

Note: This translation has been prepared by the Registry for internal purposes and has no official character

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO
(DEMOCRATIC REPUBLIC OF THE CONGO v. UGANDA)**

**SECOND PHASE
QUESTION OF REPARATION**

**MEMORIAL
OF THE
DEMOCRATIC REPUBLIC OF THE CONGO**

**VOLUME 1
(Annexes 0.1 to 1.11)**

September 2016

[Translation by the Registry]

LIST OF ANNEXES

Volume 1 Annexes 0.1 to 1.11

<i>Annex</i>		<i>Page</i>
	Introduction	
0.1	Ngurdoto-Tanzania Agreement between the Democratic Republic of Congo and the Republic of Uganda on Bilateral Cooperation, Ngurdoto, Tanzania, 8 September 2007	1
0.2	Minutes of the 3rd Meeting of Uganda and Congolese Experts on the Implementation of the Ruling of the International Court of Justice of 19 December 2005, 10-14 December 2012, Kinshasa	12
0.3	Agreed Minute of the 2nd Ministerial Meeting of the <i>Ad Hoc</i> Committee of Uganda/Democratic Republic of Congo on the Implementation of the Ruling of the ICJ (2005), 24-27 November 2014, Indaba, Johannesburg	17
0.4	The Agreed Minutes of the 4th Meeting of Ministers of the Democratic Republic of Congo and the Republic of Uganda on the Implementation of the Judgement of ICJ of 19th December 2005, held in Pretoria, South Africa, on 17-19 March 2015	17
	Chapter 1	
1.1	Ministerial Order No. 0002/CAB/J&DH/2008 of 26 February 2008 establishing an Expert Commission in charge of identifying and assessing the damage caused by Uganda to the DRC and its peoples following the armed attack and occupation of Congolese territory by Ugandan troops between 1998 and 2003	18
1.2	Ministerial Order No. 049/CAB/MIN/JGS&DH of 19 December 2015 establishing a commission responsible for defending the interests of the DRC in the second phase of the proceedings before the International Court of Justice relating to the fixing of the amount of the reparations owed by Uganda	18
1.3	Software giving access to individual victims' records (in electronic format only)	18
1.4	United Nations Office of the High Commissioner for Human Rights, <i>Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003</i> , August 2010 (excerpts)	19
1.5	United Nations Commission on Human Rights, Fifty-sixth Session, <i>Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission on Human Rights resolution 1999/56</i> , document E/CN.4/2000/42, 18 January 2000 (excerpts)	33

<i>Annex</i>		<i>Page</i>
1.6	MONUC, <i>Special report on the events in Ituri, January 2002-December 2003</i> , document S/2004/573, 16 July 2004	45
1.7	United Nations Security Council, <i>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</i> , document S/2001/357, 12 April 2001	111
1.8	United Nations Security Council, <i>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</i> , document S/2001/1072, 13 November 2001 (excerpts)	169
1.9	United Nations Security Council, <i>Interim 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</i> , document S/2002/565, 22 May 2002	199
1.10	United Nations Security Council, <i>Final 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</i> , document S/2002/1146, 16 October 2002	219
1.11	Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo 2001 ("Porter Commission"), <i>Final Report</i> , November 2002	279

ANNEX 0.1

**Ngurdoto-Tanzania Agreement between the Democratic Republic of Congo
and the Republic of Uganda on Bilateral Cooperation,
Ngurdoto, Tanzania, 8 September 2007**



THE REPUBLIC OF UGANDA

NGURDOTO-TANZANIA AGREEMENT

BETWEEN

THE

DEMOCRATIC REPUBLIC OF THE CONGO

AND

THE

REPUBLIC OF UGANDA

ON

BILATERAL COOPERATION

me
Ngurdoto, Tanzania 8th September, 2007

AKP
[Signature]



THE REPUBLIC OF UGANDA

**NGURDOTO-TANZANIA AGREEMENT
BETWEEN
THE DEMOCRATIC REPUBLIC OF CONGO
AND
THE REPUBLIC OF UGANDA
ON
BILATERAL COOPERATION**

Preamble

This Agreement is made between the Democratic Republic of Congo (the DRC) and the Republic of Uganda (hereinafter referred to jointly as the Parties).

CONSIDERING that the common cultural heritage and shared natural resources in the two countries offer enormous opportunities and strengths for the pursuit of stability and prosperity;

RECALLING the Agreement establishing a Joint Permanent Commission of Cooperation, 1986 between the two countries; the Agreement of Cooperation for the Exploration of Hydrocarbons and Exploitation of Common Fields, June 1990 and the Luanda Agreement on Cooperation and Normalization of Relations, September 2002;

FURTHER RECALLING the Lusaka Ceasefire Agreement of July 1999, the Tripartite Agreement, October 2003; the Principles of Good Neighbourly Relations and Cooperation, September 2003, the Pact for Security, Stability and Development in the Great Lakes Region, December 2006, the United Nations Charter and the Constitutive Act of the African Union;

REAFFIRMING their commitment to the letter and spirit of the said Instruments;

REGRETTING the violent incidents, some involving loss of life, that have recently taken place along the common border;

DETERMINED to promote social, cultural, economic, and political cooperation in order to achieve peace, security and prosperity,

The Parties hereby agree as follows:



THE REPUBLIC OF UGANDA

CHAPTER II: DEFENCE AND SECURITY

Article 1

Negative Forces

The Parties undertake to strengthen bilateral efforts to eliminate all negative forces operating from the two countries, particularly for Uganda, the Lord's Resistance Army (LRA), the Allied Democratic Alliance (ADF), the People's Redemption Army (PRA), and the National Liberation Army of Uganda (NALU) and for DRC, Forces Armees du Peuple Congolais (FAPC) of Jerome Kakwavu, Mouvement Revolutionaire Congolais (MRC) of Bwambale Kakolele, CNDP of Laurent Nkunda. To this end, the Parties agree that:

- (a) the process of apprehension, disarmament, demobilization, repatriation, resettlement and reintegration (DDRRR) of persons in the negative forces referred to above, shall, within 90 days from the date of this Agreement, be demonstrably undertaken in either country, respectively. The foregoing may be achieved through joint military operations in concert with MONUC. The Parties shall deny sanctuary to any person opposed to DDRRR.
- (b) The Government of the DRC shall formulate an action plan to neutralize the negative forces, particularly the LRA and ADF, which shall become effective by January 2008;
- (c) the Joint Verification Mechanism already existing between Parties shall be strengthened by opening liaison offices in the towns Aba, Beni, Bunia, Kinshasa, Fort Portal, Arua, Kisoro, Kanungu and Kampala;
- (d) the decisions reached in previous bilateral meetings with regard to the negative forces but have not been implemented shall be implemented within three months from the date of this Agreement and future joint decisions shall be implemented without delay;
- (e) there shall be meetings of Ministers of Defence and Security and their Permanent Secretaries at least twice a year to review progress in this respect. These meetings shall be preceded by those of Chiefs of Defence Forces and Chiefs of Military Intelligence, which shall be held at least once a



THE REPUBLIC OF UGANDA

year. In addition, there shall be meetings of Regional Commanders as well as those of local political leaders every month;

- (f) At the Tripartite Plus One meeting scheduled to take place in Kampala, the Government of Uganda shall support a proposal by the DRC to ensure the successful integration of the DRC national army, disarmament of the Interahamwe and other negative forces and the joint pacification, by MONUC and the DRC national army, of areas in North Kivu currently affected by hostilities.

Article 2

Settlement and Repatriation of Refugees

The Parties agree to set up a Tripartite Commission on Refugees involving the Government of the Democratic Republic of the Congo, the Government of the Republic of Uganda and the United Nations High Commission for Refugees in the last quarter of 2007 with a view to ensuring that:

- (a) refugees are settled away at least 150 km from the common border, as required by international instruments governing refugees;
- (b) refugees are sensitized about the situation pertaining in their countries;
- (c) refugees are repatriated once the conditions that compelled them to flee their countries improve in accordance with international rules governing refugees.

Article 3

Border Demarcation and Security

- (1) The Parties reaffirm their commitment to respect the principle of inviolability of borders as inherited from the colonial powers.
- (2) The Parties agree to the joint re-marking, where necessary, of the international boundary between the two countries as defined in the Agreement between the United Kingdom and Belgium Respecting Boundaries in East Africa (Mt. Sabinio to the Congo-Nile Watershed) of



THE REPUBLIC OF UGANDA

3rd February 1915 and its annexes as recognised under the Charter of the Organisation of African Unity and its successor, the Constitutive Act of the African Union.

- (3) The Parties agree to set up a joint team of experts within one month from the date of this Agreement to work out the modalities of carrying out the task in (2) above. The joint team may co-opt any person or persons from any country or body as it may be deemed necessary.
- (4) The parties agree that upon being constituted, in remarking the international boundary, the joint committee shall give priority to Rukwanzi island and in the territory of Mahagi, particularly the areas of Uriwo, Anzida/Panzuru, Angiero, Pagira and Pamitu; and in the territory of Aru the border of Vura.
- (5) The Parties agree that Rukwanzi island and Mahagi, particularly the areas of Uriwo, Anzida/Panzuru, Angiero, Pagira and Pamitu shall be immediately demilitarized.
- (6) The Parties further agree that the DRC administration on Rukwanzi island shall remain in place for one month from the date of this Agreement and during that month, it shall sensitize the resident population about this aspect of the Agreement. Immediately after the said one month, Uganda shall appoint a co-administrator to jointly administer the Island with the DRC administrator, and post police personnel equal in number to those stationed by the DRC on the island to maintain civil order.
- (7) The Parties agree to ensure that the existing mechanism under which regular joint border meetings are held alternately on both sides of the border involving local political leaders, military commanders and other technical officials as well as central government representatives shall have the responsibility of monitoring and ensuring the implementation of the provisions of (5) and (6) above.



THE REPUBLIC OF UGANDA

CHAPTER II: ECONOMIC COOPERATION

Article 4

Management of Trans-boundary Resources and Regularization of Cross-border Trade In Minerals

- (1) The Parties agree to ensure and facilitate cooperation in all economic fields of common interest, particularly the use and management of trans-boundary living resources. To this end, the Parties agree to convene a session of the Joint Permanent Commission of Cooperation in Uganda in December, 2007 for the purpose of exploring ways of harmonising and adopting best practices for preserving trans-boundary resources such as crops, animals, fisheries, forests and national parks, for mutual benefit.
- (2) The Parties reiterate their commitment to cooperate in the exploration of trans-boundary hydrocarbons and in the exploitation of trans-boundary fields. To this end, the Parties agree that:
 - (a) where an oil field is found to straddle their common border, the Parties shall jointly explore and exploit that field and proportionately share the costs and proceeds in accordance with the principle of *unitisation*. The respective Ministers responsible for the oil sector shall meet within one month from the date of this Agreement to deliberate and agree on the detailed modalities in this regard;
 - (b) they shall within three months from the date of this Agreement attach petroleum experts in their respective embassies who will, under a framework to be agreed upon between the Parties, observe petroleum exploration activities on each other's side of the border;
 - (c) they shall continue to exchange information, experience and expertise in petroleum matters;
 - (d) the Democratic Republic of Congo shall enhance Petroleum exploration in the Albertine basin as soon as possible to enable the Parties identify and evaluate trans-boundary fields;
 - (e) the DRC Government shall send a team of experts within one month from the date of this Agreement to visit areas where oil has been discovered near the common border.



THE REPUBLIC OF UGANDA

X (f) they shall update the said *Agreement of Cooperation for the Exploration of Hydrocarbons and Exploitation of Common Fields*, 23 June 1990 with a view to improving and strengthening it.

- (3) The Parties undertake to ensure the following in order to enhance economic cooperation and trade regularisation:
- (a) the conclusion of an agreement for mutual assistance in Customs matters for preventive research and repression of illegal activities;
 - (b) setting up a common project to fight illegal trade and fraudulent networks in minerals, starting within 90 days;
 - (c) the establishment of a regional gold trade centre and refinery in the Democratic Republic of Congo, starting within 30 days;
 - (d) the enhancement of exchange of information by the respective mine surveillance authorities;
 - (e) active participation in the Traceability Group in the Great Lakes Region.
 - (f) the signing of an Agreement between the two countries' Ministries responsible for Minerals, on economic and technical cooperation in the sectors of geology, mines and steel, within 30 days.
- [Handwritten signature]*

Article 5

Development of Cross-border Infrastructure and Trading in Electricity

- me*
- (1) The Parties agree that their respective Ministers responsible for infrastructure shall convene, in the framework of the session of the Joint Permanent Commission scheduled for December 2007 in Uganda, meet to work out modalities for developing road, rail and water transport infrastructure linking the two countries;
 - (2) The Parties agree to conclude an Agreement for cooperation in the interconnection of their respective power grids in the framework of the Nile Basin Initiative through, among others, extending the 132 kv transmission line from Kasese (Uganda) to provide electricity for the areas of Beni-Butembo-Rutchuru in the Democratic Republic of the Congo.
- [Handwritten signature]*



THE REPUBLIC OF UGANDA

- (3) The Parties agree to jointly undertake studies on the project in (2) above which will be reinforced by the electricity generation project on River Semliki. Their respective Ministries responsible for energy and their energy distribution companies should meet within one month in Kampala, Uganda, to study modalities for implementing this project.

CHAPTER III: POLITICAL AND DIPLOMATIC COOPERATION

Article 6

Normalization and Strengthening of Bilateral Relations

The Parties agree to normalize and strengthen their bilateral relations by, among others

- (a) reviving the activities of Joint Permanent Commission of cooperation which should hold its next session in December, 2007 in Uganda to review what has been done or has not been done during the last 10 years of its inactivity and recommend ways of ensuring a solid foundation for future bilateral cooperation;
- (b) upgrading their diplomatic representation to ambassadorial level;
- (c) holding an annual summit of the Heads of State of the Parties to be held alternately on each Party's territory, or wherever they may decide.

Article 7

Claims

- (1) The Parties agree to form, with each Party nominating not more than three members, an ad hoc joint technical team to study and advise the respective Ministers of Foreign Affairs on matters relating to:
- (a) claims by the Embassy of the DRC in Kampala in connection with:
 - (i) plot 25 A Elizabeth Avenue, Kololo which is a subject of a dispute involving a Ugandan national; and



THE REPUBLIC OF UGANDA

- (ii) three villas on Acacia Rd No.7B, Mbuya No.14 and Bugolobi No.12 which were auctioned due to the Embassy's indebtedness.
 - (b) a claim of outstanding payment of US\$1 million for services rendered by M/s Uganda Air Cargo to the DRC Government.
- (2) The joint team in (1) above shall report its findings within one month from the date of this Agreement.

Article 8

Implementation of the Judgment of the International Court of Justice (ICJ)

The Parties agree to constitute, with each Party nominating not more than 7 members, an ad hoc committee to study the ICJ judgment in the Case Concerning Armed Activities on the DRC Territory (DRC v Uganda) and recommend to the JPC modalities of implementing its orders on the question of Reparations.

CHAPTER IV: GENERAL PROVISIONS

Article 9

Amendment

This Agreement may be amended or revised with the written consent of the Parties.

Article 10

Dispute Resolution

Any dispute between the Parties to this Agreement relating to the interpretation and application shall be resolved amicably.



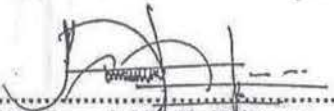
THE REPUBLIC OF UGANDA

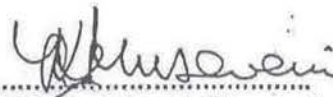
Article 11

Date of Effectiveness


This Agreement takes effect upon signature by the Parties.

IN WITNESS WHEREOF, the Parties have signed this Agreement at NGURDOTO on this 8th day of the month of September in the year 2007 in English and French, both texts being equally authentic.


.....
H.E Joseph Kabila Kabange
PRESIDENT OF THE DEMOCRATIC
REPUBLIC OF THE CONGO


.....
H.E Yoweri Kaguta Museveni
PRESIDENT OF THE
REPUBLIC OF UGANDA

WITNESSED BY:


.....
H.E Jakaya Mrisho Kikwete
PRESIDENT OF THE UNITED REPUBLIC TANZANIA

ANNEX 0.2

**Minutes of the 3rd Meeting of Uganda and Congolese Experts on the Implementation
of the Ruling of the International Court of Justice of 19 December 2005,
10-14 December 2012, Kinshasa**

**MINUTES OF THE 3RD MEETING OF UGANDA AND CONGOLESE EXPERTS ON
THE IMPLEMENTATION OF THE RULLING OF THE INTERNATIONAL COURT OF
JUSTICE OF 19 DECEMBER 2005**

I. INTRODUCTION

In conformity with Article 8 of the Ngurdoto Agreement (Tanzania) of 8th September 2007 the DRC and Uganda delegations sat in a meeting in Johannesburg (South Africa) on 13th and 14th September 2012 to examine the response to the DRC financial claim in its evaluation report submitted to the Government of Uganda during the meeting organized between both parties at Kampala on 25th May 2012.

During the working meeting above held in Johannesburg both parties concluded a bilateral Agreement on 14th September 2012 as indicated in part V that within six months from that date both parties will work together to assemble evidence of their respective claims in order to reach an acceptable agreement in the different presentations.

That the first meeting was to be held Kinshasa in which the Ugandan Experts will receive and verify documents supporting the DRC claim and at the same occasion the Ugandan Experts were to presents documents to prove the damages claimed against Uganda Embassy in Kinshasa.

The working meetings at Kinshasa are organized in conformity of the Ngurdoto Agreement and the Johannesburg meetings cited above. The list of the experts of the ADHOC committee of both parties is attached in this document.

II. OPENING OF WORKING SESSION

The working session started on Monday 10 December 2012. During this occasion, Mrs. Mumba Wivine Matipa, Minister of Justice and Human Rights, in her introductory remarks welcomed the Uganda delegation to Kinshasa, indicated that the DRC and Uganda are friendly and brotherhood countries that are bound to live together and to hold amicable

relations of good neighborhood and requested experts of both parties to work in spirit of trust and amicable transparency.

III. WORKING PROCEDURE

The actual technical work of the Experts Committee started on Tuesday 11 December 2012, after the brief speech made by Honorable Tunda Ya Kasende, Vice Minister of Foreign Affairs to the participants. In his speech the Vice Minister insisted on the fraternal and excellent relation that does not only exist between the Uganda and Congolese people but also between their Excellencies, Presidents Yoweri K. Museveni and Joseph Kabila Kabange. He also requested the experts of both parties to work in a spirit of trust and amicable transparency.

During the working session the Uganda experts saw, photocopied the evidence presented by the Congolese Party of the damages caused in Ituri, Kisangani, Benim Butembo and Djamena; and documents related to the physical and moral damages and to the Congolese State.

They have therefore photocopied approximately 10950 documents and taken them to Kampala for evaluation of the proof of the claim made by the DRC. The Democratic Republic of Congo will transmit the Verbal Note to the Embassy of Uganda in Kinshasa related to identification of the photocopies that were made.

The Congolese experts on their side received documents of evidence supporting the claim to the damages of the Embassy at Kinshasa amounting to 141 pages.

The both parties in conformity with part V 2/a of the Johannesburg Agreement agreed to meet again in February 2012 in Johannesburg to discuss the proposed amounts presented by both parties in the execution of the decision of the International Court of Justice of 19 December 2005.

IV. CLOSING OF WORKING SESSION

The experts working session of both parties ended on Friday 14 December 2012 by Honorable Tunda Ya Kasende, Vice Minister of Foreign Affairs. During the occasion, he wished a safe journey to the return of the Uganda delegation to Kampala

V. WORKING LANGUAGE

The text of this document was drafted in English and French, both texts being equally authentic.

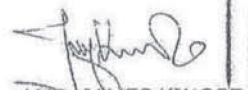
Done at Kinshasa this 14th day of December 2012.

For the Democratic Republic of Congo

Mr Yvon Kalonda Kele Oma
Head of Congolese delegation



For the Republic of Uganda



AMB. JAMES KINOBE
Ambassador of the
Republic of Uganda

ATTACHEMENT

LIST OF DELEGATIONS

Ugandan Delegation

- 1- Amb. James W.L. KINOBE, *Head of Delegation*
- 2- Amb. Alexie KYEYUNE, *Head of the Technical Expert Team/ Ministry of Foreign Affairs*
- 3- Mr. John Bosco R. SUUZA
- 4- Mr. Timoty KANYOGONYA
- 5- Ms. Lucy KABEGE
- 6- Ms. Patricia HABU
- 4- Mr. MBABAZI ARAALI
- 8- Mr. Steven MUHUMUZA
- 9- Benon KAYEMBA

DRC delegation

- 1- KALONDA KELEOMA Yvon, *Head of the Delegation, Director of Cabinet/Min. Justice and Human Rights*
- 2- Prof. TSHIBANGU KALALA, *Lawyer of the Congolese Government*
- 3- NTUMBA KAPITA Patrice
- 4- KASONGO KIOMBA Dominique
- 5- MUAMBA TSHIBANGU John
- 6- KITENGE OTUL Patrick
- 7- Mrs. PAONI TUPA Mélanie
- 8- KILOMBA NGOZI MALA Noël
- 9- NTENDAYI NSHIMBA Honoré
- 10- NGALU KALALA Jules

ANNEX 0.3

**Agreed Minute of the 2nd Ministerial Meeting of the *Ad Hoc* Committee of
Uganda/Democratic Republic of Congo on the Implementation of the
Ruling of the ICJ (2005), 24-27 November 2014,
Indaba, Johannesburg**

OK

AGREED MINUTE OF THE 2ND MINISTERIAL MEETING OF THE AD HOC COMMITTEE OF UGANDA / DEMOCRATIC REPUBLIC OF CONGO ON THE IMPLEMENTATION OF THE RULING OF THE ICJ (2005) WAS HELD ON 24-27 NOVEMBER 2014 AT INDABA, JOHANNESBURG	COMMUNIQUE FINAL DE LA 2ème REUNION MINISTERIELLE DU COMITE AD HOC REPUBLIQUE D'UGANDA/REPUBLIQUE DEMOCRATIQUE DU CONGO SUR L'EXECUTION DE L'ARRET DE LA CIJ(2005) TENUE DU 24 au 27 NOVEMBRE 2014 A INDABA, JOHANNESBURG
1.0. INTRODUCTION: The 2nd Ministerial Meeting of the Ad hoc Committee of Uganda / Democratic Republic of Congo on the Implementation of the Ruling of the ICJ (2005) was held on 24-27 November 2014 at Indaba, Johannesburg in line with Article 8 of the Ngurdoto Agreement (2007). 1.1. List of Delegation Uganda delegation was led by Hon Peter Nyombi, Attorney General of Uganda and included Hon. Kahinda Otafiire, Minister of Justice and Constitutional Affairs, Hon. Daudi Migereko, Minister of Lands, Housing and Urban Development, Hon. Henry Oryem Okello, Acting Minister of Foreign Affairs, and Hon. Jeje Odongo, Minister of State for Defence.	1.0. INTRODUCTION La 2ème Réunion Ministérielle du Comité ad hoc République d'Ouganda / République Démocratique du Congo sur l'exécution de l'Arrêt de la CIJ (2005) s'est tenue du 24 au 27 Novembre 2014 à Indaba, Johannesburg en conformité avec l'Article 8 de l'Accord de Ngurdoto (2007). 1.1. Liste des délégations La délégation de la République d'Ouganda était conduite par l'Honorable Attorney General de l'Ouganda et comprenait l'Honorable Kahinda Otafiire, ministre de la Justice et des Affaires Constitutionnelles, Hon. Daudi Migereko, Ministre des Terres, Habitat et Développement Urbain, Hon. Henry Oryem Okello, Ministre a.i. des Affaires Etrangères et Hon. Jeje Odongo,

OK

Mphahlele

DRC Delegation was led by H.E Wivine MUMBA Matipa, Minister of Justice and Human Rights of DRC, Principal Advisor of the DRC President in Charge of Legal Affairs, H.E. Bene L. MPOKO, DRC Ambassador in Pretoria and H.E. Jean-Charles OKOTO LOLAKOMBE.

A list of the delegations is attached as **Annex A**.

1.3. AGENDA

The meeting adopted the following agenda:

- 1) Registration
- 2) Opening Statements
- 3) Response by Uganda on DRC Claim
- 4) Consideration of the Report of the Committee of Experts
- 5) Response by DRC on Counter claim
- 6) Any other Business (AOB)

Ministre d'Etat à la Défense.

La délégation de la RDC était conduite par S.E. M. Wivine MUMBA Matipa, Ministre de la Justice et Droits Humains et comprenait le Conseiller Principal du Président de la République en charge du collège Juridique, Mr Néhémie Mwilanya, S.E.M. L'Ambassadeur Plénipotentiaire de la RDC à Pretoria, Bene L. M'POKO et S.E.M. L'Ambassadeur de la RDC à Kampala, Jean-Charles OKOTO LOLAKOMBE.

La liste des délégués est jointe en **Annexe A**.

1.3. ORDRE DU JOUR

La réunion a adopté l'ordre du jour ci-après:

- 1) L'Enregistrement
- 2) Les discours d'ouverture
- 3) La réponse de l'Ouganda à la réclamation de la RDC
- 4) L'examen du rapport des Experts
- 5) La réponse de la RDC à la demande reconventionnelle de l'Ouganda
- 6) Divers

do

Mah/2

2.0. OPENING STATEMENTS

2.1. Statements by the delegation of Uganda

Hon. Oryem Okello, Acting Minister of Foreign Affairs of Uganda delivered the opening remarks on behalf of Uganda. The statement is attached as Annex B.

2.2. Statement by the delegation of DRC

H.E Wivine MUMBA Matipa delivered opening remarks on behalf of the DRC. The statement is attached as Annex C.

3.0. RESPONSE BY UGANDA ON THE CLAIM OF DRC

Hon. Peter Nyombi, the Attorney General of Uganda presented a speech on the general response to the DRC Claim. The speech is attached as Annex D.

2.0. LES DISCOURS D'OUVERTURE

2.1. Discours de la délégation de la République d'Ouganda

L'Hon. Oryem Okello, Ministre a.i. des Affaires Etrangères de la République d'Ouganda a fait le discours d'ouverture au nom de l'Ouganda. Le discours est joint en Annexe B.

2.2. Le discours de la délégation de la RDC



S.E.M Wivine MUMBA Matipa a livré le discours d'ouverture au nom de la RDC. Le discours est joint en Annexe C.

