coffee. So on coffee as one example I would say the trade has always been oscillating depending on where the market is better it is a natural response to market forces. If the market is better in Congo we take our things there. If the market is better here we bring incidentally that border just cuss across one tribe. My people the Bakonzo people in Uganda were just ½ a million in Congo they call them Banandi but were the same people they are 3 ½ million so we intermarry we talk the same language and we trade, we trade together. Then the other significant trade has been in timber. Timber wood for a long time since I was a small child I have seen timber coming from Congo on huge trucks. Coming some timber they sell in Kasese not so much because we have our own timber I think some of the Bakongo come and sell in Kampala here but most of it, it was being sold in Kenya for a long time. Bakongo themselves bring their timber some they sell here in Uganda most of it they were selling in Kenya. Even now if we go you will see Bakongo with their trucks carrying timber taking it across to Kenya and some they are selling here. That I have witness. The other trade which was under cover is gold a luvial gold. I can testify that there are business men even now in Kasese who from that time 60's 70's used to quietly get gold from Congo from other traders and take it to Kenya to sell to Asians in Kenya I think the trade here was not so strong and the smuggling was obviously not allowed so they were doing it under cover I could tell you that when I went into exile in 1981, I was a young boy and just finished medical school I had no money I don't know where I was going in Kenya just to save my life, so I went to one trader how do I live in Kenya? So he told me, if you have money, I can give you some gold. Oh I said I see, but where will I put the gold? He said you will sell it to the Asians. So I said I have only eighty thousand shillings. He gave me what he called four tollers. So I took them asked him how will I carry this? You put in your socks. So that's

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what the businessman told me. So I put in my socks I escaped across the border to Kenya he gave me telephone of this Asian I telephoned him he said "oh you are from my friends" he said "bring your (nani)" then he gave me five thousand Kenya shillings which I lived on until I got a job in Kenya. So this has been going on between our people in Kasese and may be in Kampala here and traders in the Congo. I think when again we changed we made reforms and said oh if you have an export no problem open your bank account and put your money there. I suspect many of our people if they are still in this trade they now have foreign exchange accounts. I suspect that trade still goes on. Then in Congo where I have been once, I have been to Congo once although I live near the border because of a different colonial set up there, even when I went into exile I had to cross from Kasese to go to Kenya because it is English speaking. The Bakongo what they use, their supplies in Eastern Congo comes from outside, mainly things like clothing, paraffin, petrol, cement, most of the textiles comes from abroad from China from Singapore, supplies like cement like iron bars building materials, either from Kenya or from Uganda. Soap from Uganda. Plastics from Uganda. Then in return our people also get some things like timber trade the women in my constituency they go to buy a particular cloth called bitengi. They go and buy them from Congo they sell them in Kasese and here in Kampala. They go and buy plates, kitchen ware and bring here. So trade goes on there and nobody can stop that trade, that I can be sure. Even if you put troops there, you cannot stop that trade. It has to respond fast that these are the same people, secondly they have needs, and they look where there is a supplier and where there is a market. That's what I would say about trade but what My Lords could also be relevant to this Inquiry and also to the UN, these Congo people are really suffering people, and the result of their suffering we will all suffer not only from security, from fire even from disease, you see we are always getting Cholera from Congo because there is no administration there. In my constituency we have a hospital we've just built recently, if you go something like 30- 40% of the people who come to attend are from Congo. They are suffering people, Congo is in my view, richly endowed with these minerals, with forest, with water, so for me I would be happy if the UN was asking where have the resources of Congo been going since 1960? They would just ask about 1996 where have the resources of Congo been going, since 1960? The country is still poor, you go and see

those poor peasants, there are no roads, there is no power supply, and yet these resources have been going who has been taking them. The UN really would help Congo as now we hope they will democratized to ask these questions. Who has been taking the wealth of Congo not since 1998 but since 1960, when Bakongo got independence. The mining has been going on who has been taking this money.

**Justice D. Porter:**

What do you think the answer to the question is?

**Dr C. Kiyonga**

The answer is lack of liberation of the Bakongo lack of democracy in the Congo.

**Justice D. Porter:**

But who has been taking the resources.

**Dr C. Kiyonga**

Oh, many people including multinational companies and foreign companies may be foreign governments also they are involved there. I don't know but suddenly few Bakongo small traders take as I told you this gold and diamond, you go if you go like I was recently in Belgium, they showed me a village that, that is the Bakongo village. You find some Bakongo there. But I think most of this is being taken by Multinational companies since 1960's. and this is traceable and it is possible to know. Then Congo is now one of the most indebted. Countries in sub-saharan Africa they've been getting money from World bank, from IMF I don't know who has been taking this money. And the Bakongo will one day have to pay despite their problem. I think UN would help Congo more fundamentally, if we probe deeper than just say 19 I don't know 96. The plan has been going on since 1960 of Congo to talk of nothing of the colonial period.

**Justice D. Porter:**

Just going back to the attacks, the cross border attacks, have you ever received as Uganda, ever received assistance from the Kishansa government to help stop these attacks?

**Dr C. Kiyonga**

Well, the assistance in this form not significant assistance, I would say not significant but in the initial days of Kabila the old man not the new President

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**Justice D. Porter:**

Just go back to Mobutu you started with.

**Dr C. Kiyonga**

No, Mobutu never helped us at all.

**Justice D. Porter:**

Right, now

**Dr C. Kiyonga**

We talked to him and he just says I will do something. He does nothing.

**Justice D. Porter:**

So now Mzee Kabila

**Dr C. Kiyonga**

Kabila I think was willing to help, for example I was sent one time by the President to go and discuss with Kabila's government how we could help them to train their police. I went there and had a meeting with President Kabila. But he was not in position to help us because he himself had just taken over power, he didn't have an army an army in the sense of formal and the right size for his country so he said nothing about the Police but politically he was willing to work with us at least he would not give cover. He would not give cover to our enemies because he knew we wouldn't give cover to his enemies as well. But some how in the middle he seemed to have changed because we had evidence. These chaps who are fighting us the ADF some of them are from my villages from my constituency and we even at a peasant level, we started to know that some of these fellows were living with Kabila's soldiers in Beni and Butembo. So somewhere in the middle Kabila I think changed his mind and wanted to give covert assistance to the rebels. So to answer your question My Lord no the Bakongo have never helped us in any significant way with our security problem because there has never been effective administration in the Congo. Even they can't deal with their own problem the Mai Mai I have told you about the PLC. Now there is Mai Mai is another force within the rebel across the border calling themselves they are all Mai Mai they are also fighting there. They have never helped us in any significant way with our security.

**Lead Counsel:**

I think the subject has been quite exhausted, My Lord, by the witness.

## **UR Annex 68**





THE REPUBLIC OF UGANDA

**JUDICIAL COMMISSION OF INQUIRY**  
**INTO**  
**ALLEGATIONS INTO ILLEGAL EXPLOITATION OF NATURAL**  
**RESOURCES AND OTHER FORMS OF WEALTH IN THE**  
**DEMOCRATIC REPUBLIC OF CONGO 2001**

(May – October, 2001)

Legal Notice No. 5/2001

**INTERIM R E P O R T**

**OCTOBER, 2001**

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## INTRODUCTION

This report is an Interim Report as a result of an inquiry made into the allegations contained in a UN Expert Panel report on the illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of the Congo. The Expert Panel was appointed by the Secretary General at the request of the Security Council. It produced a report which was submitted to the Security Council on 16<sup>th</sup> April, 2001. In that report, the Expert Panel alleges that there has been illegal exploitation of Congolese natural resources by individuals, governments and armed groups; and that the Government of the Republic of Uganda was one of those involved.

The Security Council considered the Panel report and made a number of decisions and observations. It noted that the report contained disturbing information about the illegal exploitation of Congolese resources. It took note of the action plan of the Expert Panel for time extension of the Panel's mandate to allow it to conduct a follow-up investigation and to prepare an addendum to its final report. It also urged governments named in the report to conduct their own inquiries into these allegations..

Accordingly His Excellency the President of the Republic of Uganda, through his Minister of Foreign Affairs took urgent steps to implement the decision to set up an inquiry.

It should be clearly understood that, although this Commission's inquiries are at an advanced stage, it is not able to answer all the questions asked of it. This Interim Report is directed at Legality, involvement in illegal activities by the Ugandan Government, His Excellency the President and Members of his

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family only, although other issues have had to be addressed to deal with these matters.

Even so there remain outstanding issues, particularly with regard to members of President Museveni's family

#### ESTABLISHMENT OF THE COMMISSION

On 23<sup>rd</sup> May 2001, the Minister of Foreign Affairs issued Legal Notice No.5 which was published as Supplement No.23 in the Uganda Gazette of 25<sup>th</sup> May 2001, and by which the Minister established the Commission of Inquiry (Allegations into Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of Congo ) 2001.

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#### 1 MEMBERS:

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The Commission consisted of the following persons:

Hon. Justice David Porter	:	Chairman
Hon. Justice J.P. Berko	:	Member
Mr. John Rwambuya    retired Senior UN official	:	Member
Mr. Bisereko Kyomuhendo Principal State Attorney	:	Secretary        to Commission
Mr. Alan Shonubi, Advocate	:	Lead Counsel

The Commission was ably assisted by Dr. Henry Onoria particularly on International Law and Mr. Vincent Wagana from the office of the Director of Public Prosecutions.

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## **2 TERMS OF REFERENCE**

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The terms of reference of the Commission are as follows; \_

- to inquire into the allegations of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo, to wit minerals, coffee, timber livestock, wildlife, ivory, moneys or other property from the Democratic Republic of Congo contained in the said report.
- To inquire into the allegations of mass scale looting and systematic exploitation of natural resources and other forms of wealth from the Democratic Republic of Congo by the Government of Uganda made in the said report;
- To inquire into allegations of complicity or involvement by His Excellency the President and his family in the alleged illegal exploitation made in the said report;
- To inquire into allegations of involvement in the illegal exploitation of the natural resources of the Democratic Republic of Congo by top ranking UPDF officer and other Ugandan individuals named in the said report.

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## **3 TIME FRAME OF THE INQUIRY**

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The Commission was required to submit a report of its findings and recommendations to the Minister responsible for Foreign Affairs within three months after commencing duties.

The Commissioners were sworn in on 4<sup>th</sup> June 2001, but because of logistical set backs, they did not open public hearings until 12 July 2001. The intervening period was spent in preparing office, acquiring equipment, recruiting

secretariat, collecting and reading source documents and relevant data (such as the UN Panel Report) and interviewing, selecting and summoning witnesses.

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#### **4 CONSTRAINTS/LIMITATIONS**

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The Commission has experienced various constraints in its task. One of the major snags was the lack of sources of information. Although the Panel was able to accept unsworn, and often hearsay evidence, this Commission is forced by The Commissions of Inquiry Act to work only with sworn evidence.

The Commission had hoped for the Panel's assistance in providing some of the sources it had not included in its report, but disappointingly, this was not the case. In refusing to share with this Commission their source of information, the Panel made it clear that it was the policy of UN not to disclose such sources in its reports.

Other constraints included unwillingness by witnesses interviewed to tell all they knew, inefficiency of some officials or poor record keeping, fear of self incrimination in instances of corruption and in some cases fear of reprisal. Also financial shortage, bureaucracy in releasing approved funds and limited time for completing the tasks had an adverse effect on the work of the Commission.

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#### **5 METHODOLOGY**

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In conducting its inquiry, the Commission looked at its task as one of inquiry and investigation rather than that of prosecution or defence of any one who appeared before it. The hearing was conducted in public and evidence was given on oath. Witnesses were free to be accompanied or assisted by counsel before the Commission, if they so wished. The Commission utilized two



types of information for its inquiry: documentation and evidence.

#### **Documentation:**

Abundant documents were available to the Commission. They included;

- Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo, dated 16<sup>th</sup> April 2001.
- Response by the Government of the Republic of Uganda to the above report dated 23 April 2001.
- Statement by H.E President Museveni about the UN Panel Report dated 3 May 2001.
- Legal Notice issued by the Minister of State for Foreign Affairs/Holding the Portfolio of Minister of Foreign Affairs, dated 23 May 2001, establishing the Commission and terms of reference therein.
- The Commission of Inquiry Act, cap. 56 of the Laws of Uganda as amended by Statutory Instrument 200 of 1965.
- Sections 89 and 93 of the Penal Code Act.
- Lusaka Agreement 1999 (and subsequent protocols).
- [A list of other relevant documents is given in Annex I Exhibits:

#### **Evidence**

Virtually all Ugandans and some non-Ugandans mentioned in the Panel report provided evidence on oath. They included His Excellency President Museveni, the Defence Minister, Mr. Amama Mbabazi, the Army Commander, Major Gen. J. J. Odongo, the Secretary of Defence, Dr. Ben Mbonye, the Chief of

staff, Brig. James Kazini, Major Gen. Salim Saleh (Caleb Akandwanaho). Also interviewed were Government officials from various Ministries and institutions. They produced and defended or explained data and reports presented to the Commission. This enabled the Commission to cross check or compare the figures or sources with those given in the Panel Report.

Other witnesses volunteered to share the information they had and others appeared in response to the Commission's appeal to the public to come forward and give evidence. Unlike the UN Panel of Experts, the Commission's terms of reference restricted its task to the allegations relating to Uganda and the Democratic Republic of the Congo. [ A full list of witnesses is given in Annex II Witnesses]

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## **6 RULES OF PROCEDURE**

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While the Commission was empowered to adopt its own rules of procedure, it on the whole adhered to the Evidence Act (cap.43).

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## **7 WORKING HOURS**

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The working hours of the Commission were from 8:30 a.m. to 5:30 p.m. from Monday to Friday of each week. Public hearings were normally conducted between 9:00 a.m. and 5:30 p.m.

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## **8 PLACE OF WORK**

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The Commission's office was located in suites 102-104 Nile Hotel International Conference Centre.

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## 9 SECTIONS OF EVIDENCE

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The evidence gathered was divided in the following briefs;

1. Background to Uganda involvement in the Congo.
2. Exploitation allegations pertaining to timber – Dara Case Study and other timber related allegations.
3. Exploitation allegations pertaining to minerals, diamonds, gold, cassiterite, other minerals and economic data.
4. Exploitation allegations pertaining to coffee, livestock, wildlife, ivory, money and other property.
5. Exploitation allegations pertaining to mass scale looting systematic and systemic exploitation.
6. Allegations against His Excellency the President and his family in alleged illegal exploitation.
7. Exploitation by individuals and top UPDF officers named in the report.
8. Upcountry considerations and evidence

These were generally intertwined in such a way that the evidence in one brief could also appear in another brief or, to some extent, be mentioned in another.

## CONSIDERATION OF THE UN PANEL REPORT

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### 10 ILLEGALITY.

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This Commission has read paragraph 15 of the report of experts on illegality. Bearing in mind that there are pending proceedings before the International Court of Justice between the Democratic Republic of Congo and Uganda, this Commission takes the view that it would be wrong to attempt a full definition of illegality in the context of exploitation of resources in the Democratic Republic of Congo .

The UN Panel Report defined four concepts of illegality:-

#### 10.1 Violation Of Sovereignty

The history of Zaire now the Democratic Republic of Congo since independence has been characterised by the seizure of power by military means. There is no doubt that, even before the rebellion in 1996 Kinshasa had little or no control over the Eastern the Democratic Republic of Congo, and that to all intents and purposes, apart from the technical drawing of lines on a map, in practice these were different countries.

The point about sovereignty is that consideration of it falls into two headings:-

#### .1 OF 10/1 WHETHER THE UPDF SHOULD HAVE GONE INTO THE DEMOCRATIC REPUBLIC OF CONGO .

Our consideration of the evidence shows that the original incursion into the Democratic Republic of Congo was by consent between Uganda and the Laurent Kabila government. It has been shown that movement across the Democratic Republic of Congo over the period of a year was strategically

necessary from Uganda's point of view, and this Commission has said that in view of the outstanding ICJ case, and will not attempt finally to decide the matter. However, there are many examples from up-country visits of breach of Uganda's sovereignty, prior to the first incursion by the UPDF, by groups actively supported and sheltered, first by the Mobutu regime, and later by the regime of Laurent Kabila.

However, whether or not the movement across the Democratic Republic of Congo was legal or illegal under International Law is irrelevant to the consideration of exploitation of the resources of the DRC, because exploitation would be by trade, and this Commission has been advised that even during an illegal occupation, trade is not affected (see Annex III Paper on Illegality and International Law).

**1 OF 10/2 WHEHER BUSINESSMEN AND INTERNATIONAL COMPANIES MAY TRADE IN A WAR ZONE WITHOUT COMPROMISING THE SOVEREIGNTY OF THE COUNTRY**

Even if it were to be argued that Uganda's presence in the Democratic Republic of Congo is unlawful on the basis of UN resolutions, this does not necessarily imply that commercial activities in the Eastern Part of the Democratic Republic of Congo should be deemed illegal. For International Doctrine and practice admits of the continuity of the political, socio-economic and cultural life of the people and communities in territory occupied. Trade by businessmen and International Companies is only a facet of that continuity

**10.2 Respect By Actors Of The existing Regulatory Framework**

There is no doubt that since 2<sup>nd</sup> August 1998, the Kinshasa Regime has never had effective control in the Eastern and North Eastern the Democratic

Republic of Congo . This was a mere reflection of the situation which prevailed before the rebellion against the Mobutu regime. Therefore the authorities exerting effective power and control over the Eastern and North Eastern the Democratic Republic of Congo after August 1998 were the various rebel groups.

This Commission is surprised to see, in paragraph 15(b) of the Report, the suggestion by the UN Panel that rebels in effective control of an area somehow adopt the title of “sovereignty” over that area. Our view is that sovereignty is indivisible and relates to the whole of the Democratic Republic of Congo . This Commission thinks that the UN Panel was ill advised to use this phraseology.

The Panel appears to say on the one hand that breach of sovereignty is illegal, and on the other hand that rebels exerting effective power and control over an area can set up a regulatory framework to govern the use and exploitation of natural resources in that area. The two are incompatible.

This Commission is inclined to the view that Congolese, in effective control of territory, who set up or adopt a regulatory framework, commit no breach of sovereignty, and therefore that regulatory framework must be obeyed by traders and businessmen who operate in that territory. It is not for those traders or businessmen to look into application of taxes, merely to comply with the regulations

### **10.3 Use And Abuse Of Power**

The UN Panel gives five examples of abuse of power :

#### **.3 OF 10/.1 FORCED MONOPOLY IN TRADING**

Forced monopoly should not be confused with price fixing in the ordinary course of trade. For example in the coffee trade, quite often coffee buyers will provide sacks, either free or at a price, for the growers: this is an advantage to both parties: clean coffee for the trader, and facilitation of packing for the growers. However, coffee prices will be fixed by the buyers, and the fewer buyers there are, the more like a monopoly this will look : but such a practice is in the ordinary course of business. (see Panel Report paragraph 65)

Similar practices exist in the tobacco industry, where seed money, fertilizers, chemicals and hand tools are provided, recovered from the farmer through tobacco prices.

But where the circumstances amount to a use of military force as suggested under paragraph .3 of 10/.4 below, this should be considered as illegal.

### .3 OF 10/2 UNILATERAL FIXING OF PRICES OF PRODUCTS BY THE BUYER

In view of the practices in the coffee and tobacco trade, this Commission cannot agree that this involves illegality.

### .3 OF 10/3 CONFISCATION AND LOOTING OF PRODUCTS FROM FARMERS

These would obviously be rightly considered as illegal

### .3 OF 10/4 USE OF MILITARY FORCES IN VARIOUS ZONES TO PROTECT SOME INTEREST OR TO CREATE A SITUATION OF MONOPOLY.

Once again one has to distinguish circumstances. There is a great deal of difference between provision of security in the general sense, which enables a

businessman to trade advantageously, and specific protection of interests for the benefit of a particular party. To satisfy this commission's conditions of work, this Commission would need evidence of specific instances.

### .3 OF 10/.5 VIOLATION OF INTERNATIONAL LAW INCLUDING "SOFT" LAW.

In paragraph 15 (d), the Panel considered that business activities carried out in violation of international law were illegal, and included "soft" law in that definition.

This Commission has received a great deal of evidence relating to import, export and transit of timber. Certification of timber is an example of "soft" law, and the only one referred to in the Panel Report.

On the basis of evidence this Commission has received there is no doubt whatever that, although the international community quite rightly promotes proper forest management for the protection of the environment, and uses certification as a powerful tool to that end, nevertheless in commercial terms the difference between certification and non certification amounts to a difference in price only, and as a matter of fact, companies involved in the timber trade will use certification where they can, but will nevertheless sell uncertified timber where certification is not possible or too expensive.

It is difficult to describe an act as illegal unless there is some penalty attached to the performing of the act, which is not the case for certification of timber, and this Commission doubts that the Panel of experts was correct in including "soft" law in their definition of illegality.

This Commission does not think that the definition of illegality is quite as



simple as the Panel of Experts has set out in the report.

On the basis of the response of the Republic of Uganda, and that of His Excellency President Museveni, this Commission takes the view that there are many considerations which the Panel did not include, some of which are implicitly recognised in documents such as the Lusaka Agreement to which the Panel does not refer throughout the Report. This omission was unfortunate, because there is no doubt that the Lusaka Agreement recognizes and legitimizes the various rebel groups, and their administrations. The agreement itself is witnessed by major nations and representatives of the UN and recognized and being implemented by the UNSC.

As this Commission understands the position of the Government of the Republic of Uganda, and the case put forward by His Excellency the President in their respective responses, there is a level of trade which must be expected to continue whatever the political situation, and for which provision must be made during times of trouble. In respect of a country like the Democratic Republic of Congo, which on the Eastern side is in practice landlocked due to the difficulty of communication with Kinshasa, and indeed Uganda itself, cross-border trade is a fact of life, and in some cases is the support of life itself.

Control of that level of trade must be allowed to be exercised by whoever is in de facto control of the area in question. Coffee, for instance, grows, is picked, dried, packed and stored: but it does not wait for politicians to settle their differences. A market must be found for it before it goes off. If that market is across the border of another country, then that is where it will be sold, whatever the rules of an administration thousands of kilometres away, which has no de facto control over the area where the coffee was grown.

At a higher level of trade, such as mineral resources, wherever there are such resources, there will be miners to mine them. Those miners have to make a living, and in order to do that they have to sell what they mine. There have been earlier precedents of rebels while in de facto control, granting concessions to companies based in other countries, before being successful and later forming the government. The UN Panel Report cites concessions granted to Zimbabwean companies during Laurent Kabila's rebellion against Mobutu.

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## **11 EXPLOITATION**

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This Commission has also read the Panel's definition of exploitation in paragraph 16 of the Panel Report. Once again, this Commission hesitates to enter upon a full definition of the word for the same reason as above. However the word itself does not bear the overtones of illegality with which it has been used in the present context. It is perfectly normal to exploit a forest, or a Gold Mine or a diamond mine in the ordinary course of trade. Many national or international companies enter onto the sovereign territory of another country than their own in search of opportunities for exploitation of natural resources. It is the question of illegality which should bring such actions to the attention of the international community.

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## **12 BACKGROUND AND PRE-EXISTING STRUCTURES**

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In Paragraph 23 of the Panel of Experts Report, the Panel recites the outbreak of war between Zairean forces and the AFDL, a rebel movement led by the late Laurent Kabila. The Panel recites that the AFDL was supported by the Angolan, Rwandan and Ugandan forces.

The Panel leaves the impression that Ugandan forces marched with the AFDL, certainly in the Eastern Zaire. The Panel develops that point in the following way in paragraph 23:

*"This AFDL-led conquest of then eastern Zaire fundamentally altered the composition of the regional stakeholders and the distribution of natural resources. Previously, the distribution norm was (via legal and illegal channels) through locally based Congolese, mostly civilian-managed, business operations. However, these traditional modes were quickly overtaken by new power structures. Along with new players came new rules for exploiting natural resources. Foreign troops and their "friends" openly embraced business in "liberated territories", encouraged indirectly by the AFDL leader, the late President Kabila."*

And in paragraph 26 and onward, under the heading "Pre-existing structures that facilitated illegal exploitation":

*"26. Illegal exploitation by foreigners aided by the Congolese began with the first "war of liberation" in 1996. The AFDL rebels, backed by Angolan, Rwandan and Ugandan soldiers conquered eastern and south-eastern Zaire. As they were advancing, the n AFDL leader, the late Laurent-Désiré Kabila, signed contracts with a number of foreign companies. Numerous accounts and documents suggest that by 1997 a first wave of "new businessmen" speaking only English, Kinyarwanda and Kiswahili had commenced operations in the eastern Democratic Republic of the Congo. Theft of livestock, coffee beans and other resources began to be reported with frequency. By the time the August 1998 war broke out, Rwandans and Ugandans (top officers and their associates) had a strong sense of the potential of the natural resources and their locations in the eastern the Democratic Republic of the Congo. Some historians have argued that Ugandan forces were instrumental in the conquest of areas such as Watsa, Bunia, Beni and Butembo during the first war."*

27. Numerous accounts in Kampala suggest that the decision to enter the conflict in August 1998 was defended by some top military officials who had served in eastern Zaire during the first war and who had had a taste of the business potential of the region. Some key witnesses, who served with the Rally for Congolese Democracy rebel faction in early months, spoke about the eagerness of Ugandan forces to move in and occupy areas where gold and diamond mines were located. Other sources informed the Panel that, late in September 1998, they were already engaged in discussions with General Salim Saleh on the creation of a company that would supply the eastern Democratic Republic of the Congo with merchandise, and on the import of natural resources. The project never materialized in this form, but the sources reportedly also discussed this and other business venture possibilities with the President of Uganda, Yoweri Museveni.

There are strong indications that, if security and political reasons were the professed roots of the political leaders' motivation to move into the eastern Democratic Republic of the Congo, some top army officials clearly had a hidden agenda: economic and financial objectives. A few months before the 1998 war broke out, General Salim Saleh and the elder son of President Museveni reportedly visited the eastern Democratic Republic of the Congo. One month after the beginning of the conflict, General James Kazini was already involved in commercial activities. According to very reliable sources, he knew the most profitable sectors and immediately organized the local commanders to serve their economic and financial objectives. "

As this Commission understands the Panel's argument, leaving aside for the moment alleged personal involvements, and endeavouring to separate alleged Ugandan and Rwandan involvement:, which unfortunately the Panel failed to do, the Panel say:

1. Ugandan top Officers gained experience of business potential in the Congo because they supported the ADFL in Eastern Congo during Laurent Kabila's rebellion against President Mobutu, while conquering East and South East Zaire
2. Top Military officials in the UPDF who had served in Eastern

Zaire in 1996 argued for Uganda's involvement in 1998 for their own selfish ends

3. The Panel acknowledges that political leaders might have been motivated to move into the Congo for security and political reasons: however top army leaders had a hidden agenda : economic and financial motives

Reference to the transcript of evidence will quite clearly show that, so far as Uganda was concerned, while the AFDL, together at least with the Rwandan army, if not the Angolan army, swept across the country, and finally attacked and took Kinshasa, the UPDF was concerned with dealing with incursions into Uganda at Uganda's northwestern border with the Sudan and Zaire. The UPDF therefore went into Zaire at its North Eastern-most point, and pursued West Bank Nile Front rebels successfully. Thereafter, the UPDF was withdrawn from Zaire. This Commission was told that this was a short campaign and that the UPDF moved quickly.

There is some evidence that Uganda provided extremely limited assistance to the Rwandans, by detaching a pilot to fly Rwandan soldiers on quick response in a plane chartered by Rwanda. The pilot has told this Commission that he never flew Ugandan troops. Uganda's ambassador to Kinshasa told this Commission that, although he was away at the time of the fall of Kinshasa to Laurent Kabila, he returned only ten days later to witness the swearing in of Laurent Kabila, and he saw no sign of Ugandan troops.

All of this evidence is supported by the evidence of ministers and permanent secretaries responsible at the time, and this Commission, in default of representation for the opposing view, has been forced to descend into the

arena and put the points raised in the Panel Report strongly to the witnesses who have come before it.

On point 1 above, on the evidence which this Commission has heard, this Commission finds as a fact that there is no indication whatever that in 1998 "Ugandans (top officers and their associates) had a strong sense of the potential of the natural resources and their locations in Eastern the Democratic Republic of the Congo" due to their earlier experiences, because the earlier experiences were in North Eastern Zaire, rather than Eastern Zaire.

On point 2 above, it is beyond contest that in April 1998, Uganda's Ambassador to Kinshasa had briefed His Excellency the President on the situation in the Congo after several visits to the border area and discussions with traditional chiefs, opinion leaders and local authorities in Beni and Irumu: there were also intelligence reports from UPDF Intelligence. The situation was that ADF, NALU, EX-FAZ, EX-FAR and WNBF were operating along the common border. Vehicles stolen from Uganda were ending up in the Congo. ADF, EX-FAZ and EX-FAR were getting support through Sudan. On this side of his report, the Ambassador recommended a military solution in addition to a political one : as a joint operation between Uganda and the Democratic Republic of Congo to get rid of the armed groups.

There was a Ministerial Meeting on Security and Refugee Matters between Uganda and the Democratic Republic of Congo on 7.4.98 in Kampala. Uganda recommended Joint Command for the UPDF and the ADFL, with increased deployment of ADFL on the border, and other cooperative measures: the Democratic Republic of Congo preferred joint operations rather than joint command. However, there was a clear understanding of the problems of

security, and acknowledgement of the problem. The language of the discussion clearly indicates that the Democratic Republic of Congo expected any joint command to include "foreigners into the affairs of a foreign state"

A joint communiqué was prepared on 26<sup>th</sup> April after a meeting between Ministers, in which it was stated that there was agreement on ways and means to eradicate insecurity, although no details were spelt out.

Thereafter at a date late in April, a Protocol was drawn up at Kinshasa in which the two parties (Uganda and the Democratic Republic of Congo ) recognised the existence of enemy groups which operate on either side of the common border. Consequently the two armies agreed to "co-operate in order to insure (sic) security and peace along the common border".

It was at about this time probably, on the evidence this Commission has heard, that shortly before the Protocol, the UPDF went into the Democratic Republic of Congo, with a force of three battalions in three places, Bukira, Buswaga and Lhume. When they did that they met no resistance from the ADFL: and presumably, whatever the political situation, it follows that the two armies were in agreement to this action: which the politicians appear to have attempted (unsuccessfully in this Commission's view) to legalise in meetings and by the drafting of the Protocol which this Commission has referred to above. The circumstances shown by the evidence amount to a genuine invitation to Uganda to take part in security operations over the border.

Now this does not sound to this Commission like a collection of gung-ho top military commanders wanting to dash off into the Democratic Republic of Congo to make money, and persuading even their commander-in chief, whose decision it finally must have been, to agree with them, and commit Uganda to

the danger and expense of occupation of another country. There were sound reasons for the concerns of both countries, and the action Uganda took was as a result of discussions and agreement.

There was a problem of security, to which the Panel does not refer: there clearly were discussions and agreements of the most open kind: all these documents were available to the Panel. This Commission thinks that, taken together with this Commission's finding on Point 1, it cannot be said either that the Government of Uganda acted for any other motive than for security and political reasons: and this finding also deals with Point 3 above.

As to Point 4 above, these allegations should not be dealt with here, as this Commission is trying to consider overall policy and the actions of Government. However, in view of what has been said above, this Commission doubts that this is a correct conclusion.

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### **13 PRE-EXISTING STRUCTURES THAT FACILITATED EXPLOITATION**

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#### **13.1 Transportation Networks**

In the UN Panel report at Paragraph 31, the comment is made that aircraft fly from the military airport transporting arms, military equipment, soldiers and, for some companies, merchandise. On the return flights, they will carry coffee, gold, diamond traders and business representatives, and in some cases soldiers.

A great deal of this Commission's time has been taken up trying to investigate what was going on at Entebbe Airport. Restricting this Commission's conclusions to flights in and out of the military airport, this Commission has discovered that at various different times, both military planes and private



commercial planes were operating from the airport. On the basis of CAA data it is quite clear that the private flights outnumbered the military flights by a large number.

The Ministry of Defence at one time was operating its own plane, at another chartering aircraft. There are some limited examples which appear from the manifests this Commission has been able to collect that military flights were occasionally assisting private businessmen, and occasionally private charters were assisting the Ministry of Defence . But generally these flights were operating separately.

The justification for private flights operating from a military airport was that they were flying to a war zone, and therefore needed to be under military control: and further, the policy of He the President was to assist as a humanitarian act trade with the Democratic Republic of Congo to be facilitated.

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#### **14 ALLEGATIONS AGAINST THE GOVERNMENT OF UGANDA**

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In Paragraph 31 of the Report, that the Government of Uganda permitted these flights to facilitate the exploitation of natural resources of Congo.

The problem here is a matter of perception. What was happening was two entirely separate operations, one private and the other military. It would have been easy for an observer to assume that all operations were military, because the planes used do not carry any special markings, for instance camouflage, and the Ministry of Defence planes were not armed.

Having made that incorrect assumption, that all operations were military, the observer would wrongly conclude that military officials were carrying out enormous amounts of trade at the military airport. So far as this Commission can tell, that was not the case, although the investigations are not yet complete. By far the largest number of flights were private, carrying merchandise to and from the Congo. This Commission actually saw an Antonov Aircraft carrying a cargo of 19 tons of Cocoa for Unilever land during the visit to the airport. It was using the military airport, and had dropped passengers from the Democratic Republic of Congo at the International Airport for Immigration and Customs formalities. It was met by Customs officials when it taxied over to the military installation.

This Commission has to say, however, that it is not convinced that military planes were not carrying merchandise for senior officers from the Congo. In the examination of the officers involved, this Commission was faced with a conspiracy of silence. The only cargo this Commission could trace as having been flown back from the Democratic Republic of Congo in a military airplane was on two occasions loads of coffee owned by Jean Pierre Bemba.

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## 15 ALLEGATIONS AGAINST GEN SALIM SALEH

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Gen Salim Saleh was criticised for visiting the Eastern the Democratic Republic of Congo before the 1998 war broke out. Gen Saleh told this Commission on oath that he had never visited the Eastern the Democratic Republic of Congo, but that he had gone to Kinshasa at the invitation of Laurent Kabila, and there discussed trade possibilities, and in particular air services. This was at a time when there was every reason to count on the co-operation of Laurent Kabila, and this Commission sees no problem in such matters as trade being

discussed at that time.

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## **16 ALLEGATIONS AGAINST KAINERUGABA MUHOOZI**

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This is the only time Lt Muhoozi's name is mentioned in the whole report. Before this Commission Lt Muhoozi said that he went, not to Eastern the Democratic Republic of Congo but to Kinshasa on two occasions. The first was in 1997, during the regime of Mobutu, when he went to look for a market for meat products on behalf of his family ranch, which is well known for the keeping of cattle and the need for a market. The second occasion was in early 1998 when he had started working for Caleb International, Salim Saleh's firm, for discussions with some potential partners in the Democratic Republic of Congo with the possibility of developing some mining interest there. This was during the regime of Laurent Kabila, when friendly relations were thought to exist between the Kinshasa Government and Uganda.

This Commission is fully satisfied that these were genuine visits during peacetime to promote international trade, and this Commission cannot understand why they appear as criticisms in the UN Panel Report.

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## **17 MASS SCALE LOOTING**

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The UN Panel Report states as a general proposition that between September 1998 and August 1999, occupied zones of the Democratic Republic of Congo were drained of existing stockpiles.

Ugandan soldiers under Gen Kazini were accused of having, in late August 1998 absconded with stockpiles of Timber belonging to Amex Bois. The Report does not state whether Gen Kazini was present at the time. This

Commission has been able to investigate this allegation to some extent. This Commission found on the evidence that only a short time after this was supposed to have happened, Amex Bois was transitting quantities of timber through Uganda: and wonders, if Amex Bois was drained of stockpiles of timber, how they were able to replenish their stocks so quickly. This creates a serious doubt in this Commission's minds as to the truth of this allegation. One suggestion given to this Commission on oath is that some UPDF soldiers had used a little of the timber for firewood, falling far short of draining the stocks.

Gen Kazini was also alleged to have ordered the confiscation of stockpiles of timber of La Forestiere in December of that year. The Panel rely on an allegation that Gen Kazini was seen in the area at the time of the alleged incident. In fact when Gen Kazini left La Forestiere, he obtained a withdrawal document signed by the relevant authorities which stated that La Forestiere had no such complaint.