3.0. LA REPONSE DE RÉPUBLIQUE D'UGANDA A LA RECLAMATION DE LA RDC.

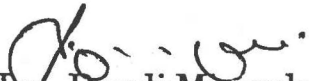
L'Hon. Peter Nyombi, Attorney General de la République d'Ouganda a présenté le discours en guise de réponse générale à la réclamation de la RDC. Le discours est joint en Annexe D.

do


Matipa

<p>4.0 CONSIDERATION OF THE REPORT OF EXPERTS</p> <p>(i) The Ministers took note of the Report of Experts in Annex E.</p> <p>(ii) Ministers directed that the two positions be harmonized as soon as possible. Thereafter, the two parties shall meet before mid February 2015 in South Africa to conclude the negotiations.</p> <p>(iii) DRC proposes that Uganda look at the parameters used by DRC and Uganda will be at liberty to criticize them and make a response on what is right instead of coming with new parameters. The response should be done within one month.</p>	<p>4.0. EXAMEN DU RAPPORT DES EXPERTS</p> <p>(i) Les Ministres ont pris acte du rapport des experts en Annexe E.</p> <p>(ii) Les Ministres ont décidé que les deux positions soient harmonisées dès que possible. Dès lors, les deux parties ont convenu de se <u>réunir à nouveau avant mi-février 2015 en Afrique du Sud pour conclure les négociations.</u></p> <p>(iii) La RDC propose que l'Ouganda examine les paramètres utilisés par la RDC et reconnait à la République d'Ouganda la latitude de les critiquer et de faire une contre proposition sur ce qu'il estime approprié plutôt que de proposer des nouveaux paramètres. La réponse devrait être donnée <u>dans un mois.</u></p>
	

Done at Johannesburg, South Africa on 27th November
2014


Hon. Daudi Migereko, MP
Minister of Lands, Housing and Urban Development
For and on behalf of the Republic of Uganda

Fait à Johannesburg, Afrique du Sud le 27
Novembre 2014


S.E.M. Wivine Mumba Matipa
Ministre de la Justice et Droits Humains
Pour la République Démocratique du Congo

THE UGANDAN DELEGATION: ANNEX A

NAME:	ORGANIZATION:	CONTACTS:
1. Hon. Peter Nyombi	Attorney General of Uganda	
2. Hon. Okello Oryem	Ministry of Foreign Affairs	
3. Hon. Kahinda Otafire	Ministry of Justice and Constitutional Affairs	
4. Hon. Daudi Migereko	Ministry of Lands Housing and Urban Development	
5. Hon. Jeje Odongo	Minister of State for Defence	
6. Amb. James Mugume	Permanent Secretary MOFA	
7. Amb. James Kinobe	Ugandan embassy Kinshasa	jwkinobe@gmail.com
8. Amb. Julius Peter Moto	Ugandan High Commission Pretoria	ugacommer@mweb.co.za
9. Christopher Gasharibake	MoJCA	gashirabach@gmail.com
10. Cheborion Barishaki	MoJCA	bcheborionbarishaki@gmail.com
11. Maj Gen. David Muhoozi	CLF UPDF Land Forces HQs Bombo	
12. Col. Godard Busingye	MoD	godardbusingye@yahoo.com
13. Benon Kayemba	Uganda Embassy Kinshasa	kitigoma@gmail.com
14. Olga Adnette Muzungu	MoFA	olgaadnette@gmail.com
15. Dr. Albert A. Musisi	MoFPED	albert.musisi@finance.go.ug
16. Julius J. Kivuna	MoFA	jjkivuna@yahoo.co.uk
17. Kamugisha Robert	Office of the President	kamugisharoberts@yahoo.com
18. Charity Genevive Natukunda	MoFA	C_natukunda@yahoo.com,

19. Wamai David	MoFPED	david.wamai@finance.co.ug
20. Kabege Lucy Uita	MoLHUD	lucyunita@gmail.com
21. Rotsette Nakavuma	MoFPED	Rotsette.nakavuma@finance.co.ug
22. Gilbert Kerumundu	MoLHUD	kerumundugilbert@yahoo.co.uk
23. Jeffrey Atwine	MoJCA	jeffreyatwine@gmail.com
24. Geoffrey Madete	MoJCA	jwmadete@gmail.com
25. Patricia Habu	MoJCA	pingabire@yahoo.com
26. Fadhil Mawanda	MoJCA	
27. David Wamono	Uganda High Commission - Pretoria	wamonosira@yahoo.com

ANNEXE A

LISTE DE LA DELEGATION DE LA RDC

	<u>NOMS</u>	<u>QUALITE/ORGANISME</u>	<u>CONTACTS</u>
1	S.E.M Wivine MUMBA Matipa	Ministre de la Justice et Droits Humains	
2	Mr Néhémie Mwilanya	Conseiller Principal du Président de la République en charge du college Juridique	
3	S.E.M. Bene L. Mpoko	Ambassadeur de la RDC à Pretoria	rdcongo@lantic.net
4	S.E.M. Jean- charles Okoto LolaKombe	Ambassadeur de la RDC à Kampala	
5	LUGUNDA LUBAMBA FRANCIS	Directeur de cabinet de S.E. le Ministre de la Justice et Droits Humains	flugunda@yahoo.fr
6	ARTHUR DITULUAKIDI	Conseiller de cabinet du Ministre de la Justice et Droits Humains	artditu@yahoo.fr
7	BOONGI EFONDA	Conseiller/CAB Min Infrastructures Travaux Publics et Reconstruction	j_bongi@yahoo.fr
8	NTENDAYI NSHIMBA	Conseiller, Ministère des Affaires Etrangères	Cidinda2000@yahoo.fr
9	Me N'TSHILA wa N'TSHILA M	Expert	cabntshila@gmail.com
10	Prof. NTUMBA KAPITA	Expert	patricekapita@yahoo.fr
11	PHILIPPE KADIMA	Assistant de l'Ambassadeur de la RDC en République d'Afrique du Sud	phils201142@gmail.com
12	EBBE MONGA PIERRE	Chef de Bureau/Droits de l'Homme et Droit International Humanitaire/Affaires Etrangères	mongaebbe@gmail.com
13.	KASSONGO KASHAMA	Conseiller, Ministère des Affaires Etrangères	eliekass@hotmail.com

ANNEX 0.4

**The Agreed Minutes of the 4th Meeting of Ministers of the Democratic Republic
of Congo and the Republic of Uganda on the Implementation of the
Judgement of ICJ of 19th December 2005, held in Pretoria,
South Africa, on 17-19 March 2015**

COMUNIQUE CONJOINT DE LA 4^{ème} REUNION DES MINISTRES DE
LA REPUBLIQUE DEMOCRATIQUE DU CONGO ET DE LA
REPUBLIQUE DE L'UGANDA SUR L'EXECUTION DE L'ARRET DE LA
COUR INTERNATIONALE DE JUSTICE DU 19 DECEMBRE 2005, TENUE
A PRETORIA, AFRIQUE DU SUD, DU 17 AU 19 MARS 2015

PREAMBULE

Considérant l'arrêt de la Cour Internationale de Justice du 19 décembre 2005 dans la cause intitulée « Activités armées sur le territoire du Congo (République Démocratique du Congo contre Ouganda) » ;

Rappelant le contenu des paragraphes 260 et 261 de l'arrêt de la Cour Internationale de Justice du 19 décembre 2005 qui recommande des négociations de bonne foi entre les deux parties, en vue de déterminer le montant de la réparation dû à la République Démocratique du Congo par la République de l'Ouganda ;

Guidées par l'Accord de Ngourdoto en Tanzanie, signé le 08 septembre 2007 entre la République Démocratique du Congo et la République de l'Ouganda sur la coopération bilatérale, plus spécialement en son article 8 qui recommande notamment aux parties de trouver les modalités pratiques de l'exécution de l'arrêt du 19 décembre 2005 de la Cour Internationale de Justice ;

Pour ce faire,

1. Les délégations ministérielles de la République Démocratique du Congo et de la République de l'Ouganda se sont rencontrées dans une ambiance empreinte de cordialité, pour la 4^{ème} Réunion ministérielle du Comité conjoint ad hoc, tenue à Pretoria en République Sud-Africaine, du 17 au 19 mars 2015.
2. La délégation de la République Démocratique du Congo était conduite par S.E Monsieur Alexis THAMBWE MWAMBA, Ministre de la Justice, Garde des Sceaux et Droits humains, accompagné de S.E Monsieur Aimé NGOI MUKENA LUSA DIESE, Ministre de la Défense nationale, Anciens combattants et Réinsertion, Monsieur BENE L. M'POKO, Ambassadeur de la République Démocratique du Congo à Pretoria, Monsieur Jean Charles OKOTO LOLAKOMBE, Ambassadeur de la République Démocratique du Congo à Kampala, Monsieur Néhémie MWILANYA WILONDJA, Conseiller principal du Chef de l'Etat chargé des questions juridiques et administratives.



3. La délégation de l'Ouganda était conduite par S.E Monsieur le General Major KAHINDA OTAFIRE, Ministre de la Justice et des Affaires Constitutionnelles, accompagné par Monsieur FRED RUHINDI, Ministre/Procureur Général de la République, S.E Monsieur DAUDI MIGEREKO, Ministre des Affaires Foncières, de l'Habitat et du Développement Urbain, S.E. Monsieur HENRY OKELLO ORYEM, Ministre des Affaires Etrangères a.i, S.E. Monsieur le Général JEJE ODONGO, Vice-Ministre de la Défense, S.E Monsieur JAMES KINOBE, Ambassadeur de la République d'Ouganda à Kinshasa.

4. La réunion a examiné les documents suivants :

- a) les rapports respectifs de Hauts Fonctionnaires et Experts de deux pays du 17 mars 2015 ;
- b) les nouveaux critères d'évaluation proposés par la République de l'Ouganda ;
- c) la réponse spécifique de la République Démocratique du Congo auxdits critères.

5. L'Ouganda a proposé :

- a) la nécessité pour les parties de s'accorder sur des critères à utiliser comme base de calcul pour la compensation à payer à la RDC ;
- b) la vérification conjointe et une analyse commune de 7.400 pièces à conviction produites par la République Démocratique du Congo, conformément aux critères à accepter de commun accord ;

6. L'Ouganda s'est résolu en outre :

- a) de renoncer, dans un esprit de fraternité et de bon voisinage, à sa réclamation du montant de 3.760.000 USD, en rapport avec les dommages causés à l'immeuble de son ambassade à Kinshasa et aux mauvais traitements infligés à son personnel diplomatique ;
- b) de revoir à la hausse sa proposition initiale de réparation du montant de 25 500 000 US, en le portant à 37. 028.368 USD ;

En définitive, la République de l'Ouganda a vivement souhaité de voir se poursuivre les négociations entre les deux parties.



7. Pour sa part, la République Démocratique du Congo a réagi à la position de la partie ougandaise de la manière ci après :

- a) elle a fait objection à l'utilisation d'autres critères pour évaluer sa demande de réparation ;
- b) elle a insisté sur le fait qu'il ne devrait plus y avoir d'autres négociations, tant au niveau technique que ministériel, conformément à la résolution de la 3^{ème} réunion ministérielle tenue à Indaba, Johannesburg, du 24 au 27 novembre 2014 ;
- c) elle a pris acte de la renonciation par la partie ougandaise de sa réclamation du montant de 3 760 000 US ; néanmoins, elle a fermement rejeté l'offre de l'Ouganda de 37.028.368 USD comme étant toujours insignifiante, au regard des préjudices causés ;
- d) enfin, force a été pour elle de constater que le désaccord persiste entre les deux parties, ce qui l'amène à envisager de retourner devant la Cour Internationale de Justice pour la suite de la procédure ;

DE CE QUI PRECEDE,

Vu le désaccord persistant entre les parties, celles-ci ont résolu de clôturer les négociations à leur niveau, conformément à la résolution susmentionnée de la troisième réunion ministérielle, et de s'en remettre à la disposition des Chefs d'Etat, dans l'esprit de l'Accord de Ngourdoto de 2007 sur la coopération bilatérale entre l'Ouganda et la République Démocratique du Congo, pour une orientation.

Fait à Pretoria, en Afrique du Sud, à Burgers Park Hôtel, le 19 Mars 2015, en deux exemplaires originaux, en français et en anglais, les deux faisant également foi

Pour la République de l'Ouganda,

Pour la République Démocratique du Congo,

S.E. Major General KAHINDA OTAFIIRE

Ministre de la Justice et des
Constitutionnelles Affaires

S.E. Alexis THAMBWE MWAMBA

Ministre de la Justice, Garde des Sceaux

et des Droits humains

THE AGREED MINUTES OF THE 4TH MEETING OF MINISTERS OF
THE DEMOCRATIC REPUBLIC OF CONGO AND THE REPUBLIC OF
UGANDA ON THE IMPLEMENTATION OF THE JUDGEMENT OF ICJ
OF 19TH DECEMBER 2005 HELD, IN PRETORIA, SOUTH AFRICA ON
17TH - 19TH MARCH 2015

PREAMBLE

CONSIDERING the ruling of the International Court of Justice of 19th December 2005 in the case entitled "*Armed Activities on Territory of the Congo (Democratic Republic of the Congo v. Uganda)*"

RECALLING the contents of paragraphs 260 and 261 of the ruling of the International Court of Justice of 19th December 2005, which provided for negotiations to be conducted between the two parties in good faith to determine the amount of reparation due to the DRC and Uganda;

GUIDED by the Ngurdoto-Tanzania Agreement between the Democratic Republic of Congo and the Republic of Uganda on Bilateral Cooperation of 8th September 2007 signed by the Heads of State and determined to give full effect to Article 8 on the implementation of the Judgment of the International Court of Justice (ICJ) of 19th December 2005);

THEREFORE :

1. The Ministerial Delegations of the Democratic Republic of Congo and Republic of Uganda met in a cordial manner for the 4th Joint Ad Hoc Committee Ministerial Committee from 17th to 19th March, 2015 in Pretoria, Republic of South Africa.
2. The Delegation of Democratic Republic of Congo led by H.E. Mr. Alexis Thambwe Mwamba, Minister of Justice and Human Rights and Guardian of Official Seals, accompanied by H.E. Mr. Aime Ngoi Mukena Lusa



Diese, Minister of National Defence, Veterans and Re-integration; H.E Mr Bene L. M'Poko, Ambassador of the DRC in Pretoria; H.E Mr. Charles Okoto Lolakombe, Ambassador of the DRC in Kampala, and Mr. Nehemie Mwilanya Wilondja, Legal Advisor of the President of the DRC.

3. The delegation of the Republic of Uganda was led by Hon. Maj. General Kahinda Otafiire, Minister of Justice and Constitutional Affairs and accompanied by Hon. Fred Ruhindi, Minister /Attorney General of Uganda; Hon. Daudi Migereko, Minister of Lands, Housing and Urban Development; Hon. Henry Okello Oryem, Acting Minister of Foreign Affairs; Hon. General Jeje Odongo, Minister of State for Defence; and H.E Mr. James Kinobe, Ambassador of Uganda in Kinshasa

4. The Meeting considered the following documents:

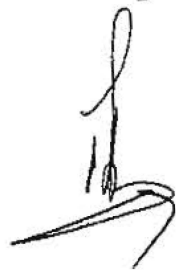
- (a) The Joint report of the Senior Officials and Experts of the two countries dated 17th March 2015,
- (b) The proposed criteria by the Republic of Uganda, and
- (c) Specific Response by the DRC to the new proposed criteria by Uganda

5. Uganda proposes that:

- (a) There is need for the parties to agree on the criteria which should be used as a basis for the compensation payable to the DRC.
- (b) The DRC and Uganda should conduct Joint verification and analysis of the 7400 documents provided by the DRC based on the agreed criteria.

6. In the spirit of brotherhood and good neighborliness and without prejudice,:

- (a) Uganda withdrew its counter claim in respect of the damage on its Embassy property in Kinshasa.



(b) Uganda revised her initial offer of reparations payable to the DRC from USD 25,500,000 to USD 37,028,368.

7. The Democratic Republic of Congo :

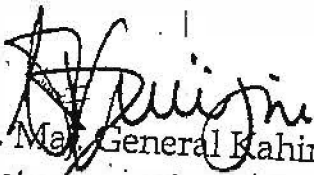
- (a) Objected to using any criteria to assess her claim.
- (b) The DRC insisted that there should be no further negotiations at technical and Ministerial level following the spirit of the 3rd Joint Ad Hoc Ministerial Committee Meeting of 24-27 November 2014..
- (c) The DRC accepts the withdrawal of Uganda's counter's claim of USD 3,760,000, which DRC had admitted as due and owing but rejects the offer by Uganda of the USD37,280,368 as being insignificant.
- (d) The DRC insists that since there is no agreement, the matter should be referred to the ICJ.

NOW THEREFORE:

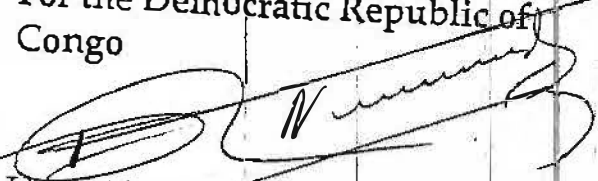
Since there is no consensus reached, the Parties resolved that there should be no further negotiations at technical and Ministerial level and that the matter should be referred to the Heads of State within the framework of the Ngurdoto Agreement on Bilateral Cooperation between Uganda and the DRC of 2007 for further guidance.

Done on this 19th day of March, 2015, at Pretoria in the Republic of South Africa in both French and English languages and both texts are equally authentic.

For the Republic of Uganda


Hon. ~~Ma~~ General Kahinda Otafiire
Minister of Justice and
Constitutional Affairs

For the Democratic Republic of
Congo


Hon. Alexis Thambwe Mwamba
Minister of Justice, Human Rights
and Guardian of the Official Seal

REPONSES SPECIFIQUES DE LA RDC AUX NOUVEAUX CRITERES PROPOSES PAR
LA PARTIE OUGANDAISE

La délégation congolaise a pris connaissance du document lui transmis par la délégation ougandaise et, après analyse approfondie, donne sa réponse ci-après :

I. De la proposition d'être guidé par l'arrêt de la CIJ pour exclure certaines réclamations

La RDC réaffirme, comme l'Ouganda, son adhésion sans réserve aux termes de l'arrêt de la CIJ du 19/12/2005.

1° Cela s'entend par une réparation intégrale des préjudices causés, ce qui n'exclut pas certains préjudices particuliers. En effet, l'arrêt dit : « *l'Ouganda a l'obligation, envers la RDC, de réparer le préjudice causé* (paragraphes 345.3 et 345.5 de l'arrêt).

2° La RDC affirme qu'elle s'en est tenue à la période d'occupation effective allant du 08/08/1998 au 02/06/2003. Aucune réclamation ne porte ni sur la période antérieure, ni encore sur la période postérieure.

3° Quant aux territoires occupés, la réclamation de la RDC ne fait pas allusion aux localités de Zongo, Bomongo et Bongandanga.

4° S'agissant d'autres forces qui opéraient sur le territoire de la RDC dans la partie occupée par l'Ouganda, la Cour elle-même reconnaît en des termes l'on ne peut plus clairs la responsabilité de l'Ouganda (paragraphe 345.1), unique puissance occupante.

II. Recours aux principes du droit international et de la jurisprudence pour exclure certains dommages

L'arrêt consacre le principe de la réparation intégrale et à ce sujet, rappelle la jurisprudence des usines de Chorzow, en Pologne. L'on ne peut dès lors y



revenir, sous peine de vouloir remettre en cause ledit arrêt déjà coulé en force de chose jugée.

III. Proposition d'une compensation mutuellement acceptable pour les cas des tueries et des décès.

En réponse, la RDC affirme que les congolais tués, dont du reste l'identité de chacun a été précisée, sont des êtres humains, et à ce sujet, elle invoque une jurisprudence plus appropriée relative à l'affaire Irak-Koweït.

IV. Prise en compte du degré des blessures et du handicap physique dans le cas des lésions corporelles

Pour ce faire, la commission d'enquête était descendue sur terrain pour constater les lésions et leurs degrés, puis les a décrites avec précision dans le document dont dispose l'Ouganda, où les montants des dommages sont ventilés avec précision. Comment l'Ouganda qui n'a pas été sur terrain peut-il, après coup, tout contester en bloc, sans offrir la moindre preuve contraire ?

V. Perte de propriété



La RDC renvoie l'Ouganda au rapport établi par la Commission d'enquête étayé par plus de 7000 pièces à conviction.

VI. Perte en matière commerciale et manque à gagner

Le principe en droit veut que l'on indemnise non seulement pour les pertes subies (valeur des biens perdus), mais encore pour le manque à gagner (gains futurs).

VII. Cas de pillage et d'exploitations illégoles des ressources naturelles

La RDC est guidée par l'arrêt de la Cour (paragraphe 345.4) en ce que l'Ouganda n'a pas empêché les actes de pillage et d'exploitation des ressources.



naturelles congolaises. Au demeurant, comment l'Ouganda, partie occupante, peut-il ignorer ce que lui ont rapporté ces activités illicites qui ont positivement impacté sur sa balance commerciale.

VIII. Violations des règles du droit international humanitaire et des droits de l'homme : paiement ex gracia

La RDC estime que s'agissant de cette réparation, elle ne peut être laissée au bon vouloir de l'Ouganda tant l'arrêt de la Cour (paragraphe 345.2, 3) stigmatise la violation par l'Ouganda des droits de l'homme et du droit international humanitaire. Par ailleurs, il s'impose de faire la distinction entre les dommages causés aux individus et ceux subis par l'Etat congolais.

IX. Vérification conjointe des 7400 pièces présentées par la RDC

Quant à la vérification demandée, cela équivaldrait à reprendre toutes les enquêtes faites pendant 6 ans, alors que l'Ouganda dispose de la réclamation de la RDC depuis le mois de mai 2010 et de toutes les pièces à conviction depuis au moins 2 ans. Ce serait revenir à la case du départ, partant un éternel recommencement que la RDC ne peut en aucune manière accepter.

Fait à Pretoria, le 18 mars 2015

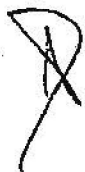
Pour la République Démocratique du Congo

S.E. Monsieur Alexis THAMBWE MWAMBA

Ministre de la Justice, Garde des Sceaux et Droits Humains


PROPOSED CRITERIA

1. We propose that we be guided by the ICJ Judgment of 19th December 2005; thus excluding claims outside the scope of the Judgment. These include;
 - a) Rape
 - b) Claims arising in the period outside 8th August 1998 to 2nd June 2003.
 - c) Areas court said Uganda was not present; Zongo, Bomanga and Bongadanga
2. Follow principles of international law and exclude the following claims; Macro Economic damages, wounded soldiers, loss to the treasury, breakdown of civil order and economic chaos, disorganization of health and education system, delay of the economic and social development plan and other war related damages.
3. We propose that in arriving at a mutually acceptable compensatable amount for acts of killing and death, reliance should be made on judicial precedents/authorities.
4. In the case of personal injury, the amount payable should take into consideration the level of injury and disability.
5. In case of loss of property and other related claims, we propose that upon proof, the assessment should be based on equitable considerations and the fair market value of the property destroyed at the time.
6. Loss of business and profits: we propose that claims in this category should be based on the lost future profits of the income generating activity, assets of the business, anticipated profits and basic accounting principles.
7. Looting, plundering and exploitation of natural resources: we propose to rely on the DRC's submissions to the United Nations Security Council, reports of UN Agencies and other humanitarian organizations.



8. Violation of International Human Rights law and international Humanitarian law in Ituri province as an occupying power also referred to as moral prejudice: we propose an ex gratia payment that is mutually acceptable to both parties.
9. A joint verification and analysis of the 7400 documents provided by the DRC should be carried to isolate credible claims from unrealistic and exaggerated claims.

We believe that if the two parties can agree on specific criteria on which to base the amount of compensation payable to the DRC we shall be able to resolve the matter amicably.

A handwritten signature or mark, possibly a stylized 'X' or a signature, located below the text.

NEW PROPOSAL

S/N	Category	Numbers	Rates	Old	New
1	Acts of killing and death				
	Original Taking into account the principles of international law relating to compensation for death, average life expectancy of 1998, GDP per capita and Net Income per person	4,985.00	308.00	1,535,380	
	New proposal (including the over 3,500 death claims that could not be verified by the DRC) Taking into account humanitarian grounds, good neighborliness, Obuntu and brother hood	4,985.00	2,000.00		9,970,000.00
				-	
2	Acts of Torture and personal injury			-	
	Original Taking into account the principles of international law relating to compensation for death, average life expectancy of 1998, GDP per capita and Net Income per person	1,069.00	308.00	329,252	
	New proposal Taking into account humanitarian	1,069.00	2,000.00		2,138,000.00

	grounds, good neighborliness, Obuntu and brother hood				
3	Loss of building, clothings and other personal property			-	
	Old	2,570.00	2,000.00	5,140,000	
	New proposal Taking into account humanitarian grounds, good neighborliness, Obuntu and brother hood	2,570.00	2,500.00		6,425,000.00
4	Loss of profits and business			3,995,368	3,995,368
5	Lottoing Plundering and expoilation of natural resources			9,000,000	9,000,000
6	Incting ethic conlifct and failure to take measures to put an end to such conflicts			500,000	500,000
7	Viloations of international Human Rights Law, International Humanitarian Law as occupying power in Ituli			5,000,000	5,000,000
	Grand Totals			25,500,000.00	37,028,368.00

ANNEX 1.1

Ministerial Order No. 0002/CAB/J&DH/2008 of 26 February 2008 establishing an Expert Commission in charge of identifying and assessing the damage caused by Uganda to the DRC and its peoples following the armed attack and occupation of Congolese territory by Ugandan troops between 1998 and 2003

[Annex not translated]

ANNEX 1.2

Ministerial Order No. 049/CAB/MIN/JGS&DH of 19 December 2015 establishing a commission responsible for defending the interests of the DRC in the second phase of the proceedings before the International Court of Justice relating to the fixing of the amount of the reparations owed by Uganda

[Annex not translated]

ANNEX 1.3

**Software giving access to individual victims' records
(in electronic format only)**

[Annex not translated]

ANNEX 1.4

United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, August 2010

(Excerpts)

[Complete document available at http://www.ohchr.org/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf]

United Nations Office of the High Commissioner for Human Rights, Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003, August 2010

Pages 172-173

347. Following these incidents, the Mayi-Mayi restarted and intensified their attacks on UPDF convoys between Beni and Butembo. In retaliation, the UPDF forces led operations against villages suspected of sheltering Mayi-Mayi groups. UPDF soldiers often made disproportionate use of force during these attacks, killing combatants and civilians indiscriminately.

- On 1 November 2000, UPDF soldiers allegedly killed between seven and eleven people during an attack on the population of the villages of Maboya and Loya, 16 kilometres north of the town of Butembo. A few hours before the attack, four UPDF soldiers had been killed by Vurondo Mayi-Mayi during an ambush close to the village of Maboya. During the afternoon, UPDF soldiers apparently launched an indiscriminate attack on the inhabitants of both villages and set 43 houses on fire. Some victims were shot and killed, whilst others were burned alive⁵³².

Page 173

348. On 8 November 2000, close to the village of Butuhe, 10 kilometres north of Butembo, Vurondo Mayi-Mayi attacked a UPDF convoy that was escorting lorries transporting minerals.

- On 9 November 2000, UPDF soldiers are alleged to have killed indiscriminately 36 people in the village of Kikere, close to Butuhe, north of Butembo. The soldiers fired blindly on civilians using rifles and rocket-launchers. Some civilians died as a result of being burned alive in their homes. The soldiers also systematically killed domestic animals and destroyed civilian property⁵³³.

349. In the town of Beni, UPDF soldiers instituted a reign of terror for several years with complete impunity. They carried out summary executions of civilians, arbitrarily detained large numbers of people and subjected them to torture and various other cruel, inhuman or degrading treatments. They also introduced a particularly cruel form of detention, putting the detainees in holes dug two or three metres deep into the ground, where they were forced to live exposed to bad weather, with no sanitation and on muddy ground.

- In March 2000, UPDF soldiers allegedly killed four civilians and wounded several others in the town of Beni during an operation to quell a demonstration. The victims had been protesting against the murder of a woman, the arbitrary arrest of her husband and the pillaging of their house, committed a few days earlier by UPDF soldiers⁵³⁴.

350. During the period under consideration, UPDF soldiers carried out several operations against an armed group of Ugandan origin, the ADF-NALU (Allied Democratic Forces–National Army for the Liberation of Uganda⁵³⁵) based in the Ruwenzori massif in the Beni region. For their part, ADF-NALU carried out attacks on villages in the Ruwenzori region, kidnapping numerous civilians and pillaging their property. In this context, the Mapping Team documented the following alleged incidents.

Pages 189-190

361. In August 1999, whilst international pressure on the leaders of the RCD-Goma to sign the Lusaka Agreement⁵⁹⁶ was intensifying, the simmering crisis between Rwanda and Uganda for the control of the RCD degenerated into open conflict in Kisangani. On the morning of 7 August, APR and UPDF soldiers fought with heavy weapons for several hours without any civilians being wounded. The situation calmed down again over the course of the following days. Tension continued to build, nonetheless, and both sides strengthened their positions and brought large numbers of weapons into the town. On the evening of 14 August, fighting again broke out between the two armies at the airport and extended along the main roads and into the town centre.

- From 14 to 17 August 1999, APR and UPDF soldiers are said to have used heavy weapons in areas with a dense civilian population as they fought to gain control of the town of Kisangani. The fighting allegedly caused the deaths of over 30 civilians and wounded over 100 of them. The APR fired on both military targets and private homes belonging to civilians suspected of supporting the Ugandans. Once the hostilities were over, Rwandan and Ugandan soldiers pillaged several places in Kisangani.⁵⁹⁷

362. After three days of fighting, Uganda and Rwanda signed a ceasefire agreement that provided for Kisangani to be demilitarised and the headquarters of the pro-Ugandan branch of the RCD, the RCD-Kisangani-Mouvement de Libération (RCD-K-ML) led by Wamba dia Wamba, to be relocated to Bunia on 1 October 1999. During the months that followed, Orientale Province found itself divided into a “Rwandan zone” under the control of the RCD-G and a “Ugandan zone” dominated by the various movements supported by Kampala. In May 2000, however, tension between the Ugandan and Rwandan armies again moved up a notch in Kisangani. The UPDF strengthened its military positions to the north-east of the town and the APR reacted by bringing in additional weapons.

- On 5 May 2000, the APR and UPDF are said to have used heavy weapons in densely populated areas, causing the deaths of over 24 civilians and wounding an unknown number of them. Before the start of the hostilities, the Ugandan army had warned the population of the imminent bombardments and had asked for the evacuation of several areas located close to their targets⁵⁹⁸.

Page 190

363. On 12 May 2000, a team of United Nations military observers was sent to the area. Under international mediation, the two parties adopted a demilitarisation plan for the town, which they began to implement on 29 May. Fighting broke out again on 5 June, however, resulting in the so-called “Six-Day War”.

- The APR and UPDF fought each other in Kisangani from 5 to 10 June 2000. Both sides reportedly embarked on indiscriminate attacks with heavy weapons, killing between 244 and 760 civilians according to some sources, wounding over 1,000 and causing thousands of people to be displaced. The two armies also destroyed over 400 private homes and caused serious damage to public and commercial properties, places of worship, including the Catholic Cathedral of Notre-Dame, educational institutions and healthcare facilities, including hospitals. The UPDF had taken steps to avoid civilian losses by ordering the evacuation of combat zones before the start of hostilities and prohibiting access to three areas that were declared off-limits to non-combatants. This restriction was, however, also extended to humanitarian workers, in particular the ICRC, which was not able to get help to the wounded for several days⁵⁹⁹.

7. Ituri

364. In mid-August 1998, UPDF soldiers arrived in Ituri and quickly took control of the district without encountering any real resistance. Like the rest of Orientale Province, Ituri was placed under RCD administration. Following the movement's split, in March 1999, into a pro-Rwandan branch (RCD-Goma) and a pro-Ugandan branch (RCD-ML), Ituri was integrated into the RCD-ML zone and administered from Kisangani. The key man on the ground in Ituri, however, was the UPDF Chief of Staff, General Kazini. He applied a policy that supported autonomy for the region in relation to the rest of Orientale Province and openly favoured the interests of the Hema community, thus reviving former conflicts over land.

Page 191

365. The Hema-Gegere farmers⁶⁰⁰ who, a few years previously, had acquired new concessions from the land registry in the Djugu region, took advantage of the new political situation to enforce their rights. As the Lendu from the Walendu Pitsi⁶⁰¹ community, who held the customary rights to the land concerned, disputed the value of their title deeds, the Hema-Gegere farmers appealed to the courts and had the Walendu Pitsi expelled from the concessions they wanted. The latter refused to leave, however, and clashes broke out with the police officers who had come to remove them. Several senior Lendu, including the leaders of the Walendu Pitsi and Walendu Djatsi communities, were arrested for vandalism. In April 1999, the Hema-Gegere concession-holders paid UPDF and APC soldiers to attack the Lendu villages located in the disputed concessions⁶⁰².

366. . . .

- Between June and December 1999, UPDF and APC soldiers killed an unknown number of Lendu civilians in villages in the Djugu region close to the concessions claimed by the Hema-Gegere farmers. Villages in the Dz'na Buba, Linga, Jiba, Dhendo, Blukwa Mbi, Laudjo, Laudedjo Gokpa, Nyalibati and Gbakulu *groupements* were particularly badly affected. Most of the victims were Lendu but Hema were also killed during the attacks. Numerous victims died when their village was set on fire or following heavy arms fire directed at their homes. Some victims were shot dead at point-blank range⁶⁰⁵.

Page 192

- Between June and December 1999, members of the Lendu militia killed several tens of Hema-Gegere in the village of Libi from the Walendu Pitsi community and in the village of Fataki from the Walendu Djatsi community. These attacks led to the displacement of almost all the Hema-Gegere living in the Walendu Pitsi community⁶⁰⁶.

.....

- On 20 June 1999, members of the Hema militias and UPDF soldiers killed at least 25 people, including several civilians, during an attack on the village of Dhendro, in the Walendu Pitsi community, on the border with the Dhendro *groupement*⁶⁰⁸.
- On 14 September 1999, members of the Lendu militias from the Walendu Pitsi community used edged weapons to kill several hundred Hema-Gegere, including a majority of civilians, during widespread attacks on locations in the Dhendro *groupement* in the Bahema-Nord community. Members of the militias also pillaged and set fire to tens of villages. The victims were buried in mass graves. According to several sources, the massacre took place in retaliation for an attack committed on 20 June by members of the Hema militias in the village of Dhendro⁶⁰⁹.

- On 14 September 1999, during a night-time offensive on the village of Fataki, in the Walendu Djatsi community, members of the Hema militias and Hema soldiers from the APC killed several tens of civilians with edged weapons, including at least 15 minors and several women. The assailants then buried the bodies themselves. Following the attack, all the Lendu left the village and Fataki became a Hema bastion in the Walendu Djatsi community.⁶¹⁰

367. During the months that followed, members of the Lendu militias tried to regain control of Fataki on several occasions. For its part, the UPDF concentrated its troops on Fataki and Linga and led several offensives against Lendu militia bases in Kpandroma and Rethy, in the Walendu Djatsi community.

Page 193

368. During the period under consideration, the Lendu militias also attacked villages in the Djugu region on the shores of Lake Albert, the majority of which were populated by Hema⁶¹¹.

- In July 1999, members of the Lendu militias from the Buba group in the Walendu Pitsi community allegedly killed over 100 Hema civilians in the fishing village of Musekere in the Bahema-Nord community. Having encircled the village at dawn and forced six APC soldiers there to flee, they massacred the population using machetes and other edged weapons. From the start of the conflict, the Lendu leaders of the Buba *groupement* had threatened to attack the inhabitants of Musekere on several occasions⁶¹².

369. . . .

- On 1 December 1999, members of the Lendu militias confronted elements of the UPDF and members of the Hema militias over control of the mining town of Bambou, in the Walendu Djatsi community in the Djugu region. The fighting allegedly led to the deaths of over 200 members of the civilian population. Numerous victims were mutilated and the town looted. Most of the victims' bodies were thrown into the River Chari⁶¹⁴.

370. . . .

Page 194

- In January 2000, members of the Lendu militias from the Walendu Pitsi and Bahema-Nord communities attacked people living in the Blukwa *groupement*, killing several hundreds of Hema with edged weapons. The *groupement* had been the site of violent inter-ethnic confrontations since September 1999. The attack in January took place after the departure of APC troops, fleeing from the increasing violence⁶¹⁷.
- On 26 April 2000, members of the Hema militias and UPDF troops attacked the Buba *groupement*, in the Walendu Pitsi community, causing around 10 deaths, the majority of whom were Lendu civilians⁶¹⁸.
- Between 27 August and 12 September 2000, members of the Hema militias from Mangala, Ghele, Gele and Liko, sometimes acting with the support of the Hema APC soldiers, pillaged and set fire to several villages in the Walendu Djatsi community including Mbau (27 August), Glakpa and Gobi (28 August), Logai (29 August), the villages in the Dz'na *groupement* (31 August) and Mayalibo (6-12 September)⁶¹⁹.

Page 206

10. Équateur

381. In November 1998, a new rebellion, the Mouvement pour la libération du Congo (MLC) began with support from Uganda. Led by Jean-Pierre Bemba Gombo, in the early days the MLC had just one battalion consisting mainly of ex-FAZ soldiers supported by elements of the UPDF. In a few months, however, the MLC army, the Armée de libération du Congo (ALC) added numerous ex-FAZ to its ranks and took control of several urban areas in the north of Équateur province. The town of Bumba fell on 17 November, the town of Lisala on 10 December, the village of Businga, on the crossroads to the towns of Gemena and Gbadolite on 20 December, the town of Gemena on 24 December and the village of Libenge, in the far west of the province, on the border with the Central African Republic, on 4 January 1999. The FAC conducted very intense air bombardments in December 1998 to block the advance of the ALC/UPDF. In this context, the Mapping Team documented the following alleged incidents.

- On 22 December 1998, an FAC Antonov dropped 11 home-made bombs on the village of Businga, killing five civilians. On 24 December, an FAC Antonov plane bombed the village a second time, killing two civilians⁶⁶⁹.

Page 209

386. Taking advantage of the withdrawal of ANT troops and the arrival of reinforcements from the recruitment and training camps, ALC/UPDF soldiers launched a second major offensive in May 1999. In three months, ALC/UPDF troops regained control of the towns of Kateke (27 April 1999), Businga (14 May 1999) and Gbadolite (3 July 1999).

.....

387. In June 1999, the ALC/UPDF troops took control of Bongandanga, a town south of Lisala.

Pages 216-217

402. During the period under consideration, the Bas-Uélé district remained under the control of ALC/UPDF soldiers. The latter allegedly committed serious violations against all those who dared to dispute their authority or criticised their involvement in pillaging the natural resources of the region. The case below is mentioned for illustrative purposes.

- From 2001 to January 2003, elements of the ALC/UPDF apparently tortured and killed an unknown number of civilians in the town of Buta. Most of the victims were held in muddy holes in conditions likely to cause death through disease or exhaustion. After a human rights activist had been tortured and held in one of the muddy holes by the soldiers, MONUC and United Nations organisations sent out an investigative mission and had these prisons shut down⁷⁰⁸.

Pages 218-219

B. Ituri

404. During the second half of 2000, the underlying conflict between the President of the RCD-ML, Wamba dia Wamba and his two principal lieutenants, the Nande Mbusa Nyamwisi⁷¹⁴ and the Hema John Tibasima⁷¹⁵ broke out in public. Wamba dia Wamba had long criticised Nyamwisi and Tibasima for trying to orchestrate the conflict between the Hema and Lendu

communities⁷¹⁶ in order to establish a power base in the district and control the region's natural resources. In August, Wamba dia Wamba tried to regain control of the movement by dismissing Nyamwisi and Tibasima from their posts, but they resisted and the number of incidents on the ground between the different factions of the APC increased. After several unsuccessful attempts at mediation by Uganda and a series of confrontations in the centre of Bunia, Wamba dia Wamba was exiled to Kampala in December, leaving the leadership of the RCD-ML to Nyamwisi and Tibasima.

405. In January 2001, Ituri saw a resurgence of violence in the Djugu area. Between January and February, members of the Hema militias from Bogoro, generally accompanied by Hema soldiers from the APC and UPDF soldiers, led indiscriminate attacks in the Walendu Tatsi community, next to the Bahema-Nord community, killing an unknown number of civilians. In this context, the Mapping Team documented the following alleged incidents.

- On 4 January 2001, during a failed attack on Kpandroma, members of the Hema militias based in Fataki killed at least 35 Lendu civilians in the *Zabu groupement* in the Walendu Pitsi community, particularly in Aruda and Mola and the surrounding area⁷¹⁷.
- In early 2001, members of the Hema militias killed at least 16 people and kidnapped two minors who have been since recorded as having disappeared in the Salimboko, Poli-Masumbuku and Penyi *groupements* in the Walendu Tatsi community⁷¹⁸.

Page 219-220

- Also in early 2001, members of the Lendu militias killed an unknown number of civilians, including a majority of Hema and Alur in the villages alongside Lake Albert in the Bahema Banywagi and Bahema-Nord communities⁷¹⁹.
- Between January and February 2001, UPDF soldiers attacked around 20 villages in the Walendu Tatsi community, killing around 100 people, including various Lendu civilians. During the attacks, the soldiers also committed rape, looted and caused an unknown number of people to disappear. Most of the victims were killed in villages located near the Zumbe power station, in the Bedu Ezekere *groupement*, where they had gathered under the protection of members of the Lendu militias⁷²⁰.
- On 3 February 2001, members of the Hema militias and UPDF troops killed 105 people, including numerous Lendu civilians, in the villages in the Bulu *groupement* in the Ndo Okebo community in the Djugu region. The victims often came from the Walendu Pitsi community. They had taken refuge in the Bulu *groupement* following recent attacks on their village⁷²¹.

406. At the end of 2000, the conflict between the Hema and Lendu finally reached the Irumu region. The UPDF soldiers lent their support to the local Hema communities and violent incidents broke out on the ground.

- Between 9 and 18 January 2001, members of the Hema militias allegedly killed around 60 people, including numerous Lendu and Ngiti civilians⁷²², in the village of Kotoni, in the Irumu region and the surrounding area⁷²³.

407. Following the bombardment of the Walendu Bindi community by a UPDF helicopter, Ngiti militiamen, originally in conjunction with the Djugu Lendu from the Walendu Bindi community, launched an attack on 19 January 2001 against UPDF positions at the airport in Bunia. During the attack, Ngiti militiamen tried to destroy the helicopter the UPDF had used to bomb their villages. The UPDF finally repelled the attack but at the cost of a significant loss of human life.

Page 220

- On 19 January 2001, Hema militiamen and civilians allegedly killed between 200 and 250 civilians from the Lendu, Ngiti, Nande and Bira ethnic groups in the Mudzipela neighbourhood in the town of Bunia. The victims, who included a large number of women and children, were killed with machetes, spears or studded batons. Most of them were subjected to mutilation. Some were decapitated and their heads carried through the town as trophies. The Hema militiamen and civilians also systematically looted the victims' property and set fire to several houses. Shortly before the massacre, UPDF officers and senior members of the Hema community in Bunia had held a meeting and called on Hema civilians to attack the Lendu population.⁷²⁴

408. In order to restore calm to Ituri and avoid new splinter groups developing within the RCD-ML, Uganda forced the RCD-ML and MLC to join forces within a new movement, the Front de libération du Congo (FLC), led by Jean-Pierre Bemba⁷²⁵. On 6 February 2001, the FLC organised consultations with the traditional chiefs in Ituri and on 17 February, the latter signed a memorandum of agreement, providing in particular for an immediate cessation of hostilities, the disarmament of the militiamen and the dismantling of the training camps⁷²⁶. During the months that followed, the number of violations decreased significantly. Inter-community tension on the ground nonetheless remained high and the militias continued to arm themselves. In this context, the Mapping Team documented the following alleged incidents.

- On 26 April 2001, armed men killed six members of the ICRC during an attack on a humanitarian convoy in the area around Fataki in the Walendu Djatsi community, in the Djugu region. Local sources indicate that the attack is thought to have been perpetrated by Ugandan soldiers and Hema militiamen. The attack was supposedly aimed at ending the presence of humanitarian personnel in areas where the displaced Lendu had taken refuge. During the period under consideration, numerous sources indicate that Hema militias and armed groups severely hampered the work of humanitarian organisations in areas populated principally by Lendu⁷²⁷.

Pages 221-222

- In 2001, Hema soldiers from the APC killed 40 Lendu, a majority of them civilians, including women, children and elderly and disabled people, in the village of Gobu in the Bahema-Nord community. The victims were taken to a ditch and shot. Their bodies were then thrown into the ditch⁷²⁸.
- In January 2002, UPDF troops and Hema militiamen opened fire on the population of the village of Kobu in the Walendu Djatsi community in the Djugu region, killing 35 Lendu civilians. As they entered the village, Ugandan soldiers killed four civilians in the marketplace, including one disabled person. Almost all of the population fled and hid in the forest for nearly two months. On their return to the village, the villagers found 35 decomposed bodies, which they buried in various places. Those responsible for the massacre were trying to remove Lendu populations from the Kobu area, close to the Kilomoto gold mines. Following the killing, the population of Kobu sent a petition to Governor Lomondo, who visited the area shortly afterwards accompanied by senior figures in the UPDF. Following the visit, UPDF soldiers left the area⁷²⁹.
- On 26 January 2002, members of the Hema militias killed around 100 Lendu in a forest a few kilometres from Datule, in the Bahema-Sud community in the Irumu region. The victims had been chased from the village of Datule the previous day by a UPC commander. They were killed with machetes, spears and studded batons. A young girl of 13 was the only person to survive the attack⁷³⁰.

- On 28 January 2002, Hema militiamen killed and mutilated around 50 Lendu civilians in Kasenyi in the Irumu region. Having been informed of the massacre that had taken place on 26 January, the victims had fled the village of Datule on 27 January in the hope of reaching the Lendu villages in the Walendu Bindi community. They were hiding behind a police station when they were surprised and killed⁷³¹.
- Between January and May 2002, Hema militiamen in the region forcibly recruited all the men from the Alur ethnic group living in the village of Gobu in the Bahema-Nord community in the Djugu region⁷³².
- Between February and April 2002, elements of the UPDF and Hema militiamen killed several hundred Lendu civilians in the Walendu Bindi community in the Irumu region. They also tortured and raped an unknown number of people. The villages of Aveba, Bukiringi, Nombe, Kaswara, Djino, Kagaba, Biro, Kapalayi, Gety étang, Tsubina, Kinyamubaya, Karach, Bolomo, Bachange, Tsede, Molangi, Tamara, Irura, Modiro, Mukiro and Anyange were all pillaged⁷³³.

Page 222

409. In February 2002, against a background of growing economic rivalry between Hema and Nande businessmen and disagreements on the new strategic directions taken by the Mouvement⁷³⁴, the Defence Minister of the RCD-ML, Thomas Lubanga, and the Hema soldiers of the APC broke away from the RCD-ML to form a political and military Hema group, the *Union des patriotes congolais* (UPC). In response, Mbusa Nyamwisi and Nande officers in the APC, supported by certain members of the UPDF, reduced Hema influence in the district⁷³⁵, intensified their cooperation with the FAC⁷³⁶ and encouraged members of the Lendu and Ngiti militias to join forces in political military groups, namely the *Front National Intégrationiste* (FNI)⁷³⁷ and the *Forces de résistance patriotique en Ituri* (FRPI)⁷³⁸. During the course of 2002, these various armed groups received significant supplies of weapons from Uganda and the Government in Kinshasa. In this context, the Mapping Team documented the following alleged incidents.

- Starting on 21 May 2002 and during the course of the next six months, elements of the UPC killed at least 46 civilians, most of them from the Bira ethnic group, in Walu in the Ngombe-Nyama *groupement*, in the Irumu region. The militiamen also raped an unknown number of women, looted and destroyed educational institutions and hospitals. These attacks were supposedly intended as retaliation for the help given to the Lendu by the Bira during the previous attacks against the Hema in the region⁷³⁹.
- In May 2002, Lendu militiamen accompanied by civilians killed at least 80 people, mainly Hema and Alur, in the village of Gobu in the Bahema-Nord community. The victims were civilians or soldiers who were no longer able to fight. Most were summarily executed with edged weapons. According to several witness statements, the Hema militiamen in the area had fled before members of the Lendu militias arrived in the village⁷⁴⁰.

Pages 223-224

- In early June 2002, elements of the UPDF and Hema militiamen indiscriminately killed members of the Lendu militias and an unknown number of civilians in the Lendu villages in the Walendu Pitsi community. By way of example, in June 2002, Hema militiamen and elements of the UPDF killed at least 27 people in Buba⁷⁴¹.

410. In June 2002, faced with the advance of Lendu militiamen into the Banyali-Kilo community in the Djugu region, the local Security Council for the town of Mongwalu decided to chase away or eliminate any Lendu living in the town. In this context, the Mapping Team documented the following alleged incidents.

- On 10 June 2002, elements of the UPC supported by local youths, systematically attacked the houses of Lendu living in Mongwalu, killing around 20 civilians. The victims, who were long-term residents of Mongwalu, were either shot dead or killed with studded batons⁷⁴².
- On 11 June 2002, in retaliation for a massacre carried out the day before, several hundred Lendu from the villages of Kobu, Bambou and Kpandroma killed tens of civilians with edged weapons, most of them from the Hema ethnic group, in the town of Mongwalu. The Hema left Mongwalu following the massacre⁷⁴³.

411. In early August 2002, elements of the UPC, with support from UPDF troops, are reported to have chased elements of the APC out of the town of Bunia. In this context, the Mapping Team documented the following alleged incidents.

- Between 7 and 10 August 2002, in Bunia, at least 300 civilians were killed on the basis of their ethnic origin, most of them by UPC militiamen. Between 7 and 8 August, elements of the UPC killed an unknown number of Bira, Lendu and Nande civilians during raids on the neighbourhoods of Mudzipela, Bigo and Saio. Lendu and Ngiti militiamen responded by killing an unknown number of Hema civilians in the districts of Mudzipela, Saio, Rwambuzi and Simbiliabo. At the same time, Lendu and Ngiti militiamen killed 32 Hema civilians and wounded and mutilated an unknown number of them at a farm in the village of Lengabo, a few kilometres from Bunia. Between 9 and 11 August, elements of the UPDF and the UPC killed at least 80 Lendu, Nande and Bira civilians at the Governor's residence, at the hospital in Bigo and at Bunia central prison. The bodies of the victims were then placed in mass graves⁷⁴⁴.

Page 224

412. Over the course of the following months, violent fighting broke out on several fronts, between elements of the UPC and UPDF on the one hand, and those of the APC and FNI-FRPI on the other. Both coalitions targeted civilian populations on the basis of their ethnic origins. Numerous civilians from non-belligerent tribes were also massacred on the basis of their actual or supposed support for one or other camp. Many of them were also victims of forced recruitment to the various armed groups. The mining regions north of Bunia, control of which was seen as strategic by the various groups involved, were the theatre for some particularly violent fighting.

413. On 9 August 2002, having had to leave Bunia quickly, Governor Loponde, the APC troops and Lendu and Ngiti militiamen⁷⁴⁵ established a base in Komanda for the purpose of preparing the counter-offensive. The UPC, meanwhile, consolidated its positions south of Bunia in order to prevent the counter-attack from elements of the APC and FNI-FRPI and to gain control of the area's mining resources. In this context, the Mapping Team documented the following alleged incidents.

- On 9 August 2002, elements of the APC and Lendu and Ngiti militiamen killed tens of civilians, mostly Hema, in the town of Komanda and the surrounding villages in the Basili-Basumu community, in the Irumu region. Guided by the Ngiti militiamen who had infiltrated the village and by local youths, elements of the APC and members of the militias moved from house to house, killing Hema civilians purely on the basis of their ethnic origin. Most of the victims were killed with edged weapons. Some were tied up and then killed with spears⁷⁴⁶.
- From 14 to 19 August 2002, elements of the UPC killed over 50 civilians from different ethnic groups during an attack on the village of Komanda. Most of the victims were shot or killed with edged weapons when they fled Komanda for Beni. Many of the victims had left Bunia a few days previously following the takeover of the town by the UPC and had taken refuge in

Komanda. The aim of the UPC attack was to avenge the massacre committed in Komanda on 9 August⁷⁴⁷.

Page 225

- On 28 August 2002, Hema-Gegere militiamen associated with the UPC killed several tens of “non-native” inhabitants⁷⁴⁸ in the gold-producing town of Mabanga in the Mambisa community, in the Djugu region. The victims were killed either with machetes or with studded batons. Sixteen of them were clubbed to death with planks of wood. The Hema-Gegere militiamen associated the “non-natives” with Governor Loponde and APC soldiers. Whilst the Lendu militiamen were trying to take control of the region’s mines, the Hema-Gegere militiamen feared that the “non-natives” were helping them. During previous fighting in Mabanga, the Lendu militiamen had systematically killed Hema civilians but had spared the “non-native” populations. After the massacre, UPDF troops intervened to provide cover for the flight of the non-natives to Bunia⁷⁴⁹.
- On 31 August 2002, elements of the UPC supported by Bira militiamen killed at least 14 civilians, including women and children, in several villages in Songolo in the Walendu Bindi community, in the Irumu region. They also carried out acts of pillaging and widespread destruction, setting fire to over 1,000 houses. Several victims were mutilated and killed in an extremely cruel fashion. At least three women were impaled. Songolo was considered to be one of the FRPI fiefdoms⁷⁵⁰.
- Between 5 and 15 September 2002, elements of the FRPI and APC systematically massacred over 1,000 Hema-Gegere and Bira civilians, including large numbers of children, in Nyakunde and the surrounding villages in the Andisoma community, in the Irumu region. They also carried out numerous acts of pillaging. The victims were killed purely on the basis of their ethnic origin, mostly using arrows or edged weapons. Elements of the APC and FRPI had set up road blocks so that no-one from the Hema or Bira ethnic groups was able to escape from Nyakunde. FRPI militiamen sorted civilians and the soldiers there who were no longer able to fight based on their ethnic origin in the Evangelical Medical Centre. They systematically killed Hema and Bira and spared the members of other ethnic groups. Numerous victims were detained in cruel, inhuman or degrading conditions for several days before they were finally executed. Most of the massacres took place once the fighting with the UPC militiamen present in Nyakunde had been over for several days⁷⁵¹.