In January 1999, Jean Pierre Bemba with Gen Kazini was alleged to have organized a large operation for the confiscation of coffee beans. The recital of information upon which the Panel relied deals with acts of Jean Pierre Bemba, but does not implicate Gen Kazini.

It is further alleged that :-

*"Cars and other items were apparently also taken from the country, as the statistics on Ugandan registered cars reflected an increase of about one quarter in 1999".*

The assumption that the increase in registered cars in Uganda at the relevant period represented cars stolen from the Democratic Republic of Congo

was obviously wrong as it ignored completely other probable sources from which the increase could have come.

Besides, the information this Commission has received from Interpol Data Base shows that the number of stolen vehicles that were recovered by Uganda and handed over to the Democratic Republic of Congo between 1998 and 2001 was only three.

If the allegation were true, there would have been a significant number of left hand drive cars in the streets of Kampala. This Commission has evidence, and have observed ourselves, that this is not the case.

In Paragraph 42 it is alleged that in Bunia Congolese civilians were injured or murdered for resisting the attempted seizure of property by "RCD rebels and foreign soldiers". It is not clear whether this is an allegation against the UPDF, but the allegation is not sufficiently detailed to investigate, or to rely upon.

In Paragraph 43 and 44, the highest army commanders of Uganda are alleged to have encouraged, organized and coordinated looting, and in particular Gen Kazini is said to have appointed loyal commanders and reliable civilian Congolese to secure his network in areas rich in mineral resources. This Commission shall revert to this in the final report. The appointment of Adele Lotsove was quoted as an example, and is further dealt with in Paragraph 71. This Commission has considered the matter at paragraph 18 below of this report.

In Paragraph 45 it is alleged that key officials in the Government of Uganda were aware of the situation on the ground: and further, in the case of gold, that the increased production would have alerted any government.

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## 18 ALLEGATIONS AGAINST UGANDA

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In relation to the allegations in Paragraphs 43,44, 68 and 71 of the Panel Report relating to the appointment of Adele Lotsove, in paragraph 71 of the UN Panel Report it was stated that the illegal exploitation of natural resources was facilitated by the administrative structures established by Uganda and Rwanda. An example which the Panel quoted was the appointment as Governor of Ituri Province of Adele Lotsove on the 18th June 1999. This Commission has seen the letter of appointment among the exhibits: the only difference is that the letter is the appointment of a Provisional Governor. This Commission is however impressed by the terms of the letter of appointment, which exhorts the new Provisional Governor to act in a proper fashion, and the way in which she should approach her work is particularised. This Commission has been told that Brigadier Kazini was reprimanded for this act. In his defence he pointed out that, due to a split in the RCD factions, no one could agree on the necessary appointment of an administrative head for Ituri province, and he therefore thought it right to act to fill the vacuum. In fact, not only did he appoint a Provisional Governor, he actually created a new Province in defiance of organized opposition, leaving yet more disgruntled Congolese, and in defiance of the express command of his Commander in Chief. This Commission does not think that a reprimand was appropriate for this, especially when it was not entered on the officer's record as it was supposed to be: this Commission had asked for a copy of this, but have not been availed it. This Commission also thinks that warning flags were flying as to the capability of this officer to fill his very sensitive post.

As to the allegation that Madame Lotsove was instrumental in the collection and transfer of funds from her assigned administrative region to the Uganda authorities in 1999, this Commission has been interested in the mechanics of such a transfer of funds.

It would have helped this Commission in this Commission's work had the Panel named the authorities concerned. If local UPDF authorities were concerned, this Commission does not see how it would now be possible to check any payments made. If government authorities in Uganda were concerned, this Commission does not see how any payments made could have reached Treasury without being recorded. In those circumstances this Commission is at a loss to work out what information gathered by the Panel could clearly indicate that such payments were made, and this Commission therefore doubts this conclusion.

It has proved impossible to trace or investigate the allegation in Paragraph 45, because the key officials and the source of information upon which the Panel relies is not given. In evidence on oath before this Commission, this allegation has been denied in toto.

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## **19 SYSTEMATIC AND SYSTEMIC EXPLOITATION**

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In Paragraphs 46-54 of the Panel Report, the Panel allege that a company (Dara Forêt ) used illicit business practices and complicity with occupying forces and the Government (presumably the Government of Uganda ) as well as its international connections to exploit the natural resources of the Congo. The Panel conducted a case study which is alleged to support this proposition.

The allegations of impropriety concern Dara Forêt, Dara Great Lakes Industries and associated companies, and the Uganda Government.

#### **19.1 TIMBER : DARA FOREST AND DARA GREAT LAKES INTERNATIONAL.**

This Commission reproduces here the example according to the Panel Report. Evidence brought, and severely tested by this Commission, is interpolated together with this Commission's comments.

*DARA-Forest case study. A Ugandan-Thai forest company called DARA-Forest moved to the Ituri area late in 1998.*

Dara Forêt is a company registered in the Democratic Republic of Congo . Whilst it has Thai (5%) and Congolese (40%) Directors, it has no Ugandan Directors shareholders, or any other Ugandan Interest apart from a Ugandan Company named Royal Star Holdings, whose directors and shareholders (55%) are exclusively Thai Nationals.

*In March 1998, DARA-Forest applied for a licence to carry out logging activities in the Democratic Republic of the Congo, but was denied a forest concession by the Kinshasa authorities.*

Mr. John Supit Kotiran, the managing Director of Dara Forêt, denied before this Commission that he had ever made any application to Kinshasa authorities. This Commission has no evidence of any such application.



*In 1999, the company began to buy production by hiring individuals to harvest timber and then sell it to the company. Initially, these individuals were Congolese operating in partnership with Ugandans.*

The evidence of Mr. Kotiran was that the company was buying individual trees from Congolese, with the assistance of Local Chiefs in the Congo. He was then shipping them in transit through Uganda (with the exception of a trial run of two containers which he imported to Uganda and in respect of which he has produced the relevant customs documents) to foreign destinations.

*The same year, DARA engaged in industrial production with the construction of a sawmill in Mangina. By 2000, it had obtained its own concession from RCD-ML.*

So far as this Commission can ascertain, this is correct.

*Analysis of satellite images over a period of time reveals the extent to which deforestation occurred in Orientale Province between 1998 and 2000. The most harvested forests in the areas were around Djugu, Mambassa, Beni, Komanda, Luna, Mont Moyo and Aboro. This logging activity was carried out without consideration of any of the minimum acceptable rules of timber harvesting for sustainable forest management or even sustainable logging.*

*Timber harvested in this region, which is occupied by the Ugandan army and RCD-ML, has exclusively transited or remained in Uganda. Our own investigation in Kampala has shown that mahogany originating in the Democratic Republic of the Congo is largely available in Kampala, at a lower price than Ugandan mahogany. This difference in price is simply due to the lower cost of acquisition of timber. Timber harvested in the Democratic Republic of the Congo by Uganda pays very little tax or none at all.*

There is no evidence before this Commission that Uganda as a country or as a Government harvests timber in the Democratic Republic of Congo . This Commission doubts that the allegation in the Report is correct.

*In addition, customs fees are generally not paid when soldiers escort those trucks or when orders are received from some local commanders or General Kazini. Timber from the Democratic Republic of the Congo is then exported to Kenya and Uganda, and to other continents. The Panel gathered from the Kenyan port authorities that vast quantities of timber are exported to Asia, Europe and North America.*

*The Panel also discovered during its investigation that individual Ugandan loggers violated forestry legislation, recognized by their ally RCD-ML, by logging (extracting) the timber directly. According to the Congolese legislation on the permis de coupe, only individual Congolese nationals are allowed to harvest timber and only in small quantities. Foreigners must apply for the larger concessions. Initially, Ugandans operated in partnership with a Congolese permit holder. Soon, the Ugandans began to pay the Congolese to sub-lease the permit and, subsequently, to obtain the licence in direct violation of the law.*

In so far as the above relates to Dara Forêt, Mr. Kotiram has told this Commission that he has not yet cut a single tree within his concession. He has given good and sufficient reason for that, and this Commission will recite it in due course.

During a visit to Mpondwe/Kasindi and also at Arua/Ariwari, this Commission spoke to the Congolese Officers there, and they denied strongly that it would be possible for UPDF to influence the passage of merchandise, or for their commanders to give orders in that regard. It should also be pointed out that even if what is alleged was happening, there would be no customs fees payable on exit from the Congo, so the only loser would be Uganda. It is true that large quantities of timber transit Uganda for export to Europe and

America., in the ordinary course of trade.

In so far as individual Ugandan loggers are concerned, this Commission has no way of investigating this non-specific matter: This Commission have had evidence that there are Ugandans who go over to the Congo and buy trees by negotiating with individual Congolese permit holders or Chiefs, and import the timber once cut to Uganda, which helps to account for the presence of Congolese hardwood in the Uganda market. This Commission was informed that the low price of Congolese hardwood is due to the fact that Congolese timber is harvested and cut with chain saws, while chain saws are not permitted in Uganda. The efficiency of chain saws accounts for the increase in cross border trade. This cross border trade has been carried on throughout living memory.

*Timber extraction in the Democratic Republic of the Congo and its export have been characterized by unlawfulness and illegality. Besides extracting timber without authorization in a sovereign country and in violation of the local legislation, DARA-Forest consistently exported its timber without any certification procedure.*

In this paragraph the Panel raise the whole question of de facto control of administration which this Commission has dealt with under the heading of ["Illegality" at 10 above ].

*It tried to approach some certification bodies licensed by the Forest Stewardship Council. These bodies requested documentation and elements that the company failed to provide.*

Mr. Kotiram has told this Commission that he wants to gain certification for his concession in the Congo, for reasons which are to do with timber for his

processing factory at Namanve in Kampala which is yet to be built. It is because certification has not yet been achieved that he has not cut any trees on his concession

*Yet DARA-Forest exported timber in violation of a normal procedure generally required and accepted by the international forest community and gradually considered to be international "soft law". Companies importing this uncertified timber from DARA-Forest were essentially in major industrialized countries, including Belgium, China, Denmark, Japan, Kenya, Switzerland and the United States of America.*

If companies so widely spread around the developed world are prepared to trade in uncertified timber, this paragraph lends weight to this Commission's conclusion under the title ["Illegality" at 10 above] that commercial practice is to trade in timber whether certified or not, but at different prices. It again raises the question of "soft law" which this Commission has considered in Paragraph 3 of 10/5 above. Mr. Kotiram gave this Commission some interesting information: he said that there is no other company certified in Africa except one company in Gabon. This Commission does not know if that is true or not, but has no reason to doubt it. If so, then in Africa this cannot be said to be a "procedure generally required".

*The Panel also realized that DARA Great Lakes Industries (DGLI), of which DARA-Forest is a subsidiary, along with a sister company in Uganda, Nyota Wood Industries, is in collusion with the Ministry of Water, Land and Forests of Uganda in establishing a scheme to facilitate the certification of timber coming from the Democratic Republic of the Congo.*

There are a number of matters here. First, DGLI is not a subsidiary of Dara Forêt. They are both subsidiaries of the Dara Group. Mr. Kotiram is managing

director of both, and holds the controlling interest in both companies, either personally, or by his interest in yet another company, Royal Star Holdings, which while registered in Uganda, is a wholly Thai owned Company. Since the shareholding in Nyota Wood is much the same, presumably it falls under the same umbrella. This is the evidence of Mr. Kotiram, and probably in practice it is true: but probably also these are not in law subsidiaries of Dara Group, (a company registered in the Virgin Islands) since that company does not appear to hold any interest in any of the companies.

Then it can be shown that there was no collusion between Nyota Wood and the Ministry of Water, Land and Forests of Uganda, because one application which was made to the Ministry, which, if the Panel is right, would have been essential to the alleged conspiracy, was refused by the Ministry.

*In May 2000, DGLI signed a contract for forest stewardship certification with SmartWood and the Rogue Institute for Ecology and Economy in Oregon, United States of America.*

This is not true. Smartwood is the certifying Agency: the Rogue Institute for Ecology and Economy was an agency whom Mr. Kotiram contracted to advise him on SmartWood's requirements for certification. Thereafter Dara contacted another Company, UNIQUE, Wegerhäuser & Partner, who later gave a presentation to the New UN Panel. UNIQUE were advising Dara on the way to go about certification of their concessions in Democratic Republic of Congo and in Uganda.

*On 21 March 2000, the Director of the DARA group, Prossy Balaba, sent a letter to the Commissioner asking him to allow an official of SmartWood to visit certain forests, such as Budongo and Bugoma; he was due to visit the region in mid-April.*

Prossy Balaba was not “the director of the Dara Group”. She was a director and minority shareholder of the Ugandan Company referred to above as DGLI. In that regard it will be noted that Mr. Kotiram set up his companies with himself in control, supported by the participation of local directors and shareholders. This is quite normal, and indeed required in some countries. In any event, for a Thai National whose languages are not that good, it is certainly advisable.

It is true that the request above was made : this Commission has a copy of the letter.

*The visit was meant to deceive the official by presenting those forests as the ones for which certification was sought and to convince SmartWood to work for the certification of their timber.*

The evidence of Mr. Kotiram, and of the Forestry Commissioner is quite clear and consistent. DGLI had applied and obtained an investment licence for a factory to process finished and semi-finished timber in Kampala. The specifications for the factory were that it would require an enormous amount of timber, far more than it turned out that Uganda could supply once investigations were made. It was therefore necessary for DGLI to turn to Dara Forêt in the Democratic Republic of Congo for additional supplies. But Mr. Kotiram was advised that, in addition to certification of the timber from Uganda, he would have to show that timber from the Congo was also

certified if it was to be processed in the factory, and sold as certified produce. This he was told would be a requirement of SmartWood, who would be interested not only in the forests, but the whole operation. DGLI therefore needed to start with certification in Uganda at least.

*Indeed, when the visit took place, from 14 to 16 April, the DARA group had not even applied for the concession of the Budongo forest (Uganda). It was only on 5 July 2000 that John Kotiram of the DARA group wrote to the Commissioner to request the concession on the Budongo forest.*

The visit never took place, because the concessions in Uganda had not been granted by the suggested date. Prossy Balaba and Mr. Kotiram told this Commission that to write this letter so early was a genuine mistake brought on in the belief, based on discussions with the Forestry Commissioner that the concessions were to be granted more quickly than they in fact were.

*The idea behind this is to use Budongo forest as a model of forests from which timber is harvested and which comply with the international requirements for certification, in order to certify timber coming from the Democratic Republic of the Congo for which basic elements of certification do not exist. Future plans for beating the international system are already in place. According to internal documents of DGLI, DARA-Forest will import timber from the Democratic Republic of the Congo into Uganda, which will be processed for different types of products in the new plant in Namanve for the sawmilling of hardwood, both imported from the Democratic Republic of the Congo and harvested in Uganda. DGLI partners in this new scheme include DARA Europe GmbH Germany, Shanton President Wood Supply Co. Ltd China, President Wood Supply Co. Ltd Thailand, DARA Tropical Hardwood, Portland, Oregon, United States of America.*

The Panel's informant no doubt did not have, as this Commission has, DGLI's application to the District Forestry Officers concerned for concessions in three

Ugandan Forests, namely Budongo, Bugoma and Mabira dated 11<sup>th</sup> October 1999, and therefore have seen conspiracies where no conspiracies exist. Mr. Kotiram has explained to this Commission what he planned to do: there is no way that the conspiracy alleged would have fooled experts from SmartWood, as the capacity of the factory would have been obvious, as would the inability of the Ugandan Forests to supply it. The first question would have been where the balance was to come from. Mr. Kotiram accepts the list of overseas companies with whom his companies trade.

In a letter of 5<sup>th</sup> July 2000, what is alleged to have been recorded only in internal documents is in fact publicly acknowledged.

*The distribution of sales of the company is thought to remain the same, about 30 per cent to the Far East, China, Japan and Singapore, 40 per cent to Europe and 25 per cent to North America. DARA Great Lakes Industries shareholding and management is between Thai and Ugandan nationals, among them John Supit Kotiran and Pranee Chanyuttasart of Thailand and Prossy Balaba of Uganda.*

These figures are accepted by Mr. Kotiram and Prossy Balaba. Pranee Chanyuttasart is his wife, who is now unfortunately and lately deceased. Mr. Kotiram retains firm control of DGLI, and is its managing Director

*Some unconfirmed information indicates that members of President Museveni's family are shareholders of DGLI, although more investigation is needed.*

This Commission agrees that a great deal more investigation is needed before such an allegation appears in a report to a United Nations body. Our own investigations with the Companies Registry reveals nothing whatever of that



nature, and the allegation is denied by Mr. Kotiram and Prossy Balaba, and for himself by His Excellency the President.

*The DARA group also established another scheme to carry out fraudulent activities in the Democratic Republic of the Congo. The objects of DGLI range from logging to financial and industrial activities. Because of the confusion created between DARA-Forest, which received a concession from RCD, and DGLI, DARA-Forest has also been dealing in diamonds, gold and coltan. The Panel has received reports from the custom posts of Mpondwe, Kasindi and Bundibujjo of the export from the Democratic Republic of the Congo of minerals such as cassiterite and coltan in trucks. During the Panel's visit to Bunia it was reported that other products were loaded in trucks which are supposed to carry timber only; it is likely that coltan and cassiterite were these products. Moreover, the fraud extends to the forging of documents and declarations "originating" in Kinshasa.*

The confusion between Dara Forêt and DGLI, on the basis of the evidence, exists only in the mind of the Panel. These appear to this Commission to be two separate Companies, registered in two separate countries. Mr. Kotiram agrees that Dara Forêt has been exporting coltan for which he has a licence, which he has produced to this Commission. It does not appear to be forged. The mineral has been sent in transit through Uganda. Mr. Kotiram has produced before this Commission Customs documents which have been verified for this Commission by URA.

The Panel is not specific as to the forgery alleged: but this Commission suspect that the problem may arise from the use by rebels of original forms left by the Kinshasa Government before the rebellion. In any event, this Commission would be slow to accuse parties of criminal offences such as fraud and forgery without being able to set out specific details with particulars

*The logging rate was alarming around Butembo, Beni, Boga and Mambassa. The RCD-ML administration acknowledged its lack of control over the rate of extraction, the collection of taxes on logging activities and the customs fees at the exit points. On the basis of eyewitness accounts, satellite images, key actors' acknowledgements and the Panel's own investigation, there is sufficient evidence to prove that timber extraction is directly related to the Ugandan presence in Orientale Province. This has reached alarming proportions and Ugandans (civilians, soldiers and companies) are extensively involved in these activities. In May 2000, RCD-ML attributed a concession of 100, 000 hectares to DARA-Forest. Since September 1998, overall DARA-Forest has been exporting approximately 48, 000 m<sup>3</sup> of timber per year.*

UPDF presence in Orientale Province provided the security and access to overseas markets denied to the Congolese for so long. One would therefore expect to see increased activity in the area, not only by Dara Forêt but by other companies as well.

So far as Dara Forêt is concerned, while Mr. Kotiram agrees the figures quoted, he tells this Commission that in his concession he has not cut even a single tree, and he has given this Commission good and sufficient reason for this. The source of his timber has been from individuals, in accordance with a practice outlined to this Commission by another witness.

This Commission is extremely concerned at the approach of the Panel to this subject. Nowhere in the whole of this passage is the reliability of sources quoted, but, considering the emphasis put on these alleged events, the Panel must have come to the conclusion that it was safe to rely on its undisclosed and apparently un-evaluated sources. Yet the perception of those sources, and that of the Panel, was quite clearly wrong. A short interview with Mr. Kotiram would have established the truth, and he was never approached according to his evidence.

From the evidence, this Commission has come to the conclusion that the investigation by the Panel of Dara Forêt was fundamentally flawed. What is most unfortunate is that the publication of the report has led to the arrest of 24 Thais working in the Democratic Republic of Congo for Dara Forêt by the Mai-Mai, who publicly attributed the arrest to the UN Panel Report.

### **19.2 Mining Sector**

This Commission is not yet ready to deal with this subject which requires further investigation

### **19.3 Wildlife.**

Paragraph 61 of the Panel Report states that between 1995 and 1999, 30% of elephants were killed in Garamba National Park in areas controlled by Ugandan troops and Sudanese rebels, and that there are similar problems in other parks.

It is also said that RCD-ML temporarily seized about 3 tons of tusks in Isiro. After strong pressure, it is said, from Uganda, the cargo was released and transferred to Kampala.

In Paragraph 62, as an example of soldiers hunting with the consent of their commander, it is alleged that in August 2000, UPDF Col Mugenyi and a crew of his soldiers were discovered with 800 kg of elephant tusks in their car near Garamba Park. The Government of Uganda received detailed notification of this incident.

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## 20 ALLEGATIONS AGAINST THE GOVERNMENT OF UGANDA

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In Paragraph 61, the implication is that RCD-ML seized about 3 tons of tusks from Ugandans who are not named, and that strong pressure was exerted from some unnamed people in Uganda to release these tusks so that they could continue on their journey to an unnamed destination.

With the evidence at hand, it is impossible to investigate this incident, or to attribute it to the State of Uganda. Officers from the Wildlife Authority told this Commission on Oath that they had no information about this alleged incident, and one would have expected them to have been the agency informed.

In Paragraph 62, that the Government of Uganda received detailed notification of the incident, and, by implication, did nothing.

This Commission is again in problems due to the failure of the new Panel to assist. This Commission has no idea who found the Colonel, or where the recovered tusks are. Nor does this Commission know to whom the report to the Government of Uganda was made: an officer from Wildlife Authority appeared before this Commission and told this Commission on oath that he had not received any such report, nor did he know about the recovered tusks. Col Mugenyi (who was not a particularly impressive witness) denied the whole incident on oath, and there was no evidence to the contrary. It is therefore impossible to attribute blame for this alleged incident to the Government of Uganda .

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## 21 ALLEGATIONS AGAINST HIS EXCELLENCY THE PRESIDENT AND HIS FAMILY

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The Panel say :

*Some unconfirmed information indicates that members of President Museveni's family are shareholders of DGLI, although more investigation is needed.*

This Commission agrees that a great deal more investigation is needed before such an allegation appears in a report to a United Nations body. Our own investigations with the Companies Registry reveal nothing whatever of that nature, and the allegation is denied by Mr. Kotiram, Prossy Balaba, Salim Saleh, Jovial Akandawanaho, and, for himself, by His Excellency the President.

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## 22 MONOPOLIES AND PRICE FIXING

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In Paragraph 64 of the Panel Report, Ugandan Troops are alleged to have abused commerce and the trade system by forcing unnamed locally owned and foreign owned businesses to close down with a view of gaining control of local commerce. The Panel say that the result was unprecedented control of the economy of the Eastern and North Eastern Democratic Republic of Congo .

As examples of that, the Panel refer to their field trips to Gbadolite and Bunia in the Democratic Republic of Congo where they found consumer goods which emanated from Uganda.

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### 23 ALLEGATIONS AGAINST UGANDA

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Uganda is only involved in this paragraph's allegations by implication. However, this Commission has visited the border posts at Kasindi and Ariwara in the Congo, and were particularly interested in the markets over on the Congo side. This Commission agrees that those markets are full of goods imported from Kenya and Uganda, and indeed from even further afield. However, this Commission does not agree with the Panel that this is unprecedented control of the economy, nor that it is attributable to the actions of Ugandan Troops, apart from the provision of overall security.

First, it is suggested that local and foreign companies have been forced out of business due to trade from Uganda. These companies have not been named, and this Commission doubts whether sending merchandise from Uganda, which is not available in the Democratic Republic of Congo would have the effect of forcing a company in the Democratic Republic of Congo to close down.

All this Commission's investigations show that on each side of the borderline there are similar or the same tribes. On each side of the border are close family relationships, and cross border trade is only to be expected. The evidence before this Commission shows quite clearly that cross border trade has been there in one form or another since time immemorial. This Commission was told that trade through the Western side of the Democratic Republic of Congo has never been practical due to the poor infrastructure and the comparative level of economic development of Kenya, Uganda, Rwanda and Burundi as against the Democratic Republic of Congo, and that the obvious markets for Eastern Democratic Republic of Congo dwellers has always been

Uganda, Rwanda and Burundi, due to proximity and infrastructure.

Certainly Congolese goods can be found in quantity on the Ugandan side: this Commission has seen that to be true. If the Panel's theory is right, then it is surprising that the Panel did not find significant trade in Kisangani in Ugandan Goods, due to UPDF occupation there.

Further, the cross border markets are not some hole in the corner affair. There are market days arranged by agreement from both sides of the border, and proper arrangements in the market places : the best market this Commission saw was in Ariwari which was fully stocked with an array of goods for local purchase. In Mpondwe and Kasindi there were representatives on both sides for Chamber of Commerce, and proper arrangements for resolution of trade disputes had been put in place. Every sign that this Commission saw was the OFIDA and Ugandan Customs were operative and visibly present.

The other level of trade involves those who fly goods from Entebbe to places in the Democratic Republic of Congo, and back from the Democratic Republic of Congo, and also those (like Dara Forêt) who trade within the Democratic Republic of Congo without using the markets, but using lorries.

It is clear that this was happening, and on a major scale. This Commission has dealt with the legality of such trade at Paragraph .1 of 10/.2 above and has required manifests and import documents from some of the airlines and companies involved, and attached to almost every transaction are papers from the Congo showing payment of the relevant taxes. In the case of Dara Forêt, this Commission has details of every cross border transaction the company engaged in, and in each case, again, there is evidence that taxes were paid.

This Commission wonders therefore whether the statement attributed to RCD-ML about non-payment of taxes is correct. There is the possibility which Ugandan traders have raised before this Commission, that there was an unusual arrangement which rebel factions used to raise money quickly. As this Commission understands it, and there are documents in support, traders used to pay a sum to a particular rebel faction in advance of importing goods, and were given a time within which to complete the import. The race then began to get goods through the border before the expiry of the time limit, which might, for example, be three months. This practice has been confirmed in the affidavits of rebel leaders. Sometimes this worked, but on other occasions differences would arise within the rebel organisations which resulted in the promise to allow import against the prepayment not being honoured.

In Paragraph 68 of the Panel Report, it is suggested that part of the taxes collected by RCD-ML and MLC were sent to Kampala, and individual colonels, who are not named, would claim direct payment from RCD-ML. There is a similar allegation in Paragraph 71 relating to Adele Lotsove. This Commission have dealt with this in Paragraph 18 above

As to the allegation in relation to individual colonels, who are not named, this is incapable of investigation, or of attribution to the State of Uganda.

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## **24 CURRENT STRUCTURES OF ILLEGAL EXPLOITATION**

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### **24.1 Administrative Structures.**

This Commission is not yet ready to deal with this subject, which requires further investigation



## **24.2 MODES OF TRANSPORTATION**

In Paragraph 72 and 73 with 74 of the Panel Report, the Panel criticise the airlines, including the Ministry of Defence, who operated from the Military Airport at Entebbe on the basis that illegal activities, that is transport of products and arms into the Democratic Republic of Congo, and vast quantities of agricultural products and minerals out to Kampala, have benefited from the increase in airline traffic, and in Paragraph 73 that existing airlines are put out of business.

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## **25 ALLEGATIONS AGAINST UGANDA**

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What is criticised by the UN Panel Report here is the conducting of illegal activities. While this Commission would leave open the question of the UPDF being involved in such activities, as under "Illegality" at 10 above, this Commission cannot see that ordinary trade can be said to be an illegal activity, and this strikes at the whole basis of these paragraphs. For this reason, this Commission cannot see any basis for the criticism of Sabena contained in Paragraph 76, particularly as the evidence is that Air France has taken over the market Sabena has voluntarily left.

This amounts to a criticism of the Ministry of Defence who are credited with using aircraft leased by the UPDF for commercial and non-military functions. This Commission has already dealt with the mis-perception which this involves under "Background and Pre-existing structures" at 12 above. There clearly were two operations at the military airport, military and civilian, and the major operation was civilian.

It is odd that the Panel starts Paragraph 72 by saying that prior to the second war the major forms of transport were by road and by smuggling across the lakes: and thereafter in Paragraph 73, allege that the new means of transport by air put existing air operators out of business. The argument does not seem to be consistent. No doubt in any business opportunity, it is open to any company to develop where there is an opportunity to do so. This Commission cannot see how Uganda as a State can be blamed if Congolese Airlines failed to react to the changing circumstances.

It is alleged that the airlines involved are owned or controlled by “relatives and friends of generals colonels and Presidents”. This Commission has on every opportunity to do so, investigated connections with such people. Leaving aside Air Alexander and Take Air for the moment, there is nothing in this allegation. Air Navette which is specifically mentioned is owned by Shiraz Hudani, and the other directors and shareholders are Mrs. Hamida Hudani, and one Abu Mukasa, according to Mr. Hudani’s evidence. Modeste Makabuza who is mentioned in Paragraph 75 as a major shareholder is not and never has been a shareholder of Air Navette.

Mr. Hudani specifically denied having any connection with Salim Saleh or any of his companies. He admits however dealing with Jean Pierre Bemba commercially.

#### **25.1 PRIVATE COMPANIES**

In Paragraph 85 The involvement of Uganda was treated differently from Rwanda. Effectively the Uganda Government was acquitted of the charge of Systemic and Systematic exploitation by government, and the blame was put on to individuals, mainly top Army Commanders. This is said to be known by the

political establishment in Kampala.

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## 26 ALLEGATIONS AGAINST UGANDA

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There are two bases upon which the Government of Uganda could be said to be involved. First that the amount of trade, especially in items where statistics are kept, signalled what was going on in the Democratic Republic of Congo . Second, that there is a specific allegation that the political establishment knew.

There are only very few examples given in the Panel Report where knowledge can be imputed to the Government of Uganda as such, and in each case this Commission does not have sufficient details to be able to investigate, or to attribute knowledge to the Government of Uganda

As to whether top army commanders are the main illegal exploiters of the Democratic Republic of Congo, this Commission runs into a problem. This being an interim report, at a time when this Commission has yet to complete the investigation into UPDF involvement, this Commission is not in a position to come to a conclusion on this point. However, looking at the CAA statistics and the relationship between flights of the Ministry of Defence airplanes and private airplanes, and the manifests available to this Commission, this Commission would think that, if the Ministry of Defence airplanes were being used for transport by senior officers, then it would not have been for the majority of the resources alleged to have been exploited. Further most of the resources flown or driven out of the Democratic Republic of Congo appear to have transitted Uganda, rather than to have been exported to Uganda: and in such case, this Commission cannot see that a message would necessarily be transmitted to the Government of Uganda .

### **26.1 Individual Actors**

There are allegations against Salim Saleh, Jovial Akandwanaho, and General Kazini in the Panel Report. This Commission is not yet ready to report on these matters which require further investigation.

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### **27 ECONOMIC DATA : CONFIRMATION OF THE ILLEGAL EXPLOITATION OF THE NATURAL RESOURCES OF THE DEMOCRATIC REPUBLIC OF CONGO**

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In Paragraphs 94 to 108 economic data is set out in the report.

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### **28 ALLEGATIONS AGAINST UGANDA**

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The Conclusion the Panel attempts to draw from the data is that other allegations made elsewhere in the report are confirmed by this data.

This Commission has called evidence to evaluate this data and is still in the process of analysing the data, and it is unable to report on it at this time.

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### **29 LINKS BETWEEN THE EXPLOITATION OF NATURAL RESOURCES AND THE CONTINUATION OF THE CONFLICT.**

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#### **29.1 BUDGETS COMPARED TO MILITARY EXPENDITURE.**

In paragraph 115 of the Panel Report the Uganda budget is set out, with one error by which it is assumed that the military budget pays for the pension of retired soldiers. It has been explained to this Commission, as it would have been to the Panel had they asked, that the budget which they quote covers programme 2 (Land Forces) and programme 3 (Air Forces) only. There is an additional programme 1 which provides for Headquarters, out of which

pensions are paid.

In paragraphs 116 and 117 calculations are made, based on various assumptions and directed to show that the budget was overspent by about \$16 million. Particularly the calculation relating to the cost of air transport is based upon fantastic and unrealistic figures. The correct figures could have been obtained by the Panel from Ministry of Defence.

Life has been made rather more simple for this Commission . This Commission have not had to make any assumptions or do any calculations, because the actual figures have been availed to this Commission . Overexpenditures during the years 1998 to 2001 were:

98/99 47 billion Ushs

99/00 6 billion Ushs

00/01 14 billion Ushs

Evidence before this Commission was that these overexpenditures were necessary for various reasons, not all of which related to Operation Safe Haven: they were covered by supplementary budgets, and the money provided by Ministry of Defence from funds obtained from Ministry of Finance.

Therefore, in the case of Uganda, the link between exploitation of natural resources of the Democratic Republic of Congo and the continuation of the conflict, based upon the suggestion that such exploitation was swelling the funds of Uganda's treasury in order to pay for the war is tenuous, to say the least.

Indeed in paragraph 135 of the report, the Panel say:

*“Uganda unlike Rwanda did not set up an extrabudgetary system to finance its presence in the Democratic Republic of the Congo. The regular defence budget is used and broadly the deficit is handled by the treasury.”*

This is followed by a complicated computation relating to what the Panel call the “re-exportation economy”. This Commission shall consider this in due course, but here only says that the Panel neither say, nor supply evidence that the Government of Uganda was aware of, or encouraged the tricks referred to in the Panel’s exposition of the “re-exportation economy”. This Commission has no evidence leading to that conclusion.

#### **29.2 FINANCING THE WAR**

In Paragraphs 136 – 142 the Panel attempt to make a case for saying that Uganda was able to pay for the war out of what they call a “re-exportation economy”. They summarise the case in the following way:-

*"142. The Ugandan situation can be summarized as follows: the re-exportation economy has helped increase tax revenues, allowing the treasury to have more cash. Businesses related to the conflict and managed by Ugandans have contributed to an extent to generate activities in the economy in a sector such as mining (gold and diamonds). The growth in these sectors has had a trickle-down effect on the economy and permitted Uganda to improve its GDP in 1998 and maintain it somewhat in 1999. The improvement in GDP has permitted, according to Ugandan officials, an increase in absolute terms of the military budget while keeping the level of the military budget at the agreed 2 per cent of GDP. The apparent strength of the Ugandan economy has given more confidence to investors and bilateral and multilateral donors who, by maintaining their level of cooperation and assistance to Uganda, gave the Government room to spend more on security matters while other sectors, such as education, health and governance, are being taken care of by the bilateral and multilateral aid."*

Specifically in Paragraph 136/7, the Panel explain the re-exportation economy to imply that natural resources imported from the Democratic Republic of Congo are re-packaged or sealed as Ugandan Natural resources or products and re-exported. They say that that is the case for gold, diamonds coltan and coffee exported by Uganda. Examples given of the impact of the re-exportation economy on the financing of the war are:-

- Increase of income of businessmen.
- Illegal exploitation of gold improving balance of payments, leading to improving donor confidence in the economy
- Theoretically leading to higher tax collection.

In Paragraph 139, examples are given of road transit of goods through Uganda. This example is irrelevant, because transit goods do not pay duty or taxes in Uganda.

As to the question of collection of taxes in the Congo, that is a matter for the Congolese authorities, and as this Commission has examined elsewhere at Paragraph 18 above, the allegation that taxes were not paid is doubtful. Then there appears to be a suggestion that if customs duties were to have been paid on items in transit, then that would bring in \$5 million per month: but in the context of the subject being discussed, that \$5 million would neither be income to Uganda from transit goods, nor income to the Democratic Republic of Congo, as customs duties are not payable in the Democratic Republic of Congo for export or transit.

In the affidavit of Ateenye Tibasima, he doubts that the figure of \$5 million is realistic in any event.

In Paragraph 140 the Panel suggest that Uganda was financing the war by buying military supplies, specifically petrol, on credit.

It seems to this Commission that these are normal commercial transactions, and are matters between, for instance, the petrol companies and Government. This Commission have no doubt that if the credit extended gets too great, the petrol companies would neither extend further credit nor be able to.

In Paragraph 141, the Panel talk of official bonuses. This Commission has the clearest evidence that no official bonuses were paid to soldiers in the Democratic Republic of Congo . There was a payment in lieu of rations to enable soldiers to buy food, which was cheaper for the UPDF than flying food over from Uganda.

If individual soldiers were lining their pockets, with or without the approval of their commanders, this cannot be connected to the alleged re-exportation



economy: and this is an inappropriate place to consider this matter.

To assist the verbatim evidence is set out :-

*Justin Zake: (Justin Zake is a Deputy Commissioner General with Uganda Revenue Authority) Yeah. I saw in the report \$5 million, re-exportation went to the treasury and my reaction was to laugh because if it was re-exportation, and re-exportation does not benefit the Government of Uganda, unless the company doing the re-export is resident and registered in Uganda. In other words, we would not go for income taxes from them because these are transit items, I mean, from one place passing through Uganda, so that would not benefit the Government of Uganda. And I beg your indulgence my Lords, I talked about contribution of the top 200 taxpayers and as I said the top 20 contribute about 50%. Now any of these companies that were mentioned in the report are not in the top 20 and 50% of about a trillion shillings, and that is a lot of trillions. \$5 million, and I think that is the captured value, the mere captured value, but not tax out of that value, and not a tariff attached on a particular item off what they thought maybe ends up in Uganda. So I would like to tender as well the top taxpayers in Uganda, these are 200 for both 1997-1998 and 1999-2000 just to give you a feel of what it is. So the issue of dramatic revenue arising out of Democratic Republic of Congo and significant contributions to the treasury, the data that I have doesn't bear that out.*

*Justice J.P. Berko: Actually the UN were not concerned with the legitimate trading between the two countries and that is what would be reflected in your documents. But they were really worried about the illegal trade between the two countries.*

*Justin Zake: My Lord I do understand that.*

*Justice J.P. Berko: And that one would not reflect, in treasury accounts.*

*Justin Zake: It wouldn't reflect in treasury accounts, not as far as we are capturing. Maybe after having read the report and they were talking of re-exportation, there are no taxes on exports, so somebody resident in Uganda, and registered in Uganda can take out whatever they want, there will be no tax on the export, however, he will be liable to the profit tax if he makes profits. If a company is non-resident in Uganda and consigns directly from the Democratic Republic of Congo to wherever and it is just transiting Uganda I cannot tax them because they are not resident in Uganda. Yes, the Income Tax Act 1997 talks about the concept of global income, but that is for a company that is resident in Uganda and it is earning from global sources, that is taxable. And of course where there is a double taxation agreement there is a set off, so that is my submission."*

And

*"Micheal Atingi-Ego: (Micheal Atingi-Ego is Acting Director of Research at Bank of Uganda) My Lords, I would not want to entirely believe that re-exports have benefited the Ugandan economy as such, if there were benefits to Uganda economy they should be clearly spelt out. First of all re-exports are not taxed just like any exports are not taxed so I do not know how benefits would have come in there and if there are re-exports that are going out through Uganda the beneficiaries of these might be the non residents may be the foreigners given the good infrastructure that they are using for re-exporting the receipts they get from those re-exports go direct to the economy, so how will it benefit Uganda?*

*Assistant Lead Counsel: So you are saying that any re-exportation would not benefit?*

**Micheal Atingi-Ego:** I cannot say that there is no benefit at all, for example, if you have trucks coming from Rwanda or Sudan or Congo going through Uganda may be re-exporting, there are indirect effects that you have e.g. business might boom for small owners of restaurants, lodges, eating places etc. It can get an indirect benefit just like you have Ugandan traders who are bringing oil from Mombasa, we buy this Commission's oil from there and it is a re-export of Kenya and it comes to Uganda and as the truck drivers go to Kenya to pick the oil they may stop in Kisumu for a night, spend some money there so the owners of such business benefit If that is the kind of benefit that you are talking about

**Assistant Lead Counsel:** No I am talking in the terms of benefit to the treasury in terms of taxes or custom duties. Please look at paragraph 138 where they make that allegation that there were trucks carrying timber, coffee, minerals etc

**Micheal Atingi-Ego:** Paragraph 138, the very first sentence reads:

"Secondly, illegal exploitation of gold in the Democratic Republic of Congo brought a significant improvement in the balance of payments of Uganda

That statement is wrong because this Commission's current account balance has been deteriorating so much, this Commission's exports are far less than this Commission's imports so I do not know how it is improving and the improvement in the overall balance of payment is largely as a result of donor in flows coming to this country not as a result of exports because these are far less compared to this Commission's imports even the tables I have here show that the current account has been deteriorating for a long time and this is being financed by donors to the extent that exports, leave alone the re-exports are not taxed I do not see how the treasury benefits from this

**Assistant Lead Counsel:** Because you are saying that customs wouldn't be paid on transit and re-exports. Customs duties wouldn't be paid on re-exports so the treasury wouldn't benefit?

**Micheal Atingi-Ego:** No they do not tax exports, any exports in Uganda are not taxed

*Assistant Lead Counsel: The statement that the Ugandan treasury got at least 5 million dollars every month .....*

*Micheal Atingi-Ego: To the best of my knowledge that is not the case because exports are not taxed so how would the treasury benefit*

*Assistant Lead Counsel: I want to make this final question, is there a significant relationship between the policy of liberalization and the volume of trade that Uganda has enjoyed in those years?*

*Micheal Atingi-Ego: My Lord there is a strong significant relationship between liberal policies pursued by the government of Uganda and the volume of trade in that during the period of controls farmers were paid farm gate prices for the products an amount which was not competitive to make them recover the costs of production so what happened was that in most cases the cost of producing an item that is sold to a state owned enterprise e.g. Produce Marketing Board, Coffee Marketing Board, the farmers could not recover some of the costs they were incurring so as a result they abandoned growing of these cash crops and resorted to subsistence. Evidence shows that non monetary economy picked up at or during the time of controls, however, when the government of Uganda liberalized its economic environment the incentives for farmers produce picked up so much because a farmer was now free to sell his/her products at a price that would cover the production costs. Ever since the government of Uganda began liberalizing production has picked up and then we also liberalized both the current and capital accounts and so the border trade has also picked up, e.g. the trade between Uganda and Kenya, Uganda and Rwanda and the trade between Uganda and the Democratic Republic of Congo particularly when West Nile got some degree of peace as a result that there are some items which are produced in Uganda that may not be produced in other countries. We are well known for supplying food to Kenya and in return agents get manufactured goods particularly when we had this Commission's manufacturing sector here not working. It was a normal border trade but what is happening is that when we liberalized production picked up and therefore the volume of trade has picked up"*

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## **30 ALLEGATIONS AGAINST UGANDA**

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We think therefore that the attempt of the Panel to show that Uganda was financing the war in the Democratic Republic of Congo through the re-exportation economy fails.

In Paragraph 180 the Panel raise the question of the Hema-Lendu and Nia-Nia conflicts: elsewhere the question of the Kisangani confrontations is also raised. And it is suggested that these conflicts were strategies used to sustain the vicious circle of war and exploitation. We do not feel at the moment that this Commission's inquiries have gone far enough to come to a conclusion on these issues, and are therefore not prepared to report at this time.

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## **31 FACILITATORS OR PASSIVE ACCOMPLICES**

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### **31.1 PRESIDENT MUSEVENI**

The Panel in Paragraph 201 accuse President Yoweri Museveni of complicity in the exploitation of the natural resources of the Democratic Republic of Congo and the continuation of the war in that country on three grounds, namely his alleged policy towards the rebel movements, his attitude towards the Uganda army and the protection provided to illegal activities and their perpetrators. On his alleged policy towards the rebel movements, The Panel alleged in Paragraph 202 that President Museveni has shaped the rebellion in the area controlled by Uganda according to his own political philosophy and agenda of a more centralised authority and preparing to intervene only when major problems arise, even though he has a good knowledge of the situation on the ground.

We think that matters pertaining to the President's political philosophy and agenda are beyond this Commission's terms of reference and not suitable for the enquiries this Commission has been asked to conduct. We hasten however to point out that President Museveni has publicly declared on many occasions that the internal administration of the Democratic Republic of Congo is for Congolese themselves, so long as the security concerns of Uganda are addressed.

It was for this reason the Gen Kazini was reprimanded for meddling in the local administration in the Democratic Republic of Congo .

President Museveni has been accused in para 203 of not taking action against Nyamwesi and Tibasima for alleged embezzlements of \$10 million and \$3 million respectively. We think the accusation is misconceived as the President of Uganda has no jurisdiction over Congolese Nationals and rebels leaders for that matter.

In the same paragraph 203 President Museveni was accused for not taking action about an alleged collusion between Trinity Group and Tibasima and its impact on collection of customs duties. Here again this Commission wishes to point out that the Panel was ill advised to accuse President Museveni as he has no jurisdiction over the actors alleged in the collusion.

President Museveni has again been accused in Para 205 for having allowed members of his family namely Gen Salim Saleh and his wife who are alleged to be shareholders in Victoria Group and Trinity to carry on business activities in the occupied zones of the Republic of Congo undisturbed.

We have evidence on oath that Victoria Group does not exist. Therefore Gen

Salim Saleh and his wife could not have been shareholders in that Company. We also have evidence on oath that Trinity is a fictitious company established by the rebels in the Eastern the Democratic Republic of Congo to generate funds to organise their campaign against the Kinshasa Government. General Salim Saleh and his wife have said that they have no interest in that company.

Consequently it was wrong for the Panel to accuse President Museveni for allowing the two companies to operate in the Democratic Republic of Congo undisturbed.

Therefore the Panels conclusion in Para 206 is misconceived and unwarranted.

ANNEX I EXHIBITS

THE REPUBLIC OF UGANDA

**THE COMMISSIONS OF INQUIRY ACT, CAP. 56**

**THE COMMISSION OF INQUIRY (ALLEGATIONS INTO  
ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND  
OTHER FORMS OF WEALTH IN THE DEMOCRATIC REPUBLIC  
OF CONGO), 2001**

INDEX OF EXHIBITS

NO.	MARKE D AS	SUBJECT	TENDERED BY
1.	BKB/1/1	Minutes of Good Neighbourliness Meeting between Uganda/Zaire officials held at Rukungiri District H/Q on 9- 10/6/1990.	CW/01 /01 Bernadette Kyomugisha Bigirwa
2.	BKB1//2	Minutes of Border Meeting held at Kasindi on 16/6/1993.	"



3.	SKB/1/3	Protocol between DRC/Uganda on Security along common border in April 1998.	CW/01/02Steven B. Kavuma
4.	SBK/1/4	Radio Message by HE President to Chief of Staff banning trading in DRC by UPDF Officers/Men on 15/12/1998.	"
5.	SBK/1/5	Press report of interview with Mr. Steven Kavuma, the then Minister of State for Defence: <i>New Vision</i> , 24/11/1998.	"

6.	SBK/1/6	Press reports on refutation by the army of Congo claims of UPDF forces' presence in the DRC territory: <i>New Vision</i> , 12 Aug. 1998.	"
7.	SBK/1/7	Press reports of continued plane flights from DRC into Old airport, Entebbe in spite of CAA directive: <i>New Vision</i> , 16/08/1999.	"
8.	SBK/1/8	Agreement for a Ceasefire in DRC (Lusaka Peace Agreement), 1999.	"

9.	JK/1/9	Photocopy of document from one Embaba, a FAC officer, to an ADF officer (captured doc. on 15/2/98).	CW/01/03 Brig. James Kazini
10.	JK/1/10	Letter from Intelligence Officer, Capt. Kasule to the Chief of Staff on allegations against Col. Kerim (interference with customs) dated 14/3/1999.	"
11.	JK/1/11	Letter of appointment by Brig. Kazini of Ms. Adele Lostove as a <i>provisional</i> administrator of Ituri province in DRC dated 18/6/99.	"

12.	KBC/1/12	Brief to H.E President Y.K. Museveni by Uganda's Ambassador to DRC (Dr. Kamanda Bataringaya Cos) on the insurgency in Rwenzori Mountains along Common Border.	CW/01/04 Dr. Kamanda Bataringaya Cos
13.	KBC/1/13	Press Article Titled, "Uganda is in Congo Legally", Sunday Vision, 13/09/1998, pg.9.	"
14.	KBC/1/14	Joint Communique Between DRC and Uganda of 1/6/1999.	"
15.	BM/1/15	Ministry of Defence Approved Estimates of Revenue and expenditure (Recurent and Development) 1998/99.	CW/01/05 Ben Mbonye

<b>16</b>	<b>BM/1/16</b>	<b>Ministry of Defence Proposed Estimates 1998/99, Financial Analysis of Programme 02 and 03 as at 30/06/99.</b>	<b>"</b>
<b>17</b>	<b>BM/1/17</b>	<b>Ministry of Defence Approved estimates of revenue and expenditure (Recurrent and Development) 1999/2000.</b>	<b>"</b>
<b>18</b>	<b>BM/1/18</b>	<b>Ministry of Defence Proposed Estimates 1999/2000, Financial Analysis of Programme 02 and 03 as at 30/06/2000.</b>	<b>"</b>

19	BM/1/19	Ministry of Defence Draft Estimates of Revenue and expenditure (Recurrent and development) 2000/01.	"
20	RO/1/20	Peace (SIRTE) Agreement Between Uganda, Eritrea, Chad and DRC (18/04/1999).	CW/01/06 Ralph Ochan
21	RO/1/21	UN Security Council Resolution 1258 (1999) dated 6 August 1999.	"
22	RO/1/22	UN Security Council Resolution 1291 (2000) dated 24 February 2000.	"
23	RO/1/23	UN Security Council Resolution 1304 (2000) dated 16 June 2000.	"
24	RO/1/24	UN Security Council Resolution 1323 (2000) dated 13 October 2000.	"

25	RO/1/25	UN Security Council Resolution 1332 (2000) dated 14 December 2000.	"
26	RO/1/26	UN Security Council Resolution 1341 (2001) dated 22 February 2001.	"
27	RO/1/27	Letter by Uganda's Charge d' Affaires (Fred Beyendeza), Permanent UN Mission, New York, 18/08/1999. - to PS, Min. of Foreign affairs, Uganda. Attached:- Statement to the UN by DRC Permanent Rep. to UN and the Rep.'s letter to UN security Council.	"

28	RO/1/28	Letter dated 4 may 2001by UN Sec. Gen. Kofi A. Annan to H.E. , Y.K.Museveni, appealing to Uganda not to withdraw from the Lusaka Peace Process.	"
29	RO/1/29	Govt. Response to UN Panel Report	"
30	KT/2/30	Certificate of Incorporation, Memorandum and Articles of Association for TRINITY (U) LIMITED.	CW/02/01 Ketrah Tukuratire



31	KT/2/31	Certificate of Incorporation, Memorandum and Articles of Association for DARA GREAT LAKES (INDUSTRIES) LIMITED.	"
32	KT/2/32	Certificate of Incorporation, Memorandum and Articles of Association for NYOTA WOOD INDUSTRIES (U) LIMITED.	"
33	KT/2/33	Certificate of Incorporation, Memorandum and Articles of Association for ROYAL STAR HOLDING LIMITED.	"

34	PB/2/34	Application for CERTIFICAION authority in respect of Budongo and Bugoma forests, dated 21 <sup>st</sup> march 2000 by Prossy Balaba of DARA GREAT LAKES (INDUSTRIES) LTD., to the Commissioner, Forestry.	CW/02/03 Prossy Balaba
35	PB/2/35	Application for CONCESSION in respect of Budongo, Bugoma and Mabira forests, dated 21 <sup>st</sup> march 2000 by Prossy Balaba of DARA GREAT LAKES (INDUSTRIES) LTD., to the Commissioner, Forestry.	"

36	PB/2/36	3 PROVISIONAL LICENCES No 149, 150 & 351 all dated 18/09/2000 for DARA GREAT LAKES (INDUSTRIES) LTD., to Harvest and Process Forestry Produce in Budongo, Bugoma and Mabira Forests.	"
37	DNB/2/3 6A	3 LICENCES No 149, 150 & 351 all dated 18/09/2000 for DARA GREAT LAKES (INDUSTRIES) LTD., to Take Forest Produce from Budongo, Bugoma and Mabira Forests.	CW/02/04 Deogratius Nkeija Byarugaba

38	KT/2/37	Certificate of Incorporation, Memorandum and Articles of Association for M/S DARA EXPRESS (UGANDA) LIMITED.	CW/02/01 Ketrah Tukuratre
39	KT/2/38	Certificate of Incorporation, Memorandum and Articles of Association for TRINITY INTERNATIONAL LIMITED.	"

40	KT/2/39	Letter dated March 27, 1996 by MAYANJA - NKANGI, EDWARD ELUE & CO, to the Registrar of Companies, inquiring whether the name TRINITY HOLDINGS [UGANDA] LIMITED, was available for registration as a Company. Plus attachments including the Certificate of Incorporation.	"
41	KT/2/40	Certificate of Incorporation, Memorandum and Articles of Association for TRINITY 2000 LIMITED.	"

42	PB/2/41	Application for a Permit to Harvest Hard Wood(Cynometra Alexandria, Celtis and Pirinari) from Budongo forest, dated 11 <sup>th</sup> October 1999, by Prossy Balaba of DARA GREAT LAKES (INDUSTRIES) LTD., to the Commissioner, Forestry.	CW/02/03 Prossy Balaba
43	PB/2/42	Letter dated July 5, 2000 by John Kotiram of DARA GREAT LAKES (INDUSTRIES) LTD., to the Commissioner, Forestry as a follow up of the subject in PB/2/41 above.	"

44	DNB/2/4 3	SI 56/1987 The External Trade (Export Restricted Goods) Order, 1987. Prohibits the Export of TIMBER.	CW/02/04 Deogratius Nkeija Byarugaba
45	DNB/2/4 4	Letter dated 25 <sup>th</sup> July 2000 by Jacques Chan of NYOTA WOOD INDUSTRIES (U) LTD , to the Commissioner of Forestry, seeking clearance for transit timber traded by their sister company, M/S DARA FOREST of Beni, Congo.	"
46	GMD/1/4 5	(UPDF) 2000/2001 Proposed Budget Financial Analysis of Programme 02 and 03 as at 30/06/2001.	CW/CW/01/07 Gabindade Musoke David

47	GDM/1/4 6	UPDF Salary Payments to units Under operation Safe Haven for:- August - December 1998; January - December 1999; January - December 2000; January - June 2001.	"
48	GDM/1/4 7	UPDF RCA Payments to Units Under Operation Safe Haven for:- August - December 1998; January - December 1999; July 1999 - June 2000; July 2000 - June 2001.	"
49	GMD/1/4 8	UPDF Aeroplane Charter Payments for 1998/1999; 1999/2000; 2000/2001.	"



50	GDM/1/4 9	Agreement for Lease and Charter Services Between the Government of the Republic of Uganda and Uganda Air Cargo Corporation, dated 26 <sup>th</sup> July 2000.	"
51	GDM/1/5 0	Amendment to and Renewal of the Agreement in GDM/1/49 above.	"
52	JSK/2/51	French Version of Articles and Memorandum of Association for DARA FORET.	CW/02/06 John Supit Kotiram.

53	AM/1/52	Joint Communiqué of 26/04/1998 Between Uganda and DRC, on Security along Common Border, Police Training and refugees.	CW/01/08 Amama Mbabazi
54	AM/1/53	Agreed Minutes of the Ministerial Meeting on Security and Refugee Matters Between the Uganda and the DRC held in Kampala on April 7, 1998.	"
55	AM/1/54	Statement of 23/03/1999 by Hon. Amama Mbabazi to the 53 <sup>rd</sup> Resumed Session of the UN General Assembly.	"

56	AM/1/55	Statement of 27/10/1998 by Hon. Amama Mbabazi to the Lusaka Ministerial Meeting on the Conflict in DRC.	"
57	AM/1/56	DRAFT SECURITY COUNCIL PRESIDENTIAL STATEMENT dated January 26, 2000 by Hon. Amama Mbabazi to UN Security Council President.	"
58	AM/1/56 (b)	Uganda's Reaction (Hon. Amama Mbabazi) of 30 January, 2000 to 1/27 SECURITY COUNCIL DRAFT RESOLUTION ON DRC.	"

59	AM/1/57	GoU Response to UN Panel Report dated 3 <sup>rd</sup> April 2001.	"
60	KT/2/58	Memorandum and Articles of Association of VICTORIA BIOTECHNOLOGY LTD.	CW/02/01 Ketrah Tukuratiire

61	NM/1/59	<p>1. Photographs Depicting Scenes of and Attrocities by Rebels Fighting Uganda Government.</p> <p>2. Statements made to CMI by Lt. Soko Lutaya, Lt. Col. Fenekas Mugenyi, Lt. Col. John Waswa and Col. Sula Semakula following allegations against UPDF and individual Officers, contained in the UN Panel report.</p>	<p>CW/01/11 Lt. Col. Noble Mayombo</p>
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62	JN/2/60	Volume of Timber Production in Uganda in Cubic Metres From Mid 1997 to 2000 as Per Forestry Department Computerized Data Bank.	CW/02/07 James Ndimukulaga
63	JN/2/61	Two Copies of Letters dated 11 <sup>th</sup> October 1999 from DARA GREAT LAKES (INDUSTRIES) LTD by Prossy Balaba, being Applications for Permits to Harvest timber from Bugoma and Mabira Forests Respectively.	"

64	JN/2/62	Letter dated 18 <sup>th</sup> September 2000 from Ag. Commissioner of Forestry to M/S NYOTA WOOD INDUSTRIES (U) LTD., being a reply to theirs, seeking a permit or special clearance for their transit timber from DRC.	"
65	WLA/1/6 3	Contract dated 19 <sup>th</sup> October 1998 Between GoU and KNIGHT AVIATION.	CW/01/12 William Luwemba Apuuli
66	MJK/1/64	Summary of Troops and Logistics Sent and withdrawn From DRC Between 1998 and 2000.	CW/1/13 Maj. Musinguzi Jones Kafiire

67	MJK/1/65	UPDF Loading Shedules for Goods Originating From Entebbe Military Air Base (Old AirPort) Destined for the DRC, Contained in a File Opened on 05/04/2000 and Closed on 31/12/2000.	"
68	JJ/1/66	RESPONSE BY UPDF TO THE REPORT OF THE PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND OTHER FORMS OF WEALTH OF THE DRC.	CW/01/14 Maj. Gen. J.J. Odongo



69	JSK/67	Customs Documents Relating to Imports and Exports of Timber and Minerals From the DRC by DARA GREAT LAKES (INDUSTRIES) LTD.	CW/02/06 John Supit Kotiram
70	DLK/2A/ 68	UPDF Loading Shedules for Goods Originating From Entebbe Military Air Base (Old AirPort) Destined for the DRC for 1998 and 1999.	CW/02A/01 Lt. David Livingstone Komurubuga

71	DLK/2A/ 69	UPDF Loading Shedules for Goods Originating From Entebbe Military Air Base (Old AirPort) Destined for the DRC for: October - November 1998, January and February 1999, March 1999, April 1999.	"
72	RB/2A/70	UPDF Loading Shedules for Goods Originating From Entebbe Military Air Base (Old AirPort) Destined for the DRC for June 1999.	CW/2A/02 Capt. Richard Badogo
73	AKA/2A/ 71	Map (Lay out) of the Entebbe International AirPort and Military Air Base.	CW/02A/04 Ambrose Akandonda Kashaya

74	AKA/2A/ 72	Revenues Billed and Received in Respect of Operations at Old AirPort: Sept. 1998 - June 2001.	"
75	AKA/2A/ 73	Flight Schedules, Operations and ICAO Desination in DRC.	"
76	AKA/2A/ 74	Specimen of Flight Plan Form to be filled by Aircraft.	"
77	AKA/2A/ 75	Correspondence Between CAA and MOD on Knight Aviation (Letter dated 13/07/1999).	"
78	AKA/2A/ 76	Documents on Air Navette from UPDF to CAA (Letter of 7/8/1999).	"

79	AKA/2A/ 77	Air Service Licence Air Alexander, for Operating a Helicopter dated 16/6/1999.	"
80	AKA/2A/ 78	Air Service Licence for Bogol Air Services (U) Ltd. Dated 21/6/1999.	"
81	AKA/2A/ 79	Letter from URATO CAA dated 8/8/2001 relating to request by CAA on Timber Imports/Transit.	"
82	WB/03/80	Map of Uganda Detailing Concessions and Licences for Prospecting/Explorati on of Minerals Plus Details of Concession Holders.	CW/03/01 Watuwa Bwobi

83	WB/03/81	List of Companies Licenced to Trade in Minerals.	"
84	WB/03/82	Statistics of Production and Export of Minerals - 1992- 1995.	"
85	BK/02A/ 83	Video Tape Recording in DRC, Showing Among Others an Interview With Ugandan Rebels of WNBF.	CW/02A/05 Bart Kakooza

86	YKM/01/ 84	<p><b>DOCUMENTS TENDERED BY PRESIDENT YOWERI KAGUTA MUSEVENI:-</b></p> <ol style="list-style-type: none"> <li><b>1. A bound file of photo copies of news paper cuttings with articles on ADF atrocities;</b></li> <li><b>2. Another file similar to 1 above on the MPONDWE attack by ADF on 13/11/1996;</b></li> <li><b>3. The President's Statement on - <i>Background to the situation in the Great Lakes Region;</i></b></li> <li><b>4. The Presidents Statement on <i>Conflicts in the Great Lakes Region,</i></b></li> </ol>	<p><b>CW/01/15 President Yoweri Kaguta Museveni</b></p>
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87	RC/03/85	Documents Relating to Minerals Transported out of Entebbe AirPort by SABENA Airways , 1998, 1999 & 2000.	CW/03/02 Roger Carion
88	MA/03/86	BOU Data on Internal Debt and Uganda's Trading Partners, 1995 - 2000.	CW/03/03 Michael Atingi - Ego
89	JZ/3/87	Table of Revenue Collections and Growth - 1990/1991 - 2000/2001.	CW/03/04 Justin Zake
90	JZ/3/88	Annual Report for URA 1999/2000.	"
91	JZ/3/89	List of the Top 200 Tax Payers in uganda - 1999/2000..	"
92	AK/2/90	Importation and Transit of Timber	CW/02/05 Allen Kagina

93	AK/2/90 A	Re-arranged exhibit AK/2/90 plus additional material on export, transit minerals, timber, coffee, hippo teeth.	"
94	AK/2/91	Transit Timber From DRC by Grace Majoro (GCK Enterprises), via Air Navette.	"
95	AK/2/92	Transit Timber From DRC by Grace Majoro (GCK Enterprises), via Air Navette and later sold to MS. BITANGARO & CO. ADVOCATES.	"
96	AK/2/93	Transit Timber from DRC via Malaba, brought by Sodhi Tonny aboard air Navette.	"



97	AK/2/94	Import of 105 pieces of Timber for Grand Imperial Hotel via Air Navette.	"
98	AK/2/95	Graph of Transit Timber from DRC - 1993 - 2001.	"
99	AK/2/96	DARA FOREST Transit Exports (Tantalite) from DRC - 2001.	"
100	AK/2/97	Transit Gold via Entebbe Airport - 1999 - 2001.	"
101	HAN/4/98	Coffee Exports during the coffee years 1995/1996 - 1999/2000 in 60 KG bags and corresponding values as prepared by UCDA.	CW/04/01 Henry Agyenda Ngabirano

102	JKT/4/99	<p>1. Map showing Wildlife and forestry protected areas in Uganda.</p> <p>2. Summary of Wildlife specimen seizures and court cases, 1994-June 2001.</p> <p>3. Report on 'Trade in Ivory in Uganda' dated 18 Nov. 2000.</p> <p>4. Wildlife Statute, No. 14/1996.</p>	<p>CW/04/02 Justus Kashagire Tindigarukayo</p>
103	SS/7/100	<p>Memorandum and Articles of Association for AIR ALEXANDER.</p>	<p>Cw/07/01 Hon. Maj. Gen. Caleb Akandwanaho <u>alias</u> Salim Saleh</p>
104	SS/7/101	<p>Memorandum and Articles of Association for TAKE AIR.</p>	<p>"</p>

105	FM/7/102	Statement (and attachments) to CMI by Lt. Col. Fenekasi Mugyenzi in response to allegations of illegal possession of ivory by himself and gold mining by the members of UPDF, contained in the UN Panel report.	CW/07/03 Lt. Col. Fenekasi Mugyenzi
106	KM/3/10 3	A Sample of a mineral from DRC, called Coltan.	CW/03/05 Kasule Mohamed

107	TM/3/104	Documents Tendered by Capital Finance Corporation relating to Gold Trade - trading licences 1995 to 1997; register of gold dealings 1995 to 1997; customs documents for the last export in 1998, of 20 KG via Sabena Airlines; BOU letter stopping the Company's gold trade on grounds of non viability.	CW/03/06 Twinomujuni Julius
108	EK/5/105	Statistics on Stolen/ Robbed Motor Vehicles 1994 - 2000.	CW/05/01 Elizabeth Kutesa

109	FKM/3/1 06	Documents pertaining to trade in Coltan from DRC and Prospecting for Coltan in Uganda, by UGANDA MARINE PRODUCTS LTD.	CW/03/07 Farouq Kigozi Makubya
110	SM/3/107	Documents relating to trade in DRC in Coltan between one Songa Museme (Congolese) and John Sopit Kotiram of DARA FOREST.	CW/03/08 Songa Museme
111	GM/2/10 8	Documents relating to trade in timber from DRC by Grace Majoro of G.C.K. ENTERPRISES.	CW/02/08 Grace Majoro

112	SE/5/109	Documents relating to trade in general merchandise between Uganda and DRC by SAM ENGOLA.	CW/05/03 Sam Engola
113	PK/5/110	1. Letter dated 17/12/1999 by Col. Peter Kerim to President Museveni on ethnic fighting in Ituri Province.  2. Letter dated 26/2/2000 by Gen Kazini appointing col. Peter Kerim to streamline liaison duties in Bunia, DRC.	CW/05/05 Col. Peter Kerim
114	SH/2A/1 11	Documents relating to AIR NAVETTE and its trading activities between Uganda and DRC.	CW/02A/06 Shiraz Hudani

115	GAW/8/1 12	1. Message by Col. Katumba Wamala (as he then was) to Zaire authorities and Businessmen at the height of West Nile bank Front (WNBF) insurgency.  2. Tape recording.	CW/08/10 George Ambe William
116	EA/08/11 3	Forestry Statistics relating to Timber Movement from Congo and Uganda (Arua) - 11/9/97 - 15/5/2000.	CW/08/12 Edison Adiribo

**ANNEX 2 WITNESSES**

**THE REPUBLIC OF UGANDA**

**THE COMMISSIONS OF INQUIRY ACT, CAP. 56**

**THE COMMISSION OF INQUIRY (ALLEGATIONS INTO**

11	Lt. Col. Noble Mayombo	CW/01/11
12	William Luwemba Apuuli	CW/01/12
13	Maj. Musinguzi Jones Kafiire	CW/01/13
14	Maj. Gen. J. J. Odongo	CW/01/14
15	President Yoweri Kaguta Museveni	CW/01/15
16	Lt. Col. Andrew Lutaaya	CW/01/16
17	Dr. Cripus Kiyonga	CW/01/17

## **BRIEF 2**

### **Exploitation Allegations Pertaining to Timber – DARA Case and Other Timber Related Allegations**

<b><u>NO.</u></b>	<b><u>FULL NAMES</u></b>	<b><u>REFERRED AS</u></b>
01	131.1.1.2Kerah Tukuratiire	CW/02/01
02	Joseph Olea	CW/02/02
03	Pross Balaba	CW/02/03
04	Deogratius Nkeija Byarugaba	CW/02/04



05	Allen Kagina	CW/02/05
06	John Supit Kotiram	CW/02/06
07	James Ndimukulaga	CW/02/07
08	Grace Majoro	CW/02/08

**BRIEF 2 (A)**

**TRANSPORT**

<b><u>NO.</u></b>	<b><u>FULL NAMES</u></b>	<b><u>REFERRED AS</u></b>
01	131.1.1..3Lt. David Livingstone Komurubuga	CW/02A/01
02	Capt. Richard Badogo	CW/02A/02
03	Lt. Col. John Kasaija Araali	CW/02A/03
04	Ambrose Kashaya Akandonda	CW/02A/04
05	Bart Kakooza	CW/02A/05
06	Shiraz hudani	CW/02A/06

**BRIEF 3**

EXPLOITATION ALLEGATIONS PERTAINING TO MINERALS,  
DIAMONDS, GOLD, CASSITERITE, OTHER MINERALS AND  
ECONOMIC DATA

<u>NO.</u>	<u>FULL NAMES</u>	<u>REFERRED AS</u>
01	131.1.1.4Watuwa Bwobi	CW/03/01
02	Roger Carion	CW/03/02
03	Michael Atingi - Ego	CW/03/03
04	Justin Zake	CW/03/04
05	Kasule Mohamed	CW/03/05
06	Twinomujuni julious	CW/03/06
07	Farouq Kigozi Makubya	CW/03/07
08	Songa Museme	CW/03/08

**BRIEF 4**

EXPLOITATION ALLEGATIONS PERTAINING TO COFFEE,  
LIVESTOCK, WILDLIFE, IVORY, MONEY AND OTHER PROPERTY

<u>NO.</u>	<u>FULL NAMES</u>	<u>REFERRED AS</u>

01	131.1.1..5Henry Agyenda Ngabirano	CW/04/01
02	Justus Kashagire Tindigarukayo	CW/04/02

**BRIEF 5**

EXPLOITATION ALLEGATIONS PERTAINING TO MASS SCALE  
LOOTING, SYSTEMIC AND SYSTEMATIC EXPLOITATION

<u>NO.</u>	<u>FULL NAMES</u>	<u>REFERRED AS</u>
01	131.1.1..6Elizabeth Kuteesa	CW/05/01
02	Lt. Col. Joseph Arocha	CW/05/02
03	Sam Engola	CW/05/03
04	Col. Kahinda Otafiire	CW/05/04
05	Col. Peter Kerim	CW/05/05

**BRIEF 7**

ALLEGED EXPLOITATION BY INDIVIDUALS AND TOP UPDF  
OFFICERS

<u>NO.</u>	<u>FULL NAMES</u>	<u>REFERRED AS</u>
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01	131.1.1..7Maj. Gen. Caleb Akandwanaho Salim Saleh	CW/07/01
02	Lt. Muhoozi Keinerugaba	CW/07/02
03	Lt. Col. Fenekasi Mugyenyi	CW/07/03
04	Lt. David Livingstone Okumu	CW/07/04
05	Jovial Akandwanaho	CW/07/05

**BRIEF 8**

BORDER AREAS (KASESE, BWERA, FORTPORTAL, ARUA)

<u>NO.</u>	<u>FULL NAMES</u>	<u>REFERRED AS</u>
01	131.1.1..8Tushabe Christopher <u>alias</u> Benz	CW/08/01
02	131.1.1..9Masereka Ibrahim	CW/08/02
03	Ramadhan Kalihod	CW/08/03
04	Ezekiel Mwehga	CW/08/04
05	James Burolerro	CW/08/05
06	Maisho Fred	CW/08/06
07	Moses Ikagobya	CW/08/07

<b>08</b>	<b>John Masoro</b>	<b>CW/08/08</b>
<b>09</b>	<b>Kasoro Williams</b>	<b>CW/08/09</b>
<b>10</b>	<b>George Ambe william</b>	<b>CW/08/10</b>
<b>11</b>	<b>Milton Rahuka</b>	<b>CW/08/11</b>
<b>12</b>	<b>Edison Adiribo</b>	<b>CW/08/12</b>
<b>13</b>	<b>Alex Angundru</b>	<b>CW/08/13</b>

## ANNEX 3 PAPER ON ILLEGALITY

### **The Concept of 'Illegality' in International Law: Theoretical and Doctrinal Analysis *vis-à-vis* Allegations of *Illegal* Exploitation of Natural Resources and other forms of Wealth in the Democratic Republic of the Congo**

#### **I. Introduction.**

1.1 The concept of *illegality* in international law has been subject of theoretical analysis and controversy in legal scholarship, international relations as well as doctrinal pronouncements by courts. The earliest post-19<sup>th</sup> century statement of the concept is traceable to the *Manchuria question* and the *Stimson doctrine of non-recognition* of a puppet statal entity created in the aftermath of Japan's invasion of China. The non-recognition policy urged by the then US Secretary of State was premised on the perceived *illegality* of Japan's action as being in violation of the prohibition on the use of force in international relations.<sup>1</sup> Since then the concept of *illegality* and the doctrine of *non-recognition* have come to underpin conduct of states in international law.<sup>2</sup> This has been the case in the respect of the

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<sup>1</sup> The position taken at the League of Nations was that Japan's action was a violation of the prohibition on non-use of force contained in the Covenant and the Pact of Paris: LNOJ Special Supp. No. 101/1, 81, 11 Mar. 1932.