Pages 226-227

- On 13 September 2002, elements of the FRPI from Gety killed around 150 people, including numerous civilians, most of them Hema, in the lakeside *groupement* of Bandikado in the Bahema-Sud community, in the Irumu region. They killed and mutilated an unknown number of people in Nyamavi, for example. They also looted the villages before leaving the *groupement*. These attacks also caused several thousand people to be displaced for several years⁷⁵².
- On 11 October 2002, in the Djugu region, elements of the FNI from the Walendu Djatsi community killed an unknown number of Alur, Hema, Bira and Nyali civilians in the mining town of Nizi in the Mambisa community. They also killed 28 people and kidnapped 23 women in the mining area of Kilomoto. During these attacks, the militiamen mutilated numerous victims, carried out large-scale pillaging and set fire to numerous buildings, including the community offices, schools and a hospital. The victims’ bodies were buried in nine mass graves. According to witnesses, the FNI militiamen accused inhabitants of the town from all ethnic groups of supporting the UPC⁷⁵³.

414. Between October and December 2002, confrontations between elements of the FNI-FPRI and UPC had spread throughout the Irumu region. The UPC troops led major military operations in the same region directed at the FRPI bases in the Walendu Bindi community and Lendu enclaves in the Bahema-Sud community. The Bira farmers living in Pinga, in Songo in the Irumu region were also attacked, with the UPC suspecting them of funding the FNI and FRPI. In this context, the Mapping Team documented the following alleged incidents.

- Between 15 and 16 October 2002, UPC militiamen killed at least 180 people, including civilians, in Zumbe in the Walendu Tatsi community. The militiamen also raped at least 50 women. Most of the victims were killed with machetes or spears. Some were shot dead. Some survived but were badly mutilated. Having looted large amounts of property and stolen 1,500 head of cattle, the UPC troops set fire to the village, destroying more than 500 buildings, including health centres and schools. Zumbe was an FRPI fiefdom⁷⁵⁴.
- On 20 October 2002, elements of the UPC from Bunia and Bogoro killed at least 10 Lendu civilians during attacks on several villages, including Nombe, Medhu, Pinga, Kagaba, Singo and Songolo in the Walendu Bindi community, in the Irumu region. A Bira woman married to a Lendu civilian was also killed. The militiamen systematically pillaged property and stole cattle belonging to Lendu in the villages they attacked⁷⁵⁵.

Page 227

- On 24 October 2002, elements of the UPC killed several dozen Lendu in the Walendu Bindi community, particularly in the villages of Nombe, Kagaba, Lakabo, Lokpa, Medhu, Songolo, Pinga, Androzo and Singo. Most of the victims were killed with edged weapons. The militiamen also kidnapped more than 20 people, including women. They also stole some 1,450 head of cattle and burned at least 351 houses, including schools and health centres⁷⁵⁶.
- On 5 November 2002, elements of the FRPI killed at least 14 civilians, including two women, in the village of Saliboko in the Mobala community, in the Irumu region. They also pillaged and set fire to the village. Most of the victims were Bira. They were attacked at night in their houses. First they were tied up and then killed with machetes. Some civilians managed to escape but were often severely mutilated. The militiamen were critical of the Bira in Saliboko for having given shelter to displaced Hema. The village has not been rebuilt since⁷⁵⁷.

415. The signing of a peace agreement in September 2002 between the DRC and Uganda offered new prospects for peace in Ituri. In addition to the withdrawal of UPDF troops from Gbadolite and Beni, the agreement provided for the creation of a Peacekeeping Commission in Ituri and the setting up of an Administration intérimaire de l'Ituri (AII) [Interim Administrative Authority for Ituri] responsible for managing the district after the departure of the Ugandan soldiers. On the ground, however, far from stabilising the region, the closer relationship between Kinshasa and Kampala prompted new patterns of alliances that made the situation even more volatile. As mentioned previously, in October 2002, the MLC army, the ALC, and its allies in the RCD-N launched a major operation east of Orientale Province, called "Clean the blackboard". This operation aimed to destroy the APC once and for all, so as to deprive the Government in Kinshasa of its ally in eastern Congo and get hold of the natural resources still under the control of the RCD-ML before the transition period began. The UPC, which was also trying to crush the APC, joined in with the operation.

416. On 12 October 2002, the ALC and its allies from the RCD-N entered the town of Mambasa. On 29 October, however, they were forced to withdraw, before regaining control of the town from the APC on 27 November. During the attacks, the ALC soldiers (MLC and RCD-N) committed numerous atrocities directed at civilians.

Page 228

- Between 12 and 29 October 2002, elements of the ALC and RCD-N taking part in the “Clean the blackboard” operation allegedly killed at least 173 Nande and Pygmy civilians in Mambasa and in the villages along the main road between Mambasa and Beni, particularly in Teturi, Mwemba and Byakato, in the Mambasa region. The soldiers also carried out acts of cannibalism, mutilated an unknown number of civilians, raped a large number of women and children and committed widespread pillaging. The victims were killed purely on the basis of their ethnic origin, with Nande and Pygmies accused of supporting the RCD-ML⁷⁵⁸.

417. Following their victory over the APC in Mambasa, elements of the ALC/RCD-N/UPC, with the help of UPDF soldiers, launched a major military operation in order to take control of the mining town of Mongwalu.

- On 20 November 2002, during their attack on Mongwalu, elements of the ALC/RCD-N/UPC are alleged to have killed at least 50 Lendu, including civilians and Lendu militiamen who were no longer able to fight. Most of the victims were shot dead or killed with edged weapons. Some were killed whilst they were hiding in a church. Some survived but were badly mutilated and tortured⁷⁵⁹.

Page 230

421. On 6 March 2003, after the UPC had attacked the UPDF base in Ndele, a few kilometres from Bunia, UPDF soldiers and elements of the FNI and FRPI set up a joint military operation and regained control of the town of Bunia.

Page 231

- On 6 March 2003, elements of the UPC and UPDF/FNI/FRPI fought each other with heavy weapons in Bunia, reportedly killing between 17 and 52 civilians. After the withdrawal of UPC troops from the town, elements of the FNI killed an unknown number of Hema civilians on the basis of their ethnic origins. Elements of the UPDF/FNI/FRPI also looted and destroyed numerous buildings, private homes and premises used by local and international NGOs. UPDF soldiers sometimes intervened to ask elements of the FNI/FRPI to stop the atrocities and leave the town⁷⁶⁹.

Pages 234-235

429. During the period under consideration, all the armed groups in Ituri (UPC, FNI, FRPI, FAPC and PUSIC) are alleged to have recruited thousands of children along ethnic lines.

- Between 2001 and 2003, thousands of Hema children recruited by the UPC had undergone military training in the Mandro, Katoto and Bule camps. During the training, they were often tortured, subjected to cruel, inhuman or degrading acts and raped. In 2000, at least 163 of these children were sent to Uganda to undergo military training at a UPDF camp in Kyankwanzi before finally being repatriated to Ituri by UNICEF in February 2001. Between 2002 and 2003, some children associated with the UPC were kidnapped and taken to Rwanda to undergo military training in the APR camps. An unknown number of Lendu children were taken to military training camps in North Kivu. Other communities were affected by the same phenomenon, primarily the Alur, largely in the Mahagi region⁷⁸².

Page 243

2. Beni and Lubero regions (Grand-Nord)

442. In the Beni and Lubero regions controlled by the RCD-ML, fighting continued between the troops from the APC (the armed wing of the RCD-ML) and the UPDF on the one hand and the various Mayi-Mayi groups on the other.

- In 2001, elements of the APC allegedly killed at least five civilians and set fire to houses in the village of Kiantsaba, 15 kilometres from Beni. APC soldiers and the Vurondo Mayi-Mayi had long been in dispute over control of the village⁸⁰⁸.

443. From 2001, Mayi-Mayi groups and UPDF soldiers, sometimes supported by elements of the APC, engaged in fierce fighting to gain control of the village of Irango, around 20 kilometres from Beni.

- In 2001, elements of the UPDF allegedly killed an unknown number of people in the village of Irango. The victims had been accused of supporting the Mayi-Mayi. The soldiers also raped numerous girls. During the attack, they set fire to and looted several houses⁸⁰⁹.

444. In the town of Beni, UPDF soldiers instituted a reign of terror for several years with complete impunity. They summarily executed civilians, tortured and arbitrarily detained an unknown number of people, several of them in muddy holes two or three metres deep.

Page 340

Mouvement national de libération du Congo (MLC)

697. The MLC's army, the ALC, with the backing of the Ugandan Army, the UPDF, allegedly also recruited children, primarily in Mbandaka, Équateur Province. In 2001, the MLC admitted to having 1,800 CAAFAG within its ranks¹²⁷². The child soldiers were involved in ALC offensives during which serious violations of human rights and international humanitarian law were committed. This was particularly the case in the attacks carried out within the context of the "Erasing the Board" operation¹²⁷³.

ANNEX 1.5

United Nations Commission on Human Rights, Fifty-sixth Session, *Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission on Human Rights resolution 1999/56, document E/CN.4/2000/42, 18 January 2000*

(Excerpts)



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2000/42
18 January 2000

ENGLISH
Original: SPANISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in the Democratic Republic of the Congo,
submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with
Commission on Human Rights resolution 1999/56

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Summary.....		6
I. INTRODUCTION.....	1 - 12	9
A. Mandate and activities.....	1 - 6	9
B. Joint mission to investigate allegations of massacres	7 - 8	10
C. Reprisals against individuals who cooperated with the United Nations.....	9 - 10	11
D. International human rights agreements and cooperation with the United Nations.....	11 - 12	11
II. THE ARMED CONFLICT	13 - 30	12

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
III. POLITICAL DEVELOPMENT.....	31 - 47	17
A. In Government-controlled territory	31 - 41	17
B. In territory controlled by RCD and MLC.....	42 - 47	19
IV. SITUATION OF HUMAN RIGHTS	48 - 107	20
A. In the territory controlled by the Kinshasa Government.....	48 - 80	20
B. In the territory controlled by RCD and MLC.....	81 - 107	28
V. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW	108 - 117	33
A. By the Kinshasa Government.....	108 - 111	33
B. By RCD and MLC forces.....	112 - 117	33
VI. CONCLUSIONS.....	118 - 137	35
VII. RECOMMENDATIONS	138 - 151	38

Annexes

	<u>Page</u>
I. Previous resolutions and reports of the General Assembly and the Commission on Human Rights	41
II. Officials of the Government of the Democratic Republic of the Congo with whom the Special Rapporteur met.....	42
III. Officials of the Rassemblement congolais pour la démocratie with whom the Special Rapporteur met.....	43
IV. Other institutions, churches, judges, public organizations, non-governmental organizations and political parties met in territory controlled by the Kinshasa authorities	44
V. Other institutions, churches, judges, public organizations, non-governmental organizations and political parties met in territory controlled by the authorities of the Rassemblement congolais pour la démocratie.....	46

CONTENTS (continued)

	<u>Page</u>
VI. Places visited by the Special Rapporteur	47
VII. International instruments to which the Democratic Republic of the Congo is a party	48
VIII. Irregular armed groups directly or indirectly involved in the armed conflict in the Democratic Republic of the Congo	49
IX. Armed conflicts developing in the territory of the Democratic Republic of the Congo.....	50
X. Main peace initiatives undertaken by the international community since the outbreak of the conflict	51
XI. Ceasefire implementation timetable.....	52
XII. Non-exhaustive list of human rights abuses committed in Government-controlled territories and brought to the Special Rapporteur's attention.....	54
XIII. Non-exhaustive list of human rights abuses committed in territories controlled by RCD and MLC and brought to the Special Rapporteur's attention.....	71

38. One of the key provisions of the Lusaka Agreement is that “the inter-Congolese political negotiations shall be under the aegis of a neutral facilitator to be agreed upon by the Congolese parties” (art. III, para. 19) and that the facilitator should be appointed within 15 days of signature. The dialogue itself was to be held within 45 to 90 days. All these deadlines passed without any agreement being reached, even though the international community has put forward eminent individuals with impeccable democratic credentials and acknowledged moral and intellectual prestige, credibility and experience. The RCD and MLC leaders have rejected all the names put forward, thereby delaying one of the key aspects of the Agreement. At a meeting of the parties in Lusaka on 19 November, there was agreement in principle on Father Mateo Zuppi and the former President of South Africa Nelson Mandela, but the Government continues to be opposed to the appointment of the latter.

39. The Government has also been criticized for establishing People’s Power Committees (CPPs) to replace the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), which brought Kabila to the Presidency. Their functions include organizing the people and establishing policy in all aspects of national life. All inhabitants, at their respective levels (neighbourhood, commune, town, city), are members. At their first congress, the President defined the Committees as the new democracy. They are financed by the State and their Executive Secretary is a former minister of President Kabila’s Government, Rafael Ghenda. The population likens them to a single party and complains that sometimes its members have acted as police informants to have opponents arrested. There have even been reports that its members have taken part in the arrest of opponents and that they are inclined to interfere in the administration of justice.⁵

40. Worse still, in a clearly provocative move against the civilian population, condemned by the Special Rapporteur for the huge risk it carries for the civilian population, on 14 November, the Government authorized the CPPs to carry weapons. For that purpose, it created the People’s Self-Defence Force (FAP), a private militia with 50 members per neighbourhood who will be given weapons to defend the homeland on the grounds that it is an extension of the army.

41. The army continues to have a very strong influence. According to reliable reports, there are 13 security, military and police forces, apparently all authorized to make arrests. One positive feature is the recent replacement of the former classification between commanders and troops by the establishment of ranks - lieutenant-general, brigadier-general, colonel, lieutenant-colonel, major, force commander and regional commander - which should prove useful in determining responsibility and ending impunity. However, that progress is cancelled out by the virtual incorporation into the army of the Mai-Mai and their criminal activities, which invites a reaction from RCD.

B. In territory controlled by RCD and MLC

42. In the territory controlled by RCD, there is no party but it and another small party called the Reformers’ Movement. In January, when confronted with the defection of its first president, RCD held a general assembly that established an assembly and a collegial presidency consisting of eight members as the only way of harmonizing its various civilian, military and Congolese components and those perceived as foreign by the population. In March, the rift was consolidated when its new president, Wamba dia Wamba, who is supported by Uganda, left for

Kisangani and, later, Bunia. In May, supporters of the Rwanda-backed Goma faction clashed with supporters of the Kisangani faction, leaving between three and eight people dead. In Goma, the assembly established in January was dissolved in June and a further defection in October was added to those in January and March, when the Katanga section rebelled against the majority, which was perceived as foreign.

43. The worst confrontations occurred between 15 and 18 August, when Ugandan soldiers clashed with Rwandan soldiers in Kisangani, resulting in the deaths of some 200 soldiers and 30 civilians, who, needless to say, were Congolese. The residence of the Congolese bishop Laurent Monsengwo, who has been critical of the Rwandan presence in his homeland, was attacked by the Rwandans. Other clashes between the factions have taken place in Beni, Butembo, Rutshuru and other towns.

44. In order to deal with the civilian population, most of which is hostile to it, RCD has established "self-defence groups", trained by Rwandan soldiers. These groups have often been accused of arresting or kidnapping individuals. State radio has called on people to join them. The groups constitute a real paramilitary force, which has even been accused of the death of a priest.

45. Various measures adopted by RCD have increased hostility towards it: the flight of national wealth to Uganda and Rwanda; the introduction of a new flag for the region; the declaration of the "twinning" of Kigali and the South Kivu region; and, lastly, the formation of a so-called parliament (*baraza*), the members of which were appointed by the Governor of South Kivu. In November, a dispute within RCD/Goma introduced a further factor, the intention being to establish a sort of federal state in South Kivu, so as to be no longer dependent on Goma.

46. During his two visits to Goma and one to Bukavu, the Special Rapporteur was struck by the prevailing climate of terror and humiliation in RCD-controlled territory.

47. The Special Rapporteur has not been able to obtain information on the political situation in the territory controlled by MLC.

IV. SITUATION OF HUMAN RIGHTS

A. In the territory controlled by the Kinshasa Government (annex XII)

1. Right to life

Death penalty

48. In his oral presentation to the Commission on Human Rights at its fifty-fifth session, the Special Rapporteur said that "in 1999, such sentences (by the Military Court) have not been carried out, which indicates progress with regard to what I stated in the report". That same month, the practice of public executions was resumed and, during the year, a very large number of people – particularly members of the former Armed Forces of Zaire (FAZ) or civilians found guilty of armed robbery – were sentenced to death. Over 130 executions were reported, some for such petty reasons as refusing to eat the food served up, which was considered a "military

war and for “ideological education”. Unfortunately, RCD, citing reasons of security, is not prepared to participate in the pan-African conference on demobilization organized by Kinshasa that is due to be held in the third week of December.

107. There are many street children owing to the death of their parents during the war or in the massacres that have occurred in many villages. In South Kivu, 1,324 unaccompanied children whose parents were killed in massacres in the region have been registered. At least 13 of these survivors died as a result of neglect. It was reported that there are 400 children in Kisangani in danger of dying from malnutrition and lack of medical care.

V. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

A. By the Kinshasa Government

108. The principal violations of the law on armed conflicts by the forces of the Kinshasa regime and their allies were as follows:

Attacks on the civilian population

109. Especially the bombing of Kisangani and pillaging in the city in January (17 dead); the bombing of Zongo (120), Libenge (200), Goma (between 30 and 65 dead) and Uvira (3) in May; and the atrocities perpetrated by Chadian soldiers in Bunga and Gemena. In addition, the Zimbabwean army's bombing of rebel-occupied towns claimed many victims.

Murders in the north-east

110. In Mobe, some 300 civilians were killed, apparently during an unsuccessful search for rebels (second week of January 1999).

Sexual violence against women

111. While many general charges have been made, the most specific information relates to the flight of FAC soldiers from Equateur at the beginning of the year, when, in addition to committing robberies, they raped women.

B. By RCD and MLC forces

Attacks on the civilian population

112. The cruellest and most violent actions, committed without heed for the laws of war, were attacks on the civilian population, as reprisals for acts committed by Mai-Mai in Chipaho and Lemera (3 and 4 December 1998, around 70 dead); Makobola (end of 1998 and beginning of 1999, up to 800 or more dead according to some sources); Burhale and Musinga (12 January, 12 dead); Bashali (14 January, many Bahutu refugees killed); Lukweti, South Kivu (25 February, 45 dead); Budaha, South Kivu (17 March); Walungu, Mwenga (19-21 March); Mikondero (15 February, around 100 dead, including in the towns of Kyondo, Beni, North Kivu); Kamituga (around 100 dead between 14 and 17 March, in the towns of Kutunda,

Kenge, Lubila, Kabukungu); Budaha, Burhinyi, Ngweshe, Kigulube (31 May, around 90 dead, according to the sources); Kibizi, Buyankiri (similar incidents throughout the year, of varying intensity); Kasala (Katanga) (45 dead, many of them burned alive, on 28 July); Kalambi (Menga, 30 September); Kahungwe (23 October, around 100 dead); Kashambi (61 dead, on 31 October); Kalami (October); and Chifunze (South Kivu, over 60 dead). Many of these massacres were carried out using machetes, knives or guns, and houses were usually set on fire at the same time. RCD claims that these incidents were provoked by the Interahamwe or the Mai-Mai, but these groups have no reason to commit massacres against the Congolese population or Hutu refugees, who account for most of the victims. These incidents - like those in Kasika (1998) and Makobola - were denied by RCD, before finally being acknowledged as unfortunate mistakes. That is how they were described by both the Head of the Department of Security and Information, Bizima Karaha, and the Head of the Department of Justice, Institutional Reform and Human Rights, Jean Marie Emungu, in a report sent to the Governor of South Kivu. A feature common to all these incidents is the attempt to cover up all traces immediately. Ugandan troops carried out similar massacres in Beni on 14 November, with an unconfirmed death toll of 60 civilians.⁸

113. The attacks on the defenceless civilian population during the dispute between Ugandan and Rwandan soldiers in Kisangani in August, which claimed 30 civilian lives, and later attacks on Beni and Rutshuru were also a violation of the rules of international humanitarian law.

Arson and destruction

114. In incidents mostly, though not always, unconnected to the massacres, RCD forces have set fire to and destroyed many villages.

Deportations

115. Mai-Mai and other persons have been arrested during military operations and transported to Rwanda and Uganda, where they usually disappear without a trace.

Mutilation

116. The Special Rapporteur received many reports of mutilation and, in at least one case, was able to verify it. During his mission in February, he met an 18-year-old man, arrested along with another young man by Rwandan soldiers in a village in South Kivu on suspicion of collaborating with the Mai-Mai. The first man's genitals were cut off completely and he was abandoned in the jungle, from where he was later rescued, although he was left with irreparable physical damage. His comrade died when his heart was torn out.

Rape of women as a means of warfare

117. The Special Rapporteur received reports of rapes of women in Kabamba, Katana, Lwege, Karinsimbi and Kalehe. There were also reports of women being raped by Ugandan soldiers in towns in Orientale province.

VI. CONCLUSIONS

A. The armed conflict

118. Since 2 August 1998, the eastern part of the Democratic Republic of the Congo has been living through a war started by a movement known as the Congolese Rally for Democracy (RCD), which subsequently split in two and is supported by the armies of Rwanda, Uganda and Burundi (countries the Security Council calls “uninvited”). A new rebel movement, the Movement for the Liberation of the Congo (MLC), was formed later on. Faced with this situation, the Government of the Democratic Republic had to request help, in accordance with Article 51 of the Charter, from the armies of five other countries: Zimbabwe, Chad, the Sudan, Angola and Namibia. The presence of these armies, in addition to the involvement of various militias, i.e. the Interahamwe, the Mai Mai, the former Rwandan Armed Forces (FAR), the Front pour la Défense de la Démocratie (FDD) and the Lord’s Resistance Army, has created a climate of great insecurity. Conflicts which should be characterized as international are thus going on in the country at the same time as others which are internal in nature. The parties have all committed serious violations of international humanitarian law, such as murders and attacks on the civilian population, including the rape of non-combatant women.

B. Violations of international humanitarian law committed by Government forces

119. The most serious acts have been the bombing of civilian populations by the Congolese Armed Forces and its Zimbabwean and Chadian allies (Kisangani, Gemena, Zongo, Libenge, Goma, Bunga) and reprisals against the civilian population in Bunga and Gemena.

C. Violations of international humanitarian law committed by the rebel forces allied with the uninvited countries

120. In reprisal for attacks on those the Congolese population calls “aggressors” and “Rwandan soldiers”, RCD forces have retaliated by massacring defenceless civilian populations with machetes, knives and guns, causing thousands of victims, most notoriously in Chipaho, Lemera, Makobola, Burhale, Musinga, Bashali, Lukweti, Budaha, Walungu, Mwenga, Mikondero, Kamituga, Budaha, Burhinyi, Ngweshe, Kigulube, Kibizi, Buyankiri, Kasala, Kalambi, Kahungwe, Kashambi, Kalami and Chifunze.

D. Human rights violations attributed to the Kinshasa Government

121. The continued application of the death penalty, which President Kabila justifies by the need to guarantee the population’s security, even though he describes himself as abolitionist; the existence of a Military Court (COM) which does not guarantee the rights of the accused; continuous attacks on the independent press (the arrest of journalists, raids on printers, summonses, the use of Mobutu-era freedom-killing legislation); the systematic use of torture; and the practice of enforced disappearance and summary executions appear to be the most serious violations. On the positive side, the Minister of Human Rights has tried to make improvements in some specific areas and a solution was found for “persons at risk” (those of Tutsi appearance, who had to be protected to prevent reprisals by the population); a national

human rights plan of action has been prepared with the participation of the main human rights organizations; and, in November, the Office of the High Commissioner for Human Rights was authorized to visit detention centres.

E. Human rights violations in RCD-controlled territory

122. The most striking thing in the territory occupied by the “rebel or aggressor” forces is the prevailing atmosphere of terror and an increasingly stronger feeling of rejection of those in power. The people of the area feel humiliated. The right to life is constantly being violated, but so are all the public liberties, such as the right to freedom of association, assembly, expression and opinion. There are no independent news media and the few that did exist, such as Radio Maendeleo, were banned. Any dissent or opposition is presented as “attempted genocide”. The deportation of prisoners to Rwanda and Uganda is a particularly serious matter. It is also symptomatic that the latest RCD/Goma structural adjustment eliminated all public human rights organizations. The one positive aspect is that the death penalty, which is provided for by law, is not being applied.

F. The situation of human rights advocates

123. In the two parts into which the country is divided, the situation of human rights advocates is particularly serious. The annexes contain several specific examples of violations of their rights to freedom of association, expression and assembly, as well as of their rights to life, physical integrity and liberty of person. In the opinion of President Kabila, NGOs should be regarded as “political parties”. For the Governor of South Kivu, civil society is a grouping of extremist political parties funded by the Kinshasa secret services.

G. The right to democracy in Government-controlled territory

124. An analysis of Commission on Human Rights resolution 1999/57 of 27 April 1999 on the promotion of the right to democracy, whose existence the Special Rapporteur has supported in all his reports since 1994, shows not only that this right does not exist in the Democratic Republic of the Congo, but that nothing has been done to guarantee it.

125. The rights to freedom of opinion and expression, thought, conscience and association and assembly are being violated and only the right to freedom of religion may be considered to be applicable. Political parties are banned (unless they are in conformity with a new law which does not meet democratic requirements) and, in their place, People’s Power Committees (CPPs) have been systematically set up with State funding and ideological support; they are no more than an extension of the State itself for the implementation of its policies and they have also been authorized to organize armed neighbourhood militias known as People’s Self-Defence Forces (FAPs).

126. The human right to receive and impart information and ideas is being violated and is subject to harsh penalties of arrest, trial (even by the Military Court), prohibition on leaving the country and torture.

127. The rule of law is applicable only to private individuals, not to the Head of State, who has arrogated to himself the most absolute discretionary powers, in accordance with Decree-Law No. 3 of 1997, which concentrates all executive and legislative powers and the majority of judicial powers in his hands. There are no effective remedies for the protection of the fundamental freedoms and security of citizens.

128. The right to vote has not been restored and nothing has come of any of the announcements made, even before the attack of 2 August 1998 in the eastern part of the country.

129. The right to political participation on terms of equality has also not been restored. According to the new law on political parties, only those which are authorized by the Ministry of the Interior may take part in politics. In the “national debate” called for by the Government, only the issues proposed by the President may be discussed.

130. The Government continues to have a stranglehold on government institutions. Even ministers of State, judges, soldiers of all ranks and senior public officials have been sent to prison, often without trial, thus showing that power is being exercised non-transparently, with the most absolute impunity.

131. The Congolese people does not enjoy the right to choose its system of government and the “national debate” proclaimed by the President is restricted to the issues he proposes.

132. The right of citizens to have access, on terms of equality, to public service is not recognized.

H. The right to democracy under RCD

133. In RCD-controlled territory, there are no parties, no freedom of expression, information, association, assembly or political participation and no right to vote. People do not even have the right to criticize what they see as “foreign aggression and occupation”. Only RCD is authorized and it is effectively a party-State. The population has endured terrible political humiliations, such as the changing of the flag without consultation and the declaration of the “twinning” of the Rwandan capital, Kigali, and the territory of South Kivu, which is even seeking autonomy for itself.