<sup>2</sup> See, e.g. *illegality* (and *voidness*) of treaties concluded under coercion in violation of the principles of the UN Charter: Vienna Convention on the Law of Treaties, 1969, art. 52.

unilateral declaration of independence in Rhodesia; conduct of South Africa after termination of its mandate over South West Africa; creation of *bantustans* in South Africa; Israel-occupied territories in the Middle East; Turkish occupation of Northern Cyprus; and the Iraqi occupation of Kuwait.

1.2. Traditionally, the consequence of an illegality is non-recognition of acts or conduct of the illegal entity or authority with respect to territory. However, this concerns acts or conduct that pertains to a claim or alteration in status of a territory. Thus, for instance, conduct on the part of South Africa that tended to confirm its continued claim to administer South West Africa as a mandatory power after the termination of the mandate by the UN Security Council was regarded as invalid.<sup>3</sup> Or for that matter conduct on part of the then *apartheid* South Africa that confirmed the segregation policy in creation of *bantustans* as *separate statal entities*.<sup>4</sup> Or the case of Israel's policy of settlements which was seen as intended to alter the Arab-character of its occupied territories and give an impression of disguised annexation.<sup>5</sup> Thus if Uganda (and Rwanda) purported to annex the

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<sup>3</sup> *Legal Consequences for States of the Continued Presence of South Africa in South West Africa notwithstanding Security Council resolution 667(1970)*, adv. op. [1971] ICJ Rep. 6 (hereinafter *Namibia case*)

<sup>4</sup> See e.g. Resolution on the so-called Independent Transkei and other Bantustans, GA Res. 31/6, 26 Oct. 1976.

<sup>5</sup> See e.g. GA Res. 32/5, 1 Nov. 1977; SC Res. 446 (1979), 22 Mar. 1979.

eastern part of the DRC territory, this would in effect amount to an alteration of the status of that part of territory, and would *prima facie* be an illegal act or conduct.<sup>6</sup>

## II. The Concept of 'Illegality' and the DRC Expert Panel's Interpretation.

2.1 A significant concern has been the conceptualisation of *illegality* in respect of the 'illegal' exploitation of natural resources and other forms of wealth in the Democratic Republic of Congo (DRC). The Panel of Experts established by the United Nations<sup>7</sup> saw it necessary as a starting point to give a definition or interpretation of *illegality* as a key concept. The Panel admits that it was the 'most contentious concept in [its] mandate'.<sup>8</sup> Further, it states that: 'almost all actors in the conflict and observers requested a clear definition of illegality'.<sup>9</sup> In the finality, the Panel adopted what it saw as a wish of the Security

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<sup>6</sup> The illegality would inure from the existing condemnation contained in the numerous Security Council resolutions, but generally on the principle of international law on the non-recognition of acquisition of territory by the use or threat of force. This intention is apparently denied by Uganda (and Rwanda) according to press reports on the matter: E. Allio, 'Uganda, Rwanda dismiss plot to annex Congo', *The New Vision*, 5 Dec. 2000.

<sup>7</sup> The Expert Panel was constituted by the UN Secretary-General on 31<sup>st</sup> July 2000 (letter to the President of the Security Council: S/2000/796) in response to a request by the Security Council (letter by President of the Security Council to the Secretary General: S/PRST/2000/ 20), 2 June 2000). The Expert Panel submitted its report through the Secretary-General on 12 April 2001: S/2001/357.

<sup>8</sup> Expert Panel report, para. 15.



Council for a broad interpretation of the concept, and in this regard it understood it to be underpinned by *four* elements (related to the rule of law), viz.: (a) violation of sovereignty; (b) respect of existing regulatory framework for conduct of activities; (c) accepted practices in trade *vis-à-vis* those obtaining in the DRC and (d) violations of international law (including 'soft law').<sup>10</sup>

2.2. In respect of violation of sovereignty, the Panel states:

The first element is based on the Security Council's understanding of illegality as described in the Panel's mandate. This posits that all activities – extraction, production, commercialization and exports – taking place in the Democratic Republic of the Congo without the consent of the legitimate government are illegal. This interpretation suggested that only non-invited forces and nationals are carrying out illegal activities in the Democratic Republic of the Congo.<sup>11</sup>

This should essentially be the fundamental starting point of determining that a particular act or conduct is an illegality. In this case, the presumption is that the United Nations having condemned the presence (and continued presence) of Uganda (and Rwanda) in DRC territory as a violation of territorial integrity and political independence of the DRC,<sup>12</sup> this *particular* conduct on the part of

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Ibid., para. 15(a). The Panel refers for this element to the statement of the President of the Security Council of 2 June 2000.

<sup>12</sup> See, e.g. Security Council resolutions:

Uganda is in itself an illegality. This in itself however does not dispose off the question of whether all the activities involving exploitation of resources in the territory of another State are to be considered illegal. This probably explains the Panel's contention that it employs the four elements it identified as a basis of its definition of illegality in a complementary manner.<sup>13</sup> But this in itself has a shortfall in that it presumes in the corollary that activities of the (so-called *legitimate*) Kinshasa regime (and its allies) are legal. This may not necessarily be the case.

2.3. With regards to the second element, the Panel expressed thus:

... if authorities exerting effective power and control over their sovereign area recognise or set up a regulatory framework to govern the use or exploitation of resources, this framework should be respected. Failure to do so may lead to the infringement of law and, therefore, activities considered illegal and unlawful. In this case the Panel deems illegality to be the carrying out of an activity in violation of an existing body of regulations.<sup>14</sup>

This is a rather vague recognition that activities in rebel-held areas of the DRC territory *may be* legal if they are carried out in accordance

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<sup>13</sup> Expert Panel report, para. 15.

<sup>14</sup> Ibid., para. 15(b).

with a regulatory framework. The *authorities* exerting *effective power* in this case must be taken to mean the rebel groups (and their backers). One may assume that this is an implied recognition that in a situation in which the *legitimate government* has lost effective control over part of its territory (to rebels or a foreign occupier), those exercising effective authority must ensure continuity of civil life in its various manifestations. This tends to be in contradiction with the Panel's view in their first element that 'non-invited forces and nationals are carrying out illegal activities in the Democratic Republic of the Congo'.

2.4. It is to be admitted that those in effective control must not allow society to degenerate into lawlessness and anarchy. This is perhaps crucial in the Panel's concerns about an existing regulatory framework for exploitation and trading in natural resources. What exactly the existing regulatory framework for that purpose is or was, either in the DRC generally or the rebel-held parts, is not stated or outlined by the Panel, although this may imply regulations on, for instance, concessions, reforestation, etc. The crucial questions are thus:

- (a) who was or were the *authorities* in *effective power*; and
- (b) was or has there been in existence a *viable regulatory framework* prior to or after exerting of effective control by such authorities in the DRC?

These concerns were not adequately addressed and one is left to infer from particular incidents in the report. Are the authorities in effective

power the rebel groups clothed with administrative authority by the Lusaka agreement of 1999? Further, it is contended that the history of DRC shows harvesting of timber and mining of minerals permitted to individuals outside the realm of state control – is this the regulatory framework to bear in mind?

2.5. The third element identified by the Panel was:

The discrepancy between widely accepted practices in trade and business and the way business is carried in the Democratic Republic of the Congo ... [T]he Panel considered the use and the abuse of power by some actors fall in the category of illegality. This includes forced monopoly in trading, the unilateral fixing of prices of products by the buyer, the confiscation or looting of products from farmers and the use of military forces in various zones to protect some interests or to create a situation of monopoly.<sup>15</sup>

This element largely ties in with the second. Similarly, inferences can only be read into particular incidents documented in the report. Here, it also begs the question of what is accepted practices of trade and business, given that in the DRC for decades in the Mobutu era, the exploitation of and trading in natural resources might not have followed the so-called 'accepted practices'. In any event, incidents of

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<sup>15</sup> Ibid., para. 15(c).

looting, confiscation, forced monopolies are perhaps better conceptualised in relation to the functioning of the *de facto* authorities.

2.6. The fourth and final element of illegality identified by the Panel is stated as:

The violation of international law including 'soft law'. The Panel considers that business activities carried out in violation of international law are illegal.<sup>16</sup>

What the international law in question is (including the so-called 'soft law') is not stated or outlined. Incidents such as those alleged to involve exploitation of wildlife (e.g. elephant tusks) in violation of CITES can be considered to be in this category—these acts would *prima facie* be illegal irrespective of whether undertaken by the Kinshasa government or authorities in rebel-held parts if they were in violation of CITES. Is the certification of timber, for instance, an instance of 'soft law' and would the failure to do so entail an illegality in real terms?

2.7. However, what is perhaps more crucial and was not dealt with by the Panel is the principle in international law on permanent

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<sup>16</sup> Ibid., para. 15(d).

sovereignty of *States* and *peoples* over their natural resources.<sup>17</sup> In this regard, the exploitation of natural resources by either side or all parties to the conflict that would not benefit (or is inimical to the interests of) the Congolese peoples would be in violation of international law and, therefore, inherently *illegal*.

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### 32 III. THEORETICAL AND DOCTRINAL POSTULATIONS ON ILLEGALITY – CONCEPT

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#### and its Application

3.1 A concept of *illegality* has in application in international law been founded on the desire to proscribe certain conduct on part of States. This is particularly so where the conduct offends the so-called values in the realm of *order public* of the international community, e.g. non-use of force, self-determination, non-discrimination (*apartheid*). Traditionally, theory and doctrine was concerned with the illegality and non-recognition of entities or territorial acquisitions in violation of international law such as Manchuria and the Iraqi occupation of Kuwait respectively. In the past century, theory and doctrine came to

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<sup>17</sup> This principle is stated in several resolutions of the United Nations dating as far back as 1960s: e.g. Resolution on Permanent Sovereignty over Natural Resources, GA Res. 1803 (XVII) (1962); Charter on the Economic Rights and Duties of States, GA Res. 3281 (XXIX) (1974). The principle as *right of peoples* is conceived in human rights treaties: e.g. International Covenant on Civil and Political Rights (ICCPR) (1966), art. 47; International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), arts. 1(2) and 25; African Charter on Human and Peoples' Rights, 1981, art. 21.

embrace *humanistic* elements in situations such as Rhodesia, Namibia, *bantustans*, Israel-occupied territories. The emphasis was placed on the human character of the illegal statal entities or acquisitions in the nature of *peoples* deprived of rights to self-determination or sovereignty over natural resources. The state or territory thus ceased to be an abstraction.

3.2 The very transcendence of abstractions of state or territory and recognition of the 'human element' in those erstwhile abstractions was also to be the premise for exempting certain acts or conduct of the otherwise illegal statal entity or authorities from the realm of *illegality*. Doctrine and state practice has sought to except certain acts or conduct of an other illegal statal entity or authority in effective power if the acts or conduct, while they do not affect the status of territory, are nonetheless beneficial to the social ordering of human existence in that territory. Therefore the illegality would exclude activities that support the *social fabric* and *livelihood* of inhabitants/people in the particular territory.

3.3 Illegality (and non-recognition) would concern with the *external* aspects of territory - and a duty would thus be placed on states to refrain from dealings that otherwise legitimise or entrench an illegality. This has been distinguished from acts or conduct that are beneficial to the *internal* ordering of society. This distinction was made by the International Court of Justice with regards to South

West Africa in the wake of termination of South Africa's mandate. The Court observed that the duty imposed was to abstain from *diplomatic relations and economic and other forms of relationships or dealings with South Africa* in respect of the territory<sup>18</sup> - in effect, relations that would affirm South Africa's continued exercise of mandatory powers over Namibia. The Court nonetheless recognised the fact that the 'injured entity is a people',<sup>19</sup> and that:

... In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the *people* of Namibia of any advantages from international co-operation. In particular while *official acts* performed by the government of South Africa on behalf or concerning Namibia after the termination of the Mandate are *illegal* and *invalid*, this invalidity shall not extend to those acts, such as, for instance, the registration of births and deaths, marriages, the effects of which can be ignored only to the detriment of the *inhabitants of the Territory*.<sup>20</sup>

3.4 Similar positions were taken in respect of the non-recognition of statehood with regards to Rhodesia (1965-1980) and the Bantustans (1970s-1994) where acts and conduct affecting private lives and social

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<sup>18</sup> Namibia case, *supra*, note 3, paras. 123-4.

<sup>19</sup> *Ibid.*, para. 127.

<sup>20</sup> *Ibid.*, para. 125.



ordering of peoples were to be excepted from the realm of illegality.<sup>21</sup> What is admitted is that certain acts and conduct are excepted from illegality if it ensures survival of inhabitants or peoples in the territory – whether it is a situation of rebel-controlled areas (e.g. eastern DRC), territory occupied by a foreign power (e.g. Israel-occupied territories in the Middle East and Turkish-occupied Northern Cyprus) or even illegal entities in violation of self-determination (e.g. the *Bantustans*).

3.5. The acts or conduct that is to be regarded as beneficial to inhabitants are wide-ranging as long as it is not a disguised attempt at legitimising *status* of the illegal entity.<sup>22</sup> Thus apart from registration of births and deaths and of marriages, it can encompass

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<sup>21</sup> In any event, international law has in fact taken analogies from municipal law – with the most prominent example often given being the years of the American civil war (1862-70), whereby after the conclusion of the civil war, the courts recognised the legality and validity of the acts and conduct of the renegade (rebel) southern states on the premise of the doctrine of ‘necessity’. The cases pertaining to the American civil war are largely referred to in the case of *Uganda v. Commissioner of Prisons, ex parte Matovu* [1966] EA 514.

<sup>22</sup> Thus in respect of Rhodesia, issuance of passport was included in the ‘illegal’ acts, as it tended to lend legitimacy to Ian Smith’s UDI as a mark of statehood (only a state can confer nationality and citizenship). It was then still taken that Rhodesians were British protected persons.

the 'maintenance of law and order', 'provision of social services (education, health)', 'economic policy', commercial activities etc.<sup>23</sup>

3.6. What has perhaps been a critical concern has related to the exploitation of natural resources by an illegal entity or authority in effective power. The position has generally been that the illegal entity and occupier cannot exploit resources in the territory in question, and any act or conduct in that regard is manifestly *illegal*.

- (a) in Namibia, after the termination of its mandate, South Africa had no power to enter into agreements for the exploitation of natural resources in Namibian territory;<sup>24</sup>
- (b) in the occupied territories, the United Nations generally treated Israel's exploitation of resources as illegal and unlawful;<sup>25</sup>

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<sup>23</sup> Detention of an individual under *preventive detention* laws: *Madzimbamuto v. Ladner-Burke* (1969) AC 645 (Rhodesia). Of course, concerns were expressed over the non-usurpation of the *authority of the lawful sovereign*: per Lord Pearce. See also trial of an individual for treasonable offences: *Binga v. The Administer-General for South West Africa & Ors* (1984) 82 ILR 464 (Namibia). The economic policy (e.g. market-orientation, taxation, currency) should not however seem a disguised attempt to unify the economy of the occupier state with that of the occupied territory – this was apparent in the criticism of the tax policies of Israel with respect of the occupied territories. See also on export/import trade with Northern Cyprus: *R v. Minister of Agriculture, Fisheries & Food, ex parte SP Anastasiru (Pissouri) Ltd. & Ors* (1994) 100 ILR 244.

<sup>24</sup> Namibia case, *supra*, note 16. In fact, the United Nations established the United Nations Council for Namibia. The Council adopted Decree No. 1 for the Protection of the Natural Resources of Namibia, 27 Sept. 1974 which was endorsed by the UN General Assembly: GA Res. 3295 (XXIX), 13 Dec. 1974.

<sup>25</sup> See e.g. GA Res. 3171 (XXVIII), 17 Dec. 1973.

- (c) in respect of Rhodesia during Ian Smith's regime, concern was expressed by the United Nations over chrome ore;<sup>26</sup>
- (d) in respect of East Timor, Portugal did institute proceedings before the International Court against Australia in respect of a treaty concluded by the latter and Indonesia to exploit resources in the 'Timor Gap';<sup>27</sup>

3.7. The concern over natural resources has thus been a pivotal one in some of the problematic situations in the post-United Nations period. Nonetheless, it is notable that these situations did entail an *official* policy of the illegal entity or authority in effective control in illegal exploitation of resources. Further, there has not been a specific excepting of acts of inhabitants in the exploitation of resources especially as is asserted that right of individuals to harvest timber or mine minerals has traditionally existed in the DRC, and that such activities (and related trading or commercial activities in such resources) have been the mainstay of the *livelihood* of its peoples.

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<sup>26</sup> See e.g. concerns expressed over import of chrome from Rhodesia by the United States: SC Res. 232 (1966)

<sup>27</sup> *East Timor case* (Portugal v. Australia) [1992] ICJ Reports. The essence of the Portuguese claim was that the treaty would violate the right of the *East Timorese* people to permanent sovereignty over natural resources.

#### 32.1 IV. CONCEPT AND PARAMETERS OF 'ILLEGALITY' REVISITED

The conceptual definition of illegality remains crucial in determining which exploitation or trading in DRC natural resources is to be considered or treated as *illegal*. One may vouch a number of positions:

1. that all exploitation that deprives the Congolese peoples of their right to permanent sovereignty over their natural resources is illegal. This is a general exposition of the principle of international law recognised in GA Resns. 1803 and 3218. In effect, if the resources are being systematically exploited to detriment of the Congolese peoples (and not their benefit) – whether by the Kinshasa government and its allies (Zimbabwe, Angola, etc); Uganda (and Rwanda) or by any other non-state entities (e.g. rebel groups, foreign companies) – then it is *illegal* exploitation;<sup>28</sup>
2. that exploitation of resources by occupier of territory exercising effective power, where the presence of armed forces in territory of another State has been condemned, is *prima facie* illegal. This is however dependent upon:

- (a) proof that the exploitation is part of *official policy* of the occupier state or that acts of its army officers are *attributable* to the state;
  - (b) demonstration that the state is indeed in a situation of *occupation* and thus international law rules on occupation apply to proscribe any exploitation of resources;
3. that certain activities involving the exploitation – extraction, production, trading – in natural resources of a territory not in the *de facto* control of the *legitimate state* is to be excepted from the realm of *illegality* if such exploitation is beneficial to inhabitants (e.g. allow for provision of social services – education, health, infrastructure) or that it is part and parcel of the *normal and daily life, wage-earning employment or activities* of the inhabitants of the territory. In effect, even activities that are taking place without the consent of the legitimate government may be legal if they meet this criterion. In effect, the Panel’s definition of illegality in its first element can be taken as only partially correct, with the second part of that definition being not entirely correct in light of the practical realities of societal existence (requiring that

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<sup>28</sup> One can draw reference to the exploitation of phosphate by the administering powers, New Zealand, Australia and United Kingdom in Nauru: *Phosphates in Nauru case* (Nauru v. Australia) [1991] ICJ Reports.

activities that support livelihood of a people should continue being carried out) and more so in the specific peculiarities of the DRC.

4. that exploitation of resources must in the event that it meets element 3 above must be undertaken under a clear regulatory framework put in place by occupier state or other authority in *effective power* (e.g. rebel groups). The existence of a regulatory framework established and put in place by groups such as RCD, MLC, etc. must be ascertained. Otherwise, an absence of such a framework permits for lawless and arbitrary acts in exploitation of resources. If there are regulations requiring exploitation of timber with licence, then *harvesting and extraction* of timber without a licence or one granted by one who has no authority to grant it should be regarded as unlawful and thus illegal. In the finality, such acts would revert to element 1 above.

#### 32.2 V. CONCLUDING REMARKS

What amounts to illegality remains problematic given the implications of the various United Nations resolutions and the Lusaka Agreement. The Security Council has consistently condemned the presence of Uganda (and Rwanda) armed forces in DRC. On the other hand, the Lusaka agreement supposedly vests administrative authority in the rebel groups signatory to the agreement. In this regard, the Uganda government has remained insistent that it has no administrative role in the DRC (at least after Lusaka agreement) while its conduct remains at least ambivalent in that regard. Uganda thus escapes the

status of an occupier state, as is traditionally the case of a state whose forces occupy another state's territory (e.g. Israel). Nonetheless, in-fighting between rebel groups (and factions within groups) has left a very fluid situation which in itself poses the question of existence of effective *administrative structures* in several parts of eastern DRC. This seems to have left a vacuum of authority in which lawlessness and arbitrary acts in the exploitation of DRC resources thrives, and thus left any concept of *illegality* highly fluid in itself.

## **UR Annex 69**



NATIONS UNIES



UNITED NATIONS

UNITED NATIONS MISSION  
IN THE DEMOCRATIC REPUBLIC OF CONGO  
(MONUC KAMPALA)

REF: OPS -2001

FAX: + 256 - 41 - 232690  
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Military Observer Team  
MONUC, C/O UNDP  
15 B, Clement Hill Road  
PO Box No 7184  
Kampala, Uganda  
19 November 2001

Maj Gen James Kazini  
Acting Army Commander  
General Headquarters  
Kampala

General

*MA:*  
let former log officer OSH  
in liaison with office of  
COS fill the attached form  
on withdraw from DRC. The data  
must be available. *SPH*

SUBJECT: COMPLIANCE TO THE SECURITY COUNCIL (SC) RESOLUTIONS:  
WITHDRAWAL FROM THE DRC

1. Attached find an extract (Refer to par 12i) from the SC Resolution 1376 on the UN mission in the DRC (MONUC), for your information.
2. The Resolution calls for certain information and plans for compliance to the Lusaka and subsequent resolutions. The attached form resembles the detail as requested.
3. Can you please complete the form or provide the requested information in any other format. I am available to assist in any matter.

With best regards,

*[Signature]*  
(J.P. POTGIETER)  
SENIOR MILITARY LIAISON OFFICER: CAPT (NAVY)

Enclosure: Extract from the SC Resolution 1376 dated 9 November 2001  
Example of Form



## Security Council

Distr.: General  
9 November 2001

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Resolution 1376 (2001)

Adopted by the Security Council at its 4412th meeting, on  
9 November 2001

*The Security Council,*

*Recalling* its previous resolutions and statements by its President,

*Reaffirming* the obligation of all States to refrain from the use of force against the territorial integrity and political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and *reaffirming also* the political independence, the territorial integrity and the sovereignty of the Democratic Republic of the Congo, including over its natural resources,

*Taking note* of the Secretary-General's report of 16 October 2001 (S/2001/970) and its recommendations,

*Welcoming* the participation of the Political Committee for the implementation of the Lusaka Ceasefire Agreement (S/1999/818) in joint meetings held on 9 November 2001,

*Determining* that the situation in the Democratic Republic of the Congo continues to pose a threat to international peace and security in the region,

1. *Welcomes* the general respect for the ceasefire among the parties to the Lusaka Ceasefire Agreement, *expresses* nonetheless its concern at the hostilities in areas of the eastern Democratic Republic of the Congo and *calls on* the parties to cease any form of support to the armed groups, particularly in the east of the country;

2. *Welcomes* the withdrawal of some foreign forces from the Democratic Republic of the Congo, including the full Namibian contingent, as a positive step towards the full withdrawal of all foreign forces, and *requests* all States that have not yet done so to begin to implement, without delay, their full withdrawal in accordance with resolution 1304 (2000) of 16 June 2000;

3. *Demands once again* that Kisangani be demilitarized rapidly and unconditionally in accordance with Security Council resolution 1304 (2000), *takes note* of the pledge by the RCD-Goma during the 4411th meeting of 9 November 2001 fully to demilitarize the city, *welcomes* the decision of the Secretary-General to further deploy MONUC personnel in this city, notably to contribute to the training of police, *stresses* that, once demilitarized, no party will be permitted to reoccupy

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11/09/01 11:01 AM 11/09/01 11:01 AM 11/09/01 11:01 AM

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the city militarily and *welcomes* in this regard the pledge by the Government of the DRC, during the same meeting, to respect this provision;

4. *Expresses* its support for the inter-Congolese dialogue, one of the key elements of the peace process, and for all efforts to promote this process, *calls on* the Congolese parties to work together for the success of the dialogue, and *expresses* its support for the Facilitator and his call on the parties to make the dialogue fully inclusive;

5. *Expresses* its grave concern at the repeated human rights violations throughout the Democratic Republic of the Congo in particular in the territories under the control of the rebel groups party to the Lusaka Ceasefire Agreement, and *calls on* all parties to put an end to such violations;

6. *Expresses* its serious concern with regard to the humanitarian situation in the DRC and *calls on* the international community to increase, without delay, its support for humanitarian activities;

7. *Expresses* its serious concern with regard to the economic difficulties facing the Democratic Republic of the Congo, *stresses* that progress in the peace process and the economic recovery and development of the country are interdependent, and in this regard underlines the urgent need for increased international economic assistance in support of the peace process;

8. *Reiterates* its condemnation of all illegal exploitation of the natural resources of the Democratic Republic of the Congo, *demands* that such exploitation cease and *stresses* that the natural resources of the Democratic Republic of the Congo should not be exploited to finance the conflict in that country;

9. *Emphasizes* that there are links between the peace processes in Burundi and in the Democratic Republic of the Congo and, welcoming the recent progress in the Burundi process, *invites* the parties to the Lusaka Ceasefire Agreement to work with the Burundian authorities to advance these two processes;

10. *Supports* the launching of phase III of the deployment of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) on the basis of the concept of operations detailed in paragraphs 59 to 87 of the Secretary-General's report (S/2001/970) and *stresses*, in this regard, the importance it attaches to the deployment of MONUC in the east of the Democratic Republic of the Congo, in conformity with the new concept of operation and within the overall ceiling, including in the cities of Kindu and Kisangani;

11. *Notes* with concern the joint communiqué issued on 4 November 2001 by the Secretaries General of the Mouvement de Libération du Congo and of the Rassemblement Congolais pour la Démocratie concerning the deployment of a joint special force in Kindu, and *stresses* that appropriate conditions will be necessary to allow MONUC to fulfil its role in Kindu and to ensure that discussions on the voluntary disarmament and demobilization of concerned armed groups take place in a neutral environment;

12. *Affirms* that the implementation of phase III of the deployment of MONUC requires the following steps from the parties and requests the Secretary-General to report on progress thereon:

- (i) The transmission to MONUC, as soon as possible and in accordance with its resolution 1355 (2001) of 15 June 2001, of the necessary operational information for the planning of MONUC support for the process of total withdrawal of foreign troops present in the territory of the Democratic Republic of the Congo, including the number of foreign military personnel in the territory of the DRC, their equipment and armament, their exit routes, and a precise timetable for implementation;
  - (ii) The transmission to MONUC, as soon as possible and in accordance with its resolution 1355 (2001), of the necessary operational information for the planning of MONUC's mandated role in the process of disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) programme for the armed groups referred to in annex A, chapter 9.1 of the Lusaka Ceasefire Agreement, including the number of persons concerned, their equipment and armament, their location, their intentions, as well as a precise timetable for implementation;
  - (iii) The establishment of a direct dialogue between the governments of the Democratic Republic of the Congo and Rwanda leading to confidence building and a joint mechanism for coordination, and exchanges of information regarding the DDRRR process;
  - (iv) The establishment by the governments of the countries concerned, in particular Rwanda, and noting steps taken so far, of conditions conducive to voluntary DDRRR of the members of the armed groups concerned, in particular, by assuring the protection of the personal safety of the members of these armed groups, their civil rights and their economic reintegration including with the assistance of the donor community;
  - (v) The demilitarization of Kisangani;
  - (vi) The full restoration of freedom of movement for persons and goods between Kinshasa and Kisangani and throughout the country;
  - (vii) The full cooperation by the parties with MONUC military and logistical operations, as well as its humanitarian, human rights, and child protection activities, including by permitting unrestricted access to ports and airports, and by refraining from introducing administrative and other impediments;
13. *Expresses* its satisfaction at the partnership established with the parties to the Lusaka Ceasefire Agreement, strengthened by regular contacts between the Political Committee for the implementation of that Agreement and the Council, and *reiterates* its firm determination to continue to provide assistance to the parties in their efforts to achieve peace;
14. *Commends* the outstanding work of MONUC personnel in challenging conditions, and *pays tribute* in particular to the efforts of the Special Representative of the Secretary-General;
15. *Decides* to remain actively seized of the matter.

UPDF/OSH/S9

Liaison Office  
OSH  
BOMBO

12 Dec 01

The Chief of Staff  
UPDF-GHQS  
BOMBO

UPDF WITHDRAWAL FROM DRC

Reference:

A. OPS - 2001 dated 19 Nov 2001 from Senior military Liaison officer. (attached with your comments).

1. Attached is a summary of withdrawal timetable of UPDF from DRC.
2. A total of 6655 officers/men have so far been withdrawn.
3. All ammo stores in the locations where UPDF withdrew were also returned to IGME.
4. The number of troops includes attached personnel.

*for E Musunguzi*  
E MUSINGUZI *capt*  
LT. COL.  
FORMER LOG OFFR OSH

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**UPDF withdrawal from the DRC**

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Ser No	No of Troops	Name of Unit	Where from	Equipment & Armament	Timetable	Exit Routes	Comments

Certify correct: .....  
Maj Gen J. Kazini  
Acting Army Commander

Date: November 2001

# ADF WITHDRAWAL FROM THE DRC

S/NO	No. of Troops	Names of Unit	Where from	Equipment & Arms	Time Tab	Exit Route	Comments
1	587	3 BN	KISANGANI	ALL WPNS ORGANIC TO UNIT	29-Jul-00	BUTA	
2	565	5 BN	KISANGANI	"	"	"	
3	606	9 BN	KISANGANI	"	"	"	
4	371	67 BN (MAIN)	KISANGANI	"	"	"	
5	533	75 BN	KISANGANI	"	Sep-00	"	
6	780	31 BN	BUTA	03 TANKS & WPNS ORGANIC TO UNIT	28-FEB-01 UP TO 19-MAR-01	BUTA	TANKS WERE AIRLIFTED IN APR 01
7	687	7 BN	LIBENGE	107MM- 01 PC 120MM - 01 PC	21 MAR 01 UP TO 27 MAR 01	GEMENA	REAR PARTY LEFT GEMENA IN
8	237	67 BN (REAR)	ANGO	02 TANKS & ALL WPNS ORGANIC TO UNIT	22 MAY 01 UP TO 06 JUN 01	ISIRO	TANKS AIRLIFTED ON 21/22 MAY 01
9	658	77 BN	KANYABAYONGA	ORGANIC WEAPONS	16-Apr-01	BENI & MPONDWE	WITHDRAW BY ROAD
10	580	71 BN	BASANKUSU	ALL ORGANIC WPNS & 01 TANK	17 JUN 01 UP TO 03 JUL 01	GBADOLITE	
11	551	73 BN	DONGO	ORGANIC WEAPONS 02 TANKS	28 JUN UP TO 11 JUL 01	GEMENA	
12	500	65 BN	BAFWABOLI BAFWASENDE	05 TANKS 01 TANK RECOVERY ORGANIC WEAPONS	02 JUL 01 UP TO 28 SEPT 01	BENI & MPONDWE	WITHDRAW BY ROAD
TOTAL	6655	11 UNITS	-	14 TANKS	-	-	-

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NOTES:

A. Organic weapons are:-

- 82 MM MOR
- 82 MM REC
- 60 MM MOR
- 40 MM RPG
- 12.7 MM AAC
- GPMG
- G2
- MMG

B. Support weapons withdrawn at different dates:

- 100 MM AAC - 03 PCS
- 37 MM AAC - 05 PCS
- 23 MM AAC - 01 PCS
- 14.5 MM AAC - 07 PCS
- IGLA MISSILES- 09 PCS with firing mechanism
- SAM 7 - 24 PCS with firing mechanisms.
- STRELLA 2 - 02 PCS with firing mechanisms.



## **UR Annex 70**

United Nations

S/2001/1107



**Security Council**

Distr.: General  
26 November 2001

Original: English

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**Letter dated 21 November 2001 from the Permanent Representative  
of Uganda to the United Nations to the President of the  
Security Council**

On instructions from my Government, I have the honour to attach the text of a statement issued on 20 November 2001 by the Government of Uganda (see annex) on the recently published addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of the Congo (see S/2001/1072).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

*(Signed)* Semakula Kiwanuka  
Ambassador Extraordinary and Plenipotentiary/  
Permanent Representative of Uganda to the United Nations



**Annex to the letter dated 26 November 2001 from the Permanent Representative of Uganda to the United Nations to the President of the Security Council**

**Statement issued on 20 November 2001 by the Government of the Republic of Uganda on the addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of the Congo**

The Government of Uganda welcomes the release on 19 November 2001 of the addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (see S/2001/1072).

The Government of Uganda has noted that the addendum to the report has some positive aspects:

(a) First, it recognizes the fundamental issue regarding Uganda's legitimate security concerns in the Democratic Republic of the Congo as a result of the threat from the negative forces in the Democratic Republic of the Congo, including the Allied Democratic Forces (ADF), WBNF, UNRF and more recently from the People's Redemption Army (PRA). The addendum to the report also appreciates the fact that the intervention by Uganda in pursuit of the perpetrators of terrorist activities was based on a bilateral protocol signed between the Government of Uganda and the Democratic Republic of the Congo in 1998;

(b) Second, the addendum to the report states that neither the Government of Uganda nor any of its companies are involved in the illegal exploitation in the Democratic Republic of the Congo;

(c) Third, the addendum to the report recognizes that Uganda is complying with the Lusaka Ceasefire Agreement and relevant Security Council resolutions. Specifically, it notes that Uganda has made significant withdrawal of its troops from the Democratic Republic of the Congo. It also notes that Uganda has complied with the Security Council presidential statement S/PRST/2001/13 by establishing the Judicial Commission of Inquiry on the Illegal Exploitation of Natural Resources of the Democratic Republic of the Congo;

(d) Fourth, the addendum to the report recognizes what President Yoweri K. Museveni has repeatedly said, namely, that the significance of the implementation of the Lusaka Ceasefire Agreement, including the inter-Congolese dialogue, is the only guarantee to (a) guard against illegal exploitation and (b) ensure the security of neighbouring countries;

(e) Fifth, the addendum to the report remedies the earlier anomaly and introduces balanced coverage of all the countries involved in the Democratic Republic of the Congo, including the Democratic Republic of the Congo itself, Zimbabwe, Angola and Namibia.

**Key areas of concern**

The Government of Uganda, however, wishes to express its disappointment with the addendum to the report as follows:

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(a) The addendum to the report accuses senior military officers of continuing to have commercial networks in the Democratic Republic of the Congo, and it quotes as examples the Trinity and Victoria Companies, which are still involved in the Democratic Republic of the Congo;

(b) Preliminary findings, however, indicate that Trinity and Victoria Companies are not Ugandan owned. Thus, Uganda cannot determine which companies operate in the Democratic Republic of the Congo or where their products end. It would, therefore, be very helpful for the Panel to provide evidence to Uganda's Porter Commission of Inquiry so that it can finalize investigations involving senior UPDF Officers. The Uganda Government is committed to the implementation of the recommendations of the Porter Commission of Inquiry;

(c) We also note a number of factual errors. For example, in paragraph 48, the addendum to the report alleges that the Government of Uganda denies that timber from the Democratic Republic of the Congo transits through Uganda. This is not true. The detailed facts and data regarding transit cargo from the Democratic Republic of the Congo were given to the Panel in November 2000 and August 2001.

#### Comments on the recommendations

1. *On the convening of an international conference on peace and development in the Great Lakes region:* Uganda believes that such a conference should take place after the implementation of the Lusaka Ceasefire Agreement on the Democratic Republic of the Congo and the Arusha Peace Process on Burundi. The conference would then focus on reconstruction of the region and take advantage of the peace dividend.
2. *On the recommendation that the United Nations Organization Mission in the Democratic Republic of the Congo accelerate the disarmament, demobilization and reintegration of the negative forces present in the Democratic Republic of the Congo:* Uganda supports the recommendation and believes this is the key to the complete withdrawal of foreign forces and the full implementation of the Lusaka Ceasefire Agreement.
3. *On the evaluation of donor assistance to countries in the region:* Uganda has nothing to hide. Our budgeting process has been transparent and has been worked out with our development partners, including the International Monetary Fund and the World Bank. Uganda's military expenditure remains within the agreed spending limits. Also, Uganda has withdrawn 12 out of 14 battalions, and has requested the Security Council to deploy the United Nations Organization Mission in the Democratic Republic of the Congo in the Bunia and Buta areas so that Uganda can withdraw its remaining troops.
4. *On the issue of a moratorium:* Uganda has always stated that a moratorium could be put on the commercial exploitation of minerals, but not on smallholders who earn their living through the traditional cross-border trade.
5. *On the issue of sanctions:* Uganda believes that sanctions should be aimed at those who violate the implementation of the Lusaka Ceasefire Agreement. The implementation of the Lusaka Ceasefire Agreement and the establishment of the new political dispensation are the only guarantee against the illegal exploitation of natural resources in the Democratic Republic of the Congo.

## **UR Annex 71**

United Nations

S/2001/1156



## Security Council

Distr.: General  
5 December 2001  
English  
Original: French

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**Letter dated 5 December 2001 from the Permanent Representative  
of the Democratic Republic of the Congo to the United Nations  
addressed to the President of the Security Council**

On instructions from my Government, I have the honour to transmit herewith the note of the Government on the report and the addendum to the report of the United Nations Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, in violation of its national sovereignty (see annex\*).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Atoki Ileka  
Ambassador  
Permanent Representative

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\* The annex is being circulated in the language of submission only.



**Annex to the letter dated 5 December 2001 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the President of the Security Council**

**Note of the Government on the report of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo**

Permanent Mission of the Democratic Republic  
of the Congo to the United Nations

November 2001

**REPUBLIQUE DEMOCRATIQUE DU CONGO**

**MEMOIRE DU GOUVERNEMENT  
RELATIF AU RAPPORT DU GROUPE D'EXPERTS DES  
NATIONS UNIES SUR LE PILLAGE ET L'EXPLOITATION  
ILLEGALE DES RESSOURCES NATURELLES ET AUTRES  
RICHESSES DE LA R.D.C.**



NOVEMBRE 2001

UR Annex 71

## I. INTRODUCTION

### Objet du mémoire

1. A sa séance du 3 mai 2001, le Conseil de Sécurité a examiné la question relative à la situation de la République Démocratique du Congo. A cette occasion, il a demandé au Secrétaire Général de proroger, pour une durée de trois mois, le mandat du Groupe d'Experts sur l'exploitation illégale des ressources naturelles et autres richesses de la République Démocratique du Congo.

2. Dans sa déclaration, le Président du Conseil a noté que le rapport du Groupe d'Experts contient des informations préoccupantes au sujet de l'exploitation illégale des ressources congolaises par des particuliers, des Gouvernements et des groupes armés impliqués dans le conflit et au sujet des liens existants entre l'exploitation des ressources naturelles et autres richesses de la République Démocratique du Congo et la poursuite de la guerre.

## II. CONSIDERATIONS DU GOUVERNEMENT SUR LE RAPPORT DU PANEL DES NATIONS UNIES

3. Le Gouvernement de la République Démocratique du Congo, tout en faisant siennes les définitions du Panel sur l'entendement des concepts tels que « légalité », « pillage », et « exploitation », considère que :

Primo, la légalité s'apprécie par rapport :

- à la date du 30 juin 1960 à laquelle la RDC est devenue un Etat souverain et indépendant et non par rapport au statut des groupes dirigeants ;
- à la loi existante. Il s'agit de celle qui existait avant la guerre d'agression et non par rapport à l'effectivité du pouvoir des groupes gouvernants ;
- à la conformité des pratiques commerciales et à la législation existante sur le plan national et sur le plan international.
- Et plus particulièrement par rapport au respect :
  - a. de la souveraineté nationale,
  - b. de la législation nationale,
  - c. des pratiques commerciales normalement acceptées et des méthodes pratiquées en République Démocratique du Congo,
  - d. du droit international y compris des instruments non contraignants.

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Secundo, la définition extensive de l'exploitation dépasse les opérations d'extraction, de production, de commercialisation et d'exportation des ressources naturelles. Elle intègre les activités connexes telles que les services de transport, d'assurances, les transactions financières, les taxes douanières, fiscales, domaniales, etc.

4. En ce qui concerne les prérogatives de souveraineté, le Gouvernement prend la position suivante au sujet des ressources naturelles et autres richesses de la RDC :

- Dans son argumentaire relatif au Rapport du Panel des Nations Unies, le RCD se décrit comme : « *un mouvement formé exclusivement des fils et filles du Congo, qui combattent contre la dictature fut-elle naissante et pour l'instauration d'un Etat de droit, gage de paix, de justice et de stabilité et dans la Sous-Région des Grands Lacs* ».
- Le MLC et le RCD-ML se définissent de la même façon en ce qui concerne leur composition, leurs objectifs et leur vision des institutions de la RDC.
- Dans le même ordre d'idées, les trois mouvements de libération sont soutenus, dans leur entreprise subversive par trois Etats voisins, à savoir le Rwanda, l'Ouganda et le Burundi.
- Sur la base de cette définition, les Mouvements rebelles déduisent et concluent que les termes d'exploitation illégale et de pillage des ressources naturelles et autres richesses de la RDC utilisés par les Experts de l'ONU dans leur rapport ne doivent, en aucun cas, s'appliquer à eux.
- Dans ce contexte, ils les rejettent et les récusent au motif que ces termes s'analysent par rapport à une exploitation ou à une récupération des ressources qui appartiennent à autrui, sans l'autorisation du propriétaire et sans contrepartie pour celui-ci. Or, pour eux tel ne serait pas leur cas.
- Les mouvements rebelles et leurs commanditaires se présentent ainsi comme les propriétaires du sol et du sous-sol congolais. Mais à quel titre peuvent-ils soutenir une telle prétention ?
- Ils n'ignorent cependant pas qu'ils ne sont ni la nation congolaise ni ses représentants attitrés, ni non plus que ces ressources appartiennent à l'Etat congolais dont la direction se trouve à Kinshasa.
- Comment les mouvements rebelles et leurs parrains comptent-ils opérer pour s'affranchir de l'autorisation préalable du Gouvernement central prévue par les lois congolaises auxquelles ils prétendent pourtant vouloir

se référer ? Ici interviennent particulièrement les dispositions pertinentes du Code minier et du Code foncier qui déterminent clairement l'autorité minière et l'autorité foncière compétente pour agir au nom de l'Etat au niveau national, provincial ou local.

- Quelle est la contrepartie que l'on peut attendre de l'exploitation des ressources naturelles de la RDC dans les territoires occupés ? Les Etats envahisseurs et les mouvements rebelles congolais répondent à cette interrogation par l'affirmation qu'ils perçoivent régulièrement les taxes et redevances prévues par la loi. Et ils ajoutent : « En effet, l'exploitation n'est pas exercée par les mouvements rebelles comme institutions mais plutôt par les exploitants congolais eux-mêmes lorsqu'ils marchandent avec les comptoirs. Ceux-ci exportent après paiement des redevances et taxes ».
- De toutes ces opérations, les mouvements rebelles prétendent ne recevoir que. « des taxes et redevances au titre d'institutions exerçant les prérogatives de l'Etat ». « Dès lors que les exploitants congolais et le Trésor public perçoivent pour les uns la contrepartie financière et pour les autres les taxes dues, on ne peut parler ni d'exploitation illégale ni de pillage ».
- Les mouvements rebelles n'ignorent pourtant pas que les redevances et taxes versées au Trésor public appartiennent à l'Etat dont ils ne sont pas des mandataires. A quel titre peuvent-ils exiger leur versement, les faire percevoir et se les attribuer ? Et pour quel usage ?
- Les mouvements rebelles se définissent comme des institutions exerçant des prérogatives de l'Etat. De quel Etat s'agit-il ? Car, la RDC ne leur a conféré aucun mandat, aucun pouvoir pour gérer une quelconque partie de son territoire ou de sa population ou de ses services. En outre, ils ne peuvent pas être à la fois des mouvements rebelles contre les institutions légalement établies, détentrices de la souveraineté nationale et des entités exerçant les prérogatives de cette même souveraineté.
- Par leurs écrits et leurs actes, les mouvements rebelles confirment la réalité de l'exploitation et de la récupération des ressources naturelles et autres richesses de la RDC. Que cette exploitation soit réalisée par eux-mêmes, par leurs alliés ou qu'ils en perçoivent les taxes et les redevances, cette activité constitue manifestement une exploitation illégale et un pillage systématique des ressources de la RDC.

- Cette exploitation est illégale du fait qu'elle est faite en violation des lois et règlements en vigueur. Il y a pillage par le fait de la récupération des ressources et des richesses de la RDC contre la volonté du peuple qui en est le propriétaire et sans contrepartie pour celui-ci de la part des pays agresseurs et des mouvements rebelles.
- Le RCD, le MLC et le RCD-ML cherchent désespérément à tirer de l'Accord de Lusaka des prérogatives imaginaires pour tenter de couvrir l'illégalité de leurs actes. A cet effet, il suffit de lire le point 15 article 3 de cet Accord pour comprendre. Il stipule : « Rien dans cet Accord ne devra d'aucune manière nuire à la souveraineté ni à l'intégrité territoriale de la RDC ».
- Cette disposition complète utilement celle de l'article 3 de la Charte de l'OUA garantissant à tous les Etats membres le droit à leur souveraineté et à leur intégrité territoriale ainsi que celle de l'article 2 de la Charte des droits et devoirs économiques des Etats sur leurs ressources naturelles et leurs richesses nationales sans oublier la Déclaration des Nations Unies sur la souveraineté permanente des Etats sur leurs ressources naturelles.
- La souveraineté est un droit étatique. Elle ne peut être attribuée qu'à un Etat et ne peut en conséquence être exercée que par un Etat, c'est-à-dire une entité politique possédant un territoire, une population, des institutions et dotée de la personnalité juridique internationale et de la reconnaissance des autres Etats.  
Or, le RCD, le MLC et le RCD-ML ne le sont pas. Ils ne peuvent en conséquence accomplir des actes de souveraineté.  
Ce qu'ils considèrent à tort comme prérogatives de l'Etat constitue justement les infractions de rébellion, de pillage et d'exploitation illégale des ressources naturelles et autres richesses de la RDC.
- Ces faits infractionnels sont prévus et punis gravement par le Code pénal congolais et par le Code congolais de justice militaire. Tandis que les Etats complices engagent leur responsabilité internationale par la violation des instruments juridiques internationaux dont la Charte des Nations Unies, la Charte de l'OUA, la Charte de l'Union Africaine, les Déclarations et Résolutions pertinentes de l'Assemblée Générale et du Conseil de Sécurité des Nations-Unies.
- Toutes ces violations constituent des fautes graves dans leur chef en droit international. Les préjudices causés au peuple congolais sont incommensurables : plus de trois millions de morts, des millions de blessés, de mutilés, de malades, de déplacés de guerre, de réfugiés, une



pauvreté exponentielle, une grande vulnérabilité à l'égard des maladies émergentes en tête desquelles trône le Sida qui ravage et décime la population active. Une juste indemnisation est indispensable pour réparer tous ces torts et pour rétablir le peuple congolais dans sa dignité.

- L'accord de Lusaka n'organise pas la partition de la RDC entre deux ou plusieurs Etats issus du démembrement de l'Empire congolais. Il n'autorise aucun mouvement rebelle à poser des actes de Gouvernement. Le droit international ne réserve cette prérogative qu'aux Etats. L'administration assurée par les dirigeants rebelles dans les territoires qu'ils occupent est une institution illégale mise en place et gérée par des hors la loi pour piller la population et le pays. C'est une turpitude dont les rebelles ne peuvent se prévaloir.
- Les actes d'administration comme ceux de législation et de juridiction sont des actes de souveraineté. Ils relèvent de la compétence exclusive du Gouvernement légal et légitime de la RDC. Celui-ci n'oublie ni la population ni les fonctionnaires ni les magistrats ni les enseignants ni d'autres agents de l'Etat se trouvant dans les territoires occupés.
- La preuve est que le Gouvernement organise les examens d'Etat à faire passer dans les territoires occupés pour que les enfants congolais arrivés en terminale ne puissent pas sacrifier leur avenir en perdant toute chance d'accéder à l'enseignement supérieur et universitaire. Le concours de la MONUC a été précieux pour le transport des copies et des examinateurs en toute sécurité et toute confidentialité.
- La campagne de vaccination est menée par les services gouvernementaux avec la collaboration de l'OMS et de l'UNICEF sur l'ensemble du pays et ce y compris les territoires occupés pour prévenir la poliomyélite qui risquerait d'invalider une partie de la jeunesse congolaise. D'importants moyens ont été débloqués pour la réussite périodique de cette opération de salubrité publique. Les personnes qui en sont chargées assument des graves risques pour accéder aux enfants à vacciner.
- Le Gouvernement a décidé de verser à tous les fonctionnaires et agents de l'Etat des territoires occupés les arriérés de salaire pour trente-six mois. Une mission gouvernementale s'est rendue à Gbadolite pour une concertation avec le MLC en vue de procéder au paiement desdits arriérés.
- Le Gouvernement de la République Démocratique du Congo ne peut s'empêcher de faire remarquer que des mouvements qui prétendent

exercer des prérogatives étatiques puissent laisser pendant 36 mois les fonctionnaires et agents de l'Etat sans salaire.

- Plus grave est la répression exercée par le RCD, entraînant mort d'hommes, contre les fonctionnaires et agents de l'Etat qui ont voulu manifester leur approbation de la décision gouvernementale de leur verser leurs salaires pour qu'ils puissent faire étudier leurs enfants ou faire soigner les membres de leur famille. Plusieurs arrestations ont été opérées et ceux considérés comme meneurs ont été transférés en d'autres lieux où on ignore le sort qui leur est réservé.
- L'accord de Lusaka reconnaît l'état de belligérance et les parties belligérantes mais ne reconnaît qu'un Gouvernement qui assure la continuité des institutions de l'Etat et qui n'a été contesté par personne. Il n'existe pas non plus de Gouvernement congolais en exil. Le Gouvernement congolais est une réalité objective, incontestable et incontournable.
- Le pays doit continuer à être gouverné. Le Gouvernement de la République Démocratique du Congo est connu et reconnu par tous les Congolais y compris ceux des mouvements rebelles ainsi que par la Communauté internationale, prise dans son ensemble et au niveau de chaque Etat.
- Les membres du Corps diplomatique et les Représentants des Organisations Internationales sont accrédités à Kinshasa, siège des institutions de la République.
- En posant des actes de gouvernement, les mouvements rebelles pillent les ressources naturelles ou financières de la RDC. Car ils violent ainsi les normes impératives du droit congolais et la souveraineté nationale.
- Il est réel que le sol et le sous-sol congolais sont la propriété exclusive, inaliénable et imprescriptible de l'Etat congolais. Mais le RCD, le MLC et le RCD-ML ne sont pas des Etats et moins encore l'Etat congolais. L'Accord de Lusaka n'a pas créé sur le territoire congolais un Etat appelé RCD, MLC ou RCD-ML.
- Lors de la signature de l'Accord de Lusaka, la RDC a été représentée par Son Excellence feu Laurent Désiré KABILA, agissant en tant que Président de la République. Tandis que les autres Congolais ont signé ledit Accord comme Représentants des Mouvements rebelles.

- Les Plénipotentiaires de Lusaka n'avaient pas le mandat de démembrer la RDC. Leur mission se limitait à rechercher la cessation des hostilités par un cessez-le-feu effectif et la réconciliation nationale par la tenue du Dialogue Intercongolais. S'il y avait un Etat MLC, ou RCD ou RCD-ML il aurait eu besoin de la reconnaissance internationale. Or jusqu'à aujourd'hui aucun de ces mouvements ne s'est jamais proclamé comme un Etat indépendant et souverain et aucun autre Etat ne l'a jamais reconnu comme tel. Même pas les Etats qui soutiennent leur rébellion et qui leur servent de commanditaires.
- L'ambition des mouvements rebelles de se prendre pour des Etats n'est qu'une illusion. D'ailleurs ils sont pris dans leurs propres contradictions de vouloir être des Etats et de continuer à se mouvoir en même temps dans la souveraineté congolaise unique et indivisible. Les Congolais, toutes tendances confondues, aiment à définir la RDC comme un Etat indépendant et souverain, uni et indivisible, social et laïc, démocratique et libéral.
- Dans ce contexte où serait la place de l'Etat RCD-ML, de l'Etat MLC ou de l'Etat RCD ?

**En ce qui concerne le rôle de la Banque Mondiale, du Fonds Monétaire International et d'un certain nombre de gouvernements spécialement ceux des nations industrielles :**

5. Selon le Rapport du Panel des Nations Unies sur l'exploitation illégale des ressources minières de la RDC, le Rwanda et l'Ouganda, bénéficient d'un soutien financier quasi inconditionnel tant pour l'accès au programme d'ajustement structurel que pour l'aide budgétaire, l'aide à la balance de paiement et la remise de la dette.

6. Il va sans dire que l'accès à ce programme structurel conditionne également un nombre important de flux d'aide et entraîne quasi-automatiquement l'appui financier d'autres institutions au plan tant multilatéral que bilatéral.

7. En ce qui concerne la Communauté Internationale, les nations industrielles continuent d'apporter au Rwanda et à l'Ouganda d'importants fonds destinés à soutenir leurs budgets respectifs et d'organiser des montages financiers en faveur des entreprises appartenant à leurs citoyens installées dans les territoires occupés et dans les pays agresseurs, entreprises engagées dans le pillage et l'exploitation illégale des ressources de la RDC.



8. Le Gouvernement considère que cette générosité de la part de certains gouvernements des nations industrielles et des institutions de Bretton Woods offre de larges possibilités de manœuvre au Rwanda et à l'Ouganda pour le financement d'une partie des dépenses militaires à travers l'aide budgétaire et l'aide à la balance des paiements dont ils sont bénéficiaires.

9. Moralement les Gouvernements des nations industrielles, la Banque Mondiale et le Fonds Monétaire International ne devraient pas accorder le soutien financier aux pays qui font la guerre, qui exploitent illégalement les richesses d'un autre pays et qui sont à la base de pratiques maffieuses dont le trafic d'armes, le blanchiment de l'argent sale, la fabrication de la fausse monnaie et qui criminalisent ainsi les économies.

**En ce qui concerne la coopération de la RDC avec ses alliés :**

10. Le Rapport du Panel fait mention de la responsabilité du Gouvernement de la République Démocratique du Congo essentiellement au sujet des contrats signés dans le cadre de l'exploitation du diamant du Kasai, du cuivre et du cobalt au Katanga avec les opérateurs économiques originaires des pays alliés.

11. A ce sujet le Panel des Experts des Nations Unies a ciblé les sociétés suivantes : COMIEX, COSLEG, BCD, SENGAMINES, SONANGOL, SOCEBO, et différentes autres conventions de partenariat entre la RDC et ses alliés, structures qualifiées de supports de pillage.

12. Pour le Gouvernement, les contrats signés en bonne et due forme et qui s'inscrivent dans le cadre d'une convention économique globale entre la RDC et ses alliés ne peuvent pas être assimilés à des actes de pillage et d'exploitation illégale qui se déroulent dans les territoires contrôlés par le Rwanda, l'Ouganda et le Burundi.

13. D'ailleurs, la convention économique globale signée entre la République Démocratique du Congo et le Zimbabwe dépasse le contexte de la guerre et vise le développement de deux pays. L'exemple de la Sengamines et celui des accords de partenariat entre les Lignes Aériennes Congolaises (LAC) et Air Zimbabwe, en sont une illustration.

14. En ce qui concerne la Sengamines, un projet d'investissement pour l'exploitation du diamant dans la Province du Kasai Oriental évalué à 64.000.000,00 USD a été agréé. De janvier à août 2001, elle a exporté 183.401,38 carats de diamant vers Anvers pour une valeur de 2.420.259,00 USD. Il convient de signaler que la Sengamines a déjà créé 700

emplois stables et construit 300 Km de route en terre battue et des écoles. Par ces réalisations la Sengamines est impliquée dans la reconstruction nationale.

15. Cette coopération n'a rien de comparable avec le pillage et l'exploitation de ressources naturelles et autres de la RDC effectués par les Ougandais, les Rwandais et les Burundais dont les comptoirs ont déjà exporté 12.967.047,83 carats de diamant de joaillerie d'une valeur de 427.046.578,39 USD, 3.962.126,28 kg de coltan pour une valeur de 792.425.256 USD et de 6.308.330 kg de cassitérite pour une valeur de 24.393.116,85 USD, de 1998 en mai 2001 sans contrepartie en faveur de la population congolaise.

16. Dans le cadre de la convention économique signée entre la RDC et l'Angola, la SONANGOL importe et distribue les produits pétroliers en assurant ainsi l'approvisionnement régulier de ses produits stratégiques pour l'économie congolaise. En plus, elle construit des stations services et crée des emplois.

17. Par contre la Société DARA-FOREST exploite pour le compte de l'Ouganda une concession de 100.000 hectares qui lui a été octroyée par l'Arrêté Interdépartemental RCD/DPT/EPIC/FIN/003/2000 du 11/03/2000 et dont la production lui a déjà rapporté, au bas mot, environ 43 millions de dollars américains. Cette exploitation intensive et excessive des forêts congolaises a fini par révolter les populations locales et c'est probablement ce qui a justifié la prise en otage, au mois de mai 2001, d'une dizaine des ressortissants thaïlandais, suédois, ougandais et kenyans oeuvrant dans la Société Dara-Forest par des résistants Mai-Mai.

18. Confrontée à une agression sauvage de la part du Rwanda, de l'Ouganda et du Burundi dans une situation de l'amenuisement de ses moyens financiers et de l'embargo financier le frappant sur le plan international, la République Démocratique du Congo n'a pu offrir aux alliés venus à son secours pour l'aider à sauvegarder sa souveraineté menacée, que des possibilités de compensation de leurs dépenses militaires à travers des joints-ventures.

19. Le Gouvernement considère que condamner une initiative qui lui a permis de défendre la souveraineté nationale ne peut être perçu que comme une invitation à la trahison du devoir fondamental auquel est tenu tout gouvernement à savoir défendre par tous les moyens possibles la souveraineté et l'intégrité de son pays

20. Que certains des contrats de partenariat entre la RDC et ses alliés comportent des clauses controversées mais imputables au contexte de guerre où sont intervenues leurs signatures, le Gouvernement en est conscient. En effet, il n'a pas d'ailleurs attendu la visite du Panel de l'ONU pour amorcer une action d'évacuation des dispositions contractuelles au demeurant non conformes aux



lois régissant les sociétés commerciales et à l'équité inhérente aux joint-ventures, parce que pas assez explicites.

**III. : L'AMPLEUR DU PILLAGE ET DE L'EXPLOITATION  
ILLEGALE DES RESSOURCES DE LA REPUBLIQUE  
DEMOCRATIQUE DU CONGO**

21. Quels que soient les reproches que le Rwanda, l'Ouganda, le Burundi et leurs commanditaires puissent faire au Rapport du Panel de l'ONU, le Gouvernement, quant à lui, considère que le pillage et l'exploitation illégale des ressources de la RDC ont atteint une ampleur qui dépasse de loin le constat établi par ledit Panel ; car ce phénomène porte sur l'ensemble des ressources qu'elles soient minérales, écologiques, agro-pastorales, financières, énergétiques, industrielles et surtout humaines. En effet le pays déplore aujourd'hui plus de 3.000.000 de morts, des millions de déplacés, des réfugiés et de centaine des milliers de mutilés.

22. Le Rapport des Nations Unies établit, de façon objective, la réalité du trafic et de l'exploitation illégale par l'Ouganda, le Rwanda et par le Burundi, des richesses naturelles de la République Démocratique du Congo, essentiellement le coltan, le diamant, l'or, la cassitérite, le pyrochlore (le niobium), le bois, le café, etc.

23. En ce qui concerne le diamant, l'ampleur du trafic est confirmée par les faits et chiffres incontestables. Des sources indépendantes crédibles évaluent des exportations rwandaises, ougandaises et burundaises des diamants de joaillerie à 12.967.047,83 carats pour une valeur de 427.046.578,39 dollars américains de 1998 à mai 2001.

24. L'estimation faite par le Groupe d'Experts des Nations Unies selon laquelle le coltan a déjà rapporté au Rwanda environ 250 millions de dollars est sous - évaluée au regard du montant relevé par le Commission des Experts Nationaux Indépendants pour la période allant de 1998 à mai 2001 qui est de 774.811.256,00 dollars.

25. Le Rapport du Panel d'Experts des Nations Unies sur l'exploitation illégale des ressources naturelles et autres richesses de la République Démocratique du Congo s'est limité à décrire le pillage systématique des ressources. Le Gouvernement, quant à lui, a procédé à une première évaluation sommaire pour chiffrer l'ampleur de ce pillage.

26. Sans prendre en compte l'évaluation du coût humain de la guerre, les préjudices subis par l'Etat congolais sont estimés provisoirement à 10 milliards de dollars américains. Toutefois, le dossier reste ouvert jusqu'au moment où toutes les personnes victimes de la guerre présenteront leurs réclamations et les organismes spécialisés évalueront le coût de la réinsertion des déplacés de guerre et ainsi que le coût de la reconstitution des Parcs nationaux et aires protégées.

27. L'évaluation faite concerne les ressources minières pour 1.510.331.115,59 dollars, les ressources agro-pastorales et écologiques pour 1.737.407.196,42 dollars, les ressources financières pour 6.247.963.961,45 dollars et les ressources matérielles y compris les infrastructures sanitaires pour 622.565.026,00 (cfr tableau de synthèse ci-après).

**Evaluation du préjudice financier subi par la RDC suite au pillage et à l'exploitation illégale des ressources naturelles et autres richesses à cause de la guerre d'agression**

N°	NATURE DES RESSOURCES	MONTANT
A	<b>Ressources minières</b>	
	1. Coltan ( 3.962.126,280 Kgs)	792.425.256,00
	2. Diamant ( 12.965.047,83 Kgs)	427.046.578,39
	3. Or ( 30.037,409 Kgs)	265.104.164,35
	4. Cassitérite ( 6.308.330 Kgs)	24.393.116,85
	5. Niobium	1.362.000,00
	<b>S/TOTAL</b>	<b>1.510.331.115,59</b>
B	<b>Ressources agropastorales et écologiques</b>	
	6. Secteur bois	164.229.039,00
	7. Parcs nationaux et aires protégées	91.398.300,00
	8. Secteur de l'élevage	1.430.729.932,00
	9. Produits agricoles industriels	51.150.925,42
	<b>S/TOTAL</b>	<b>1.737.407.196,42</b>
C	<b>Ressources financières</b>	
	10. Banques	16.228.334,49
	11. Régies financières	1.435.991.660,00
	12. Entreprises de la FEC	125.344.461,00
	13. Entreprises Publiques	199.472.175,24
	14. Entreprises minières	4.470.932.230,00
	<b>S/TOTAL</b>	<b>6.247.963.961,45</b>
D	<b>Ressources matérielles</b>	
	15. Infrastructures sanitaires	622.565.026,00
	<b>TOTAL GENERAL A + B + C + D</b>	<b>10.118.267.299,46</b>

28. Les Nations - Unies devront rester saisies de la question jusqu'à l'indemnisation intégrale de toutes les victimes (personnes physiques et morales) à l'instar des dommages subis pendant la guerre de Koweït.

29. Le Rapport du Panel fait ressortir, également avec des preuves, témoignages et faits à l'appui, la responsabilité des Etats ougandais, rwandais, burundais d'une part et des sociétés privées et des hommes d'affaires appartenant à ces pays, d'autre part.

30. De même, il établit la responsabilité politique et morale des Présidents de ces pays à travers l'implication des membres de leurs familles et les chefs militaires qui leur sont liés hiérarchiquement.

Tous les noms cités dans le Rapport du Panel sont confirmés par diverses sources fiables et par de nombreux témoignages.

31. La responsabilité d'un certain nombre de sociétés privées européennes, américaines et asiatiques est également établie. Certaines Banques occidentales sont citées, même si on peut regretter qu'une Banque belge de renom international n'ait été citée que d'une manière incidentielle alors qu'elle finance notoirement ce commerce illicite à travers la Banque de Kigali (BK), la Banque Commerciale du Rwanda (BCR), la Banque de Commerce, de Développement et d'Industrie (BCDI) et l'Union des Banques Congolaises (UBC) par son siège de Kisangani aujourd'hui transféré à Kigali.

32. Le Rapport relève la présence, aussi bien dans la filière ougandaise que dans la filière rwandaise, des citoyens libanais, juifs, thaïlandais, pakistanais qui jouent un rôle de premier plan dans ce trafic illégal.

33. Il convient de signaler par exemple que ces Libanais sont en réalité les anciens de la filière Khanafer et Abdul Karim très connue en République Démocratique du Congo dans le trafic du diamant angolais et dans celui de la fabrication de la fausse monnaie.

34. La connexion entre les marchands d'armes et l'exploitation illicite des richesses fait ressortir suffisamment le rôle des personnages notoirement connus dans la criminalisation de l'économie congolaise telle que Madame Gulamali dans le pillage des ressources et la poursuite de la guerre.



35. De ce qui précède, le Gouvernement de la RDC est en droit d'affirmer que les problèmes liés à l'insécurité aux frontières et à l'instabilité de la Région des Grands Lacs, invoqués par l'Ouganda, le Rwanda et le Burundi ne peuvent plus justifier l'occupation actuelle de près de la moitié du territoire congolais par les Armées coalisées de ces pays dont les lignes de front se trouvent en profondeur de la RDC à plus de 2.000 kilomètres de leurs frontières.

36. De même, les questions liées à la démocratie et au respect des droits de l'homme ne sont pas au programme des mouvements rebelles dans les territoires sous contrôle des armées du Rwanda, de l'Ouganda et du Burundi pour justifier une quelconque rébellion qui constitue aujourd'hui un alibi pour masquer l'invasion puis l'occupation étrangère de la République Démocratique du Congo.

37. Il est désormais clair que parallèlement à cette guerre et à l'ombre de celle-ci, il est entrain de s'opérer l'une de plus grandes entreprises de pillage économique que le continent africain ait jamais connue.

38. En effet, il suffit de consulter la carte de la guerre pour constater aisément que l'Ouganda, le Rwanda et, dans une certaine mesure le Burundi, contrôlent dans les régions qu'ils occupent 70 à 75 % des richesses minières et agro-industrielles de la RDC. C'est ainsi que toutes les zones de production aurifère de la Province Orientale, du Maniema, du Sud Kivu, du Nord Kivu et du Nord Katanga, qui regorgent à elles seules l'essentiel de toutes les réserves d'or connues du pays, sont totalement sous leur contrôle.

Ces mêmes pays occupent également toutes les zones diamantifères de la Province Orientale, du Maniema, de l'Equateur (Yakoma) et d'une partie non négligeable du Kasai (Lodja et Kabinda).

39. Par ailleurs, le Rwanda, l'Ouganda et le Burundi contrôlent pratiquement toutes les zones de production agro-industrielle et forestière du pays (Equateur, Nord et Sud Kivu, Maniema, Province Orientale).

Il en résulte que le gros de la production du café de la RDC estimée à environ 60.000 T de café robusta et 8.000 T de café arabica ainsi que toutes les plantations de thé, de quinquina du Nord-Kivu et du Sud-Kivu ainsi que l'exploitation de papaye du Nord-Kivu se trouvent sous leur contrôle.

40. Il convient de faire remarquer que toutes ces opérations d'exploitation illicite des ressources naturelles et autres richesses de la RDC se réalisent d'autant plus facilement que le Rwanda, l'Ouganda et le Burundi sont parvenus à avoir la main - mise sur un certain nombre d'aéroports, dont quatre sont d'importance internationale (Kisangani, Goma, Gbadolite et Kindu), et des ports importants comme ceux de Kalundu, Kalemie, Moba, Bukavu, Kisangani et Goma. En plus, la quasi totalité des compagnies aériennes qui opèrent dans ces régions appartiennent aux hommes d'affaires originaires de ces pays.

41. Cette main - mise a favorisé les activités des réseaux des entreprises et de commerçants rwandais et ougandais qui, parallèlement à la guerre, occupent tout le marché des biens, des produits et des services, et se livrent à des opérations de spéculation. Il s'ensuit une exploitation intense de tout ce qui a de la valeur et qui peut rapporter des bénéfices substantiels à court terme.

42. Des secteurs entiers de l'économie des territoires occupés, des villes et des villages sont sous le joug des seigneurs de la guerre qui ont des ramifications insoupçonnées avec des narco-trafiquants et des groupes maffieux soutenus par des officiers supérieurs des armées ougandaise, rwandaise et burundaise qui font régner la loi de la jungle sans le moindre respect des principes humanitaires.

43. Cet état de choses est, à n'en point douter, à la base de la forte tension qui prévaut de façon permanente dans les Provinces occupées et plus particulièrement dans le Sud-Kivu où l'exploitation illégale et le pillage des ressources renforcent là où elle existe, ou la crée là où elle n'existe pas encore, la résistance armée et non armée des populations locales. Ce qui risque donc de perpétuer l'instabilité et l'insécurité que le Rwanda, l'Ouganda et le Burundi prétendent combattre

44. C'est ainsi que la résistance de la population contre les exactions, le pillage et l'exploitation dont elle se sent victime explique des massacres périodiques des populations autochtones par les pays envahisseurs. Ces massacres se déroulent, comme par hasard, toujours dans les zones minières telles que Kasika, Kamituga dans la Province du Sud-Kivu ou encore Djugu, Mongbalu, Watsa dans la Province Orientale.

45. Dès lors, la question que l'on est en droit de se poser est celle de savoir à qui profite le crime ? le Gouvernement cible principalement le groupe militaro-politique qui est au pouvoir au Rwanda, en Ouganda et au Burundi et des hommes d'affaires de ces deux pays ; ensuite, les criminels du blanchiment de l'argent sale à travers les trafics de la drogue, de l'or, du diamant, du coltan et des armes.

46. La criminalisation de l'économie congolaise a permis de mettre en évidence l'existence d'un réseau de trafiquants d'or, de diamant et de coltan qui emprunte la filière de la fabrication de la fausse monnaie, de la vente des armes et du blanchiment des narco-dollars. Cela est d'autant plus intrigant que personne ne peut justifier la provenance de ces millions de dollars qui servent à l'achat des matières précieuses et dont une partie assez importante ne passe pas par les circuits bancaires classiques.

#### **IV. LE PILLAGE ET L'EXPLOITATION ILLEGALE DES RESSOURCES DE LA RDC ET L'AMPLEUR DE LA CATASTROPHE HUMANITAIRE**

47. Le Panel de Nations-Unies n' a pas fait allusion au coût humain de la guerre. Pourtant, toutes les informations fournies par les organisations humanitaires tant nationales qu'internationales (Agence catholique MISNA, Amnesty International, Human Right Watch, International Crisis group, Collectif des organisations et Associations des Jeunes du Sud-Kivu, Fondation Congolaise pour la Promotion des droits humains et de paix) confirment que la guerre en RDC est d'abord une catastrophe humanitaire.

48. En effet, le pillage et l'exploitation illégale de la RDC s'accompagnent des massacres, des déplacements de la population ainsi que de l'exploitation des enfants et des prisonniers, etc.

49. Un des rapports de Human Right Watch établit à plus de 3.000.000 de personnes qui sont mortes directement ou indirectement des effets de la guerre tandis que International Crisis estime à 2.000.000 le nombre de personnes déplacées à l'intérieur du pays et à 300.000 le nombre de personnes réfugiées à l'extérieur.

50. Dans son rapport présenté au Conseil de sécurité le 28 novembre 2000, Mme Mac Askie, Coordinatrice des Secours des Urgences, a précisé que 16.000.000 de personnes sont menacées par la famine du fait de la guerre, ce qui représente environ plus du tiers de la population congolaise.