I. The Lusaka Peace Agreement

134. Following many attempts at peace, the Lusaka Peace Agreement was signed on 10 July, but signed by RCD only on 31 August. It contains both military and political agreements and provides for observer participation by countries (Zambia) and organizations (OAU and the United Nations). The Ceasefire Agreements have not been observed, since fighting and troop mobilizations have continued, the militias have not been disarmed and the massacres have gone on. Worse still, the parties have continued to use warlike language, in increasingly louder tones every day, thereby undermining the participation of the so-called “international community”, which, apart from civil society in the two parts of the territory, so far appears to be the only one interested in the Agreement’s success. Since the date of signing, however, there have been no major changes in territorial positions.

135. The political commitments provided for in the Agreement have also not been implemented: the facilitator for the Congolese components of the Agreement has not yet been appointed and President Kabila's Government refuses to hold an all-inclusive "national dialogue" (inter-Congolese political negotiations) on the future of the country with the participation of widely recognized political parties and civil society, preferring instead a "national debate" limited to the issues it is prepared to discuss.

136. None of the agreements provided for in the Lusaka Agreement was implemented within the time limits set and most of them have still not been implemented.

137. The joint mission to investigate violations of human rights and international humanitarian law committed during the 1996-1997 war has still not been able to begin its activities, as the Commission on Human Rights requested, because the required security measures have not been taken.

VII. RECOMMENDATIONS

A. Respect for the peace process

138. The parties involved must fully implement the Peace Agreement, both in its military aspects (halt to warlike language; disarming of militias; withdrawal of all foreign troops, whether invited or "uninvited"; respect for the inviolability of borders; a proper ceasefire; and security for movements of United Nations and OAU observer and auxiliary staff; etc.) and in its political aspects.

139. With regard to the political agreements, the appointment of a facilitator cannot continue to be put off, especially as the Special Rapporteur found that there was broad consensus on the San Egidio community, which meets all the requirements of recognized moral and intellectual standing, credibility and experience provided for in the Agreement.

B. Democracy

140. The restoration of democracy is essential and urgent. To this end, the political parties and NGOs organized in accordance with the law in force at the time of their establishment must be respected and must take part in any serious process of reconciliation and democratization. Democracy is built by peoples or by no one.

141. In the east, RCD must accept the fact that it is not popular with the Congolese people and must allow organizations in which the people is represented to operate. It cannot continue seeing every opponent as a perpetrator of genocide or as an instigator of ethnic hatred. It cannot go on adopting measures which anger the population, such as the twinning of Kigali and South Kivu and the change of flag.

142. Human rights, especially liberty of person and the freedoms of expression, opinion and association, must be restored in the two parts into which the war has divided the territory, since their enjoyment today seems more like a concession from the authorities than an enforceable

ANNEX 1.6

**MONUC, *Special report on the events in Ituri, January 2002-December 2003*,
document S/2004/573, 16 July 2004**

United Nations

S/2004/573



Security Council

Distr.: General
16 July 2004

Original: English

Letter dated 16 July 2004 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit to you a report from the United Nations Organization Mission in the Democratic Republic of the Congo, regarding the events which occurred in Ituri, in the north-eastern part of the country, from January 2002 to December 2003.

I would like to take this opportunity to reiterate my grave concern about the continuing human rights abuses in the Democratic Republic of the Congo, in particular the impunity with regard to crimes committed against the citizens of that country. As the Security Council has noted in several of its resolutions and presidential statements pertaining to the Democratic Republic of the Congo, impunity must be brought to an end, and perpetrators of crimes such as those highlighted in the attached report brought to justice.

I should be grateful if you would make this letter and the report available to the members of the Security Council.

(Signed) Kofi A. Annan



S/2004/573

Special report on the events in Ituri, January 2002-December 2003

Contents

	<i>Paragraphs</i>	<i>Page</i>
Abbreviations		3
I. Summary	1-11	4
II. Introduction: the Ituri district	12-16	6
III. Background to the conflict	17-31	8
IV. Methodology of the investigation	32-34	14
V. Most serious human rights abuses committed in Ituri district from January 2002 to 31 December 2003	35-158	15
A. Ethnically targeted attacks	41-94	16
B. Other mass killings	95-117	29
C. Political killings, abduction and forced displacement of suspected opponents.	118-137	34
1. Political killings, enforced disappearances, illegal arrest and forced displacement of selected persons by UPC	119-132	34
2. Political killings, illegal arrest and forced displacement of selected persons by FAPC	133-137	38
D. Children associated with armed groups	138-158	39
1. A profile of children associated with armed groups in Ituri: fighting for survival.	141-146	40
2. Training of children.	147-148	42
3. Use of children in combat and attacks.	149-150	42
4. Presence and use of girls in armed groups.	151-154	43
5. Use of children by armed groups in the exploitation of natural resources: a vicious circle.	155	44
6. Prospects for separating children from armed groups	156-158	44
VI. Conclusion and recommendations.	159-161	45
Annexes		
I. Armed and political groups involved in the Ituri conflict		47
II. Chronology of main political events and incidents of gross violations of human rights in Ituri, 1998 to 2003		51
Maps		
Ituri district.		63
Collectivités of Djugu and Irumu territories		64
Main military camps where children were trained or present.		65

Abbreviations

AFDL	Alliance des forces démocratiques pour la libération du Congo
APC	Armée populaire congolaise
ASADHO	Association africaine de défense des droits de l'homme
FAC	Forces armées congolaises
FAPC	Forces armées du peuple congolais
FIPI	Front pour l'intégration et la paix en Ituri
FLC	Front de libération du Congo
FNI	Front nationaliste intégrationniste
FPDC	Forces populaires pour la démocratie au Congo
FRPI	Front de résistance patriotique de l'Ituri
ICRC	International Committee of the Red Cross
IRIN	Integrated Regional Information Network
MLC	Mouvement de libération du Congo
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MSF	Médecins sans frontières (Doctors without Borders)
PRA	People's Redemption Army
PUSIC	Parti pour l'unité et la sauvegarde de l'intégrité du Congo
RCD	Rassemblement congolais pour la démocratie
RCD-K/ML	RCD-Kisangani/Mouvement de libération
RCD-N	RCD-National
UPC	Union des patriotes congolais
UPDF	Ugandan People's Defence Forces

I. Summary

1. The Ituri district, located in the Orientale Province of the Democratic Republic of the Congo, currently has one of the world's worst — and for a long time largely ignored — human rights records. Based on the investigations carried out by MONUC and other human rights entities, it is estimated that 8,000 civilians, probably more, were deliberately killed or were the victims of indiscriminate use of force from January 2002 to December 2003. The exact number of female victims of rape or sexual slavery is impossible to estimate at this time. Countless women were abducted and became "war wives", while others were raped or sexually abused before being released. More than 600,000 civilians have been forced to flee their homes. Thousands of children aged from 7 to 17 were drawn forcibly or voluntarily into armed groups, placing their very lives at risk and depriving them of a childhood. In addition, entire villages — belonging to all the different ethnic groups — were destroyed, including health and education facilities, housing and other infrastructure.

2. These abuses have been carried out with total impunity by all Ituri armed groups and several non-Ituri groups (MLC, RCD, RCD-ML, RCD-N). In addition, the pre-transition Government in Kinshasa and the Governments of Rwanda and Uganda all contributed to the massive abuses by arming, training and advising local armed groups at different times.

3. The European Union-led Interim Emergency Multinational Force (Operation Artemis), and then the MONUC Ituri Brigade with a mandate from the Security Council under Chapter VII of the Charter of the United Nations, have been instrumental in reducing the intensity of the conflict and the capacity of the local groups to operate. However, ending the violence and abuses, bridging the gaps between communities to install and extend a lasting peace, and establishing structures to strengthen human rights protection and reduce the total impunity enjoyed by the perpetrators remain major challenges, which the international community must assist the Government of the Democratic Republic of the Congo to address. Though there have been timid attempts to restore some kind of State presence in Ituri through the deployment of a small group of judges and police, neither currently has the capacity to maintain law and order in the district. It is therefore of vital importance that MONUC continues to have a Chapter VII mandate to ensure security.

4. There have long been tensions and conflict between the Hema and Lendu communities in the district, fuelled by bad governance. The latest conflict — which has provoked so many of the abuses — was sparked off by a particular land dispute in 1998 when some Hema *concessionaires*¹ took advantage of the weakened State apparatus to illegally enlarge their estates to the detriment of neighbouring mostly Lendu agriculturalists.² The agriculturalists revolted when law enforcement agents came to evict them and in response they tried to destroy the land of the Hema *concessionaires*. Initially starting to the north of Bunia, this violence gradually

¹ The *concessionaire* is the person who rents a concession from the State. The concession is defined by law as a contract by which the State recognizes the right of an individual or organization, under conditions defined by law, to use a piece of land or a building belonging to the State. In the Democratic Republic of the Congo, all land belongs to the State.

² The first conflict erupted in the *collectivité* of Walendu Pitsi, located in Djugu territory.

extended to the whole of Ituri district. Moreover, while spreading through the district, the conflict quickly turned into a confrontation opposing the two communities, the Hema and the Lendu. This conflict would not have reached such a level of violence without the involvement of national Congolese players, as well as of foreign Governments. The Ugandan army, already present in Ituri since late 1998, fuelled the conflict by initially supporting some Hema notables and allegedly bombed hundreds of Lendu villages. Some Lendu traditional authorities created self-defence units. Believing that a Hema conspiracy existed against them, the Lendu militias began attacking Hema villages solely on account of their ethnicity. They also benefited from external support to organize themselves, from either the Congolese (pre-transition Government, rebel movements) or individual Ugandan officers.

5. The conflict entered a new phase of violence at the end of 2001 with the intensification of ethnically targeted attacks on villages, including killings, torture, rape of civilians, looting of homes, and destruction of social infrastructure. When the Hema militia UPC took over Bunia, first in August 2002 and again in May 2003, they adopted an ethnic cleansing policy, to empty the town of its Lendu and Bira populations, as well as the "non-Iturian" Nande community, which was a commercial rival to the Hema businessmen. Hundreds of Lendu villages were completely destroyed during attacks by Ugandan army helicopters together with Hema militia on the ground.

6. Different rebel faction leaders struggling for political power in Ituri have continued to profit from the ethnic resentment originally created by the land dispute. A series of splits, from 1999 to mid-2003, have in fact resulted in Bunia, the capital of Ituri, being the stage for repeated power struggles and skirmishes. At each stage in the fragmentation of the rebel groups, new militias were recruited loyal to one or another commander or faction leader. Often half of the militias were children. They were deployed not only to fight each other but also to whip up insecurity in the countryside and seize strategic localities and commercial opportunities. Ugandan army commanders already present in Ituri, instead of trying to calm the situation, preferred to benefit from the situation and support alternately one side or the other³ according to their political and financial interests.

7. The chiefs of armed groups took over the roles traditionally held by administrators, businessmen, traditional chiefs and law enforcement officers. They appointed "public officers", collected local taxes, sold the natural resources of their area of control, arrested civilians, judged them and in some cases executed them. The competition for the control of natural resources by combatant forces, exacerbated by an almost constant political vacuum in the region, has been a major factor in prolonging the crisis in Ituri. Those resources have also been of continued interest to foreign business networks in the region. One source of revenue for rebel groups has been the sale of concessions to foreign businesses.

8. By the end of March 2004, at the time of finalization of this report, MONUC had been able to lessen the inter-ethnic conflict of Ituri, acting to enforce peace and to restore the rule of law. Since taking over from Operation Artemis on 1 September 2003, the MONUC Ituri Brigade has implemented its Chapter VII mandate by consolidating its positions in Bunia, carrying out search operations which resulted in

³ Ugandan authorities alternately supported and provided weapons to RCD-ML, MLC, RCD-N, UPC, PUSIC, FNI and FAPC.

S/2004/573

the declaration of Bunia as a weapon-free zone, and establishing seven outposts, north, north-east, south and south-east of Bunia (Iga Barrière, Bogoro, Mongbwalu, Marabo, Tchomia, Mahagi and Kpandroma). MONUC continues to implement security measures such as patrolling and launching military operations in different parts of Ituri.

9. To reinforce the rule of law and ensure public order, MONUC has detained suspects including the Chief of Staff of FNI, Mathieu Ngudjolo, and several senior military personnel of UPC, including Aimable Saba Rafiki and Etienne Nembé. Those actions were taken given the lack of local judicial and security structures, including a functioning judiciary and prison facility. On 14 January, MONUC transported to Bunia 12 out of 20 judicial personnel appointed by the Transitional Government. The judges took their oath of office on 28 January 2004, thereby allowing them to work legally in Bunia. A minimum judicial capacity has thus been restored in Bunia.

10. However, since mid-January 2004, FNI and UPC, as well as FAPC, a militia located along the Ugandan border in Aru, have become increasingly aggressive towards MONUC and the civilian population. In mid-January 2004, as many as 200 civilians were killed in Gobu, located on the edge of Lake Albert. By the end of March 2004, MONUC was still investigating the incident with the aim of ascertaining the identity and affiliation of the perpetrators. This was the most serious mass killing since the events of Kachele in October 2003. After the incidents in Gobu, militias conducted several attacks on MONUC aircraft and patrols, the most serious being the killing on 12 February of a MONUC military observer in an ambush by unidentified militia elements on a convoy of vehicles returning from a multidisciplinary investigation 20 km north-east of Bunia.

11. This report has been drafted by the MONUC Human Rights and Child Protection Sections. It examines more closely the background to the conflict and gives details of many cases of massacres and other abuses often committed during attacks on villages. It includes information about political killings, harassment of political opponents, and the recruitment and use of children in armed groups from January 2002 to December 2003. The report also highlights the total impunity with which the armed groups have committed these atrocities. It is not intended as a political analysis of the situation, and is by no means a complete record of abuses in the area, given the scale of violations and also the constraints on carrying out such investigations, including continuing security concerns.

II. Introduction: the Ituri district

12. The region of Ituri is a district of the Orientale Province, bordering Uganda, with a population of 3.5 million to 5.5 million -- no census has been carried out for years. The population is made up of 18 ethnic groups, including the Lendu and its southern sub-clan, the Ngiti; the Hema and its northern sub-clan, the Hema/Gegere; the Bira, the Alur, the Ndo Okebo, the Lugbara, the Mambissa and the Nyali. Population figures vary greatly, but the Alur consider themselves the largest ethnic group, which would represent up to 25 per cent of the Ituri population, followed by the Lendu. No reliable population census by ethnic grouping is available at this

time. The city of Bunia, which had approximately 100,000 inhabitants before the conflict,⁴ is said to have doubled, owing to displacement created by the conflict.

13. Ituri district, with its capital at Bunia, is composed of five territories: Aru, Mahagi, Mambasa, Djugu and Irumu. Each territory is divided into several *collectivités*.⁵ The Hema/Gegere and Lendu groups are concentrated in Djugu territory, while the Hema and Ngiti groups are found in Irumu territory. The territory of Djugu, where the conflict erupted, is composed of 10 *collectivités*⁶ — three Lendu, three Hema and four of other ethnic groups — plus the city of Mongbwalu, which has a special administrative status. Djugu territory is the richest and most densely populated territory, with around 700,000 persons. The territory of Irumu, embroiled in the conflict by the end of 2001, is composed of 12 *collectivités* — one Ngiti (Walendu Bindi), and four Hema (Bahema Sud, Bahema Boga, Bahema Mitego and Bahema d'Irumu); the remainder are of other ethnic groups.⁷ The Administrator of a territory is appointed by the Government, but works very closely with the traditional chieftains of each *collectivité*. The Administrator reports to the Governor of the province, based in Kisangani, who is the only one with the power to remove the Chief of the *collectivité*.

14. The population of Ituri is for the most part agriculturalist, with a significant minority engaged in livestock raising, fishing and commerce. Generally speaking, the Hema are perceived to be associated with livestock raising, while the Lendu are perceived to be associated with agriculture. The Hema population of Bahema Boga, in Irumu territory, is agriculturalist, however. During the Belgian colonial era, some Hema were favoured, notably through access to either the religious hierarchy or the education system, and given much wider access to managerial functions, while the Lendu were overwhelmingly treated as manual labour. In fact, the colonial administration accentuated social inequalities between the ethnic groups in the region through its ethnic "favouritism" in almost all fields, including the administration and the Catholic clergy. As a result, some Hema remained as the elite in Ituri upon the collapse of the colonial State.

15. The power struggles and ethnic prejudices became entangled with the land issue. Most of the land of the Lendu *collectivités* of Walendu Pitsi and Walendu Djatsi are divided into concessions belonging to a select few Hema community members who employed Lendu manual labour. However, in the poorer and rural areas, both Hema and Lendu communities generally coexisted peacefully, and intermarriage was common.⁸ The concessions belonging to the colonialists but

⁴ This figure is given by the former Mayor of Bunia town, Gilbert Sugabo Ngulabo, who was in office until May 2003.

⁵ The *collectivités* are administrative sub-districts with a traditional chieftain, who exercises authority over the population in his area on the basis of tribal/ethnic allegiances. Chieftains are hereditary among the Hema, Bira and Alur groups but elected among Lendu and Ndo Okebo groups. The *collectivités* are divided into *groupements*, and *groupements* into *localités*.

⁶ Walendu Pitsi, Walendu Djatsi, Walendu Tatsi, Banyari Kilo, Mambisa, Mabendi, Ndo Okebo, Bahema Banywagi, Bahema Nord and Bahema Badjere.

⁷ Other *collectivités* are Andisoma (Bira population), Baboa-Bokoe, Babelebe, Banyari-Tchabi, Basili, Mobala and Wales Vonkutu.

⁸ A statement of a Hema woman quoted by IRIN and reported by Jacques Depelchin, a rebel official involved in reconciliation efforts in 1999, summarizes the situation: "War is not between Hema and Lendu, but between the rich Hema and the rest of us".

located in Lendu *collectivités*, mostly in the territory of Djugu,⁹ were utilized according to an agreement between the two parties, where the foreign *cessionnaires* would have access to the land in return for special fee paid to the traditional Chief of the *collectivité*.¹⁰ In 1973, when the foreign *cessionnaires* were forced to leave, they entrusted their Hema managers with the task of taking care of their land, hoping to come back once the "Zairianization" was over.¹¹ After a while, since the foreign *cessionnaires* were not authorized to come back, the managers registered the concessions in their own names. This phenomenon was accelerated after President Mobutu's appointment as Minister of Agriculture in 1969 of Zbo Kalogi, a Hema, who had considerable influence on the distribution of Iturian concessions to Hema. This succession of events led to a common Lendu perception that the Hema population was the rich, educated class that not only had unjustly accumulated land and control of commerce, but also constituted the administrative class, with greater access to wealth, education and political power.

16. Ituri's natural wealth has driven the conflict in the district. Apart from the region's farmland and forests, most notably coffee plantations, and valuable cross-border trade, Ituri is the home of the Kilo Moto gold field, one of the world's largest. Of added interest are potential large oil reserves in the Lake Albert basin. The competition for control of resource-rich centres such as Mongbwalu, Gety and Mabanga (gold fields) and Aru, Mahagi, Tchomia and Kasenyi (wood, fishing, customs revenues) by the combatant forces and their allies — Uganda, Rwanda and the Kinshasa authorities — has been a major factor in the prolongation of the crisis since they provide those who control production and export with very considerable profits.

III. Background to the conflict

17. During the year 1997, several Hema/Gegere *cessionnaires* extended the limits of their territory by bribing the land authorities and getting the registration certificates without obtaining the *attestation de vacance* delivered after a vacancy investigation carried out by the local land authorities as requested by law. This illegal act was given a legal patina by being secretly lodged with the court. In 1999, after the two-year statute of limitations on the appeal against the *attestation* had run out, the petitioner went to the Tribunal de Grande Instance in Bunia and obtained an enforcement order to evict the population living on that illegally acquired territory, if necessary using military force. Had these evictions been executed, they would have resulted in a total of 200,000 Lendu inhabitants having to leave their land and homes. Evictions were never fully carried out by law enforcement forces because the Lendu revolted and destroyed and occupied many estates as a result.

18. These local problems would not have turned into massive slaughter without the involvement of national and foreign players. In 1998, the Ituri district was taken over by the RCD rebel movement, supported by the Ugandan and Rwandan armies.

⁹ Djugu is by far the richest agricultural area of Ituri.

¹⁰ Obligations included the paying of special taxes to the local authorities, paying for local labour and taking care of social infrastructures.

¹¹ The Zairianization was a policy based on the appropriation of all goods belonging to foreign nationals and their transfer to Congolese nationals as administrators of the goods in the name of the State.

When RCD split into RCD-Goma, backed by Rwanda, and RCD-ML, backed by Uganda, Ituri came under the control of RCD-ML. Since then, Ituri has been at the crossroads of all the eastern players, both Congolese and foreigners: RCD-ML, MLC and its proxy RCD-N, as well as the Ugandan army. In 2002, RCD-Goma made an alliance with UPC, following contacts between this militia and Kigali. Simultaneously, the pre-transition Government supported some rival militias through Beni. Moreover, at the end of 2002, MLC and RCD-N coordinated part of their offensive against RCD-ML with UPC. The lasting involvement of national and foreign players has enabled the various Ituri militias to obtain supplies and to increase the number of combatants. This interaction has led to a regularly increasing level of violence against the civilian populations of Ituri since 1999.

19. In 1999, when the land dispute erupted, Ituri was under the control of the rebel RCD-ML movement and its ally UPDF. In May 1999 six land disputes emerged, one after the other, in the *collectivité* of Walendu Pitsi.¹² Witnesses interviewed by MONUC stated that, under the leadership of the Savo family, the *cessionnaires* began to organize militias around Fataki. They imposed a fund-raising system on the Hema/Gegere businessmen. Two prominent Hema/Gegere businessmen who were opposing the fund-raising were murdered. As the collegial leadership of this militia was expecting violence, all of the Hema *cessionnaires*, by the end of May 1999, contracted squads of UPDF soldiers to protect their land. On 29 May 1999, important Hema families reportedly paid Captain Kyakabale, the UPDF sector commander,¹³ the alleged amount of \$12,000 for a punitive action to be undertaken against the populations occupying their concessions and surrounding areas in the *collectivité* Walendu Pitsi, and to arrest the Administrator of Djugu territory, Christian Dhedonga Nganga-Lolo, because of his refusal to sign the *attestation de vacance* a posteriori.¹⁴ Christian Dhedonga Nganga-Lolo was arrested by UPDF the same day together with Longbe Chabi, the traditional Chief of Walendu Pitsi, the President of the *Conseil de collectivité* and five other local notables, and they were kept in a container in Bunia airport. Apart from the Administrator, who was accompanied by Congolese police, they were all reportedly tortured because of their refusal to sign the *attestation de vacance*. They were subsequently released. Later, the Lendu Chief of the *groupement* of Pitsi, Chief Djiba, was allegedly executed on the orders of one of the Hema *cessionnaires*. UPDF carried out its first attacks on the village of Loda, located between Fataki and Libi, in the night of 29 to 30 May 1999, burning it down and burning alive several elderly persons and women locked in their houses. Later, the villages of Lubea, Buba, Giba, Linga, Ladejo, Petro and Arr were reportedly all destroyed by UPDF forces under the command of Captain Kyakabale, who was reportedly paid by Lobo Tasoro, and several Hema *cessionnaires*. UPDF, together with Hema militias, continued their punitive

¹² On 12 April 1999, land dispute between Kadjo Singa and the population of Gonsenge in the concession of Leyina; on 14 May 1999, land dispute in the Leyina concession, where witnesses interviewed by MONUC alleged that the Singa family paid UPDF to attack the Lendu on its land, as a result of which 20 civilians were killed; May 1999, land dispute between the *cessionnaire* Abisayi (Hema) and the population of the locality of Londju (Lendu); May 1999, land dispute among the *cessionnaire* Yasona (Hema) and the Lendu population of Laudjo; 1 May 1999, land dispute between the Savo family (Hema) and the Lendu population of Sanduku in the concession of Bidha; 28 May 1999, land dispute between the *cessionnaire* Uguro and the population of Lomba, in the locality of Tsupu Libi, *chef lieu* of Walendu Pitsi.

¹³ Captain Kyakabale subsequently left UPDF and took refuge in Rwanda.

¹⁴ In spite of the fact that he was a Hema like the estate owners.

actions, burning down villages of first the *collectivité* of Walendu of Pitsi, then of Walendu Djatsi, from 1999 to the end of 2001.

20. The new administrative authorities paid little attention to the deteriorating situation and the Governor of the time, Adele Lotsove, a Hema/Gegere installed by General Kazini of UPDF in June 1999, took action to put down the Lendu revolt using UPDF soldiers. Some Lendu tried to request justice by legal means, as the tribunals in Bunia found in favour of the *cessionnaires* who had bribed them generously. Subsequent efforts to contain the increasing inter-community violence were frustrated by individuals from both communities interested in the continuation of the conflict. Moreover, several *cessionnaires* were able to profit from the conflict to increase their land, since the Lendu living close to their estates were evicted and their villages destroyed.

21. The *collectivité* of Walendu Tatsi where the Hema and Lendu communities were living in peace became involved in the conflict only late in 2001.¹⁵ In 2002, important Hema South families were reportedly involved in financing the involvement of UPDF in attacking the *collectivité* of Walendu Bindi, the only Ngibi *collectivité* located in Irumu territory. Hundreds of localities were destroyed by UPDF and the Hema South militias. Meanwhile, the Lendu were organizing themselves into armed groups to take revenge. The Ugandan military trained thousands of Hema youth in Ituri and in Uganda. After 2002, others were reportedly trained in Rwanda. However, the Hema militiamen were not the only ones to carry weapons; in some Hema localities such as Mandro and Bogoro each family was reportedly given weapons to defend itself. This was one of the reasons given by Lendu combatants to justify the massacre of civilians suspected of carrying weapons.

22. The Institut supérieur pédagogique and the Catholic Church of Bunia had been the locus of the power struggle between the Hema intellectual elite and other ethnic groups for some time. For example, while the Institute was under the direction of Tharcisse Pilo Kamaragi, from 1993 to 1997 until the arrival of AFDL, most of the non-Iturians, who constituted the majority of the teaching staff, were forced to leave and all new posts were allocated to Hema/Gegere professors to the detriment of other groups. According to testimony offered by several intellectuals living in the Mudzipela area of Bunia, some well known Hema/Gegere professors at the Institute were reportedly holding regular secret meetings, sometimes together with Hema/Gegere militia members, in order to decide strategies to create ethnic hatred. The same sources indicated that the killing of some 200 Lendu inhabitants of Mudzipela on 19 January 2001 was organized and even directed by the same group with the

¹⁵ According to sources in the administration of Walendu Tatsi, a total of 257 localities were burned down from 2000 to the end of 2002 alone. It appears that virtually all localities of Walendu Pitsi were already burned down in 1999.

complicity of UPDF under the command of Edison Muzora.¹⁶ The Catholic Church is often named by the inhabitants of Bunia as "pro-Hema". This perception dates to the period of Leonard Dhejju, the Hema Bishop of Bunia,¹⁷ who not only favoured his own ethnic group within the Church but who had also reportedly been in close contact with Hema militia commanders.¹⁸ His activities allegedly included transferring money collected from members of the Hema community to their own bank accounts in a private bank in Kigali and negotiating with the Rwandan authorities to buy weapons and obtain military training for Hema militia members in Rwanda. Bishop Dhejju was reportedly present at the first meeting between Chief Kawa and the Rwandan military authorities in June 2002. Bishop Dhejju was asked to resign by the Vatican in 2002, and he is now living in Kigali. Following the decision to remove Bishop Dhejju, Monseigneur Mosengwa Basinya arrived in Bunia on 7 April 2002 with a newly named Apostolic Administrator of Nande ethnicity, Janvier Kataka. While the Church was preparing to officially announce the leadership change, the largely Hema audience became aggressive and the installation of the Apostolic Administrator was forcibly delayed. On 11 April, Archbishop Mosengwa, together with a group of priests, were taken hostage by a group of Hema youth including some brought from Katoto village by the businessman Liripa Savo. The day after, the Archbishop left together with the new appointee.

23. Having fled to the bush after the destruction of their villages between 1999 and 2001, the Lendu people of Djugu, and later those of Irumu, chose to take justice into their own hands. Their reprisals resulted in the massacre of thousands of innocent Hema civilians. They replaced their arrows and machetes from the first period of the conflict with modern weapons that they were able to buy mostly from Uganda, using the illegal mining revenues of the Mongbwalu gold field. They also received weapons from the Kinshasa government via some members of RCD-ML hailing from Ituri, and some Ugandan authorities. One well known Ugandan supporter and reputed weapon-provider of Lendu combatants was Colonel Peter

¹⁶ On 19 January 2001, the day after an attack launched by Lendu militia on UPDF forces based in Bunia airport reportedly to destroy the helicopter bombing their villages, an organized massacre of Lendu inhabitants was carried out in Mudzipela. Each Lendu family was visited, house by house, by Hema of Bunia and approximately 250 persons were killed, mostly by sticks with nails distributed before the attack, and their houses set on fire. Several witnesses from Mudzipela gave the names of Hema professors of the Institut supérieur pédagogique of Bunia as the organizers, and the chief of the operations was reportedly also a professor. Among the victims were also several Lendu professors and students of the Institute. Since this incident, all Lendu have left Mudzipela: there are neither Lendu students nor teachers at the Institute. Just before the massacre, Colonel Muzora reportedly said in a public speech: "From now on, we can start killing Lendu".

¹⁷ Monseigneur Dhejju, a Hema/Gegere, was the Bishop of Bunia from 1976 to 2002. He was accused of having favoured his own ethnic group, giving the Church land of Mudzipela to members of the Hema/Gegere tribe from the villages and nominating only Hema or Hema/Gegere priests. It is as a result of his action that Mudzipela, originally inhabited by Bira, began to be a Hema neighbourhood. Also, several students of theology who had successfully finished their studies were never appointed, apparently because they were not Hema. When he was forced to resign by the Catholic hierarchy, there were only 6 Lendu and 2 Bira priests out of 49 priests appointed by him. Among the priests that he appointed there were also sons of the Hema militia chiefs.

¹⁸ The Bishop of Goma has reportedly very close links with the Rwandan authorities. He was the one who introduced Bishop Dhejju to them.

Karim, an Alur official of UPDF. Otherwise, most of the UPDF officers continued to support UPC.

24. In August 2002, UPDF forced the RCD-ML military forces out of Bunia. As UPC was temporarily in a position to benefit from supply from both Uganda and Rwanda, it was able to attack and to take control of the Mahagi territory. UPC then benefited from its alliance with the Aru-based militia of Commander Jérôme Kakwavu, a former RCD-ML officer. The Mahagi territory then suffered from massive human rights abuses, included destruction of villages, forced recruitment of child soldiers by UPC and Jérôme's militia, as well as sexual violence that UPC notably resorted to in order to terrorize the local elite and population. As a consequence of this spillover into Mahagi territory, some Alur notables tried to create a militia, FPDC. The plan failed, however, because of the reluctance of the business community to fund it and, above all, the active opposition of the Mahagi bishop, himself an Alur. Unlike the Catholic clergy in Bunia, throughout the conflict the diocese of Mahagi was instrumental in conflict management initiatives as well as preventing armed mobilization within the Mahagi territory.

25. The Lendu attacks became more cruel and destructive after March 2003, when the support of UPDF for the Hema was terminated. Moreover, after UPDF expelled UPC from Bunia, the Lendu militias took over stocks of ammunitions and weapons from UPC. The Lendu youth created self-defence militia groups to protect their villages, which often lacked any organized hierarchical structure. Even after the creation of FNI, several Lendu or Ngiti militia groups kept their independence and often refused to obey the orders of their supposed FNI hierarchy to cease the hostilities. The combatants forced everybody to be part of the militia, including women and children. Some community leaders tried to resist while others became part of the armed groups. Some Lendu elderly advised reviving the old methods of taking special drugs, wearing amulets and eating some parts of the human body to give supernatural forces to the combatants. These methods rendered the militia members more cruel and inhuman.

26. The other ethnic communities such as the Bira, Alur, Nyali, Lugbara, Kakwa, Ndo Okebo and Lese, who were not directly involved in the conflict, were forced to take sides and/or were attacked by both parties, who accused them of sheltering the enemy. This polarization reduced the possibility of continuing to implement local conflict management initiatives. The various militias were not only terrorizing and abusing the populations, they were also intentionally preventing local initiatives from defusing tensions or containing violence. The Bira community, whose territory includes Bunia, lost the chief of their *Andisoma collectivité*, Chief Dieudonné Bulamuzi. Several hundred civilians, including the intellectual elites, were killed, and health structures, including the largest one at Nyankunde, were destroyed. The Nyali community, whose territory includes the Kilo Moto gold field, were attacked by both sides. They lost most of their social infrastructures and many were forced to leave their villages to go into hiding in the bush.

27. **Role of Uganda.** Uganda claimed on several occasions to be in Ituri to defend "its legitimate security concerns" and to be acting for reconciliation and the protection of civilians. However, although in some cases UPDF did intervene to halt fighting between opposing forces, its commanders were responsible for the creation of almost all of the armed groups, training their militias — sometimes even in Uganda — selling weapons and even lending their soldiers to rich Hema to

massacre Lendu civilians and destroy villages in Walendu Tatsi in 1999. UPDF also carried out widespread bombing and destruction of hundreds of villages from 2000 to 2002 in the Lendu/Ngiti *collectivités* of Walendu Pitsi and Walendu Bindu. The same UPDF commanders also became businessmen who traded in the resources of Ituri. In four years, seven Ugandan sector commanders were sent to Ituri: Captain Kyakabale, Lieutenant Colonel Arocha, Colonel Charles Angina, Lieutenant Colonel Edison Muzora, Colonel Fred Seka Mwenge, Major Muhozi and Kale Kayura. Only Charles Angina and Kale Kayura left without serious allegations being levied against them. Uganda supported first RCD,¹⁹ then MLC and RCD-ML. It was also directly involved in the creation of UPC and in the training and arming of its militia.

28. Uganda reconsidered its support to UPC because of close ties between UPC and Rwanda, around December 2002. To counter that alliance, Uganda supported several other Ituri armed groups. UPDF was involved in the creation of FIPI, a platform including PUSIC, FPDC and FNI/FRPI. However, that Front did not last long and de facto came to an end in February 2003 after the attack on Bogoro by FNI. In March 2003, FAPC was created with direct Ugandan support. In March 2003 UPDF commanders also supported FNI/FRPI, which assisted them in removing UPC from Bunia. Following its commitment to the Luanda Agreement, UPDF withdrew from Ituri in May 2003. Since then, it has continued to give open support to PUSIC and FAPC, both spun off from UPC in order to weaken it.

29. **Role of Rwanda.** On 6 January 2003, RCD-Goma, a Congolese rebel movement supported by Rwanda, announced an alliance with UPC. Rwanda had become involved in the Ituri crisis much earlier, however. The Chief of Staff of the Rwandan army, James Kabarebe Kagunda, was reportedly the biggest advocate of Rwandan support to Hema militia and was in contact with Chief Kawa, who negotiated the arms supplies in June 2002. Rwanda reportedly supplied arms by airdrop to the UPC camps located in Mandro, Tchomia, Bule, Bulukwa and Dhego and sent military experts to train Hema militias, including child soldiers. Moreover, some UPC elements (estimated at 150) went for training in Rwanda from September to December 2002. On 31 December 2002, Thomas Lubanga visited Kigali for the first time. Kigali also facilitated the transport to Ituri of PRA elements, earlier trained in Rwanda, and used some Kinyarwanda-speaking Congolese to organize this support. One ex-UPDF sector Commander of Ituri, Colonel Muzora, who had left the Ugandan army to join the Rwandan forces, was seen by several witnesses in the UPC camps, mainly to orient the newcomers from Rwanda. Practically all witnesses interviewed by MONUC believe that Rwandan nationals occupied posts in UPC military commands. MONUC obtained testimonies about adults and children being trained in Rwanda and being sent through Goma, in 2002 and 2003, to fight in Ituri with UPC.²⁰ It also appears that, when Thomas Lubanga and other high-ranking UPC officers fled from Ituri in March 2003, they were evacuated by air to

¹⁹ Both Uganda and Rwanda initially supported RCD (1998-1999) before it began to splinter into different factions, a phenomenon reflecting the end of the Uganda-Rwanda alliance in the conflict.

²⁰ In September 2002, 107 children and adults were allegedly airlifted from Tchomia to Kigali airport and driven to the Gabiro training centre. They were reportedly trained in artillery skills and returned to Ituri in November of the same year. On their way back, they landed in an Antonov (often based in Goma) at Bunia airport. Each of the trained combatants was given a sub-machine gun. An officer known as "Safari" led this operation.

S/2004/573

Rwanda. Arms and ammunition were then supplied from Rwanda to UPC by air before UPC retook Bunia in May 2003. On 11 and 12 May 2003, two aircraft landed at Dhego — not far from Mongbwalu — from Rwanda, with grenades, rocket-propelled grenades, mortars and ammunition. The first of the aircraft was also carrying back Lubanga and Bosco from Kigali.

30. **Role of the Kinshasa Government.** Until 2002, the pre-transition Government in Kinshasa was hardly involved in Ituri. Its first delegation arrived in Bunia in August 2002, after a visit to Kampala. During a second visit, on 29 August 2002, the Minister for Human Rights, Ntumba Lwaba, was abducted by Hema militia and freed only after three days in exchange for the release of Lubanga and several UPC members who had been arrested in Kampala and transferred to Kinshasa. Early in 2002, the involvement of the Kinshasa Government centred on military assistance that it provided to RCD-ML in Beni. Kinshasa sent trainers, weapons and also some military elements, allegedly amounting to four battalions, in support of APC, which reportedly was sending weapon supplies from Beni to Lendu militia. FAC and APC were also named by eyewitnesses and victims as parties in some attacks on Hema villages. It is alleged that, in the last three months of 2002, some military supplies may also have been sent directly to the Lendu militia, notably to Rethy, in Djugu territory.

31. The political initiative of the Transitional Government to calm the tension in Ituri has focused on the deployment of some judicial and police personnel and sending official delegations. There have also been a number of press statements. Apart from the delivery of a humanitarian aid shipment early in 2004, humanitarian aid from the Government to the Ituri victims has been negligible. More concrete actions and active engagement would be needed to find a solution to the ongoing crisis. It was planned that the first brigade of the new national army would be deployed in Ituri before June 2004. However, there are no guarantees that these troops will receive regular payments and supplies.

IV. Methodology of the investigation

32. For the special report on Ituri, MONUC carried out a total of nine investigations. More than 1,600 persons were interviewed, including victims, eyewitnesses, community leaders, intellectuals, health workers and children associated with armed groups. Additional written testimonies were received from eyewitnesses and victims through local non-governmental organizations. Witnesses and other sources were heard in private interviews, so as to keep their accounts confidential and not expose them to risks of retaliation. Whenever possible, alleged perpetrators and chiefs of armed groups were confronted with allegations raised against them. Several field visits were made, to Bunia, Nyankunde, Mambasa, Bogoro, Mandro, Lipri, Bambu, Kobu, Drodoro, Kasenyi, Tchomia, Mahagi, Aru, Ariwara, Zumbé, Boga, Koga, Katoto, Fataki, Kachele, Kilo and Marabo, all located in Ituri. MONUC travelled twice to the Beni area and three times to border areas in western Uganda. In Beni, they received testimonies of displaced persons from Ituri located in Oicha, Erengeti, Butembo and Beni; the first visit took place after the Mambasa events of late 2002, the second after the Bunia events of May 2003. In Uganda, MONUC travelled to the areas of Rwebisengo, Ntoroko and Paidha and interviewed hundreds of Iturian refugees. Several military and political leaders were also met in Kinshasa.

33. Until the arrival of the Interim Emergency Multinational Force in June 2003, MONUC personnel had very limited access to Ituri. Therefore the information on the human rights situation was gathered through short-term investigation missions to a limited number of localities. After the opening of a MONUC office at Bunia in June 2003, the human rights and child protection presence facilitated the investigations but security restrictions did not allow them to cover each incident of gross human rights violations that occurred in Ituri. Even after the deployment of the Ituri Brigade in different parts of Ituri allowed greater access, some areas are still inaccessible. However, MONUC investigated most of the ethnically targeted attacks on villages, acts of mass killing and mass destruction of property and social services that occurred in different parts of Ituri, as well as extrajudicial executions, abductions of or threats against selected persons such as administrators, non-governmental organization workers, journalists, teachers and businessmen that occurred in Bunia, Aru and their surroundings. The Child Protection Section of MONUC has been focusing on the recruitment and use of children associated to armed groups.

34. To cover the reporting period as thoroughly as possible, MONUC has also made use of reports written by national and international non-governmental organizations and United Nations agencies on the issue of gross human rights violations and their analysis. When an incident has not been investigated directly by MONUC, the source of the information will accordingly be noted.

V. Most serious human rights abuses committed in Ituri district from January 2002 to 31 December 2003

35. All of the armed groups have committed war crimes, crimes against humanity and violations of human rights law on a massive scale in Ituri. Unarmed civilians have been deliberately killed, contrary to article 3 common to the Geneva Conventions, often solely on the basis of their ethnicity. Attacks on villages have been accompanied by the killing of several thousands of civilians, widespread looting and destruction of housing and social structures, abduction of civilians, including women for sexual slavery, rape and torture (see section A below).

36. Lendu combatants engaged in inhumane acts such as mutilation and cannibalism, often under the effect of drugs prepared by their traditional healers. They abducted children and women for forced labour and sexual slavery. According to two eyewitnesses who were released, Lendu combatants told them that they were not killing Hema children but giving drugs to "transform them into Lendu". Hundreds of Hema women were sexually abused and forced into working for the combatants. Many children and women of Hema origin were never released (see section A).

37. UPC forces shelled hundreds of Lendu villages without making any distinction between armed combatants and civilians. Some villages in Djugu territory were the object of repeated attacks when the inhabitants returned and rebuilt during calmer periods. Each time that they took control of Bunia — August 2002 and May 2003 — UPC forces conducted a manhunt for Lendu, Bira, Nande and non-Iturians whom they considered opponents: many persons were killed and many others disappeared or chose to leave Bunia. UPC soldiers also committed large-scale rape in the

different areas of the town, sometimes abusing girls as young as 12 (see sections A and C).

38. Both Hema and Lendu militias repeatedly attacked localities belonging to other ethnic groups, often bordering their own *collectivités*, for different reasons: in the Nyali territory of Banyari Kilo to have access to the gold mines; in Mahagi and Aru for the customs taxes; and, in other localities, just to punish them for having agreed to host the party considered to be the enemy (see section B).

39. All of the armed groups have recruited and trained children to turn them into combatants. According to some estimates, 40 per cent of each militia force could be composed of children under 18 years of age. Given the uncertain figures for the total strength of the armed groups, it is impossible to give accurate figures for children. Current estimates suggest 6,000 children in armed groups, with several thousand others possibly involved in local defence groups. Children have been used as combatants but also as labour in the illegal exploitation of natural resources. Girls have been forced into domestic labour and sexual slavery. Throughout the Ituri conflict, there have been a number of allegations that Uganda and Rwanda have been involved in aiding and abetting Ituri armed groups to recruit and train children (see section D).

40. Some 8,000 civilians lost their lives as a result of deliberate killing or indiscriminate use of force from January 2002 to December 2003. More than 600,000 have been forced to flee from their homes. The area bordering Uganda and North Kivu hosted thousands of extremely vulnerable refugees and internally displaced persons.

A. Ethnically targeted attacks

41. During attacks on localities occupied by the ethnic groups of the opposite side and often hosting a UPC battalion or a local Lendu militia group deployed for the "protection" of civilians, fighting between the armed groups would most often be intense and of short duration. Attackers often ended up killing civilians, destroying homes and social infrastructures, abducting women for sexual abuse and looting the entire village. Lendu militias and UPC justified their actions, stating that all civilians were part of the armed groups since most of them were given weapons for self-protection. The attacks described below illustrate some of the most serious incidents, but the list is not exhaustive. Several other attacks were orchestrated by both sides, with hundreds of civilian victims, for example in Mahagi, Komanda, Dungu, Ambé, Gety, Mitega and Fataki.

***Collectivité* of Walendu Bindi: mass killing and destruction of hundreds of localities**

42. From 9 February to 24 April 2002, UPDF based in Gety, together with Hema and Bira militia groups, carried out large-scale operations against the Lendu villages of the Boloma, Bukiringi, Zadhu, Baviba and Bamuko *groupements*, all located in the *collectivité* of Walendu Bindi, in the territory of Irumu. Mass killings continued for another two weeks after the visit on 4 April of the then Governor of Ituri, Jean-Pierre Lompondó Molondo, with Colonel Peter Karim, from UPDF, who was sent by Kampala to investigate abuses committed by UPDF soldiers. Both called upon UPDF to end the hostilities. A local non-governmental organization reported a total

of 2,867 civilians killed,²¹ and 77 localities completely destroyed, together with all social infrastructures, resulting in the displacement of 40,000 civilians. The *collectivité* of Walendu Bindi, located in the southern part of Ituri, had not been involved in the conflict until late 2001.²²

43. Early in 2002, UPDF was deployed in Gety, the main town of the *collectivité*, reportedly at the request of the Hema South families accusing the Lendu of allegiance with the Ugandan rebellion. The military operations were not carried out by the UPDF command based in Bunia, however, but by military who came directly from Uganda and who were under the command of Colonel Arocha, now appointed to Bundibujjo, in western Uganda bordering Ituri district.²³ The sector Commander Fred Seka Mwenge, based in Bunia, was reportedly not involved in the operation. The operations on Lendu villages were carried out by UPDF based in Gety together with Hema militia members from Bogoro, Kagoro, Boga, Mitego, Kyakurundu and Bukiringi and Bira militias from Talolo. One eyewitness from Gety named a certain Madilu as one of the UPDF commanders.

Mabanga: ethnic cleansing of a mining town

44. Mabanga, in the *collectivité* of Mambisa, territory of Djugu, was a multi-ethnic town because of its gold fields, which attracted non-Iturian gold traders and workers. On 28 August 2002, after an attack by Lendu militias, the local Hema/Gegere militia forced the non-Iturians to fight with them to repulse the attackers. Witnesses interviewed by MONUC stated that, when the reinforcements came from Iga Barrière, their Commander, T'Sirba Rene, stated that he had seen non-Iturians among the Lendu forces and gave the order to eliminate the non-Iturian population.

45. MONUC obtained a number of first-hand witness accounts of the attack. The father of one victim reported how his son was killed, his body mutilated and his head and arms brandished around the town. It appears that as many as 150 people may have been deliberately killed. The chief of operations, T'Sirba Rene, originally from Mabanga, was living in Iga Barrière.²⁴ UPDF had a military camp in Mabanga; the Ugandan army did not intervene to stop the killing of civilians but gave refuge to those who were able to reach the camp. Some 2,000 civilians, who sought refuge in the Ugandan camp, were escorted to Bunia the day after the event.

²¹ The most serious mass killings were the following: on 10 February 2002, attack on the localities of Tsarukaka, Nombe, Tsubina and Kagaba with 173 civilians killed; on 15 February 2002, attack and destruction of the localities of Kagaba, Rudjoko, Biro, Kapalayi and Kinyamubaya with 120 civilians killed; on 21 February 2002, attack on Bukiringi with 220 civilians killed; on 14 March 2002, attack on the locality of Sadji/Kaguma A with 146 civilians killed; on 29 March 2002, massacre of the population of Gety by UPDF based there with 109 civilians killed.

²² In January 2001, several attacks were carried out on localities of Walendu Bindi by APC forces together with UPDF when Lubanga was Minister of Defence, mostly to destroy the localities and their social infrastructures. One UPDF helicopter based in Bunia was used to bomb the localities. The *collectivité* had a calm period from February 2001 to February 2002.

²³ Colonel Arocha was Chief UPDF Sector Commander of Ituri from August 1999 to June 2000, when he was replaced by Colonel Charles Angina.

²⁴ T'Sirba Rene was condemned to death in 2002 by the Tribunal de Grande Instance of Bunia for the assassination of the Director of the Mabanga gold field, Lodju Niro.

Bunia: ethnically targeted massacres for the control of the capital city

46. Early in August 2002, the hostilities between RCD-ML and UPC that had begun in March 2002 with the arrival of Governor Jean-Pierre Lompondo reached the point of direct confrontation for the control of the town. Jean-Pierre Lompondo had been sent to Bunia by Mbusa Nyamwisi of RCD-ML as chief of military operations and Governor of Ituri, to thwart the UPC leader, Thomas Lubanga. The refusal by Mbusa of the nomination of Bosco by Lubanga as deputy chief of operations had created further tension. The fighting between the two forces ended with the withdrawal of RCD-ML from Bunia to Beni after UPDF and UPC on 9 August, shelled the residence of Governor Lompondo. UPC and its ally UPDF and the Ngiti/Lendu militias both killed civilians, many of them targeted only because of their ethnicity.

47. On 7 and 8 August, UPC militias and civilian vigilante groups under the command of Bosco roamed mostly the neighbourhoods of Mudzipela, Bigo I, II and III and Saio, killing those suspected of belonging to "opposing" ethnic groups. In Mudzipela, they completely destroyed all houses belonging to Bira, Lendu and Nande community members. Around 110 civilians, mostly Bira, Lendu and Nande were killed. According to several witnesses who testified to MONUC, UPC killed selected individuals according to a pre-established list. They also attacked Lendu civilians from Lipri market, located at 15 km from Bunia. The Lendu militias counter-attacked Mudzipela and killed dozens of Hema civilians as an act of revenge. UPC continued the killing of Bira, Lendu and Nande in Kolomani and the centre of Bunia until 10 August 2002.

48. While the fighting was going on for the control of Bunia town, Lendu militias attacked the farm of John Tibasima Ateenyi, the Hema Vice-President of RCD-ML, located in Lengabo, approximately 20 km from Bunia. According to Human Rights Watch, they killed 32 Hema workers and their families who were on the farm, mostly with machetes.²⁵

49. On 9 August, UPDF and UPC attacked Governor Lompondo's residence using heavy weapons. The day before, all ethnic groups of Bunia, including a large number of Lendu, had fled to the Governor's residence hoping that APC forces based there would protect them. Jean-Pierre Lompondo and APC troops fled on foot towards Beni, while UPC massacred the civilian population around the Governor's house, as well as near the main hospital in the Bigo neighbourhood and near the central prison. Around 80 persons were killed at the Governor's house alone. Several mass graves were discovered later by MONUC, including two near the Governor's house and others near the prison and the hospital. UPC and UPDF, taking advantage of the chaos in the town, also conducted large-scale looting operations. UPC closed all the roads out of Bunia erecting roadblocks and summarily executing several civilians who were trying to flee the town. On 9 August 2002, UPC took complete control of Bunia and established an ethnically based government with very few non-Hema members. From the first day of its

²⁵ See Human Rights Watch, *Ituri: "Covered in Blood": Ethnically Targeted Violence in North-eastern Democratic Republic of the Congo*, July 2003. Available from <http://www.hrw.org>. Path: Publications/by country/Democratic Republic of the Congo.

reign, UPC launched a manhunt in the town, looking for Lendu, Bira and non-Iturians.²⁶ The total number of victims of the fighting for the control of Bunia was never known exactly. However, taking into consideration the accounts of eyewitnesses, at least 300 persons lost their lives, killed mostly by UPC, but also by Lendu militias. The fighting also displaced 10,000 families, according to the humanitarian agencies present in Bunia. Most of the Nande community left Bunia for Beni in the following weeks. UPC extended its control in all directions, stabilizing its forces in Nyankunde, and taking the Mahagi-Aru area in the north.

Songolo: massacre of mostly women and children

50. Songolo, located in the *collectivité* of Walendu Bindi, hosted an important number of Ngiti from Nyankunde who were targeted and eventually driven out by the Chief of the *collectivité* of Andisoma, throughout 2001 and early 2002. In August 2002, UPC troops came to relieve UPDF in Nyankunde. The aim of this move was apparently to launch attacks on the bordering Ngiti localities. UPC reportedly requested the assistance of the Bira community in attacking the Ngiti.

51. On 31 August 2002, at 7 a.m., a group of some 500 UPC soldiers together with around 50 Bira attacked Songolo. According to a witness, most of the males were not in the village. The attackers used mortars and rockets before entering the village. After a short fight with Lendu forces, the attackers went into houses, reportedly guided by Bira civilians, to kill the inhabitants. Many civilians, mostly women, children and the elderly, were killed in their sleep. The attack lasted nine hours. According to witness statements collected by MONUC, the attackers looted the village and the health centre of Songolo and left with hundreds of cattle. It is difficult to estimate the number of victims killed. According to Human Rights Watch, around 140 persons were killed, mostly women and children.²⁷ Survivors who returned to Songolo after the attack to bury the bodies did a survey among the population and found that 787 people were missing. Up to now, it has not been possible to establish how many were killed and how many simply ran away. According to a Congolese non-governmental organization, UPC abducted 12 civilians.

Nyankunde: "ethnic cleansing" of Bira, Hema and Hema/Gegere groups

52. During and after an attack on Nyankunde and its neighbouring towns and villages carried out jointly by Ngiti, APC and Mai-Mai on 5 September 2002, more than 1,000 people may have been victims of deliberate killing because they belonged to the Hema, Hema/Gegere and Bira ethnic groups. Nyankunde and apparently many of the 45 localities making up the three *groupements* (Loy-Banigaga, Chini Ya Kilima/Sedzabo and Sidabo/Bagabela) of the *collectivité* of Andisoma suffered destruction, looting and massive displacement.

53. Before the devastating attack of 5 September 2002, Nyankunde, the main town of Andisoma, mostly populated by Bira, was a major centre because of its commercial activities and its well-equipped hospital, the Centre médical évangélique, which hosted several international staff and provided high-quality and specialized care in the region. According to a census done by the local administration between 2001 and 2002, around 21,000 people were living in the

²⁶ For specific killings, see section B.