51. Un récent rapport de l'OMS, quant à lui, indique que le taux de prévalence du VIH/SIDA a connu une augmentation significative ces dernières années en RDC. Parmi les raisons qui expliquent cette expansion, on note le fait que les militaires alliés des belligérants proviennent des pays où le taux de prévalence du VIH/SIDA est le plus élevé de l'Afrique subsaharienne.



52. Parallèlement à l'exploitation des ressources naturelles et autres richesses de la RDC, les officiers militaires ougandais se sont employés à attiser les conflits ethniques en Ituri notamment dans la Province Orientale où les Lendu et Hema se sont massivement entretenus entre juin 1999 et octobre 2000 provoquant des milliers de morts et des déplacés.

53. La course effrénée vers des profits de plus en plus importants a, plus d'une fois, amené le Rwanda et l'Ouganda aux affrontements sanglants à Kisangani dans la Province Orientale, affrontements dénoncés par le Gouvernement de la RDC, par la population congolaise dans son ensemble et par la Communauté Internationale.

54. Il s'agit là d'un fait unique dans l'histoire des relations internationales où on n'avait jamais vu deux armées étrangères traverser leurs frontières respectives pour s'affronter sur le territoire d'un pays voisin en se disputant les aires d'influence et d'exploitation des richesses relevant du pillage.

55. Suite aux révélations faites par le Panel des Experts des Nations Unies dénonçant dans son Rapport l'utilisation abusive des enfants dans les carrières minières, le Gouvernement de la RDC ne peut que s'indigner et s'insurger contre cette pratique criminelle violant les droits des enfants.

#### **V. ACTEURS DU PILLAGE ET DE L'EXPLOITATION ILLEGALE DES RESSOURCES NATURELLES ET AUTRES RICHESSES DE LA RDC**

56. Le pillage ainsi que l'exploitation illégale des ressources naturelles et autres richesses de la République Démocratique du Congo sont l'œuvre des prédateurs bien connus qui agissent avec la complicité de certains milieux d'affaires et financiers internationaux.

57. Au regard de ce qui précède, trois filières de pillage et d'exploitation illégale des ressources naturelles et autres richesses se dégagent à savoir :

- la filière burundaise ;
- la filière ougandaise ;
- la filière rwandaise.

##### **A. la filière burundaise**

58. Si la filière burundaise n'a pas fait l'objet d'investigations poussées, comme c'est le cas pour les filières ougandaise et rwandaise, une somme de témoignages mettent le Burundi en cause dans le pillage de la Sucrerie de Kiliba, de la société ESTAGRICO ainsi que du bétail.

## B. Filière ougandaise

59. L'Ouganda s'est généralement intéressé aux mines de la Province Orientale. Salim Saleh, demi-frère et Conseiller militaire du Président Museveni a joué un très grand rôle dans l'exploitation illégale des richesses minières congolaises par le biais de sa Compagnie « Kaled International ».

60. Il crée en collaboration avec Khanafer et Abdul Karim notamment le « Victoria Group » dans lequel ils sont en contact avec :

- la génération des anciens combattants de la guerre contre le régime d'Obote. Ces personnages ont acquis un statut de quasi-intouchables et ce sont eux qui prennent des décisions importantes concernant la politique de la gestion des territoires congolais occupés.
- les généraux ex-FAZ de Mobutu Messieurs BARAMOTO et NZIMBI qui font partie du réseau commercial de l'UNITA.

### 61. Principaux personnages impliqués :

- le Général Salim Saheh, proche parent du Président Museveni ;
- le Général James Kazini, ancien chef d'Etat Major de la Légion en République Démocratique du Congo ;
- Monsieur Khalil, sujet libanais installé à Kampala, lié à Madame Akandwanaho pour l'exploitation du diamant ;
- Messieurs Muhamed Gassan et Talal (libanais collaborateurs de Khalil), respectivement installés à Gbadolite et à Kisangani ;
- Monsieur Nahim Khanaffer, sujet libanais, très bien connu dans le milieu de Kinshasa dans les magouilles financières et monétaires avec la Banque Centrale à l'époque du Gouvernement Birindwa ;
- Monsieur Abdul Karim, sujet libanais ;
- Monsieur Agnon David, Général israélien en retrait ;
- Messieurs Abuki, Ali, Idi Tabani et Jogo, hommes d'affaires congolais autochtones de Bunia ;
- Monsieur Tibasima, commissaire général adjoint du MLC/FLC.

### 62. Principales sociétés impliquées dans d'exploitation :

- RRG (Russels Ressources Goldfield) qui contrôle l'or de Kilo-Moto ;
- Nkwano Friends Ship, Société alimentaire installée à Kampala. Elle s'occupe aussi de toutes les transactions des ex-Généraux Baramoto et Nzimbi, pour l'achat de l'or et du diamant ;



- Le Groupe « Victoria » se livre aussi au bradage du Franc Congolais contre le Dollar utilisé pour l'achat de l'or et du diamant congolais ;
- Idi Tabani associé aux hommes d'affaires ougandais et congolais pour les mêmes fins.
- Le Groupe Trinity dirigé par Tibasima exploite l'or, le café et le bois sans acquitter aucune taxe .

#### C. Filière rwandaise

63. L'exploitation des matières premières en provenance de l'Est de la République Démocratique du Congo est mise sous contrôle d'Officiers de l'Armée rwandaise.

64. Ils en font la commercialisation avec la collaboration des commerçants libanais et rwandais.

Tout comme pour l'Ouganda avec « Victoria Group », il y a également au Rwanda « le Groupe de Kigali » qui est engagé dans le trafic des substances précieuses de la RDC.

65. Le responsable des Mines du RCD/Goma, Kamanzi, est l'homme de confiance de ce Groupe de Kigali.

66. Le diamant reste au Rwanda sous le contrôle d'Abdul Karim associé à Khanafer.

67. Le coltan, l'or et la cassitérite sont pratiquement du domaine de Madame Gulamali.

68. Un autre membre important de cette filière, c'est l'homme d'affaires rwandais, Monsieur Rujiguro, proche de l'ancien Président du Burundi, Monsieur Bagaza et du Président Kagame. il contrôle entre autres choses le commerce des matières premières dans la Région Est de la République Démocratique du Congo.

#### 69. Principaux personnages impliqués :

- Paul Kagame, Président du Rwanda, qui est passé aux aveux lors de son discours du 07/04/2001, cité par le journal le Monde, un journal français du 20/08/2001, dans lequel il déclare : *"Le pillage du Congo a commencé il y a un siècle. Ceux de pays occidentaux qui nous importunent à présent avec ces questions sont ceux qui ont commencé. S'ils se plaignent, c'est parce que nous faisons maintenant ce qu'ils ont toujours fait"*. Ali

Hussein, frère d'Abdul Karim chargé de l'achat de l'or et du diamant pour le compte du comptoir Sit Combine de Khanaffer.

- Madame Gulamali (née Aziza Kalsum), propriétaire de la société Uzabuco, spécialisée dans la vente des cigarettes de marque sports-man et best à Bukavu.  
Elle contrôle Somigl, société de monopole de l'exploitation de la quasi-totalité de l'or, du coltan et de la cassitérite dans les territoires occupés par les rwandais avec le concours de Monsieur Al Haj Omar basé à Kigali et proche du Président Kagame.
- Monsieur Chirubagala Chinja assure la coordination de la Somigl à Shabunda, Walungu, Kamisimbi, Mugogo et Mwenga ;
- Monsieur Rujugiro, ancien associé du Président Bagaza aujourd'hui proche du Président Kagame à travers la Société Master Trading Company (M.T.C.), spécialisée dans la marque des cigarettes Super Match et Yes, également associé à Monsieur Asena Paul dans le trafic illicite des matières précieuses.
- l'armée patriotique rwandaise (A.P.R.) dans l'exploitation des gisements de Kampene, Punia, Salamabila, Kalehe, Walikale, etc. avec la main d'œuvre pénitentiaire des hutu.
- les officiers de l'A.P.R. :
  1. Commandant Bahati
  2. Commandant Sebera
  3. Commandant Kazungu
  4. Commandant Musoni
  5. Capitaine Gatete
  6. Major Dan
  7. Capitaine Ignace
  8. Lieutenant Emmanuel.
- Victor Ngezayo : homme d'affaire rwandais qui contrôle la Sominki.
- Kamanzi : Responsable des mines du RCD/Goma, homme de confiance de Kigali.
- Le frère de Abdoul Karim, associé à Kanaffer du réseau ougandais.

**70. Principales sociétés impliquées dans l'exploitation :**

- Little Rock Mining de Sanjivan Ruprah, sujet indo-tanzanien exploitant le diamant de Kisangani et de l'Equateur ;
- Cabot Performance Material (Broyer Town, USA) ;
- HC Starck (Allemagne - USA) ;
- Sogemi (Société rwandaise créée après la prise du Pouvoir par le Front Patriotique Rwandais (F.P.R.) et s'occupe de la vente du Tantale) ;
- La Somigl, société constituée par la fusion de 3 autres sociétés : Africom, Proméco et Cogecom, lesquelles exploitaient déjà le Coltan avec le RCD comme actionnaire principal selon les propres témoignages de Monsieur Ruberwa ;
- Jambo Safari dirigée par Modeste Makabuza, proche du Président Kagame associé à Monsieur Kassam et la société Hashi Empex ;
- Etablissement Habier, spécialisé dans la distribution du carburant au Nord et Sud - Kivu appartenant à Monsieur Ernest Habimana, proche du commandant Karasira chargé de la logistique au sein de l'APR et de Monsieur Gakwerere.
- Etablissement GR dirigé par Egide Gakuba .
- STIPAG dirigé par Monsieur Mbuguje, proche du Président Buyoya et le Commandant Kazura du renseignement militaire rwandais avec Gatete, ancien commandant du bataillon rwandais à Bukavu.

**VI : INSTRUMENTS JURIDIQUES VIOLES PAR LES ACTEURS DU PILLAGE ET DE L'EXPLOITATION ILLEGALE DES RESSOURCES NATURELLES ET AUTRES RICHESSES DE LA RDC**

**71.** L'intégrité territoriale et la souveraineté de la RDC sur ses ressources naturelles sont garanties par des instruments juridiques internationaux et nationaux qui consacrent la primauté du droit sur le droit de la force.

Aussi le Gouvernement a-t-il jugé nécessaire de répertorier le maximum d'instruments juridiques qui ont été violés par les différents actes de pillage et d'exploitation illégale des ressources naturelles et autres de la RDC par les pays étrangers notamment le Rwanda, l'Ouganda et le Burundi en complicité avec les rebelles congolais.

**Instruments universels et autres actes**

**72.** La Charte de l'ONU : article 1<sup>er</sup>, relatif aux buts de l'ONU, alinéa 2 : « Développer entre les nations des relations amicales fondées sur le respect du principe de l'égalité des droits des peuples et de leur droit à disposer d'eux-

mêmes, ... ; article 2 relatif aux principes de l'ONU dont le respect de l'intégrité et de la souveraineté territoriale de l'Etat ».

73. Le Pacte International relatif aux droits économiques, sociaux et culturels de 1966 : article 1<sup>er</sup>, alinéa 2 : « Pour atteindre leurs fins, tous les peuples peuvent disposer librement de leurs richesses et de leurs ressources naturelles (...). En aucun cas un peuple ne pourra être privé de ses propres moyens de subsistance ».

74. Le Pacte International relatif aux droits civils et politiques : idem.

75. La résolution 1803 (XVII) de l'Assemblée Générale des Nations Unies du 14 décembre 1962 : « Souveraineté permanente sur les ressources naturelles » : §7 : « La violation des droits souverains des peuples et des nations sur leurs richesses et leurs ressources naturelles va à l'encontre de l'esprit et de la lettre des principes de la Charte des Nations Unies et empêche le développement de la coopération internationale et le maintien de la paix ».

76. La Charte des droits et devoirs des Etats : article 2 : « Chaque Etat détient et exerce une souveraineté entière sur toutes ses richesses, ressources naturelles et activités économiques y compris la possession et le droit de les utiliser et d'en disposer ».

77. Les Résolutions du Conseil de Sécurité relatives à la guerre en RDC, surtout la Résolution 1291 du 24 février 2000 ; la Résolution 1304 du 16 juin 2000 ; la Résolution 1332 du 24 décembre 2000 et la Résolution 1341 du 22 février 2001, par lesquelles le Conseil de Sécurité réaffirme la souveraineté de la RDC sur ses ressources naturelles et prend note avec préoccupation des informations faisant état de l'exploitation illégale des ressources du pays et des conséquences que peuvent avoir ces activités sur la sécurité et la poursuite des hostilités.

78. Les Conventions de Genève du 12 août 1949 et leurs protocoles additionnels du 8 juin 1977 : article 33, alinéa 2 de la Convention de Genève IV relative à la protection de la population civile en cas de conflits armés : « Le pillage est interdit ... » ; article 52 alinéa 1 du Protocole I additionnel aux conventions de Genève du 12 août 1949 relatif à la protection des biens de caractère civil : « les biens de caractère civil ne doivent être l'objet ni d'attaques ni des représailles ».

79. La Convention sur le commerce international des espèces sauvages menacées d'extinction de 1973 (CITES) : article 2 §2 : « Les Parties ne permettent le commerce des spécimens des espèces inscrites aux annexes I, II et III qu'en conformité avec les dispositions de la présente convention ».



**80. La Convention de l'UNESCO pour la protection du patrimoine culturel et naturel du 23 novembre 1972 : article 6 : « ... chacun des Etats parties à la présente convention s'engage à ne prendre délibérément aucune mesure susceptible d'endommager directement ou indirectement le patrimoine culturel et naturel qui est situé sur le territoire d'autres Etats parties à cette convention ».**

**81. La Résolution 46 (III) de la CNUCED qualifiant de « violation flagrante, les principes des Nations Unies, toute mesure de pression politique ou économique de nature à porter atteinte aux droits de tout pays de disposer librement de ses ressources naturelles ».**

**82. Convention relative aux droits de l'enfant : article 22 : « les Etats parties s'engagent à respecter et à faire respecter les règles du droit humanitaire international qui leur sont applicables en cas de conflits armés et dont la protection s'étend aux enfants ».**

#### **Les Instruments régionaux**

**83. La Charte de l'OUA : article III relatif aux principes de l'organisation, notamment le respect de la souveraineté et de l'intégrité territoriale de chaque Etat et de son droit inaliénable à une existence indépendante.**

**84. La Charte Africaine des droits de l'homme et des peuples : article 21 : « Les peuples ont la libre disposition de leurs richesses et de leurs ressources naturelles. En aucun cas, un peuple ne peut en être privé. En cas de spoliation, le peuple spolié a droit à la légitime récupération de ses biens ainsi qu'à une indemnisation adéquate ... ».**

**85. La Convention Africaine pour la conservation de la nature et des ressources naturelles du 15 septembre 1968, article III.b.iii : « le Parc national désigne une aire dans laquelle l'abattage, la chasse et la capture d'animaux et la destruction ou la collecte de plantes sont interdits ... ».**

**86. L'Accord de cessez-le-feu de Lusaka du 10 juillet 1999 : article III principe 15 : « Rien dans cet Accord ne peut porter atteinte à la souveraineté et à l'intégrité de la République Démocratique du Congo. »**

## **La Législation nationale**

### **Dispositions environnementales**

87. Ordonnance n° 52/119 de 1951 sur les règles à suivre dans les coupes de bois autorisés.

88. La Loi n° 82-002 du 28 mai 1982 portant réglementation de la chasse : article 3 « nul n'a le droit d'exploiter la faune par la chasse ou par tout autre mode d'exploitation sans être muni d'une autorisation de l'autorité compétente ».

Article 13 : à l'intérieur des réserves de faune, il est interdit, sauf autorisation de l'autorité locale : « ... de poursuivre, chasser, capturer, détruire, effrayer ou troubler, de quelque manière que ce soit, toute espèce animal sauvage, même les animaux réputés nuisibles ... ».

### **Dispositions minières en RDC**

89. Ordonnance-Loi n° 81 du 2 avril 1984 portant législation générale sur les mines et les hydrocarbures : article 4, alinéa 1<sup>er</sup> « nul ne peut se livrer à des investigations du sous-sol quel qu'en soit la finalité sans l'autorisation du Ministère ayant les mines dans ses attributions. Nul ne peut se livrer à la prospection, à la recherche et à l'exploitation minière, si ce n'est en vertu des droits accordés par l'Etat, via le Ministère des Mines, aux personnes physiques ou morales de son choix ».

90. Ordonnance-Loi n° 66-343 du 7 juin 1967, dite « Loi BAKAJIKA » octroyant à l'Etat congolais la plénitude de son droit de propriété et sa souveraineté dans les concessions foncières, forestières et minières de toute l'étendue du territoire de la RDC.

91. Fort de ce qui précède, et partant du caractère objectif et impartial reconnu au rapport du Groupe d'Experts des Nations Unies sur l'exploitation illégale des ressources naturelles et autres richesses de la République Démocratique du Congo, l'on ne peut s'empêcher de relever des atteintes graves portées aux dispositions pertinentes des instruments juridiques susmentionnés.

A titre d'exemple : les Rwandais, les Ougandais et les Burundais ainsi que les mouvements rebelles exploitent illicitement les minerais de la RDC par les soldats pour leur compte personnel ; par des villageois organisés par des Commandants rwandais et ougandais, et par des étrangers pour le compte de l'armée ou des Commandants.

92. L'exploitation illégale des ressources minières de la RDC par les Etats agresseurs viole :

93. Le droit du peuple congolais à disposer de lui-même (article 1<sup>er</sup> de la Charte de l'ONU) et le principe de l'intégrité territoriale et de la souveraineté de la RDC (article 2 de la Charte de l'ONU) ;

94. Le droit du peuple congolais à disposer librement de ses richesses et de ne pas être privé de ses moyens de subsistance (article 1<sup>er</sup> commun aux Pactes internationaux relatifs aux droits économiques, sociaux et culturels, d'une part et, aux droits civils et politiques, d'autre part ; article 2 de la Charte des droits et devoirs des Etats ; le paragraphe 7 de la Résolution 1803 (XVII) de l'Assemblée Générale des Nations Unies du 14 décembre 1962 considère la violation des droits souverains des peuples sur leurs ressources naturelles comme un obstacle au développement de la coopération internationale et au maintien de la paix ;

95. Le principe de la souveraineté de la RDC sur ses ressources naturelles (les Résolutions 1291, 1304 et 1341 du Conseil de Sécurité relatives à la guerre en RDC).

96. Le principe de l'autorisation préalable reconnue au Ministre ayant les Mines dans ses attributions quant à l'octroi de permis de recherche et exploitation minière (article 4 de l'Ordonnance-Loi n° 81 du 2 avril 1984).

#### **Législation forestière et économique**

97. Par l'abattage d'arbres destinés à la production et l'exportation de bois d'œuvre de la RDC sans autorisation préalable du Gouvernement légitime de Kinshasa, les Etats agresseurs violent ainsi l'article III.b.iii de la Convention africaine pour la conservation de la nature et des ressources naturelles qui interdit l'abattage des arbres ; l'article 6 de la Convention de l'Unesco pour la protection du patrimoine culturel et naturel du 23 novembre 1972 qui interdit d'endommager directement ou indirectement le patrimoine naturel des Etats partis.

98. Le fait que les forces ougandaises et rwandaises aient tué près de 4.000 éléphants sur une population de 12.000 éléphants dans le Parc de Garamba aux fins de se livrer au trafic illicite de leurs défenses (ivoires), constitue une atteinte grave à l'article III sur la réglementation du commerce des spécimens des espèces inscrits à l'annexe I des Conventions CITES : « Tout commerce des spécimens d'une espèce inscrite à l'Annexe I doit se conformer aux dispositions du présent article » ainsi que la loi congolaise qui protège les espèces dans les parcs.



99. Le recours à la main-d'œuvre infantile pour extraire de l'or dans les mines de Kilo-Moto de la Province Orientale et du diamant dans la Province de l'Equateur pour le compte respectivement du Rwanda et du MLC, constitue une atteinte grave à la Convention Internationale relative aux droits des enfants et à la Convention n° 182 de l'OIT sur l'interdiction des pires formes de travail sur les enfants ; de même qu'une violation grave de l'article 22 de la Charte africaine des droits et du bien-être des enfants.

## VII : CONCLUSION

100. Le Gouvernement de la RDC est convaincu que, si la Communauté Internationale ne se décide pas à prendre des mesures contraignantes et conséquentes pour arrêter la dérive maffieuse des gouvernements Ougandais, Rwandais et Burundais et celle encouragée par eux dans les territoires occupés, aucune paix durable ne sera possible en République Démocratique du Congo et dans toute la région des Grands Lacs.

101. Le Gouvernement est convaincu que seules des sanctions exemplaires contre les actes délictueux perpétrés par le Burundi, l'Ouganda et le Rwanda, les mouvements rebelles et leurs dirigeants constituent les seules dignes contre ces actes maffieux posés par ces pays, ces mouvements et leurs dirigeants pour éviter une émergence des Etats – bandits, dans la Région.

102. Le Gouvernement exhorte le Conseil de Sécurité à redoubler de vigilance pour ne pas se faire distraire par l'argumentaire du Rwanda, de l'Ouganda, du Burundi et des mouvements rebelles que ces Etats soutiennent et qui leur servent de paravent dans leurs entreprises criminelles, argumentaire consistant en un acharnement à mettre sur un même pied d'égalité le Gouvernement légal de la République Démocratique du Congo et les mouvements rebelles au risque de légitimer le recours à la force comme mode d'accéder au pouvoir et de trahir ainsi l'espoir que nourrit le peuple congolais de parachever le processus de démocratisation afin de mettre en place un nouvel ordre politique.

103. Le Gouvernement est convaincu que le Conseil de Sécurité détient la clé de la cessation des hostilités, du pillage et de l'exploitation illégale des ressources naturelles et autres richesses de la RDC et de la restauration par ce pays de son intégrité territoriale.



**104.** De ce qui précède, vu la gravité de la situation et l'urgence, le Gouvernement de la RDC appuie globalement toutes les conclusions et recommandations du 1<sup>er</sup> Rapport du Panel des Nations – Unies du 12 avril 2001 et d'une manière particulière invite le Conseil de Sécurité à :

- mettre en place un tribunal international ad hoc chargé de poursuivre, de juger et condamner éventuellement les auteurs des crimes économiques et des crimes perpétrés par des individus en remontant la filière jusqu'au sommet des Etats agresseurs ;
- exiger le gel des avoirs des mouvements rebelles, de leurs dirigeants, des sociétés et individus impliqués dans les actes illicites de pillage et d'exploitation illégale des ressources congolaises ;
- demander aux pays membres de l'ONU de cesser de soutenir financièrement des pays qui sont à la base du pillage et de l'exploitation illégale des ressources de la RDC ;
- demander au FMI et à la Banque Mondiale de suspendre leur coopération avec les pays agresseurs en cas de persistance de pillage et de la guerre ;
- demander aux pays limitrophes de la RDC ou de transit de s'abstenir de favoriser les activités économiques et financières menées sur leurs territoires respectifs en rapport avec la guerre en RDC ;
- en fonction du préjudice financier, moral et en termes de régression économique, appuyer la RDC dans la défense de son droit légitime d'exiger une compensation financière de la part des pays et individus coupables de pillage soit directement soit indirectement.

**105.** Enfin, le Gouvernement prend l'engagement de mettre tout en œuvre pour accélérer l'avènement d'une société démocratique en permettant au peuple congolais d'aller dans un délai raisonnable, aux élections libres et transparentes afin de se choisir ses propres dirigeants en tant que souverain primaire .

**106.** Concernant la gestion courante de l'Etat, le Gouvernement de la République Démocratique du Congo sous la direction de Son Excellence Joseph KABILA opte résolument pour l'instauration de la bonne gouvernance dans l'intérêt bien compris de l'ensemble du peuple congolais.

## **UR Annex 72**

United Nations

S/2001/1163



**Security Council**

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**Letter dated 10 December 2001 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council**

On instructions from my Government, I have the honour to attach herewith the response of the Government of the Republic of Uganda to the addendum to the report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (see annex\*).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

*(Signed)* Prof. Semakula Kiwanuka, Ph.D  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative

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\* The annex is being circulated in the language of submission only.



**Annex to the letter dated 10 December 2001 from the Permanent Representative of Uganda to the United Nations addressed to the President of the Security Council**

**THE RESPONSE  
BY THE GOVERNMENT OF THE  
THE REPUBLIC OF UGANDA**

**TO**

**THE ADDENDUM REPORT OF THE PANEL OF EXPERTS ON THE  
ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND  
OTHER FORMS OF WEALTH OF THE DEMOCRATIC REPUBLIC  
OF THE CONGO (DRC)**

**MINISTRY OF FOREIGN AFFAIRS  
KAMPALA, UGANDA**

**4th December, 2001**

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**Annexures: Summary Report on the Visit of the UN Panel to  
Kampala, August, 2001**

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## **I: INTRODUCTION**

1. On request of the UN Security Council on 2 June 2000, the Secretary General of the UN established a Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth in the DRC. The mandate of the Panel was to:

- (a) Follow-up on reports and collect data on all activities of illegal exploitations; and
- (b) Analyse the link between the exploitation of natural resources in the DRC and the continuation of the conflict.

2. The UN Security Council held a meeting, on 3rd May 2001, to discuss the report of the UN Panel of Experts chaired by Mme Ba N'Daw dated 16th April 2001. The Council agreed with Uganda's submission that the allegations in the report lacked corroborated evidence to form a basis for action by the Security Council.<sup>1</sup> In his statement on behalf of the Security Council (S/PRST/2001/13), the Council President requested the UN Secretary General to expend the mandate of the UN Panel for a period of three months, at the end of which the Panel would present an addendum to the report. This mandate would include the following:

- (a) An update on the relevant data and analysis of further information, including as pointed out in the action plan submitted by the Panel to the Security Council.
- (b) Relevant information on the activities of countries and another actors for which necessary quality and quantity of data were not made available earlier.
- (c) A response, based as far as possible on corroborated evidence, to the comments and reactions of the states and actors cited in the report to the Panel.
- (d) An evaluation of the situation at the end of the extension of the mandate of the Panel, and of its conclusions, assessing whether progress has been made on the issues, which come under the responsibility of the Panel.

3. The UN Security Council also urged member states accused in the Report of the UN Panel to establish their own inquiries into the allegations contained in the report and requested governments to co-operate fully with the reconstituted UN Panel. Likewise, the UN Panel was requested to co-operate with the parties involved in the DRC.

<sup>1</sup> See UNSC document (S/2001/458) containing the responses of the Uganda Government to the Report of the UN Panel of Experts on Illegal Exploitation of Natural Resources of the DRC, dated 9th May 2001. Also statement in the Security Council on the Report of the UN Panel by Hon. Amama Mbabazi, Minister of State for Regional Co-operation, New York, 3 May 2001.



4. In compliance with the Security Council request, the Government of Uganda established by Legal Notice No. 5/2001 dated 25th May 2001, a Judicial Commission of Inquiry in the Allegations of Illegal Exploitation of Natural Resources of the DRC chaired by Justice David Porter (UK). Other members of the Commission are Justice J.P. Berko (Ghana) and Mr. John Rwambuya, a Ugandan retired senior UN official. The Interim Report of the Justice Porter Commission was released on 7th November 2001 (S/2001/1080 dated 15th November 2001). The final Report of the Porter Commission is expected in February 2002.

5. The terms of Reference of the Porter Commission were as follows:

- (a) To inquire into the allegations against Uganda concerning illegal exploitation of the natural resources and another forms of wealth of the DRC, to wit minerals, coffee, timber, livestock, wildlife, ivory, money or other property from the DRC contained in the report of the UN Panel of 16th April 2001.
- (b) To inquire into the allegations of mass scale looting and systematic exploitation of natural resources and another forms of wealth from the DRC by the government of Uganda made in the Report.
- (c) To inquire into allegations co complicity or involvement by H.E. the President of Uganda and his family in the illegal exploitation made in the said Report.
- (d) To inquire into allegations of involvement in the illegal exploitation of the natural resources of the DRC by top ranking UPDF officers and other Ugandan individuals named in the Report.

6. The Reconstituted UN Panel, chaired by Ambassador Kassem (Egypt), visited Uganda from 22nd to 25th August 2001, and received maximum co-operation from the Government. The Panel met H.E. President Museveni; Hon. James Wapakhabulo, Third Deputy Prime Minister and Minister of Foreign Affairs, Cabinet Ministers of Finance; Trade and Industry; Agriculture; Environment and Mineral Development; as well as the relevant government technical officials.<sup>2</sup>

7. The Government of Uganda welcomes the release of the Addendum to the Report of the Reconstituted UN Panel in New York on 19th November 2001 as an improvement to the initial document as it recognises:

- (a) Uganda's legitimate security concerns in the DRC.

<sup>2</sup> See Annex containing the Summary Report on the visit by the UN Panel to Uganda, 22 – 25 August 2001 dated 1st October 2001.

(b) The importance of the Lusaka Cease-fire Agreement in addressing the crisis and the illegal exploitation of natural resources in the DRC and bringing stability in the Great Lakes Region.

(c) Uganda's commitment to the implementation of the Lusaka Cease-fire Agreement as demonstrated by the withdrawal of most of her troops from the DRC.

8. The Government of Uganda still notes with very grave concern, however, that:

(a) Serious allegations and accusations are made against high-ranking UPDF officers and their civilian counterparts in the continued exploitation of natural resources of the DRC without any corroborative evidence.

(b) The misconceived allegation persists that the continuation of the conflict in the DRC is linked to illegal exploitation of natural resources in the DRC in the case of Uganda.

(c) The UN Panel continues to refuse to share the sources of evidence on allegations contained in the report with the Independent Judicial Commission established on the recommendation of the UN Security Council.

9. In spite of these concerns, however, the Government of Uganda will continue to co-operate with the UN Security Council, the UN Secretary-General and the Reconstituted UN Panel in order to establish the truth regarding the allegations against Uganda and the high ranking officers of the UPDF mentioned in the addendum to the UN Panel Report. Uganda encourages the UN Panel to work with the Independent Judicial Commission (the Porter Commission) in order to establish corroborated evidence against the high ranking officers of the UPDF or any Ugandans accused of illegal exploitation of the natural resources of the DRC. The Government of Uganda is committed to implementation of the recommendations of the Porter Commission.

#### **Key elements of the Response to the Addendum to the Report of the UN Panel**

10. The response of the Government of the Republic of Uganda to the addendum as contained in this document covers the following points:

- Background to the addendum to the report of the UN Panel.
- Improvements and positive aspects of the addendum and its flaws.
- Response to the specific allegations against Uganda but outside the mandate of the Justice Porter Commission.
- Exploitation of natural resources and the continuation of the conflict.
- Uganda Government comments on the Conclusions and recommendations of the UN Panel.
- Recommendations by Uganda on the way forward.



## **II: IMPROVEMENTS AND POSITIVE ASPECTS IN THE ADDENDUM TO THE REPORT**

11. As pointed out in the preliminary press statement by the Ministry of Foreign Affairs in Kampala on the addendum to the report of the UN Panel on 20th November 2001, the Uganda Government has noted that it contains some updated analyses, improvements and a more balanced coverage of countries and other actors, in spite of the admitted severe time constraints, on the part of the Panel.

12. First, it acknowledges the fundamental issues relating to Uganda's involvement in the DRC. It recognises Uganda's legitimate security concerns regarding the threat from the negative forces based in the DRC, i.e., the ADF, WNB, UNRF II, and the more recently formed PRA. The addendum also recognises the fact that the intervention by Uganda in pursuit of perpetrators of terrorist activities was allowed under a bilateral protocol, which was signed between Uganda and the DRC in April 1998.

13. Second, after examining the allegations of systemic and systematic exploitation of the natural resources of the DRC by Uganda, it recognises that neither the Uganda Government nor any of its companies are involved in the illegal exploitation.

14. Third, it agrees with a great deal of Uganda's presentation to the UN Security Council on 3rd May 2001 that the report by the UN Panel of Experts suffered from poor quality of evidence and that many allegations against Uganda were based on hearsay and falsehoods. For example, it exposed the old UN Panel's grave error in building a fictitious case-study based on DARA-Forest's company to demonstrate Uganda Government's systemic and systematic illegal exploitation and export of timber from the DRC. The case study had alleged that DARA-Forest was a 'Uganda-Thai' company involved in a scheme to make false certification of timber from the DRC as of Ugandan origin; in collusion with the Ministry of Water, Lands and Environment (Forestry Department) in Kampala. The case study also connected President Museveni's family as shareholders in the DARA company. However, the addendum, in paragraph 72 reveals the truth that DARA-Forest is a Congolese-Thai logging company registered in Kinshasa in March 1998 with a 35,000 hectare logging concession from the North Kivu Provincial Authority. It found out that DARA-Forest certificate of registration was renewed on 12 September 2001 by the Ministry of Justice in Kinshasa.

15. Fourth, the addendum recognises the significance of the Lusaka Cease-fire Agreement and the establishment of a new and stable political dispensation as the only guarantee to: (i) guarding against illegal exploitation of natural resources of the DRC; and (ii) ensuring security of the neighbouring countries.

16. Fifth, the addendum recognises that Uganda is complying with the Lusaka Cease-fire Agreement and the relevant Security Council resolutions and decisions. Specifically, it notes that Uganda has made the significant withdrawal of her armed forces from the

DRC. It also appreciates that Uganda has complied with the statement of the President of the Security Council (S/PRST/2001/13) by establishing a Judicial Commission of Inquiry into the illegal exploitation of natural resources of the DRC.

17. Seventh, the addendum remedies the earlier anomaly of focusing on Uganda, Rwanda, Burundi and the rebel groups; and gives coverage of all the parties involved in the DRC as well as the transit and destination countries of the natural resources of the DRC.

### **III: FLAWS IN THE ADDENDUM TO THE REPORT OF THE UN PANEL**

#### **Definition of Illegality**

18. The issue of 'illegality' in exploitation of natural resources of the DRC was not tackled in the addendum yet it was a contentious issue and was raised in the response by the Government of the Republic of Uganda to the initial UN report. Although the addendum is silent on the definitional aspects of 'illegality', it contains elements that clearly demonstrate agreement with Uganda's submission that, in the context of the conflict in the DRC – where there is total collapse of the state institutions and structures – exploitation of resources for survival of the people such as cross-border trade is legitimate. Some aspects of trade carried out by the rebel groups who are in the de-facto control of the territory cannot be classified as illegal.

#### **Methodology**

19. The methodology used in data collection and analysis in the addendum is not stipulated. Uganda has argued that the UN Panel, for some unexplained reasons, failed to properly analyse most of the solid data provided by the technical officials in Kampala and that no rigorous econometric and statistical analysis was contained in the Panel's report to prove causality. Uganda has demonstrated, for example, that its high GDP growth figures, which started in early 1990s had nothing to do with the start of the conflict in the DRC in 1998. Rather, the economic performance has been due to sound macro-economic policies and increased foreign investment since 1990/91. The new UN Panel, therefore, fell short of its mandate by not directly responding to Uganda's concerns in this respect. Hence the erroneous linkage of Uganda's economic performance to the illegal exploitation of the natural resources of the DRC.

#### **Corroboration of Evidence**

20. Uganda's response in May 2001 pointed out that the Panel's serious allegations against the Uganda Government and H.E. President Y. Museveni were based on **hearsay, falsehoods and distortion of data**. The mandate for the UN Panel from the UN Security Council on the need for corroborated evidence to back up allegations is very clear. However, the problem of uncorroborated or ignored evidence persists in the addendum on a number of allegations against Uganda.

21. While acknowledging that UPDF have withdrawn from the DRC, the Panel makes a very serious allegation – without any corroborated evidence – that there are continuing commercial networks and structures put in place by Ugandan commanders and their civilian counterparts in Oriental Province and Kampala. Examples given are Trinity and Victoria companies, which are not Ugandan-owned. Unnamed ‘reliable sources’ are quoted without supporting documents on a scheme between Mr. Mbusa Nyamwisi and senior UPDF officers to ‘skim’ US\$400,000= off tax revenues at Beni customs post at the Uganda border. The period is not specified of when and how the money is shared.

22. While acknowledging that Uganda is committed to the implementation of the Lusaka Agreement and the relevant UN Security Council resolutions, and has substantially withdrawn her troops from the DRC, the UN Panel – without any logical evidence – concludes that a link between the continuation of the conflict and exploitation of the natural resources of the DRC exists ‘in the case of Uganda’. The Panel should have a corroborated case study to demonstrate the linkage.