²⁷ See Human Rights Watch, *Ituri: "Covered in Blood"* ...

collectivité, 14,000 of whom were in Nyankunde. Since September 2002, several thousand have been displaced to camps in North Kivu and the premises of the hospital, the Institut d'enseignement médical and the Institut supérieur des techniques médicales, as well as several other educational and religious institutions, have been looted and abandoned.

54. Tension had been high between the Ngiti population and the Bira and Hema of Nyankunde. Throughout 2001 and 2002, the Ngiti were targeted with acts of intimidation and other abuses. They were eventually forced out of Nyankunde. Ngiti attacks on Nyankunde and other Bira villages in the *collectivité* of Andisoma during the same period further fuelled hatred between the three ethnic groups and were followed by bloody reprisals, such as the alleged indiscriminate bombing by UPDF of Ngiti positions after the Ngiti attack on Nyankunde of January 2001. It is reported that the Chief of the *collectivité*, Dieudonné Bulamuzi, accused of being pro-Hema, boarded a UPDF gunship during those reprisal attacks. The attack of 5 September 2002 followed the bloody aggression by UPC forces, reportedly assisted by Bira elements, on 31 August 2002 on neighbouring Songolo, mostly populated by Ngiti (see paras. 50 and 51).

55. A few days before the attack of 5 September, a five-member high-level delegation from Nyankunde, composed of Chief Bulamuzi, the Medical Director of the Centre médical évangélique and others, had travelled to Bunia to alert MONUC about the risk of a bloodbath in Nyankunde. MONUC did not have the means or the mandate to take any preventive action at the time.

56. The attack was apparently launched from three different directions, Singo, Songolo and Atele. From 5 September to mid-month, Ngiti combatants — many of whom were former inhabitants of Nyankunde — systematically sought and killed Bira, Hema and Gegere individuals, mostly with machetes, spears and arrows. The combatants were wearing civilian clothes, appeared overexcited by drugs and were wearing vials and *fétiches* on their chest. MONUC obtained several accounts of mutilation of victims' bodies (notably the throat and the heart were removed) by Ngiti combatants. Apparently these parts of the bodies are used for *fétiches*.

57. The hospital of Nyankunde, the Centre médical évangélique, was not spared. Killings and looting were carried out in the hospital compound from the very first day of the attack. On 10 September, Colonel Kandro Ndekote, the Ngiti commander, led a search and arrest operation in the hospital. That operation resulted in the detention in inhumane conditions of some 100 people who were hospital staff or had sought refuge there. According to some sources, the number of people arrested at the hospital could be higher. It is alleged that many of the detainees were subsequently executed extrajudicially or disappeared after being forcibly taken to Bavi, located between Singo and Olongba, and other Ngiti bases. The fate of the others is unknown, but there are fears that they were executed extrajudicially.

58. From 80 survivors' statements gathered by MONUC, it appears that mainly Ngiti forces were responsible for the killings. APC committed widespread looting and extortion, but according to witness accounts intervened at least on a number of occasions to prevent killings or allow the evacuation of survivors. According to a high-ranking APC officer and other reliable sources, APC Commander Faustin Kakule negotiated and agreed on the details of the attack on Nyankunde with the Ngiti Commander, Colonel Kandro. There is no certain information about the terms of the agreement. However, Commander Faustin claimed to some hospital staff that

he had requested that the hospital not be attacked. APC Commander Bisima from Komanda reportedly visited Nyankunde, including the Centre médical évangélique, on 10 September, but left on the same day. APC Commander Hilaire is also reported to have been involved in the attack.

59. MONUC conducted separate interviews with more than 15 people who had collected corpses for burial in Nyankunde. The few burials, conducted very much in a hurry given the prevailing insecurity, were limited to some parts of Nyankunde and were not completed by 12 September, when hundreds of the inhabitants of Nyankunde who had sought refuge at the hospital were eventually allowed to leave the town. According to witness accounts, it appears that several hundred bodies were found lying in the streets and in the houses. Most of them appeared to be civilians and many of them had died of machete wounds. In most cases, no graves were dug and most of the bodies were thrown into latrines. In some cases, bodies were burned. Individuals from Ngiti villages, including Gety, Songolo and Aveba and wearing Red Cross aprons also carried out burial of bodies. Their leader was heard saying that they had to bury the bodies quickly so that nobody could claim that there had been "genocide" in Nyankunde. According to reports, the Ngiti Red Cross may have buried or burned hundreds of bodies.

60. MONUC has obtained some 800 names of victims of alleged deliberate killings or forced disappearance in Nyankunde and neighbouring villages. At the time of the attack on 5 September, Nyankunde was under the control of UPC forces, which had entered Nyankunde after the departure of UPDF troops in July 2002. According to consistent reports, the Ngiti attackers quickly overwhelmed UPC and the fighting in the streets did not last long. This reduced the number of civilians who might have been victims of stray bullets. Scores of civilians were also apparently abducted and forced to carry the loot to Ngiti villages, including Songolo, Singo, Bavi, Bolo, Gety, Kagaba and Atele. Their exact number is unknown. It appears that at least 100 of them were killed in Singo. More than 10 people from Nyankunde who had sought refuge in nearby Marabo allegedly disappeared after being captured on the orders of Colonel Kandro in the aftermath of the attack. Some 70 people were allegedly killed in villages of the *groupement* of Musedzo and in Mambesu (*groupement* of Mayarabu), both in the *collectivité* of Mobala, which were attacked on the same days.

61. To date, none of those alleged to be responsible for the mass killings in the *collectivité* of Andisoma in September 2002 has been brought to justice. After September 2002, APC Commander Faustin was reportedly arrested in Beni and detained by APC for letting his troops desert. He was subsequently released and he is reportedly still a member of APC. The Ngiti Colonel Kandro was allegedly killed during the sharing of the loot that followed the attack on Nyankunde. However, other commanders such as Commander Matata are reportedly still leading Ngiti militias in Irumu.

Bedu-Ezekele: scorched earth operation in 24 villages

62. Bedu-Ezekele, a Lendu *groupement*, located in the *collectivité* of Walendu Tatsi, was attacked several times from January 2001 to March 2003. Several persons were killed and all of its 24 localities were destroyed at each attack. Zumbe, well known as one of the headquarters of the Lendu militia, is part of this *collectivité*, which may explain the repetition and intensity of the attacks. The attackers were

reportedly UPDF forces under the command of Muzora, together with Hema militias from Bogoro, Mandro, Tchomia, Kasenyi and Bunia under the command of Chief Kawa.

63. In 2002 and 2003, the *groupement* experienced a total of 11 attacks with 445 civilian victims of killing, according to a Lendu teacher who took notes of each event. The most serious attacks occurred on 15 and 16 October 2002, when Hema militias, together with UPDF from Bogoro, attacked Zumbe and stayed there for 48 hours. From Zumbe, the attackers burned all the surrounding villages, killed around 125 civilians and planted several anti-personnel mines.

Bogoro: mass killing of civilians and destruction of the entire village

64. Bogoro, a Hema village, was a strategic place for UPC who had a military camp in the middle of the town. Bogoro is located on the Bunia-Kasenyi main road. The presence of UPC therefore prevented the Lendu communities of Walendu Bindi from using the road to reach Bunia. The Lendu (FNI) Chief of Staff at the time, Mathieu Ngudjolo, who admitted to having organized the attack on Bogoro and Mandro, told MONUC human rights investigators that his forces carried out the military operations in order to dislocate UPC military forces, which had been shelling the Lendu villages around Bogoro for several months.²⁸ According to MONUC investigations, however, the Lendu attack was not confined to military targets but also appeared to be a reprisal operation against the Hema civilian population.

65. On 24 February 2003, Bogoro was attacked by Lendu and Ngiti militias at 5.30 a.m. The aggressors came from four directions: Kasenyi, Gety, Nyankunde and Mission. They were reportedly wearing green military combat clothes and civilian clothes, and used machetes, spears and arrows but also heavy weapons, such as mortars, rocket-propelled grenades, light machine guns and rocket launchers. UPC soldiers had their camp around the school and called the civilian population to seek refuge inside it. Some people were able to reach the camp, others were killed while fleeing. When UPC forces ran out of ammunition, they opened a corridor through which they fled, together with some civilians; others left in the direction of Kasenyi. The Lendu/Ngiti militias reportedly continued killing and looting after UPC abandoned the village. According to the testimony of 100 survivors, around 260 persons were killed and another 70 are missing. Among the victims, 173 were under the age of 18.

66. MONUC human rights investigators who travelled to Bogoro on 26 March 2003 saw that most of the buildings and houses on the main road had been destroyed or burned. They also had a discussion with the Lendu chief of operations still in control of the town, Commander Dark from FNI, who refused to grant permission for a thorough visit of Bogoro including the place where the killings allegedly occurred. According to the Ugandan officials, the reason for his refusal was the existence of unburied bodies in the vicinity of the local school. Commander Dark

²⁸ This information was confirmed later, during a visit to Zumbe on 23 December 2003, by the inhabitants of Zumbe and Zekele, two Lendu localities that were attacked and completely destroyed by Hema militia from Bogoro.

informed the team that he was under the order of Commander Germain Katanga, the officer in charge of military operations in the south of Bunia.²⁹

67. According to child soldiers who took part in the operation on the UPC side, the aggressors were Lendu North, Ngiti from the south, APC and some Ugandan soldiers. Two of the children claimed to have heard Ugandan Swahili through a radio communication and to have witnessed the killing of Ugandan military. Other victims reported having heard soldiers speaking Portuguese. These elements were thought by some to be FAC special forces who had been trained in Angola.

Lipri, Bambu, Kobu: operation *Chikana Namukono*

68. On 13 January 2003, around two UPC battalions coming from Mongbwalu arrived in Nyangaraye at around 5.00 a.m. They forced the population out of their homes and forced 15 to go into the chapel. They reportedly chopped all of them to death with machetes and burned their bodies. Eyewitnesses were able to identify two victims, one of them a child. From Nyangaraye, UPC began carrying out its military operation called *Chikana Namukono*³⁰ under the command of Salumu Mulenda. UPC first took control of Lipri and Kobu on 18 February 2003.

69. From 18 February to 3 March 2003, UPC militias carried out a large-scale military operation against the villages located between Lipri and Nyangaraye. The first attack lasted until 23 February; 15 villages were destroyed and most of their inhabitants killed.³¹ Witnesses reported that, on 24 February, the UPC Commander, Salumu Mulenda, sent a written message — a copy of which was provided to MONUC — to Lendu notables in the area and Lendu militia leaders, including traditional Chief Djatsi, and the militia commander Kabuli, inviting them to a pacification meeting. On 25 February when the Lendu leaders, accompanied by 50 persons, came to attend the meeting in Bule, they were all arrested and brought to Kobu during the night. The prisoners were then taken behind the UPC camp in Kobu with their hands tied and were attacked with machetes, knives and wooden sticks. Only two persons, one of them met by MONUC, were able to run away; all of the others were confirmed killed. According to the persons who buried the bodies, there were 47 victims. They reportedly found another 53 corpses in the bush around Kobu and buried them in two other mass graves. In the following days, UPC continued its manhunt in the Jicho forest. Another 92 persons were reportedly killed in the forest, most of them dismembered with machetes. During the last days of February, UPC attacked another eight villages³² using the same methods of killing civilians, looting and burning all the houses. During this operation, Bambu, the headquarters of the Kilo Moto gold mining company, was attacked several times: all the offices of the company, the main hospital of the region, all religious structures, the orphanage and the schools were looted and all electronic devices, archives and medical equipment destroyed.

70. MONUC human rights investigators were able to visit Lipri, Bambu and Kobu on 3 April 2003. The team saw several villages on the way that were burned and deserted, visited the place where 47 persons were killed in Kobu and interviewed

²⁹ Commandant Germain is the current Chief of Staff of FNI/FRPI.

³⁰ In Lingala this means "to take with hands".

³¹ Lipri, Ndré Chupka, Dhepka, Tsili, Ndjaza, Mbidjo, Ngbachulu, Kpaki, Bukpa, Djuba, Bemu, Nduy, Ngaru, Ndalul and Thali.

³² Jicho, Buli, Ngabuli, Pili, Athe, Bakpa, Lambi and Widde.

around 90 victims of abuse or eyewitnesses of killings. The interviewees gave the team the names of 250 victims, but more victims were identified by another investigation team in May 2003, and still more during the investigations in the Beni area in November 2003. Operation *Chikana Namukono* resulted in the killing of at least 350 persons and the complete destruction of 26 localities.³³ Around 60,000 civilians were forced to flee to the relative safety of the surrounding bush, and the number of those who died of hunger and sickness remains unknown.

Mandro: attack and mass killing in a stronghold of UPC

71. Mandro, located in the *collectivité* of Bahema Banywagi, is the birthplace of Chief Kawa. The village was known from the first period of the conflict as a stronghold of UPC and was the location of a military and training camp for newly recruited children. The Lendu population suspected several attacks on their villages as coming from Mandro. According to corroborating testimonies, Mandro was attacked several times by Lendu since the beginning of 2003 but the UPC forces were able to push them back and hold the town.

72. On 4 March 2003, early in the morning, the Lendu and Ngiti attack on UPC military positions in Mandro lasted for no more than a few hours. The armed groups succeeded in overrunning Mandro and attacked civilians, killing some 168 persons according to the testimonies received by MONUC in Mandro and Bunia. According to the Chief of the *groupement*, the attackers kidnapped several young men and girls, who were forced to carry the looted goods. Since the attack did not last long, few houses were looted but the UPC military camp was completely destroyed. The aggressors were reportedly Lendu militias from Zumbe and Loga. Interviewed later in Bunia, the former FNI Chief of Staff, Mathieu Ngudjolo, acknowledged having organized the attack with the Ngiti in order to stop UPC operations against Lendu villages. According to him, each person in Mandro was a combatant in possession of a weapon.

Bunia: chasing of UPC by UPDF and Lendu militias

73. On 6 March 2003, reportedly responding to an attack by UPC on their forces based in Ndele, UPDF drove UPC out of Bunia and took control of the town with the assistance of Lendu armed groups.³⁴ On 6 and 7 March 2003, during and after fighting between UPC and UPDF in Bunia, several civilians were killed, houses and shops were looted and civilians were wounded by gunshots. According to the inhabitants of Bunia, fighting between UPC and UPDF began around 6 a.m. and lasted until the end of the same day. Stray bullets reportedly killed several civilians; others had their houses shelled. There were also selected killings of Hema civilians who were known to have financed UPC and selected looting of shops belonging to Hema businessmen in the market area of Bunia.

³³ According to a reliable local non-governmental organization, the number of civilians killed during the operation is much higher.

³⁴ On 6 January 2003, UPC signed a military alliance with RCD-Goma. In the following weeks, RCD-Goma started airlifting troops and weapons to UPC territory. On 23 January, UPC formally requested Uganda to withdraw from Ituri. Chief Kawa, who had already defected from UPC in November 2002 and moved to Uganda, expressed a desire for Uganda to remain in Ituri. He became the new ally of Uganda and he was supported by Uganda as leader of the newly created FIPI.

74. The local Red Cross buried a total of 54 soldiers and 17 civilians but informed MONUC that Ugandan forces had buried their nationals. Local non-governmental organizations carried out investigations into the events on 12 March 2003 and compiled a list of 52 civilians killed, 30 others injured, 15 houses completely destroyed, 60 others including offices of the non-governmental organizations Coopi, Aciar, J-plus, Hellenique and Cemif were completely looted. Eyewitnesses accused UPDF of being directly involved in the looting of the town. The situation was brought under control by UPDF on 8 March. Hema community members who had fled started to come back. The local Red Cross buried the bodies from 6 to 12 March 2003.

Drodro: killing of hundreds of civilians

75. Drodro, well known for its parish and its well built social infrastructure, is part of the territory of Djugu, *collectivité* of Bahema Nord, approximately 80 km from Bunia. After its forced withdrawal from Bunia, UPC and its leader Thomas Lubanga relocated first in Bule, then in Blukwa and Drodro. On 3 April 2003, because of this presence and also as part of a revenge operation, Drodro parish (located in Duma village) and the surrounding villages of Dhassa (Largu), Nyali, Dzathi, Kiza, Ngazba, Jissa, Kpatiz, Koli, Lera, Ndjala and Kpaluma were attacked between 5.45 a.m. and 8 a.m. by Lendu militias. The attackers killed both military and civilians using AK-47 and Kalashnikov rifles but also machetes, spears and arrows. A team composed of personnel of MONUC and personnel of the Office of the United Nations High Commissioner for Human Rights travelled to the affected areas, and received testimonies of survivors, eyewitnesses, family members and church and administrative authorities, who reported the killing of 408 civilians, the serious injury of 80 others, 48 of them still in the local hospital at the time of the investigation, and the destruction by fire of 150 houses and shops. Two forensic experts who accompanied MONUC and examined one of the several mass graves in Largu confirmed that killings had happened. The team saw other mass graves in Largu, Nyali and Jissa.

76. The attackers were reportedly Lendu combatants from the surrounding Lendu villages of Andu, Jukr, Masumbuko, Tsoro, Ango and Asso. Some eyewitnesses reported that they saw also soldiers wearing green uniforms and camouflage uniforms. According to a Congolese human rights organization, the presence of Lubanga and Edison Muzora, a former UPDF commander who had joined the rebellion, during the second half of March 2003 in Drodro would explain the alliance between Lendu militias and UPDF. This version was rejected by UPDF, who stated that at that date UPDF troops were in Bule, 30 km from Drodro, and was not responsible for the Drodro killings.

Bunia, return in strength of UPC and mass flight of the population

77. On 6 May 2003, under pressure from the international community, the last UPDF soldier left Bunia, after a long presence of four and a half years.³⁵ Approximately 20,000 civilians, mostly Hema and a few from other ethnic groups, followed them towards Uganda fearing an attack by Lendu combatants. From the first day of their departure, the city was the scene of fierce fights between UPC and the Lendu militias, which lasted until MONUC was able to broker a ceasefire

³⁵ UPDF entered Bunia in November 1998.

agreement, on 17 May. Fighting in various neighbourhoods caused hundreds of civilian casualties, systematic looting of buildings and destruction by fire of around 1,000 dwellings. Following the ceasefire, the two parties agreed to withdraw their forces to their respective military headquarters in the town. This situation lasted until 27 May, when UPC drove the Lendu combatants out of Bunia. Thereafter, human rights abuses continued to be committed on a smaller scale.

78. Two investigations were carried out into the events by two different MONUC teams, one in Bunia at the beginning of June 2003 and the second in the camps of internally displaced persons in the Beni area in November 2003.³⁶ The team interviewed 311 eyewitnesses and family members of victims. A total of 563 cases of deliberate killings have been reported to MONUC, 260 of them by UPC and 303 by Lendu combatants. Other victims were killed by non-identified perpetrators. The Lendu combatants reportedly committed several ethnically motivated killings of Hema and other ethnic groups somehow associated with them, while UPC apparently killed at random, although possibly targeting non-natives and some professions like police officers and taxi drivers. According to a source, UPC killed several dozen Lendu civilians in Simbilyabo and buried them secretly.

79. Particularly heavy casualties were reported in the Mudzipela area of Bunia, considered to be a safe heaven for Hema civilians, and the Lumumba area, which is the city centre. The killing of around 16 Hema civilians and two Hema priests on 10 May 2003 by the Lendu militia in the compound of Nyakasanza church is an example of ethnically motivated killing. According to corroborating testimonies of Lendu and Hema survivors of the massacre, some hundreds of Lendu combatants arrived at 10 a.m. and penetrated the compound after a short fight with the national police. Both Hema and Lendu internally displaced persons had sought refuge in the church and were housed in two different halls. After killing two Hema priests in their rooms, the combatants penetrated the hall containing Hema civilians and one of them massacred 12 adults and 4 children. The combatants visited the room containing the Lendu but only took their money. The reason for this particular massacre was apparently to take revenge for the killing of the Ngiti priest Father Boniface Bwanalongo by UPC in November 2002 in Mongbwalu. Furthermore, Father Aimé, one of the Hema priests killed, was publicly known to be a UPC supporter and had been seen several times driving UPC officials in the church vehicle.

80. The team received reports of 18 cases of rape, some of the victims being as young as 11, committed by UPC soldiers, after the ceasefire was signed. Most of the victims were abducted while they were out to look for food or water, and were taken to military places or private houses for sexual abuse.

81. Looting started in the town as soon as the Ugandan forces left, carried out first by Lendu combatants then by UPC elements. They were later joined by civilians who profited from the situation, resulting in systematic looting of private houses and business premises with no distinction of ethnic affiliation. The market place was completely devastated. During visits to the neighbourhoods, in addition to the looted dwellings, the MONUC team saw a considerable number of shops and houses destroyed by fire. Some thousand houses were set on fire.

³⁶ Investigations were carried out in camps in Erengeti, Oicha, Butembo and Beni.

82. The MONUC team received reports of numerous cases of threats or intimidation committed by UPC elements once they had total control of the town. This is one of the main reasons behind the reported fleeing of around 200,000 people from Bunia and the surrounding villages from 8 to 14 May 2003. The inhabitants left Bunia mainly using two roads. One group took the road to Beni via Komanda and another took the route Medu-Bole-Beni, passing through the forest. One group of Lendu fled to Gety and another to Zumbe. According to humanitarian agencies, around 74,000 civilians reached the Beni area, passing through Komanda, at the beginning of June 2003. The total of the new internally displaced persons as a result of the May events in Bunia was reportedly 180,000 persons.

83. On their way, the group that took the road towards Komanda was attacked in Chayi by UPC, all their belongings were looted and an unknown number of civilians were killed. The group that took the road towards Medu and Bole was stopped by Ngiti combatants who killed the Hema civilians who were part of the group. A Nande survivor met by MONUC reported the summary execution at Longba on the basis of ethnic origin, of 13 civilians, mostly Hema and those thought to be Hema, because of their facial type, by the combatants and their Commander, Matata Banaloki Justin, known as Cobra. The same witness added that the bodies of the victims were mutilated and certain organs extracted and eaten by the combatants. An important number of Hema were reportedly killed also near Olongbo and Masini.

Tchomia: mass killings and abduction of civilians in two different attacks

84. Tchomia used to be a big trading centre of around 12,000 persons, located in the *collectivité* of Bahema Banywagi in the territory of Djugu on the shore of Lake Albert. The locality was also host to an important PUSIC military camp.³⁷ According to the Hema authorities, the area around Kasenyi and Tchomia, both located by Lake Albert, became subject to insecurity after the capture of Bogoro by Lendu militia at the end of February 2003.

85. On 31 May 2003, Tchomia was attacked around 5 a.m. and the operation lasted until 1 p.m. The attackers, allegedly from Zumbe and Loga, approached the town from three directions and attacked first the military camp and then the civilian population using rocket-propelled grenades, rifles, mortars, spears, machetes and axes. They spoke Kiswahili, Kilendu and Lingala. The attackers openly asked victims about their ethnic origin, which suggests that their objective was to kill only men from the Hema ethnic group. The majority of the victims identified the attackers as being Lendu combatants, with some APC and FAC soldiers. The MONUC human rights investigators who travelled to Uganda to interview witnesses drew up a list of 96 victims, mostly of summary executions, including 30 patients who were killed in the hospital beds and 6 victims of abduction. The assistant to the Administrator of the territory of Kasenyi, who came to Tchomia with Chief Kawa on the day of the attack, stated that they buried a total of 250 corpses. Chief Kisembo of Kasenyi stated that a militiaman called Naydo affiliated with the Lendu militia of Zumbe carried out the operation.

86. According to corroborating information received by MONUC later, in Beni and Kinshasa, after UPDF left Bunia they based themselves in Tchomia with the

³⁷ PUSIC was formed only in October/November 2002. The militia was previously under UPC.

intention of organizing a new attack on Zumbe together with PUSIC. UPDF was still reportedly in Tchomia on the day of the attack, contrary to their previous statement according to which they left around 20 May, and a large number of UPDF soldiers were reportedly killed as a result of the attack.

87. On 15 July 2003, Tchomia was attacked for the second time around 5 a.m. by the same attackers, coming from Zumbe. The attackers killed some 11 civilians, since the town was almost emptied after the first attack.

Katoto: killing of civilians during several attacks

88. Katoto, a Hema village, is located some 25 km north of Bunia, in the *collectivité* of Bahema Nord, in the territory of Djugu. The village suffered from two severe Lendu attacks in June 2003. On 7 June, 104 people were killed, according to local authorities and eyewitnesses. On 20 June, a new attack reportedly left 32 more people killed and an undetermined number of displaced people. It appears that Katoto had a population of 17,000 before the attacks and was afterwards reduced to around 7,000. The attacks came from FNI militias led by commanders Ngakpa, Nyanya, Ngerey, Kame and Lonu, among others, principally from the locality of Loga, some 10 km north-west of Katoto.

Kasenyi: mass killing and abduction of civilians

89. Kasenyi, a fishing town of around 8,000 inhabitants according to the traditional chief of the place, located on the shores of Lake Albert in the *collectivité* of Bahema Sud, in the territory of Irumu, was the site of an important PUSIC military camp. The town was attacked twice, on 11 June and 23 July 2003, by Ngiti combatants seeking to dislodge the PUSIC soldiers there.

90. On 11 June 2003, Kasenyi was attacked around 6 a.m. by Ngiti militias, reportedly together with some APC and FAC elements. The attackers first dislodged PUSIC forces and subsequently attacked the civilians in the town. MONUC received testimonies on the killing of more than 80 civilians and the abduction of 30 others. A victim, who was abducted and taken to Zumbe, reported that the chief of the operations was called Mumbere, a Lendu who had taken a Nande name. On the road to Zumbe, the victim witnessed the execution by machete of six persons because they were not able to continue walking. The victim was kept in Zumbe for one week. He later moved with two Alur hostages to Beni, accompanied by 200 persons, both Lendu militia and APC soldiers. According to the witness, the journey from Zumbe to Beni had been organized with the aim of bringing ammunition given by RCD-ML. The father of the two Alur hostages came to Beni to take his children away together with the witness and brought them to Ntoroko, Uganda. On 23 July 2003, Kasenyi was attacked for the second time by Lendu combatants. MONUC received testimonies on the killing of 16 civilians and the abduction of 4 others.

Fataki: killing and abduction of civilians in two attacks

91. Fataki, the administrative centre of Djugu territory, was inhabited by around 16,000 persons of mostly Hema origin before the conflict. Fataki was the target of two serious attacks during July 2003, the first on 19 July and the second on 31 July. The attack of 19 July resulted in the killing of 51 civilians, the abduction of 50 others, the displacement of hundreds more and the destruction of many buildings, including the orphanage, two convents, the hospital and the school buildings. The

attack of 31 July was more deadly: around 71 people were identified as having been killed, including seven survivors of the first attack who were in the hospital.³⁸ As a result of the two attacks, around 10,000 civilians fled the area.