23. The UN Panel alleges that Uganda denied that timber from the DRC does not transit through Uganda. This is false. Uganda has always stated that transit cargo to and from the DRC has taken place since time immemorial. Detailed facts and data regarding transit cargo from the DRC were given to the UN Panel in November and August 2001.

24. The Uganda Government is concerned that the addendum is silent on allegations based on hearsay and falsehoods raised in the initial report which they have not corroborated. The reconstituted UN Panel refuses to acknowledge the mistakes where the image and integrity of people or institutions have been unjustifiably damaged. Examples of the mistakes that should have been acknowledged in the addendum include:

- (a) **DARA-Forest Case-study against the Government of Uganda:** The Addendum clearly shows that the DARA-Forest case study, which was central to the old UN Panel’s demonstration of Uganda’s systemic and systematic illegal exploitation of the natural resources of the DRC, was not consistent with the evidence. It establishes that DARA-Forest is not a Uganda-Thai company, H.E. President Museveni and his family are not shareholders in the company and that the Department of Forestry, the Ministry of Water, Lands and Environment in Kampala was never involved in the false certification of timber from the DRC as of Ugandan origin.
- (b) **Allegations against H.E. President Museveni and his family:** The addendum is silent regarding the fictitious shareholding by H.E. the President’s family in the private companies involved in the illegal exploitation of natural resources of the DRC, e.g., Victoria, DARA-Forest, Great Lakes Industries and Trinity Company.



- (c) **Alleged complicity of the IMF, World Bank and other Donor Agencies in a cover up on data linking Uganda's economic performance to the illegal exploitation of the natural resources of the DRC.**

#### **IV: SPECIFIC ALLEGATIONS MADE AGAINST THE UGANDA GOVERNMENT AND INDIVIDUALS**

##### **Allegations Against Individuals**

25. The Uganda Government reiterates its position on the allegations against individuals and private Ugandan companies accused of illegal exploitation of natural resources of the DRC. An independent Judicial Commission of Inquiry was established in May 2001, as already stated, to investigate the allegations. The Government of Uganda is committed to the implementation of the recommendations of the Judicial Commission.

##### **Allegations Against the UPDF**

26.

##### **Specific Allegations in the Addendum**

**Para 28 on Gold:** ".... the Panel has evidence that artisanal gold mining activities in the North East DRC in Kilo-Moto area by UPDF... gold produced at Malaka site is still being sold through the Victoria Comptoir in Kampala".

**Para 44 on diamonds:** "....Artisanal mining in the North Kisangani area has provided sources of revenue for UPDF.... for the continuation of the conflict".

**Para 57:** ".... there are indications that clashes between the Mai Mai warriors, who are better armed than before, and the UPDF and MLC groups in the past seven months in Oriental and Kivu regions have been directly related to the control of Coltan and Gold".

**Para 97:** ".... the commercial networks put in place by Uganda Army commanders and their civilian counterparts that were described in the report are still functioning".

##### **Response:**

27. The Government of Uganda has established an independent Judicial Commission to investigate such allegations. Without prejudice to the work of the Porter Commission, the Government is obliged to respond to the various allegations against UPDF.

##### **28. Response on Gold mining by UPDF:**

- (a) It exhibits outright anti-Uganda bias to allege that UPDF is continuing to mine in the Kilo-Moto area in October/November 2001, when it is a fact that UPDF

withdrew 12 out of 14 battalions from the DRC including the Kilo-Moto area in Isiro in May/June 2001 where the artisanal mining is alleged to be 'still continuing under UPDF'.

- (b) Uganda has established and pointed out in her response that Victoria company is neither registered in Uganda nor does it operate in Kampala. A request for evidence on the existence of Victoria Comptoir company in Uganda was made to the UN Panel. But no evidence has hitherto been provided.

**29. Response on diamonds:**

- (a) It is gross prejudice for the addendum to allege that UPDF continues to be engaged in mining in Northern Kisangani area. Evidence has been given to the UN Panel, which can be verified by MONUC, that UPDF withdrew from the same area months ago.
- (b) Uganda has demonstrated commitment to the reform of the legal framework to regulate the diamonds sector. A draft Mining Bill (2001) is expected to be discussed in Parliament to amend the Mining Act (1964). The Draft Bill aims at, inter-alia, regulating the imports, exports and transit of diamonds unless such diamonds are certified by GURN or under agreed measures on standardisation of certification of production.
- (c) As pointed out in the Government response of May 2001, the UN Panel recognises 'loose regulations' at free zones that allow repackaging to falsify documents of provenance. For example, the UN Monitoring Mechanism on Sanctions Against UNITA requested Uganda to explain the 9,387.51 carats valued at \$1.26m. which were alleged to have entered Antwerp reportedly as of Uganda provenance during January-June 2000. The Uganda Revenue Authority investigated the matter and found no record of 9,387.51 carats being exported from or transferred through Uganda during the period. In order to co-operate with the UN Monitoring Mechanism, Uganda requested, April 2001, for information on copies of customs and transit documentary indicating Ugandan provenance, and copies of passport movements of the diamond carriers. No response has been received from the UN Monitoring Mechanism on Sanctions Against UNITA in New York.
- (d) Although Uganda is currently not officially a diamond producing country, there exists diamonds in Uganda, and have been recovered as a result of artisan gold-mining operations. A number of private companies have made applications for diamond exploration since 2000. East Africa Gold Mining (U) Ltd., a USA-registered company was license in 2001 to explore diamonds in Uganda.

**30. Response on the Mai-Mai/UPDF Clash on Coltan:** The UPDF role in the North East DRC is strictly in accordance with the Lusaka Cease-fire Agreement. UPDF positions were attacked by Mai Mai militias in Mambasa, Bunia sector in June 2001. The

Mai Mai were dislodged in July 2001. These incidents had nothing to do with the control of Coltan.

31. The allegation of commercial networks put in place by UPDF: After the withdrawal from the DRC, is a very serious accusation which should be made with corroborated evidence. The resources alleged to be looted by UPDF are tangible and should be traceable to their specific origins and destinations. The networks of exploitation cannot be imagined or assumed to exist. Indeed the UN Panel is, therefore, challenged to provide corroborated evidence of these commercial networks for verification.

#### **Allegations Against the Government of Uganda**

32.

##### **Specific Allegations in the Addendum**

**Para 48:** "... Although the Panel has evidence to show timber from DRC is exported ... through Kampala ... the Government of Uganda denied that any transited through the country."

**Para 71:** ".... In fact, civil servants appointed by government are still performing such duties as customs control and tax collection in rebel areas. The taxes are .... diverted for use of rebels, and Uganda..."

**Para 98:** "While the Government of Uganda does not participate directly in exploitation activities, the culture in which its military personnel functions tolerates and condones their activities..."

#### **Response:**

33. As indicated before, the accusation that the Uganda Government denied transit of timber from the DRC through Uganda is a false and malicious allegation. The Government never denied that timber and other cargo from and to Eastern DRC transit through Uganda. Detailed facts and data by the Uganda Revenue Authority were provided to the UN Panels in November 2000 and August 2001. It is possible that the UN Panel never studied the data provided by Uganda based on their Questionnaire. According to the record of the meeting in Kampala on 23rd August 2001, Hon. G. Ssendaula, the Minister of Finance to the UN Panel<sup>1</sup>:

**"... As Uganda's neighbour, Eastern DRC relies on Uganda for transiting their goods given the geography of the DRC. Therefore, traditionally, Uganda has been a transit point for all goods to and from Eastern DRC and there are laws governing goods in transit".**

<sup>1</sup> See summary reports of the visits to Uganda by the UN Panel, November 2000 & August 2001.

34. Evidence was given to the UN Panel to demonstrate that the military expenditure in the DRC was provided by the Uganda Treasury within the agreed budget limits. At no time has the UPDF in the DRC got involved in customs control, and tax collection to sustain its operations. Civil administration in rebel held areas where UPDF has a presence is handled by the rebel leadership.

**Response on the culture of UPDF:**

35. The Government response to the first report of the UN Panel, May 2001, (S/2001/485) had clearly showed how such statements as 'culture' of UPDF supporting illegal exploitation of natural resources of the DRC were based on hearsay and falsehoods. Unfortunately, the addendum maintains that impression without corroborative evidence.

36. Evidence was given to the UN Panel to demonstrate that UPDF is a very disciplined force based both on its track record and administrative codes including:

- (a) The UPDF is governed by a Code of Conduct and is subject to the law and other relevant international conventions. NRA Statute No. 3 of 1992 and the attached regulations and Standing Orders constitute the military code under which the UPDF operates and is disciplined.
- (b) UPDF is subject to Parliamentary oversight functions.
- (c) H.E. the President sent a strict radio message DTG/500010 C in December 1998 instructing the UPDF in the DRC not to engage in business. The President also instructed the UPDF to assist if necessary Ugandan private businessmen to do business in the DRC in order to alleviate the acute needs of the population, e.g., medicine, basic essentials, etc.
- (d) Army officers are subject to Commissions of Inquiry and are tried under the law if they commit offences. For example, the UPDF officers in the DRC who deviated from the directive prohibiting involvement in business and were punished include, Lt. Okumu, Lt. Kisima and Capt. Kyakabale.

37. Uganda, therefore, challenges the UN Panel to substantiate the allegation claim that the culture in which UPDF operates condones illegal activities.

**V: CONCLUSIONS OF THE RECONSTITUTED UN PANEL**

38. The Uganda Government agrees with the following conclusions of the reconstituted UN Panel:



- (a) Exploitation of the natural resources of the DRC continues and it is done by many states, companies and opportunistic individuals from both the region and other countries outside Africa. (Para 143)
- (b) The fundamental reason for the continued illegal exploitation is the effective collapse of all the state institutions and structures of the DRC, (para 144). It should be added that this collapse explains why the DRC has served as a base for the various perpetrators of terrorist activities against her regional neighbours such as Uganda. In other words, exploitation of the natural resources is not the main cause of the conflict in the DRC.

39. Uganda does not share the sweeping conclusion in the addendum that exploitation of natural resources in the DRC is the main occupation of all foreign troops and armed groups (146) as they try to justify their continued military presence. And that, therefore, in the case of Uganda, there is a link between the continuation of the conflict and the exploitation of natural resources in the DRC, (Para 100). This conclusion on Uganda's involvement in the DRC is illogical and unfounded given the following facts:

- (a) Uganda has withdrawn 12 out of 14 battalions from the DRC under the Lusaka Cease-fire Agreement. Uganda has already requested the UN Security Council for the adequate deployment of MONUC to enable UPDF withdrawal of the remaining battalions in Buta and Bunia as soon as possible.
- (b) Uganda has given full co-operation to the UN Panels. All requested information, evidence, and data on how the UPDF is financed have been provided. The concerned officers have given and will continue to give evidence on their activities in the DRC to the UN Panel and the Justice Porter Commission.
- (c) Allegations of commercial benefit as a reason to continue the conflict have not been proved. Allegation of a diversion of donor aid to finance the war has neither been proved nor is it possible given the transparent budget process monitored by the IMF, World Bank and other donors in Kampala.
- (d) Uganda's security concerns are legitimate and evidence of aggression by armed perpetrators of terrorist activities against Uganda from the DRC has been proved and confirmed by the UN Panel.
- (e) Uganda has demonstrated her commitment to the implementation of the Lusaka Cease-fire Agreement and the relevant UN Security Council resolutions.

#### VI: RECOMMENDATIONS BY THE RECONSTITUTED UN PANEL

##### 40. Panel's Recommendation 1:

**An international conference should be concerned on peace and development in the Great Lakes Region linked to a plan to rebuild state institutions in the DRC.**



**Comment:**

41. Uganda supports the proposal that the international community should urgently assist in the formulation of a plan of action to build state institutions in the DRC. Uganda believes, however, that the broader international conference on the Great Lakes, focused on the reconstruction and development of the sub-region should be convened after the implementation of the Lusaka Cease-fire Agreement on the DRC and the Arusha Peace and Reconciliation Agreement on Burundi. Holding an international conference on the Great Lakes before the conclusion of the Inter-Congolese Dialogue would undermine the Lusaka Cease-fire Agreement.

**42. Panel's Recommendation 2:**

**Phase III of MONUC should accelerate the disarmament, demobilisation, and reintegration (DDRRR) of the negative forces in order to reduce the legitimate security concerns of the regional neighbours of the DRC.**

**Comment:**

43. The Government of Uganda agrees with this recommendation as the DDRRR process of the negative forces – including Ex-FAR, Interahamwe, ADF, WBRF, PRA – is key to the withdrawal of the foreign forces from the DRC and the establishment of peace in the Great Lakes Region.

**44. Panel's Recommendation 3:**

**The World Bank, IMF and other donors should critically evaluate their assistance to countries in the Great Lakes region on the possibility of helping finance the continuation of the conflict in the DRC and to submit reports to the UN Security Council.**

**45. Comments:**

- (a) The main task of the UN Security Council and the international community should be to support the implementation of the Lusaka Cease-fire Agreement, especially the Inter-Congolese dialogue – rather than creating new structures – so that a new transitional government can begin to reconstruct institutions of the state capable of controlling the natural resources of the DRC.
- (b) Uganda has nothing to hide. Uganda's PRSP framework and her Medium Term Expenditure Framework (MTEF) budgeting process have been transparent and worked out with her development partners including the World Bank and the IMF. Uganda's military expenditure remains within the agreed spending limits. 12 out of 14 UPDF battalions have already been withdrawn from the DRC to demonstrate commitment to the implementation of the Lusaka Cease-fire

Agreement. The Government of Uganda has also requested the UN Security Council for MONUC to deploy in Buta and Bunia so that the UPDF withdrawal from the DRC can be completed as soon as possible.

**46. Panel's Recommendation 4:**

A moratorium should be declared banning purchases and importing of precious products such as Coltan, gold, diamond, coffee, timber, etc. originating in areas where there are foreign forces in the DRC as well as in territories under the control of rebel group, i.e. the whole of the DRC.

**47. Comment:**

- (a) While a moratorium could be considered to contain illegal exploitation of the natural resources of the DRC, a clear distinction should be made between the big commercial mining companies and the small farmers and artisan miners who earn their living through the traditional cross-border trade.
- (b) A moratorium on artisan mining production or small farmers' produce would be difficult to enforce in the porous borders with the nine neighbouring countries to the DRC.

**48. Panel's Recommendation 5:**

Revenue from the resources of the DRC should be channeled through the state budgets and tax collection and use should be controlled, transparent and accountable.

**Comment:**

49. This is a very good but unrealistic recommendation. Given the collapse of the state institutions and structures, the recommendation can only make sense after the implementation of the Lusaka Cease-fire Agreement especially the Inter-Congolese Dialogue and the establishment of a new political dispensation in the DRC.

**50. Panel's Recommendation 6:**

The Security Council may consider imposition of sanctions ... with regard to the exploitation of natural resources of the DRC as well as developments in the Great Lakes Region.

**51. Comment:**

- (a) Uganda believes that sanctions should be used to speed up the implementation of the Lusaka peace process and should be aimed at those who violate the implementation of the provisions of the Lusaka Cease-fire Agreement.

- (b) The UN Security Council should consider the establishment of a monitoring and follow-up mechanism for the countries involved to determine evidence of violation of the Lusaka Cease-fire Agreement provisions and the illegal exploitation of natural resources of the DRC.

#### **VII: WAY FORWARD: RECOMMENDATIONS BY UGANDA**

52. Uganda strongly believes that it is the urgent implementation of the Lusaka Cease-fire Agreement and the creation of institutions of a viable transitional state under the new political and democratic dispensation that can guarantee against the illegal exploitation of the natural resources and other forms of wealth of the DRC.

53. It is the implementation of the Lusaka Cease-fire Agreement, which will: (i) ensure the reconstruction of the collapsed state institutions and fill the vacuum created by absence of authority to regulate the country's natural resources, (ii) address the security concerns generated by the presence of armed terrorist groups in the DRC to destabilise her neighbours.

54. It is important that a summit between the UN Security Council and the Heads of State of the Political Committee of the Lusaka Cease-fire Agreement be convened, preferably in Africa, to maintain the momentum of the Inter-Congolese Dialogue and to agree on an enforceable strategy to ensure that a transitional government is in place in the DRC within a given timetable.

55. It is important that the UN Security Council sets up a mechanism which would encourage and enable the UN Panel to co-operate and share information with the independent Judicial Commissions established on recommendation of the Security Council regarding the illegal exploitation of natural resources of the DRC.

#### **KAMPALA**

**4th December, 2001**

**SUMMARY REPORT ON THE VISIT TO UGANDA BY THE RECONSTITUTED UNITED NATIONS PANEL OF EXPERTS ON THE ILLEGAL EXPLOITATION OF NATURAL RESOURCES OF THE DRC, 23-25 AUGUST, 2001.**

**INTRODUCTION**

1. As mandated in the Statement of the President of the UN Security Council on 3 May 2001, in connection with the Council's consideration of the item entitled: "The situation concerning the DRC", the reconstituted UN Panel of Experts on the Illegal Exploitation of Natural Resources of the DRC visited Kampala from 22 - 25 August 2001.<sup>1</sup> The Chairman of the Reconstituted UN Panel, Ambassador M Kassem of Egypt, was accompanied by three members of his team including Mr Moustapha Tall (Senegal), Mr Melvin Holt (USA) and Mr Amin Mohson (political assistant- Egypt).

2. In extending the mandate of the UN Panel of Experts for a period of three months, the Security Council requested the Panel to submit an addendum to its final report including the following:

- (a) An update of relevant data and an analysis of further information, including as pointed out in the action plan of the Panel to the Security Council
- (b) Relevant information on the activities of countries and other actors for which the necessary quantity and quality of data were not made available earlier
- (c) A response, based as far as possible on the corroborated evidence, to the comments and reactions of the States and actors cited in the Final Report of the Expert Panel
- (d) An evaluation of the situation at the end of the extension of the mandate of the Panel, and of its conclusions, assessing whether progress has been made on the issues which come under the responsibility of the Panel.

3. The UN Panel of Experts met HE President Y Museveni. The Panel also held discussions with the following Cabinet Ministers:

- (a) Hon. James F Wapakhabulo, 3<sup>rd</sup> Deputy Prime Minister/Minister Foreign Affairs.
- (b) Hon. Gerard Ssendaula, Minister of Finance, Planning and Economic Development
- (c) Hon. Amama-Mbabazi, Minister of Defence.
- (d) Hon. Kisamba-Mugerwa, Minister of Agriculture, Animal Industry and Fisheries.
- (e) Hon. Edward Rugumayo, Minister of Trade, Tourism and Industry.
- (f) Hon. Kezimbira Miyingo, Minister of State for Environment
- (g) Hon. Kamanda Bataringaya, Minister of State for Mineral Development

<sup>1</sup> See attachment (Annex I): Programme for the visit to Uganda by the UN Expert Panel on the DRC, 22 - 25 August 2001



4. The Reconstituted UN Expert Panel held a substantive session with the Working Group of technical officials on the Country Questionnaire as well as on specific areas of Uganda's concerns on the allegations/conclusions on the Final Report of April 2001.
5. The UN Panel requested for and met Major General Salim Saleh (retired), Brigadier James Kazini (Army Chief of Staff), and Lt. Col. Noble Mayombo (Chief of Military Intelligence).
6. Justice David Porter, Chairman of the Judicial Commission of Inquiry on the Allegations of Illegal Exploitation of Natural Resources of the DRC and members of his team held meetings with the Reconstituted UN Panel of Experts in Kampala.

#### **SUMMARY REPORT ON THE MEETING WITH H.E. PRESIDENT MUSEVENI**

7. The meeting between H.E. President Museveni and Amb. M. Kassem was attended by Hon. J F Wapakabulo, 3rd Deputy Prime Minister/Minister of Foreign Affairs; Hon. Omwony Ojok, Minister of State for Economic Monitoring; Mr. Busho Ndinyenka, President's Office; Ms Hilda Musubira, the Principal Private Secretary to H.E. the President; Amb. James Mugume, Director of International Cooperation; Mr. Ssemenda; and Mr. Adonia Ayebare, Ministry of Foreign Affairs.
8. Amb. Kassem was accompanied by three members of the Expert Panel - Mr. Holt (USA), and Tall (Senegal) and Mr. Amin Mohson a Political Officer (Egypt).
9. Amb. Kassem thanked the President for having found time to receive the UN Panel of Experts on the Illegal Exploitation of Natural Resources of the DRC. He informed the President that the purpose of the reconstituted Panel was to prepare an addendum to the Final Report. The Panel, therefore, needed both updated and new information in order to revise items or review parts of the Final Report. He also informed the President that since his arrival in Kampala the Panel had had useful meetings with Government Ministers and the Working Group of the technical officials.

#### **The Need for Inclusion on the UN Panel of a Veteran of the African Struggle**

10. H.E. the President welcomed the UN Panel members and expressed satisfaction that Mme Ba N'Daw of Ivory Coast had been replaced. He expressed the hope that Amb. Kassem would be a more balanced Chairman of the UN Panel. In this context, the President said that in order to help the UN Secretary General Kofi Annan, he had recommended that the Panel should include a veteran of the struggles in Eastern and Southern Africa - someone from either Mozambique or who had worked with the late President Nyerere of Tanzania - because the problems of Rwanda, Burundi and DRC were all historically linked.
11. H.E. the President said that he disagreed with the old UN Panel's definition of "illegality" that any economic activity which was not sanctioned by Kinshasa was 'illegal'. If that definition were to be followed, the President emphasized, the people in the Eastern DRC would have either starved to death or we would have had a terrible genocide. He pointed out that during Uganda's civil wars of both 1979 and 1985 when

Kampala was cut off, people from Western Uganda would have died and lost their cattle if medicines and cattle drugs were not procured from Tanzania, Rwanda, Burundi, etc.

12. In response to the suggestion to include a veteran of African struggles on the UN Panel, Ambassador Kassem informed the president that he had been involved in the Great Lakes issues since 1995 as Chairman of the UN Panel on the Genocide in Rwanda. He had also served as the Egyptian Ambassador to Ethiopia and Mozambique. He also explained that it is the practice of the UN Panels of Experts not to include persons from the region or country being investigated.

**Request for information on Illegal Exploitation Activities by Zimbabwe, Angola, Namibia and the Kabila Administrations in the DRC**

13. Amb. Kassem told the President that one of the problems with the report of 1<sup>st</sup> UN Panel was lack of balance in the coverage of countries involved in the DRC, focusing on Uganda and Rwanda and ignoring Zimbabwe, Angola, Namibia, etc. In an interesting move, Amb. Kassem then requested H.E. the President that Uganda should help in the Panel's efforts to cover other countries involved in the DRC, by providing information on any illegal exploitation involving Zimbabwe, Angola, Namibia or the Kabila Administrations. He explained that the Panel requires that information must be confirmed by two sources in order to be sure the allegations are based on actual evidence.

14. In response, H.E. the President told the Ambassador that Uganda has heard of various activities by Angola, Zimbabwe and Namibia in the DRC. He explained, however, that in Uganda's courts of law, evidence is given under oath. It is, therefore, not enough to hear, one needs concrete evidence. Allegations which are not backed by such concrete evidence could lead to perjury. He advised the Ambassador to talk to the armed opposition to the Kinshasa government who should have the information on activities of the allies of the Kabila Administration.

**Allegation of H.E. the President's Family Involvement in the Illegal Exploitation of Natural Resources of the DRC**

15. H.E. the President assured the UN Panel that neither himself nor his son Muhoozi are involved in any business in the DRC. He also recommended that the UN Panel should interview his brother Major General Salim Saleh.

**Why Uganda got involved in the DRC**

16. H.E. the President gave Ambassador Kassem a compiled book containing the background press reports, data and information since the ADF invasion of Western Uganda in 1996, which explain why Uganda got involved in the DRC; and a copy of his statement on "Background to the Situation in the Great Lakes Region" in Harare on 9 August 1998. The President informed the Ambassador that the biggest problem in the Great Lakes has been caused by the absence of a state in the DRC since the era of President Mobutu. That is why, President Museveni explained, Mobutu always relied on foreign forces and mercenaries – in 1966, 1967, 1977 and 1991 – to control the state. He further explained that the Late

President Mobutu of Zaire would have died in office if he had not compounded the problems of Congo by giving Congolese territory as a base for ADF, Interhamwe and EX-Far forces of Rwanda in early 1990s.

17. H.E. the President also informed the Ambassador that Uganda is compiling the affidavits of the people who were attacked in North Western Uganda in November 1996, by an Islamic extremist group (the tabliqs) who had been trained by H. Turabi, the then Speaker of Parliament in the Sudan. In response to a question by Amb. Kassem on the role of IGADD in resolving the crisis in the Sudan, H.E. the President pointed out that the IGADD process deals with issues of the internal problem in the Sudan and not cross-border terrorism.

#### **Recommendation for the UN Panel to Visit Eastern DRC**

18. H.E. the President recommended to Amb. Kassem that the UN Panel should visit the DRC and inspect some of the mines referred to in the first UN Panel Report. In response, Amb. Kassem told the President that the various government departments in Kampala had been very supportive and that the Ministry of Defense had, indeed, invited him to visit the mines in the DRC.

#### **H.E. the President's Recommendation on Investigations on Minerals**

19. H.E. the President told the UN Panel that in investigating exploitation of minerals it is important to distinguish between two types:

- (a) Big mines which require equipment and capital to exploit; and
- (b) Artisan mining operations which are difficult to trace.

20. He informed the Ambassador that Uganda has managed artisan miners by liberalizing the economy including the forex and capital accounts. As a result of the liberalization of the economy 1993, Uganda gold exports grew from 1 to 5 tons (1994), and 10 tons (2000). Uganda is now exporting US\$60m of hides and skins per year again because of liberal economic policies, indicating that the crucial ingredient is the creation of a good macro-economic policy environment.

21. Finally, Ambassador Kassem thanked H.E. the President for the co-operation that was extended by the government departments, and promised to keep in touch with the various officials from his operational headquarters in Nairobi.

#### **SUMMARY REPORT ON THE MEETING WITH THE THIRD DEPUTY PRIME MINISTER AND MINISTER OF FOREIGN AFFAIRS, HON. JAMES WAPAKABULO ON 23RD AUGUST 2001 AT 9.00 A.M.**

22. The meeting between Hon J Wapakabulo and the Reconstituted Panel of Experts was attended by: Mr. Ralph Ochan, Permanent Secretary, Ministry of Foreign Affairs; Amb. James Mugume; Director, International Cooperation; Mr. I. Kiwanuka, Uganda Coffee Development Authority; Mr. Deo N. Byarugaba, Forest Department; Mr. L. Tibaruha, Director Legal Services, Ministry of Justice; Mr. P. Ssemanda, Senior Economist, Ministry of Foreign Affairs; Mr. Fred Wainyaba, Office of the President; Ms. Allen Kagina, Commissioner Customs & Excise/Uganda Revenue Authority; Ms. Christine Lubega, Bank of Uganda; Mr. Ahurwendeire Didas, Office of the President; and B.J. Ochana, Counsellor, Ministry of



## Foreign Affairs.

23. The Third Deputy Prime Minister and Minister of Foreign Affairs welcomed the reconstituted United Nations Panel to Uganda and added that this gives Uganda a good chance of defending herself on allegations made in the UN report on plundering of the DRC resources. He assured Amb. M Kassem that Uganda would continue to extend maximum co-operation to the UN Panel. He, however informed the UN Panel that the data to be collected may differ because of the following:-

- (a) The officially analyzed data should be integrated and given by the Uganda Bureau of Statistics (UBOS), which however is only two years old.
- (b) The various departments of Government have different data cut-off dates and time lags. For example, coffee exports recorded by Uganda Coffee Development Authority (UCDA) in the month of November, will be reflected in the month of December by Uganda Revenue Authority (URA).
- (c) Export licensing departments capture intended export data while URA records actual imports and exports. For example, gold export figures by the Ministry of Energy and Mineral Development reflect intention of exports while URA captures actual exports of gold.
- (d) It is known that a number of companies understate values of export products in order to avoid high transit bond charges in the neighboring countries.
- (e) Different methods of data capturing. Some departments record quantities while others capture value.

24. The Minister further went on to say that the conceptual definition of "Illegality" by the old UN Panel has to be discussed, as it remains a contentious issue. The historical cross boarder trade and transit cargo between Uganda and DRC since Colonial times should not be overlooked. Mombasa and Dar-es-salaam Ports have their hinterland which includes Eastern Democratic Republic of Congo, Burundi and Rwanda since 1920s.

25. Hon. J Wapakabulo also made the following points:

- (a) Uganda remains convinced that the Lusaka Cease-fire Agreement on the Democratic Republic of Congo provide the only viable way to address the security concerns of the Democratic Republic of Congo, her neighbours and the establishment of a new democratic dispensation in the DRC.
- (b) Uganda has demonstrated good will and has withdrawn most of the troops from the DRC except Beni, Buta and the western slopes of Rwenzori Mountains. As requested by the UN Secretary General, the remaining troops will withdraw in the context of the Lusaka disengagement process.



- (c) Of all foreign forces and the emergency of a strong and stable state, remain the only guarantee to the end of the illegal exploitation of the natural resources of the Democratic Republic of Congo.

26. Ambassador Kassem made the following points:

- (a) The Panel was given three (3) months and already one has elapsed. The UN Panel is committed to producing a balanced report. The Panel has therefore come for more information and clarifications because there has been a lot of complaints on the final report. The report would be revised, depending on the new evidence.
- (b) The country questionnaire was given in advance and is expected to rely on the new evidence given. The panel is committed to write a report which will boost the Lusaka Peace Process.
- (c) All countries involved in the conflict would be visited. The Panel would also visit a number of European Union countries including Britain, France and Belgium if a need arose.
- (d) It is the practice of United Nations to keep their sources of information secret.
- (e) The reconstituted UN Panel will discuss the issue of "illegality" since a lot of interpretation has been put forward and the Panel of Experts had not made up its mind on the issue.
- (f) The Panel wanted to know the status of the Protocol signed in 1998 between Uganda and DRC and whether it was still valid.
- (g) The Panel would revisit Uganda, if necessary. Time constraint was however a problem.
- (h) The team needed to know the status of the rebel controlled areas.
- (i) How were taxes in rebel controlled areas collected and distributed?

27. In response Hon. Wapakhabulo said that:

- (a) It is a good development that the issue of "illegality" was to be revisited and that the Panel would write a balanced report. The idea of the UN Panel visiting other countries involved in the DRC conflict is welcome.
- (b) Uganda is happy that the Panel recognizes the Lusaka Peace Process as the only way forward for creating a stable DRC.
- (c) Tax collection in the DRC is an issue of the Congolese and that the little he knew was that under Front for Liberation of Congo (FLC), all taxes are collected jointly.

- (d) With regard to the control in the rebel territory, according to CLF agreement, Bemba is supposed to be the leader.

**SUMMARY REPORT ON THE MEETING WITH THE MINISTER OF DEFENCE, HON.**

28. The meeting between Hon. Amama Mbabazi and the Reconstituted UN Panel of Experts was attended by: Hon. Muhuri Mukasa, Minister for Security, Ministry of Defence; Mr. Gabindadde Musoke, Secretary for Defence; Maj. Gen. Jeje Odongo, Army Commander; Brig. J. Mugume, Deputy Army Commander; Brig. J. Kazini, Chief of Staff; Col. Mayombo, Chief of Military Intelligence; Mr. Busho Ndinyenka, Deputy Director ESO; Mr. Busingye Amooti, Deputy Director ISO; Mr. Fred Wairugala, Head of Legal Affairs ISO; Mr. Ahurwendeire, Head of Research ESO; Ms Naome Kibajju, Under Secretary/Logistics; Amb. J. Mugume, Director/International Cooperation (MOFA); Mr. P. Ssemanda, Senior Economist (MOFA).

29. In his opening remarks, Mr. Mahmoud Kassem stated that: -

- (a) The reconstituted UN Panel was given a new mandate to complete the unfinished work of the first Panel led by Mme Ba N'Daw of Cote d'Ivoire
- (b) The purpose of the UN Panel is to find out if there is new evidence on earlier allegations and to seek clarification on various issues in the first Panel's Report.
- (c) The new UN Panel mandate was extended for 3 months of which one month had already passed. The Panel was ready to hear from the Ugandan side in light of what was reported by the first Panel. In particular, the reconstituted UN Panel wished to gather information which could strengthen Uganda's objections to the first report.

30. In response, Hon. Amama Mbabazi made the following points:

- (a) The Uganda Government is grateful to the Security Council for reconstituting a new UN Panel Experts of DRC with a new Chairman. The new Panel would not have ample time as it was rushing through many meetings in a single day.
- (b) The first UN Panel was not balanced because it predominately consisted of members from the Francophone countries.
- (c) Uganda was unhappy with the first report because it was based on hearsay, falsehood and contained distorted data in many cases. Hence Uganda's condemnation in the strongest terms of the methods used by the first Panel in writing the Report on the Illegal Exploitation of Natural Resources of the DRC in April 2001.
- (d) When the 1st UN Panel of Experts on the DRC met with H.E. President Museveni in November 2000 with Brigadier Kazini was present. Their report stated that the

Panel requested to see Brig. Kazini but the request was turned down.

- (e) Brig. Kazini was again seated in the meeting. The reconstituted Panel was free to ask Brig. Kazini, Lt. Col. Mayombo, Chief of the Military Intelligence or any official present questions relating to issues under the UN Panel's mandate.
- (f) The 1st UN Panel of Experts on the DRC should not have condemned one without giving them a chance to be heard.
- (g) The 1st UN Panel of Experts on the DRC met H.E. the President in Kampala, November 2000 but did not inform him that there were allegations labeled against him personally.
- (h) The Ministry of Defence was ready and willing to facilitate the Panel to get evidence from various officials on various allegations even from the Congolese themselves.
- (i) The 1st UN Panel of Experts on the DRC did not condemn Zimbabwe, Namibia, etc. but condemned only Uganda and Rwanda.

31. The UN Panel asked and the Hon. Minister of Defence answered the following questions:

(a) **Question:**

What was the UPDF mission objectives for involvement in the DRC?

**Response:** UPDF Mission in Congo:

- (i) Secure Uganda's security interest by denying the Sudanese Government opportunity to destabilise Uganda through Eastern Congo.
- (ii) Deny habitation of Uganda's dissidents, the ADF, WMBF, NALU, UNRF II, in the Congo.
- (iii) Ensure that the political and administrative instability arising from rebel and government clashes in Eastern Congo does not destabilise Uganda.
- (iv) Demobilise elements of the Interahamwe, the former Rwandan army, and prevent them from terrorizing Uganda and Rwanda.
- (v) Protect Uganda's territorial integrity from invasion by Kabila forces.

(b) **Question:**

Was there an established law on the relationship between UPDF and the rebels in the DRC?

**Response:**

There is a code of conduct which regulated the relationship between the UPDF and rebels. Initially this document were supposed to govern the operations and conduct of RPA as well but the Rwandese government later refused arguing that their constitution does not allow their soldiers to be punished outside Rwanda. (Code attached as annexure 'C')

(c)

**Question:**

What was the relationship between UPDF and DRC civilian Administration.

**Response:**

(i) UPDF was not involved in the civil administration of the areas where it operated. The decision that UPDF and other Ugandan authorities must not be involved in the civil administration and control the economic activities in areas controlled by UPDF was taken September 1998. The only incident known to the Ugandan authorities which breached the directive to that effect was the appointment by Brig. J Kazini of Lotsove Adele as governor of Ituri Province. The UPDF High Command met over the issue and reprimanded Kazini for his action.

(ii) Even though this was contrary to policy of UPDF, Brig. Kazini's appointment letter to the governor highlighted need to improve the quality of life of the Congolese people:

- "Embark on a minimum road rehabilitation programme with a view to boosting trade and commerce and the delivery of social services to the people".
- "Remember that as a decentralised authority you are answerable to the people you lead. The essence is to serve the people providing the much needed guidance for the attainment of improved welfare".

(d)

**Question:**

Was there any involvement by UPDF in collection and distribution of taxes in DRC?

**Response:**

UPDF was not at all involved in the collection of taxes as this was the domain of civil leadership. UPDF officers namely Brig. Kazini, Col. Kahinda Otafire and Lt. Col. Mayombo witnessed the signing of a memorandum of sharing resources by RCD. Uganda's stand had always been to approach the revenue question in such a way as not to get involved in the internal administration of Congo.

Revenue collected must be injected in security, social and economic infrastructures (see annexure A).



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Revenue collected must be injected in security, social and economic infrastructures (see annexure A).

UPDF, however, went ahead to implement the code of conduct to regulate its activities in DRC.

(e)

**Question:**

Is there evidence of individuals or companies known by UPDF to be involved in the exploitation of natural resources in the DRC?

**Responses:**

(i) There were various economic operators in Eastern DRC who can easily be accounted for by the civil leadership since they would give them permission to operate there. Although it was outside our mandate, we investigated and found out the following:

- **Victoria Group:** this is a company registered in Goma DRC and its registered proprietors are found in annexure (D) as Ahmed Ibrahim, a Lebanese resident in Goma and K Ndukuhire, Ugandan who was resident in Goma at the time.
- **AIR NAVETTE:** owned by Shiraz Hudan, a Canadian of Ugandan origin and his partner is one Alexis Makabuza. It is registered both in Uganda and Goma DRC.
- **Showa Trading Company** owned by Sam Engola, Ugandan.

(ii) UPDF as a policy did not and was not allowed to do any business. In the early days of the operation in DRC H.E. the President sent a radio message prohibiting any involvement in business in DRC. Ref. Msg DTG 1500010C Dec 1998 (attached as annexure E).

- Those who deviated from this directive were punished, some of whom were Lt. Okumu, Lt. Kisima, and Cpt. Kyakabale.
- Even the code of conduct that was joint for both RPA and UPDF (ref. joint code of conduct)) discouraged involvement in any commercial activity by soldiers.
- UPDF could not allow any diversion from its mission by the involvement of its troops in business.

(f)

**Question:**

Is there any intelligence information by Ministry of Defence that the Kinshasa government was giving to the Rwandese Interahamwe based in DRC?

**Response:**

There is some information from Zimbabwean POWs and Interahamwe captured from the DRC which we shall pass on to the inquiry in due course.

However there is a force of 3000 WNBK at Ilebu which is being commanded by Amin's son Taban and are co-located, trained, armed and fed by the Government of Congo.

**(g) Question:**

What is the total human and material cost of Ugandan involvement in the DRC?

**Response:**

On the human and material cost of the war we believe that this question hinges on the National Security and is not material to the matter under inquiry.

**(h) Question:**

Annual Budget figures for Ministry of Defence since 1997?

**MINISTRY OF DEFENCE BUDGET PERFORMANCE (UG) SHS. BILLION<sup>2</sup>**

DETAILS	1997/98	1998/99	1999/00	2000/01	2001/02
WAGE	31.05	60.8	100.6	113.6	118.25
NON-WAGE	90.92	84.7	91.8	74.123	85.306
DEVELOPMENT	10.00	17.45	13.7	10.64	12.03
STATUTORY	6.3	17.8	17.8	14.3	5.3
TOTALS	138.27	180.75	223.9	212.663	220.888

**Notes:** There was a Supplementary Expenditure of Shs.42,907,590,762/= in 98/99 F/Y for Classified Expenditure.

1 US\$ = (U) SHS.1750

**SUMMARY REPORT ON THE MEETING BETWEEN HON. KEZIMBIRA MIYINGO, THE MINISTER OF STATE FOR ENVIRONMENT AND FORESTRY AND THE UN EXPERT PANEL ON THE DRC 23, AUGUST 2001**

32. The meeting between Hon. Kezimbira Miyingo and the Reconstituted Panel of Experts was attended by: Amb. James Mugume, Mr. Semanda Patrick, Mr. J Ocana, Mr. James Ndimukulaga,

33. Amb. M. Kassem made the following points:

- (a) There had been lots of reports on the exploitation of the natural resources including timber and wild life in the DRC by foreign forces.

<sup>2</sup> See RST/34/100/01 faxed to Ambassador M Kassem, Chairman of the UN Expert Panel on the DRC, dated 1 October 2001

- (b) The Panel would therefore like to hear from the Minister on anything on the subject that might have come to his knowledge, since Uganda had raised objections to the first UN Panel Report, April 2001.

34. In response, the Hon. Minister said that:

- (a) The Ministry of Water, Land and Environment is responsible for policy as far as the Environment is concerned. The main objective of the Ministry policy is to ensure Uganda's environmental sustainability; self-sufficiency in timber for the provision of fine wood and other forest products.
- (b) Uganda is not an importer of timber and the other forest products. Whatever forests products that pass through Uganda are in transit and are not normally monitored by his Ministry. The Ministry of Water, Lands and Environment only monitors local timber market. Uganda is self-sufficient in timber. He could not comment on the forest in the DRC as he has never been there.

35. Following questions:

- (a) Is there any formal bilateral trade co-operation between Uganda and the DRC?
- (b) Are there any Ugandan companies that are investing in the DRC?
- (c) Amb. Kassem requested for documents on the DARA company which show that it is not a Ugandan company.
- (d) Which body is responsible for giving the certificates of origin for wood products in Uganda?
- (e) Who finances the DARA Company?
- (f) Which authorities are responsible for issuing certificates of origin for Timber that originates from Eastern DRC?

36. In response, the Minister of State for Environment made the following points:

- (a) There is no bilateral trade agreement between Uganda and the DRC on forestry and related products.
- (b) The question relating to Uganda companies investing in the DRC or certification products from the DRC should be directed to the Ministry of Finance and Uganda Revenue Authority.
- (c) The question relating to impounded ivory should be directed to the Ministry of Tourism, Trade and Industry, and the Wildlife Authority.



- (d) For Ugandan timber the certificates of origin are issued by the Forestry officers on the site where the timber is coming from.
- (e) The list of the shareholders of DARA – Great Lakes company can be obtained by the Commission of Forestry and give to the Panel. The copies of the share certificates were given to the UN Panel on 24 August 2001).

37. In his concluding remarks, the Hon. Minister advised the Reconstituted UN Panel of the Experts that in addressing all the questions relating to the illegal exploitation of natural resources of the DRC, efforts must be made to ensure that the implementation of the Lusaka Peace Agreement remains in focus as it is the most viable guarantee against illegal exploitation in the DRC.

**SUMMARY REPORT ON THE MEETING BETWEEN HON. G SSENDAULA THE MINISTER OF FINANCE AND THE UN PANEL OF EXPERTS ON THE DRC. 23 AUGUST 2001**

38. The meeting between Hon. Ssendaula, Minister of Finance and the reconstituted UN Panel of Experts was attended by: Mr. Francis Tumuhairwe, Commissioner, Ministry of Finance; Mr. Tisairana L K, Assistant Commissioner, Ministry of Finance; Mr. Sewanyana, Uganda Bureau of Statistics; Mr. John Mayende, Uganda Bureau of Statistics; Mr. Bownbridge, Ministry of Finance; Amb. James Mugume, Ministry of Foreign Affairs; Ms Allen Kagina, Uganda Revenue Authority; Mr. Michel Ego, Bank of Uganda and Mr. Ssemanda Patrick, Ministry of Foreign Affairs.

39. Amb. Kassem made the following points:

- (a) The UN Panel on the illegal exploitation of the natural resources of the DRC is on the second phase of the mission to enable the reconstituted UN Panel to address complaints and reservations raised by Uganda and other countries in the Final Report April 2001. And that is why they are re-visiting those countries with reservations on the report.
- (b) The UN Panel was therefore ready to listen so that it can come up with new conclusions.
- (c) The UN Panel has some questions with regard to activities in Easter DRC – one of such case is the DARA Companies – one being registered in Kinshasa and the other in Kampala but both conducting the same business.

40. In response, Hon. G Ssendaula, Minister of Finance, made the following points:

- (a) Uganda is one of those countries who objected to the UN report. The objections were submitted through the Ministry of Foreign Affairs.

- (b) Before the current dispute in Eastern DRC, there were people conducting business with authority from Kinshasa. When the dispute broke out these people were cut off from Kinshasa but continued to do their business. It is only these Congolese business people who can explain better activities in that part of the DRC.
- (c) As a sovereign State, Uganda has customs laws that are amended from time to time and implemented by the Uganda Revenue Authority.
- (d) As Uganda's neighbour Eastern DRC relies on Uganda for transiting their goods given the geography of the DRC. Therefore, traditionally Uganda has been a transit point for all goods to and from Eastern DRC and there are laws governing goods in transit.

41. In response to Mr. Holt's question, on the financial relationship between Uganda and the rebel groups in Eastern DRC, the Minister made the following observations:

- (a) There is no economic relationship between Uganda and the rebels in Eastern DRC.
- (b) The World Bank and the IMF which have monitored the economic progress of Uganda can testify that the factors behind Ugandan economic growth have nothing to do with the DRC.
- (c) The only opportunity when Uganda discussed economic co-operation with the DRC was soon after President Kabila Snr. took over power in Kinshasa in 1997. At that time a large number of Uganda Ministers was invited to Kinshasa. They stayed in Kinshasa for two weeks. They were supposed to talk about oil explorations along the shared Western Rift Valley lakes, but nothing took off.

42. Mr. Holt, also asked the Minister the following questions:

- (a) Is there any relationship that exists between CFL rebels, RCD and Uganda on timber and minerals?
- (b) Is there any relationship between Uganda and Eastern DRC in terms of tax benefits.

43. In response, the Minister of Finance made the following comments:

- (a) The only time tax issues were discussed between Uganda and DRC was when Mr. Kabila Snr. took over power in Kinshasa in 1997. Uganda wanted to help the Kinshasa Government improve on tax and financial administration. Nothing came out of these discussions.
- (b) With regard to the rebels in Eastern DRC, no invitations has come from them or from for discussions on tax issues.

44. Amb. M. Kassem in an irritated mood, raised the following points:

- (a) The UN Panel came to Kampala in respect of objections raised by Uganda. The UN Panel circulated questionnaires in advance. The Questionnaire must be answered so that the Panel can revise the objections in order to come up with new conclusions.
- (b) In the past border trade between Uganda and the DRC was between states. Given the present situation in the Eastern DRC, is there any decree or parliamentary legislation in Uganda to cover the situation in Eastern DRC? If the answer is negative then the point now is whether the activities in Eastern DRC are legal or not.

45. In response, the Hon. Minister of Finance made the following comments:

- (a) Uganda has not made any legislation that is specifically on trade From Eastern DRC.
- (b) Uganda's revenue started to increase in early 1990s as a result of reforms carried out with the help of the World Bank and IMF. The liberalization of the economy, moving away from the public to the private sector led growth strategies helped to improve the Uganda economy. Uganda's development partners including the World Bank and IMF can collaborate causes of the positive changes in the Uganda economy since the early 1990s.

46. Amb. Kassem, still visibly irritated, informed the Hon. Minister that he was interested in Uganda's responses and not comments by the World Bank/IMF. If the Panel had wanted the IMF/World Bank answers, it would have gone to Washington DC. Ambassador Kassem wondered if the Minister had seen the resolutions passed by the EU Parliament on the illegal exploitation of the natural resources of the DRC. He added that the resolution gives some warnings to Uganda. It is therefore, important that the reconstituted UN Panel comes with new conclusions. And for that the UN Panel needs new information.

47. The meeting ended on a cold note. It was clear that the chemistry was not good. For some strange reasons, Amb. Kassem seemed to be tense and irritated most of the time.

#### **SUMMARY RECORD OF MEETING WITH MINISTER OF STATE FOR MINERAL**

48. The meeting between Hon. Bataringaya Kamanda and the Reconstitute UN Panel was attended by: Amb. Mugume, Ministry of Foreign Affairs; Mr. Patrick Ssemanda, Ministry of Foreign Affairs; Mr. Ochana, Ministry of Foreign Affairs; Mr. Watuwa Bwobi, Ministry of Energy and Mineral Development.

49. Hon. Kamanda Bataringaya made the following observations:

- (a) Having been Uganda's Ambassador to DRC during the days of Mobutu and Kabila Snr.

In 1990s, and also having been born near the boarder with DRC, he can bear witness to the cross boarder trade between Ugandans and Congolese which has existed since the colonial days.

- (b) The Ministry records export permits for companies which have intentions to export and also capture production statistics.
- (c) The policy of the Ministry of energy and Mineral Development is to register only businessmen who deal in minerals produced in Uganda.

50. The Chairman of the reconstituted UN Panel of Experts explained to the Hon. Minister about the new mandate of the Panel and lamented about the short period given to him to produce a report. He informed the Minister that in order to write a balanced report, he needed new evidence. The Chairman asked the following questions:

- (a) Is there a mechanism/system of monitoring Uganda's mineral production and exports?
- (b) Is there a distinction between DRC gold and Ugandan gold?

51. In reply the Hon. Minister of State for Mineral Development said that:

- (a) The Ministry would provide more information as requested. The Ministry was unhappy that the a which was given to the first Panel of Experts was not used in their report. The first UN Panel had instead relied on hearsay. Data requested by the UN Panel would be given during the meeting with the Working Group of the Technical officials on 24 August 2001.
- (b) The monitoring system, for mineral exports and production exists but it is not very efficient like in any other Developing Country. It is difficult to make the distinction between DRC and Ugandan gold. The Ministry of Energy and Mineral Development is interested in gold produced and exported from Uganda.

52. Mr. Watuwa Bwobi, the Commissioner for Geological Survey and Mines reviewed the UN Panel report and made the following comments:

- (a) All Minerals mentioned in the UN Report are known to exist in Uganda including diamonds and Coltan.
- (b) The first diamond (0.243 metric carats) was picked at Kibale, Buhweju in 1938 and another at Butale in 1956 both as a result of gold winning (see Geological Survey of Uganda Bulletin 4 - The Mineral Resources of Uganda published in 1961 page 61).<sup>3</sup>

<sup>3</sup> Geological Survey of Uganda, Bulletin 4, the Mineral Resources of Uganda (1961)



- (c) Information on Coltan is found on page 24 of Bulletin 4 (1961).<sup>4</sup> The production of Coltan declined due to depressed prices in the late 1950s. The production was bound to pick up with improved prices as is the case today.
- (d) Information on gold is on page 15 of the same Bulletin 4. Today gold has been found almost in all districts of Uganda. Most of the gold mined is alluvial (except Busia gold field which is reef) and is mined by artisanal/small-scale miners, many of whom are unlicensed.
- (e) It is estimated that over 500,000 Ugandan artisans are engaged in gold production in Uganda during any single month.
- (f) Mineral production figures (especially of gold) have always been lower than export figures since the trade in gold was liberalized and royalty removed in 1992/93 (CF Para 96 of the report of the first UN Panel of Experts, April 2001). Before liberalization, the gap between the gold production on export figures was not significant.
- (g) The main reasons for the increased gap between production and export figures for gold include:
- Before liberalization, the few licensed artisanal miners would indicate few grams of production to hang on their licenses and the buyers would file low figures to avoid payment of royalties.
  - After liberalization in 1992/93, buyers felt confident to export their gold through official channels thus indicating increased exports. Most of the artisanal miners are not licensed and invariably do not file their production returns which in turn come from a few licensed miners. Thus, while the production figures have remained fairly stable, the export figures have steadily gone up.
  - The gold export figures in table 1 of the UN Report (para 96) are those on the Export Permits issued by the Ministry of Energy and Mineral Development. In most cases they differ from those of actual exports. Actual export figures are those captured by the Customs Department. One needs an Export Permit before processing other export documents.
- (h) Although Uganda has no production figures for diamond, it is possible that some diamonds are being produced as a result of winning gold. During the Diamond Prospecting Programme in Uganda (1965-1974) by Mineral Prospecting (U) LTD a number of diamonds totaling over 0.4m CTS were recovered and three (3) Kimberlites were discovered. Kimberlites are rocks which are major hosts for diamond.
- (i) Since Uganda does not have official figures of diamond exports or production the

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<sup>4</sup> 1 bid

Ministry cannot comment on the figure in table 2 of the UN Report of April 2001, the source being the Diamond High Council. If we are given export papers, we could know whether the purported exports were from Uganda or not. The possibility of fraudsters using forged documents must not be ruled out.

- (j) Niobium (Coltan) production was halted in Uganda due to low prices. Increased demand and higher prices have led to more production and hence exports, the coincidence with the Congo conflict notwithstanding (cf para 33 of the UN Report). It is stated that "seven years" worth of Columbo-Tantalite (Coltan) was found in stock. Is it possible that the material could not have been sold due to low prices! Besides we do not measure minerals worthiness in years!
- (k) Following the conclusion of UNDP assisted Mineral Investment Programme in 1992, the number of investors interested in the mineral sector increased. This number dropped with revision of the surface rent in 2000.

**SUMMARY REPORT OF THE MEETING WITH HON. PROF. E RUGUMAYO THE MINISTER OF TOURISM, TRADE AND INDUSTRY 23 AUGUST 2001**

53. The meeting between Hon. Prof. E Rugumayo and the Reconstituted UN Panel of Experts was attended by: Ambassador Mugume, Ministry of Foreign Affairs; Mr. Ssemanda. P., Ministry of Foreign Affairs; Mr. J. Muhwezi, Ministry of Tourism, Trade and Industry; and Mr. J. Tindigarukayo, Ministry of Tourism, Trade and Industry.

54. The chairman of the UN Panel explained why the Panel was reconstituted for an extra period of 3 months. He pointed out that this time, the reconstituted Panel was to cover more countries including Burundi, Uganda, Zimbabwe, South Africa, Namibia, Rwanda, Angola, and a number of countries outside Africa.

55. Ambassador Kassem and his team asked the following questions:

- (a) Is there an arrangement in which trade is carried out in the rebel controlled areas In Eastern DRC since the Kinshasa Government is not in control of the area?
- (b) Would the Minister be able to show that the trade in timber, minerals and other items in the Eastern DRC is legal since the Kinshasa authorities have no control over the areas.
- (c) What would be the effect of conflict among members of the same trade agreement such as COMESA?
- (d) How does the Ministry of Trade, Tourism and Industry define the import, export, re-export and goods in transit?
- (e) What are the conditions in which Uganda government gives a certificate of origin?

- (f) What is the trade balance between Congo and Uganda for the last five years in terms of volume and value?
- (g) Who are the largest importers, exporters, transporters and countries of origin and destination?
- (h) Which enforcement authority conducts the follow up on the illegal trafficking of ivory? Where was the origin and fate of the 200 kg of Ivory that was impounded at Entebbe Airport as reported in the Ugandan press in July 2001?

56. In response Prof. E. Rugumayo informed the reconstituted UN Panel that as a Minister, he deals with policy issues and promised them that all the data the UN Panel needs will be given by the Working Group of the Technical officials on 24<sup>th</sup> August 2001. He further informed the panel that most of the information the UN Panel needed could be got from Customs Department, Uganda Revenue Authority.

57. On the issue of the Ivory which was impounded at Entebbe international airport. Assistant Commissioner, World Life Authority, later explained that usually when ivory is impounded, the matter is handed over to the police and the culprits prosecuted in the courts of law.

**SUMMARY RECORD ON THE MEETING BETWEEN THE RECONSTITUTED UN PANEL AND THE WORKING GROUP OF THE TECHNICAL OFFICIALS ON THE DRC, 24 AUGUST 2001**

58. The reconstituted UN Panel of Experts met the following members of the Working Group of the Technical officials at the Ministry of Foreign Affairs Boardroom:

Amb. James Mugume, Ministry of Foreign Affairs (Chairman of the Working Group); Michael Aztingin Ego, Bank of Uganda; Christine Lubega, Bank of Uganda; Ayebare Adonia, Ministry of Foreign Affairs; Ssemenda Patrick, Ministry of Foreign Affairs; Allen Kagina, Uganda Revenue Authority; Henry Ngabirano, Uganda Coffee Development Authority; David Kiwanuka, Uganda Coffee Development Authority; J Muhwezi, Ministry of Tourism, Trade and Industry; Justus Tindigarukayo K, Ministry of Tourism, Trade and Industry; Moses Kabanga, Ministry of Finance; Kabbs Twijuke, Civil Aviation Authority; James Ndimukulaga, Ministry of Water, Lands and Environment; Ahuwendeire Didas, Office of the President; Moses Kaggwa, Ministry of Finance; Watuwa Bwobi, Commissioner, Geological Survey and Mines; Mubiru James, Uganda Bureau of Statistics; Bahemuka Stephen, Uganda Bureau of Statistics; and Mayende John, Uganda Bureau of Statistics.

59. The meeting between the reconstituted UN Panel and the Working Group of technical officials covered the following Agenda items:

- (a) Country Questionnaire for Uganda by the UN Panel of Experts.
- (b) Workplan/Time-Frames of work of the UN Panel in the next two months.

(c) Discussions on specific areas of Uganda's concerns on allegations/conclusions in the Final Report of April 2001. Helping the reconstituted Panel to understand Uganda's objections to the Report.

(d) A.O.B.

**COUNTRY QUESTIONNAIRES FOR UGANDA BY THE RECONSTITUTED UN PANEL:**

60. The respective members of the Working Group provided the required data and explanations to the UN Panel per item as indicated on the country questionnaire including on Imports/exports/re-efforts/goods in transit for the period 1994-2001.<sup>5</sup> The Commissioner of Customs, Uganda Revenue Authority, Mrs. Allen Kagina explained to the UN Panel that data for 1995 and 1996 from Mpondwe was lost during the ADF rebel attack on Mpondwe Customs border post in 1996. She explained to the Panel that the names of transporters are not captured but the vehicle numbers of trucks transporting goods are recorded.

61. The UN Panel thanked the Working Group for the data provided. The UN Panel further sought clarification on the following items:

- System of certification of origin of Ugandan products (natural and industrial products).
- An arrangement in place to deal with countries in conflict?
- The case of Ivory which was impounded at Entebbe International Airport: how is the seizure/confiscation done at entry points and what are the enforcement structures?
- How is civilian enforcement at Entebbe Airport and other fields handled?

62. The Working Group of Technical officials made the following clarifications:

(a) Mr. Julius Tindigarukayo, Assistant Commissioner in the Ministry of Tourism, Trade and Industry explained to the Panel the enforcement mechanism in the case of impounded ivory:

- The enforcement is carried out by Customs, UPDF, Police and civilians. The culprits are handed over to Police for investigation and persecution in courts of law.
- On the issue of ivory impounded at Entebbe International Airport, the Assistant Commissioner promised to provide more data since he had already contacted Uganda Wildlife Authority. (Information was subsequently forwarded through the UN Resident Co-ordinator to Nairobi via Note Verbale # RST/34/100/01 dated 27 September 2001).

<sup>5</sup> See attachment (Annex 2): List of Documents handed to Amb. M Kassem, Chairman of the UN Expert Panel on 24 August 2001.



- (b) On the issue of Certificate of Origin Mr. J Muhwezi explained that this differs from product to product. The Uganda Coffee Development Authority issues certificates for coffee products while other products are handled by the Uganda Export Promotion Board.
- (c) Mr. Kabbs Twijuke informed the Panel that at all the airfields customs officials are always present. He further explained that besides Entebbe Airport there are 5 airfields accessible to and from Uganda. For the small airports the Uganda Civil Aviation has to be informed in advance 5 days. Products imported through Entebbe International Airport have to pay tax unless the goods are in transit. There is a ban on the exportation of timber. He also elaborated regarding data on passenger flow, export by type, aeronautical income, aircraft movements between Entebbe and Burundi, DRC and Rwanda since 1993.

#### **WORKPLAN**

63. Amb. Kassem thanked the Working Group of technical officials for the information which had been provided. He said that if need arose, then the UN Panel would comeback for more data or clarification. He doubted, however, if time would allow the new Panel to revisit Kampala. Amb. Mugume informed the reconstituted Panel that the previous UN Panel chaired by Mrs. Ba N'Daw was given a lot of data but to his surprise they chose to ignore it and instead wrote a report based on hearsay. He prayed that this new Panel utilizes the data given to it and come out with a report based on evidence.

#### **Specific areas of concern to Uganda, on the allegation/conclusions in the final Report of the old UN Panel dated 16 April 2001:**

64. Amb. J Mugume informed Amb. Kassem, Chairman of the Reconstituted UN Panel of Experts that the full response by the Government of Uganda to the Final Report of the old UN Panel of Experts on the illegal exploitation of natural resources of the DRC is contained in (i) the statement to the Security Council by Hon. Amama Mbabazi, former Minister of State for Foreign Affairs on 3 May 2001 and (ii) UN Security Council document S/2001/458 dated 9 May 2001. The new Chairman of the UN Panel did not seem to have seen the two documents.

65. For the purpose of helping the new Chairman of the UN Panel to understand Uganda's objections to the Final Report of UN Panel of April 2001, Ambassador J Mugume, Chairman of the Working Group of Technical Officials, gave examples of concerns on the key fundamental flaws of the report:

- (a) **Conceptual definition of 'illegality':** Uganda did not accept the definition in the Mme Ba N'Daw report of 'illegality' as covering all transactions and actions in the DRC that were not authorized by Kinshasa. The Mme Ba N'Daw Report ignored the legal status of the Lusaka Peace Agreement on the DRC, (1999) which mandated all parties to the Agreement - including the rebel forces to have Security/Administrative responsibilities in the respective areas until the establishment of the new dispensation in the DRC.
- (b) **Biased coverage by the Report:** The report of the UN Expert Panel on the DRC, April 2001, failed to cover investigations in all the countries involved in the DRC as mandated by the UN

Security Council. The coverage of the Mme Ba N'Daw Report reflected a bias based on the original French proposal, January 2000, that investigations should cover only Uganda and Rwanda as 'uninvited countries' in the DRC, which was rejected by the UN Security Council in favor of investigation of all countries involved in the DRC including Zimbabwe, Angola, Namibia, and the Kinshasa government.

(c) **Poor quality of evidence:** The report recommended very strong sanctions against Uganda and Rwanda based on very poor quality of evidence. Instead of basing the allegations and conclusions on concrete evidence, the Mme Ba N'Daw report chose to rely heavily on hearsay, falsehoods, distorted data and obvious biases:

- **Hearsay:** The report argues, for example, that the decision to get involved in the DRC by Uganda was based, according to numerous and reliable sources, on economic interests of the senior UPDF who had served in 1997 war (para 27). No reference was made to the discussion with H.E. President Museveni on the subject in Kampala, November 2000. No attempt was made to examine Uganda's well-documented security concerns and attacks from the DRC by the Sudanese-backed ADF rebels etc.
- **Falsehoods:** The report falsely alleged, for example, that (i) President Museveni's family was a shareholder in DARA Great Lakes timber company; that the Department of Forestry certified timber from DRC as Ugandan timber and that a non-existent factory in Namanve processes DRC timber for export (paras 47-54) (ii) government refused permission for the UN Panel to interview Brig. Kazini, whom the Panel met at State House Kampala in November 2000 (iii) 25% of the right-hand cars imported in Uganda in 1999 were looted from the DRC which has left-hand vehicles, (para 36).
- **Distorted data:** The report deliberately and repeatedly distorted data to support false conclusions or allegations, for example (i) the use of gold export data by the Ministry of Energy and Mineral Development which reflect export permits or intended exports without reference to the explanatory notes and ignoring the actual export data by the Customs Department (para 96) to support the false allegation of gold looting from the DRC; (ii) wrong interpretation of Uganda's economic data to give a false impression that Uganda's GDP growth and balance of payments benefited from the UPDF involvement in the DRC after 1998 (para 142). Uganda's high GDP growth trends started in early 1990s and have declined after 1998.
- **Obvious biases:** The Mme Ba N'Daw report displays obvious biases. For example, it (i) condemns President Museveni as an accomplice to the illegal exploitation and the god father of the illegal exploitation of natural resources and continuation of war in the DRC (paras 206, 211) without any concrete evidence, (ii) examines the events of 1994 that led to the conflict in the DRC and conveniently fails to recognize the significance of one million genocide victims in Rwanda, (para 22) (iii) refers to the Interahamwe as 'the so called negative forces'. (para 173), (iv) makes no attempt to investigate the legitimate security concerns of Uganda and Rwanda in the DRC crisis.

- (d) **Deliberate attempt to undermine the Lusaka Peace Agreement:** The Mme Ba N'Daw report belatedly mentions the significance of the Lusaka Peace Agreement (para. 219). Worse, it ignores its delicate balance and provisions in its interpretation of illegality, and chooses, in its very sweeping recommendations, to utilize the instrument of sanctions selectively to punish a few of the signatories. Indeed, when Uganda wanted to pull out of the DRC unilaterally in May 2001, the UN Secretary General rightly intervened to keep the peace process on track and requested Uganda to withdraw within the context of Lusaka Agreement.

### **CONCLUSION**

66. The visit to Uganda by the reconstituted UN Panel of Experts went very well. Ambassador Kassem expressed ~~dissatisfaction~~<sup>satisfaction</sup> with the co-operation extended by the Government of Uganda. The Government undertook to forward the outstanding data/information for the questionnaire to Nairobi through the UN Resident Co-ordinator in Kampala.<sup>6</sup> It was agreed that the Nairobi-based UN Panel would keep in touch with the Government on any further question and clarifications.

Prepared by:

**The Directorate of International Cooperation  
Ministry of Foreign Affairs  
KAMPALA**

<sup>6</sup> See attachment (Annex 3) List of items/documents forwarded to the UN Panel through the UN Resident Coordinator in Kampala (vide Note Verbale RST/34/100/01 dated 27 September 2001)

**ANNEX 1****PROGRAMME FOR THE VISIT TO UGANDA BY THE UN EXPERT PANEL ON THE DRC – 22-25 AUGUST 2001****WEDNESDAY 22<sup>ND</sup> AUGUST 2001:**

Morning : Arrival from Nairobi

Afternoon : Meetings with the Porter Judicial Commission.  
**Venue: ICC (International Conference Centre).**

**THURSDAY 23<sup>RD</sup> AUGUST 2001:**

9:00 a.m. : Opening Ceremony: Meeting with 3<sup>rd</sup> Deputy Prime Minister/Minister of Foreign Affairs.  
**Venue: MOFA Boardroom.**

10:15 a.m. : Meeting with Minister of State of Environment and Forestry.  
**Venue: Ministry Headquarters, Parliament Avenue.**

11:30 a.m. : Meeting with the Minister of Finance, Planning and Economic Development. (Officials from Customs, Civil Aviation Authority (CAA), Bank of Uganda, Uganda Bureau of Statistics (UBOS), etc. in attendance).  
**Venue: MOFED Boardroom.**

12:45 p.m. : **LUNCH BREAK**

2:00 p.m. : Meeting with Hon. Minister of Energy and Mineral Development.  
**Venue: Amber House.**

4:30 p.m. : Meeting with Hon. Amama Mbabazi, Minister of Defence. (Security/Intelligence Officials in attendance).  
**Venue: Ministry of Defence, Bombo.**

**FRIDAY 24<sup>TH</sup> AUGUST 2001:**

- 9:00 A.M. : Meeting with Hon. Minister of Agriculture.  
Venue: MOFA Boardroom.
- 10:15 - 11:30 a.m. : Meeting with Technical Officials/Working Group.  
Venue: MOFA Boardroom.
- 8:00 p.m. : Meeting with H.E. the President.  
Venue: State House, Kampala.

**SATURDAY 25, AUGUST 2001**

- 2:00 p.m. : 2<sup>nd</sup> Meeting with Hon. Amama Mbabazi,  
Minister of Defence.  
Venue: International Conference Centre.
- 4:00 p.m. : Meeting with Brig. Gen. Salim Saleh,  
Brig. J Kazini and Lt. Col Mayombo.  
Venue: International Conference Centre.



**ANNEX 2****LIST OF DOCUMENTS HANDED OVER TO THE NEW UN PANEL ON THE DRC ON 24 AUGUST 2001****1. CUSTOMS:**

Imports/Exports/goods in transit/re-exports, country of origin and destination, transportation since 1993.

**2. MINERAL PRODUCTION EXPORT:**

List of all licensed dealers and estimated exports since 1993.

**3. AGRICULTURE AND FORESTRY:**

A list of Coffee exporters and qualities exported since 1993 to-date:

- A map showing the distribution of sawmills in Uganda.
- Dara Great Lakes articles of association and a copy of company registration. A letter authorising Dara Great Lakes to suspect he wood forests in Uganda from the Commissioner of Forests.

4. A list of Ministries and personnel responsible for: Mineral/mining sector management, Agricultural Forestry and Environment and Energy.
5. Uganda's Mining code and Mining Regulations.
6. Uganda's Instrument Authority Polices and Activities.
7. The Financial Institutions Statute 1993.
8. Uganda Bureau of Statistics Statistical Abstract 2000.
9. Uganda Civil Aviation Authority statistics on exports, imports and flights
10. Uganda Investment Guide. Opportunities and conditions, March 2001.

**ANNEX 3**

**RST/34/100/01**

The Ministry of Foreign Affairs of the Republic of Uganda presents its compliments to the UNDP Resident Co-ordinator and has the honour to refer to the Country Questionnaire between the UN Panel of Experts and the Uganda Government Working Group of technical officials on the Illegal Exploitation of Natural Resources of the DRC in Kampala, 24 – 25 August 2001.

The Ministry of Foreign Affairs wishes to request that the UN Panel of Experts acknowledge receipt of the documents that were handed over 24 – 25 August 2001 in response to the Country Questionnaire.

The Ministry of Foreign Affairs also wishes to forward the attached copies of the following additional documents as requested by the UN Panel of Experts:

1. URA Documents:
  - (i) Copies of DRC documentation.
  - (ii) Uganda Customs Definition.
  - (iii) Animal Teeth cleared through Entebbe in 2000.
2. Report on specific issues raised by the UN Panel Experts – Uganda Wildlife Authorities.
3. Why Uganda Government got involved in the DRC – an extract from the counter-memorial submitted to ICJ, April 2001.
4. Information provided by Bank of Uganda in Uganda:
  - i) List of all Commercial Banks.
  - ii) Memorandum and Articles of Association or Rules required by the UN Panel.
  - iii) Their paid up share capital.
  - iv) Names of Directors.
  - v) Bank of Uganda Annual Reports 1999/2000.
  - vi) Trade between Uganda and DRC.
  - vii) Brief remarks on Uganda's Balance of Payments.
5. Data and Explanatory Notes on Imports and Exports, 1995/2000 by Uganda Bureau of Statistics (UBOS).

The Ministry of Foreign Affairs of the Republic of Uganda avails itself of this opportunity to renew to the UNDP Resident Co-ordinator the assurances of its highest consideration.

Kampala: 27 September 2001

The UNDP Resident Co-ordinator  
Kampala

**RST/34/100/01**

1 October 2001

Amb. Mahamoud Kassem  
Chairman, UN Expert Panel on DRC  
EXPNATDRC/UNON  
**NAIROBI**

**Fax: 254-2-622 689**

Re: **UGANDA'S DEFENCE BUDGET PERFORMANCE FOR  
FY 1997/98 TO 2001/2002**

Attached is a copy of the Ministry of Defence Budget Performance for FY 1997/98 – 2001/2002 which was requested for by the UN Panel of Experts in Kampala on 25 September 2001.

Please advise if the balance of the documents that were not handed over on 23 – 25 September 2001 which were forwarded through the Office of the UN Resident Co-ordinator in Kampala vide Diplomatic Note Verbale No. RST/34/100/01 dated 27 September 2001 have been received by your office (see attached copy of the Note Verbale).

Kindly let me know if there is any more data/information that you may require from Uganda. Our invitation for the UN Panel to revisit Kampala for any further interviews and clarifications still stands.

Please accept, Mr. Ambassador, my warm regards and highest consideration.

James Mugume  
For: **PERMANENT SECRETARY**

cc: The Charge d'Affaires  
Permanent Mission of Uganda to the UN  
**NEW YORK**

The UN Resident Co-ordinator  
**KAMPALA**

Enc.



## CERTIFICATION

The undersigned Agent of the Republic of Uganda hereby certifies that the texts of the documents reproduced in this Volume, as attachments to the Rejoinder submitted by Uganda in the proceedings relating to *Democratic Republic of the Congo v. Uganda*, are accurate copies of the texts of the documents they purport to reproduce.

6 December 2002

Honourable Francis J. Ayume  
Attorney General  
Republic of Uganda  
(signed)

*Agent of the Republic of Uganda*