92. The attackers were identified by the survivors as being Lendu combatants alone, in the first attack, and Lendu combatants with FAPC members in the second one. After the second attack, the Lendu militia stayed in the town for a while and killed a few survivors who came to look for their belongings. The combatants and FAPC reportedly continued to abduct civilians during August 2003.

Kachele: mass killing of civilians

93. Kachele is a small Hema village located in the *collectivité* of Bahema Badjere, in the territory of Djugu. On 6 October 2003, between 5 and 10 a.m., Kachele and the surrounding villages of Lôkô, Bû, Luguba and Lutsiko were attacked by Lendu militias from the nearby villages of Laudju and Petro. A total of 65 civilians were killed, 42 of them children, and another 26 injured.

94. A MONUC investigation team arrived at the scene of the incident the day it occurred to verify facts, gather evidence and comfort and assist the population. The following day, a new mission, including human rights observers, continued the inquiry, drew up lists of victims, gathered new evidence, interviewed survivors and visited a number of mass graves. Immediately after the attack, the Ituri Brigade was deployed to Bule and has been conducting several foot patrols in the area from which the attackers allegedly came. They have already found evidence of the existence of armed elements and weapons; they also found traces of the withdrawal from Kachele to the Petro area, which confirms the origin of the attack.

B. Other mass killings

95. Both Hema and Lendu combatants attacked territories belonging to other ethnic communities for different reasons: in some cases to punish them for having hosted enemy combatants, in others, because they took one side or the other in the conflict. Some towns, such as Mongbwalu, Mahagi and Aru, were attacked for control of their natural or financial resources. Regardless of the reasons for the attack, both Lendu and Hema militia parties committed similar types of exactions: mass killing of civilians, destruction of social infrastructures, looting of goods, abduction of women for sexual slavery and forced labour.

96. The only attack that can be considered different from the rest is the one named *Opération effacer le tableau* carried out by MLC and RCD-N forces with the direct assistance of UPC in the area of Mambasa (see paras. 105 ff. below).

Walu: killing of civilians, destruction of social infrastructure

97. On 11 May 2002, the village of Walu, located in the *collectivité* of Babelebe in the territory of Irumu, was attacked by Hema militias from 5 a.m. to 1 p.m. The attackers completely burned social infrastructures, including two schools and three health centres. They killed civilians who were not able to flee. Once the attack was

³⁸ The real number of deaths may be higher but, owing to the displacement caused by the attack, the investigators were able to reach only some of the survivors.

over, the population came out of hiding to bury the bodies. One of the eyewitnesses, who was present at the burials, reported having counted 42 bodies, including that of the Chief of the village. The village was attacked a second time a few days later by the same militia, who killed four more civilians. The militia reportedly came from Mazangina, Kabarole and Sota and was under the command of Kisembo, the Chief of Kabarole.

Mongbwalu: a town to conquer for its natural resources

98. Mongbwalu, an important gold mining centre, was the second most populated town in Ituri after Bunia, with around 80,000 inhabitants before the conflict. Though located in the Nyali *collectivité* of Banyari Kilo, the majority of its inhabitants were of Lendu origin. Lendu moved to Mongbwalu to work for the Kilo Moto gold mining company as labourers beginning in the 1980s. The Lendu families were concentrated on the outskirts of the town, in the Camp Sayo area, where the workers compounds were located, while the Hema were living in the *cité* (town centre). The town changed hands frequently in a series of attacks and counter-attacks. During the attack of June 2002 by Hema militia and some bribed APC elements, RCD-ML was still in control of the town.

99. On 11 June 2002, Lendu workers left the workers camp and sought safety on the hill where an armed camp of Lendu was located, as they had been informed that "something" would happen. The same day, the Chief of the *cité*, Taga Mpigwa Atenyi, a Hema, reportedly made a speech in which he stated: "tomorrow we'll have our coffee in the Lendu area of the town."

100. On 12 June 2002, the Lendu quarters of Mongbwalu were attacked by APC soldiers based there, together with Hema inhabitants of the town. APC had been bribed by rich Hema with the aim of emptying Mongbwalu of its Lendu population. The attack lasted from 3 a.m. to 7 a.m. The attackers killed an unknown number of Lendu civilians, threw them into the roadside ditches and set fire to Lendu homes. The chief of the Hema militia was Bakambu, called *le maître* because he had been a teacher in the nearby Bambu mines. Towards the end of the attack, the Lendu combatants arrived from their encampment. They destroyed Hema homes and killed approximately 100 Hema civilians in an act of revenge. The majority of the Hema had enough time to flee to hide in the APC camp and so were saved. The Governor of the time, Jean-Pierre Lompondo, sent a new APC commander, Papi Yani, to replace his bribed former one, Commander Alemi. Meanwhile, the notables of the Nyali community, the traditional rulers of the *collectivité*, went to see the Lendu combatants to propose a peace plan. The Lendu accepted their proposal on condition that the Hema population leave Mongbwalu for Watsa and Ariwara. The Hema left and the Nyali population stayed with APC and Lendu civilians and militia members. This first Hema operation to recover Mongbwalu and its gold mines was reportedly financed by Lombe, who had a gold board in Bunia, and by Mandefu, Kazana and Labomba, all businessmen. Mongbwalu was attacked again in August 2002 by UPC forces, but they were pushed back by Lendu combatants and APC. However, UPC was determined to gain control of the town and went to look for stronger allies such as MLC, present in the Watsa area.

101. On 8 November 2002, UPC began its operation by shelling Mongbwalu with heavy weapons. An eyewitness met by MONUC went to the Lendu camp to seek protection at that time. While there, the witness saw a wounded Lendu combatant

returning from Watsa who said that UPC was advancing under the command of Bosco. Lendu combatants were able to repulse this first attack and succeeded in capturing a young UPC militia boy. According to the boy, UPC had prepared a big operation after receiving assurance of MLC assistance to take Mongbwalu and to make it the headquarters of Lubanga. From 9 to 17 November 2002, APC went to fight on the road to Watsa to stop the advance of MLC forces.

102. On 20 November 2002, UPC and MLC jointly attacked Mongbwalu, using heavy mortars and other explosive devices. The fighting lasted for two days and resulted in the killing of around 200 civilians and the destruction of infrastructures. UPC took control of the town on 24 November 2002. According to Human Rights Watch, an unknown number of civilians, who tried to hide in a church called *Mungu Samaki* located in Sayo, were followed by UPC and MLC soldiers.³⁹ The UPC soldiers found them in the church and slaughtered them. Other civilians were captured and imprisoned in a military camp, where they were later killed. During its stay, UPC tried to exploit the gold mines. They called on the Lendu to return because they had the expertise in gold digging. Since the Lendu refused to go back, they forced the remaining Nyali population and the Hema who went back to work for them. Mongbwalu was then occupied by Lendu militias of FNI, when UPC lost the backing of Uganda in March 2003.

Nizi: mass killing of civilians

103. Nizi, located in the *collectivité* of Mambisa in the territory of Djugu, was a wealthy mining village with 20,000 inhabitants before the conflict. On 11 October 2002, Lendu combatants from Bambu and Mabanga attacked Nizi. UPC had a military camp in Nizi and the Lendu were accusing the inhabitants of Mambisa of being pro-Hema. According to a local non-governmental organization, a total of 320 bodies were buried. The persons who buried them were able to identify 69 of them.

104. The village was attacked again on 20 July 2003 around 10 a.m. by Lendu combatants of FNI from Bambu. The attackers killed 22 civilians and abducted 15 others. The number of victims was limited, owing to the arrival of the Multinational Force, which was able to stop the aggression and arrest four Lendu combatants. On 23 August, Nizi was attacked again by combatants from Zanzi mountain, who abducted 12 persons and killed 2 of them on their way to their military camp of Mbao.

Mambasa: *Opération effacer le tableau*

105. Mambasa is a medium-sized town on the road to Beni, located in the territory of Mambasa, inhabited by approximately 25,000 people. As Mambasa was not affected by the conflict raging in the territories of Djugu and Irumu, its inhabitants had maintained a fairly decent standard of living. Thousands of internally displaced persons from Ituri had moved to Mambasa, which was then considered safer than the rest of the Ituri district.

106. On 12 October 2002, the forces of MLC and RCD-N, with the assistance of UPC, attacked the town for the first time. The aim of the operation, called *Opération effacer le tableau*⁴⁰ was apparently the control of the whole RCD-ML

³⁹ See Human Rights Watch, *Ituri: "Covered in Blood"* ...

⁴⁰ Operation "Clean the blackboard"

area, notably the Beni airport and the economically active area of Beni-Butembo. With the Mambasa attack, the region witnessed a new scale of violence characterized by a premeditated operation and the use of looting, rape and summary execution as tools of warfare.

107. The MLC and RCD-N forces remained in Mambasa, after taking it for the first time, from 12 to 29 October 2002, after which the RCD-ML forces were able to push them out. They were able to retake the town again on 27 November 2002 and stayed until 5 February 2003; a month later, on 30 December 2002, a ceasefire agreement was brokered by MONUC in Gbadolite.

108. During those two periods, the MLC and RCD-N forces, although under different command, committed serious human rights abuses such as summary executions, systematic rape, systematic looting and acts of cannibalism. After Mambasa, similar abuses were also systematically carried out in the villages south of the town and between Komanda and Eringeti, with the involvement of UPC. The number of rape cases — mainly young girls or women between 12 and 25 years old — also rose to an alarming level.

109. MONUC interviewed a total of 502 eyewitnesses and family members of victims from 3 January to 20 January 2003; they reported the killing of 173 civilians, both adults and children, in Mambasa, Komanda and on the two roads to Beni. The reported cases included 12 incidents of cannibalism. Most of the victims from Mambasa and neighbouring areas were reportedly killed by MLC or RCD-N soldiers, whereas the majority of victims from Komanda were reportedly killed by UPC elements. The incidents targeted mainly the Nande population to which Mbusa Nyamwisi, President of RCD-ML, belongs, and later also Pygmy populations, who were accused of assisting APC.

110. The first operation, which lasted from 12 to 29 October 2002, was carried out under the MLC command of Colonel Freddy Ngalimu, alias Grand Mopao. The second operation was carried out under the MLC command of Colonel Widdy Ramses Masamba, alias *Roi des imbeciles*,⁴¹ and lasted from 27 November 2002 to the end of January 2003, when the last MLC elements left Mambasa. Both commanders were under the command of General Constant Ndimba, located in Isiro.⁴² General Ndimba reported directly to the MLC Chief of Staff, General Amuli. He reportedly took the order from General Amuli to replace Freddy Ngalimu with Colonel Ramses. According to an MLC informer, Colonel Ramses is very close to General Amuli, a Hema from Ituri.

111. Just after the preliminary findings were made public by MONUC, the MLC authorities agreed to conduct an inquiry into the events. The report of the team was the basis for the trial of 27 suspects from the MLC forces. The trial of the 27 individuals accused by MLC of involvement in the atrocities in and around Mambasa began on 18 February and lasted until 25 February. The United Nations

⁴¹ Widdy Ramses Masamba was appointed in November 2003 as the chief of the Kindu-based seventh military region.

⁴² Several sources reportedly stated that General Ndimba's nickname was *effacer le tableau* and they reported that he was part of a group known as *effacer le tableau* established in 2001 during the existence of FLC. The battalion called *effacer le tableau* was well known for its tough personnel and the way it behaved in war time. After the break-up of FLC six months later, the battalion reportedly remained in Isiro, and some of its companies were sent on tough missions like the invasion of territories lost in Mambasa.

High Commissioner for Human Rights stated clearly that the trial was both illegal and illegitimate.

112. Beyond the constitutional issue of its legitimacy, four additional issues about this trial need to be pointed out. First, the admission as evidence of self-incriminating statements made by defendants held incommunicado during police or military questioning. Second, the obvious disparity between the charges and the sentences handed down. For instance, the charge of rape carried a maximum prison sentence of 13 months. The charge for deserting the armed forces, which routinely is punishable by death, most surprisingly carried 39 months in this "court martial". Third, no one was charged with any of the horrendous crimes against humanity and war crimes, such as murder, group rape and cannibalism, referred to in the MONUC report on the events in Mambasa (see S/2003/674). Fourth and finally, since the sentencing, a wave of arrests of defence witnesses who had testified on behalf of the accused has begun.

Collectivité of Banyari Kilo: constant insecurity and summary executions

113. The *collectivité* of Banyari Kilo, in Djugu territory, has been changing hands between Hema and Lendu militias because of the attraction of its Kilo gold mines. UPC entered the area around January 2002 and stayed there until March 2003. While there, UPC organized several attacks on Lendu localities. When they were chased away by UPDF and Lendu militias in March 2003, Nyali inhabitants, considered by Lendu as having hosted UPC, were harassed and killed.

114. On 15, 17 and 23 May 2003, Lendu combatants from Nyangaraye and Ngotochu attacked the localities of Batata, Kilo, Itende and Lisey. They killed around 50 civilians and abducted 28 girls. All the villages on the routes Sindoni-Kilo and Kilo-Mongbwalu were destroyed and deserted by their inhabitants after several Lendu militia attacks. At least half of the population of Banyari Kilo, around 40,000 according to the Chief of the *collectivité*, went into hiding in the forest of Madombo and Kirongazi during May and June 2003. Five health centres located in Kilo, Itende, Kabakaba, Kilo-Etat and Kilo-Mission and one maternity centre in Kilo-Mission were forced to close because they were almost completely looted.

Nioka: mass killing and rape of civilians, serious destruction of social infrastructure

115. Nioka, a small town of 20,000 persons of mostly Alur origin, is located in the *collectivité* of Pandoro, in the territory of Mahagi. Nioka was first occupied by UPC, then by FAPC under Commander Jérôme Kakwavu following the split with the former in September 2002. According to a witness, the Alur community had been paying FAPC to protect them by giving them livestock. However, most of the FAPC soldiers left on 28 May 2003. A certain Dilo from Nioka decided to gather together all the inhabitants who had received some military training and organized an armed group of 15 militia members. On the day of the attack, it was reportedly FAPC that fired first with rocket-propelled grenades into the barracks housing the new militia members, probably with the aim of fighting a newly created armed group.

116. On 10 June 2003, Nioka was attacked from 5.30 a.m. until around 2 p.m. by Lendu militias from Kpandroma and Livo. The militia killed around 55 civilians according to the testimonies provided to MONUC by victims. Another 60 civilians were abducted to carry the loot first to Livo, then to Kpandroma. According to an

abducted girl, several girls were forced into sexual slavery. Only 56 of the hostages were released, most of them after payment by their family members. Three days later, the inhabitants went back escorted by FAPC to bury the dead. They reportedly buried 70 bodies, several of them in one mass grave in Nioka. The Lendu militia visited Nioka several times after this first attack to finish looting and burning all of the buildings.

117. A certain Lego was reportedly the chief of the operations. Floribert Ndjabu, the leader of FNI at that time, confirmed that the operation was conducted by Lego and his 40 followers, without the consent of the FNI authorities of Kpandroma. He added that Lego and 20 of his men were executed after this operation by FNI in Kpandroma.

C. Political killings, abduction and forced displacement of suspected opponents

118. The militia groups of Ituri executed, abducted, arrested or forced to flee persons they thought to be political opponents, as well as judges, intellectuals of enemy ethnic groups, journalists and members of non-governmental organizations. MONUC was able to carry out investigations into such abuses only in Bunia and Aru, while they were under the authority of UPC and FAPC, respectively. This does not mean that the other armed groups did not also commit political killings, abductions and forced displacement of opponents.

1. Political killings, enforced disappearances, illegal arrest and forced displacement of selected persons by UPC

119. Soon after taking power in August 2002 in Bunia and later in other parts of Ituri, UPC launched a campaign of manhunts, with summary executions, arbitrary arrests and forced disappearances. According to several witnesses, UPC had a pre-established list of persons to eliminate in Bunia.⁴³ UPC Commanders Bagonza, Kisembo, Chief of Staff, and Aimable Saba Rafiki, Chief of Security, reportedly directed the operation in Bunia. Those who were informed in time and were able to go into hiding had their houses destroyed by fire and their belongings looted, which suggests a desire to chase them for good. Among the victims were political opponents, intellectuals, businessmen, religious leaders, journalists and administrators of mainly Bira, Lendu and Nande origin, non-Iturians but also a few moderate Hema. In August and September 2002 alone, more than 100 people reportedly became victims, in Bunia town, of this campaign.⁴⁴ A new campaign was launched in May 2003, with the return of UPC to Bunia. This time, the victims were mostly non-Iturians. Some professions such as taxi drivers and police officers were specifically targeted.

120. Among the victims of the UPC manhunt campaign in August 2003 were Ileri Kuba, a 70-year-old Lendu, retired parliamentarian; Nasser Nbuna, 65-year-old non-Iturian, a former member of parliament; M. Ngura, Alur, *Chef des Travaux* of the Institut supérieur pédagogique together with his daughter; M. Mateso, Lendu

⁴³ The list was reportedly drawn up by the Hema extremists of Bunia town, including the extremist intellectuals of the Institut supérieur pédagogique.

⁴⁴ The number was given by Human Rights Watch in *Ituri: "Covered in Blood" ...*

director of discipline of the high school of Kigonze; Reverend Basimaki Byabasaija, an Anglican church minister; Eric Duandro Akobi, a 38-year-old Protestant minister and theology student; Monaco Mbaduale, a 25-year-old Lendu student of the Institut supérieur pédagogique; Ngure Gabriel Ukumu, a 45-year-old Alur administrative secretary of Radio Candip; Selian, a Bira journalist of the same radio; Malili, a police officer from Isiro; Giselaine Bofende, a Topoke worker of the non-governmental organization ABC. Several Lendu were also abducted, and taken to the houses of Bosco, Bagonza or Lubanga. Their fate is unknown to date.⁴⁵

121. Several traditional chiefs and administrators were killed in the interior of the district mostly for not collaborating with UPC: Nobamuzi, Chief of the *collectivité* of Babelbebe, killed in December 2002; Matata, Chief of the *collectivité* of Basili, killed in July 2002; Mundukukuwe, Chief of the *collectivité* of Baboa Bokowe, killed in December 2002; Bulabato Aloise, Chief of the *groupement* of Chendabo, killed in mid-2002; Fundi Kusu, Administrator of Bambu, killed in June 2002; Richard Bokalala Elanga, RCD-ML Administrator of Djugu territory, killed on 11 May 2002.⁴⁶

122. **Chief Dieudonné Bulamuzi Binmangili**, the 52-year-old traditional Chief of the *collectivité* of Andisoma, was forcibly abducted in Bunia on 5 September 2002. Earlier that same day, when Nyankunde was attacked by a coalition of Ngiti and APC, Chief Bulamuzi was able to escape with a member of the judiciary police. The two were able to reach Bunia by passing through Sota, Masabo and Badiya. In each place, they informed the UPC elements of the attack and requested military assistance. Witnesses interviewed by MONUC stated that, when he reached Bunia, Chief Bulamuzi was taken to the UPC headquarters; he was interrogated by Commander Kitembo and apparently tortured; Kitembo accused him of being aware of the Ngiti attack on Nyankunde. Chief Bulamuzi's condition was very serious when he was taken home. Witnesses further stated that, around 6 p.m., six UPC elements, including Jaguar from the Senga family, arrived and took Bulamuzi away again. A few minutes after they left, the family heard a gun shot. When they went out, they saw blood just outside the gate but no body. The same day, the UPDF commander, who had been informed, went to see UPC commanders Kitembo and Bagonza for some explanation. They told him that Chief Bulamuzi had been beaten because of his complicity with the Ngiti and sent to hospital. The body has never been returned to the family. Instead, the whole Bulamuzi family, being under constant threat, decided to leave Bunia.

123. **Adriko Johnson**, a 33-year-old Lubara, assistant Mayor of Bunia and member of UPC, disappeared on 29 September 2002. It appears that Mr. Johnson left his home on 29 September 2002 in the afternoon and never returned. The following day, his brother-in-law found out that he had last been seen on his motorcycle near the UPC military camp. All the efforts of the family members to have UPC launch an investigation were frustrated. His body has never been found. It appears that one possible reason for his disappearance could be the fact that he had given refuge in his house, in August 2002, to Lendu civilians when UPC troops were searching for

⁴⁵ Some names listed by local non-governmental organizations are: Claude, 30, son of Valery; Zakayo, 24; Claudine, 22; Loba, 48; Ndalo, 29; Justin, 28; Edward Wamba, 54; and Pierre Minzi Kakado, 30.

⁴⁶ Reportedly by UPDF soldiers under the command of the Hema political elite.

Lendu. Adriko Johnson had also apparently publicly criticized the targeting and killing of Lendu and Ngiti.

124. **Abbé Boniface Bwanalunga**, the Ngiti Roman Catholic priest of Mongbwalu parish, was arrested shortly after UPC captured Mongbwalu, on 20 November 2002, together with two nuns. The nuns were later released. When they went back to bring food to the Abbé, the UPC combatants refused to give them permission to see him and chased them away. Abbé Bwanalunga has not been seen since. The disappearance of the Abbé was very badly received by the Lendu/Ngiti community who held him in high esteem. They later justified the killing of Abbé Ngona of Nyakasanza as an act of revenge for the killing of Abbé Bwanalunga.

125. **Joseph Eneko Nguaza**, 47-year-old Alur Governor of Ituri, appointed by UPC with the aim of gaining wider support using his well-respected personality, was killed on 21 November 2002. The Governor was based in Aru and was delaying his departure for Bunia. Meanwhile, he announced that he was dissociating himself from UPC and initiated peace talks with different groups. UPC sent a delegation headed by Floribert Kisembo, then Chief of Staff of UPC, to bring the Governor to Bunia. On 21 November, before leaving for Bunia, the Governor set out for Mahagi to install a new territorial administrator. Just before his departure, the then UPC Commander in Aru, Jérôme Kakwavu, changed the Governor's bodyguards and driver. The delegation was ambushed 8 km from Mahagi. Except for two bodyguards who managed to escape, all the passengers were killed: Governor Eneko, his driver, his secretary, the Chief of the Public Office and five other guards. According to the testimony of local residents, obtained by Human Rights Watch, the attackers were UPC soldiers.⁴⁷ According to the testimony provided to MONUC by two witnesses who lived in Aru at the time of the event and who had met the two survivors, the operation was organized by Commander Jérôme, who received a considerable sum for his services.

126. **Jacques Kabasele**, the 43-year-old President of the Tribunal de Grande Instance of Bunia, from Kasai, was arrested on 11 November 2002 by UPC, accused of having contacts with their enemies. The judge was arrested by two persons from the *Direction générale de migration*, which was under the command of Rafiki, and taken to the prison of that unit. He was kept there for two days without any formal charges. On the third day, a team came to interrogate him, mainly on his contacts with Beni, Kinshasa and the outside world. They also told him that the order to arrest him came from Lubanga himself. He was not physically threatened but was kept there for 18 days and then released without charge. After his release, he was threatened and left Bunia in April 2003.⁴⁷

127. **Honoré Musoko**, a lawyer and president of the Bunia-based human rights non-governmental organization Justice Plus, tried to defend several victims abused by UPC authorities. He also worked for a short period as Minister of Justice under Jean-Pierre Bemba. He was accused of working with former Governor Jean-Pierre Lompondo and of being an enemy of UPC. Honoré Musoko was forced to flee the region in November 2002, but UPC authorities raided his organization, Justice Plus, on 5 February 2003, after he gave an interview to an international radio network on the human rights situation in Ituri. The UPC authorities then went to the office of Bunia Business Communications, owned by Musoko, arrested two workers and

⁴⁷ See Human Rights Watch, *Ituri: "Covered in Blood" ...*

seized the equipment. One of the members of Justice Plus who was also an officer of Bunia Business Communications was given refuge in the MONUC offices until UPC sent a letter stating that he had freedom of movement. The offices of Justice Plus were visited again by UPC in May 2003, all documents and materials looted and its members forced to go into hiding.⁴⁷

128. MONUC also received testimony from eight victims of harassment, five Bira, one Nande, one Ngiti and one Topoke, who were forced to leave Bunia. These victims are mostly intellectuals, journalists, teachers and civil servants. All were reportedly on a list of persons to be eliminated and six of them had their houses set on fire by UPC elements; the parents of the Ngiti victim were killed after he left Bunia. They all left Bunia between May and September 2003 and have not come back since.

129. There have also been several cases of harassment of humanitarian workers and church members, with the aim of halting the delivery of humanitarian assistance to members of "rival" ethnic groups. According to Human Rights Watch, there have been more than 30 cases where humanitarian workers have been arrested, threatened, beaten, or expelled from the area.⁴⁷ In some cases, UPC soldiers have arrested aid workers who have refused to provide them with food and medicines. UPC expelled even the representative of the Office for the Coordination of Humanitarian Affairs of the United Nations Secretariat from Bunia in November 2003, for protesting against the illegal arrest of humanitarian workers. Priests also came under threat when they tried to assist Lendu civilians. On 15 January 2003, the parish of Nioka, where a centre for malnourished children had been set up with the assistance of an international non-governmental organization, was attacked by four UPC elements and one Hema called Jabu. The foreign priests working in the centre were arrested and beaten and the centre completely looted.

130. **Mark Deneckere**, a Belgian priest of the congregation Missionnaires d'Afrique, was expelled in early 2003 for having helped a group of displaced Lendu. In his testimony to Human Rights Watch,⁴⁷ Father Mark stated that the Lendu came to seek refuge in August when UPC was attacking Lendu inhabitants of Bunia. UPC got angry when the international press picked up the story. They said they had not been informed that 120 Lendu had been given refuge by the Missionnaires d'Afrique. On 11 February 2003, the priest was called in for interrogation. UPC accused him of helping the Lendu and of giving them weapons. On 14 February, Father Mark was given 48 hours to leave Ituri.

131. MONUC received reports of numerous cases of summary executions, threats or intimidation committed by UPC elements when they again took total control of Bunia in May 2003. The intimidations targeted mainly the non-natives, the Bira, the Nande, the few Lendu left in town, some businessmen, journalists, taxi drivers and police officers. UPC also attacked the non-Iturian civil servants, accusing them of being pro-Lendu. Even after the installation of the Ituri Brigade, the selected killings continued, committed by UPC elements dressed in civilian clothes during the night. The level of violence created the biggest mass exodus in the history of Bunia, forcing around 200,000 persons from Bunia and the surrounding villages nearby to flee their homes.

132. A number of members of the national police and taxi drivers stated to MONUC that the members of their profession were victims of targeted summary executions by UPC soldiers. The taxi drivers, in majority non-Iturians, were indeed accused of

having driven Lendu out of the town, while the national police officers, most of them non-Iturians, were considered to be pro-Lendu. From 6 May 2003 to the end of the month, 11 police officers and 12 taxi drivers were apparently victims of summary executions by UPC.

2. Political killings, illegal arrest and forced displacement of selected persons by FAPC

133. After September 2002, a former RCD-ML commander, Jérôme Kakwavu, took over Aru in the name of UPC.⁴⁸ Disagreements between UPC and Jérôme appeared at an early stage, regarding control of the significant financial benefits of the territory, where there is an important market at Ariwara where gold, diamonds and timber can be traded and there are two tobacco companies and the Aru Customs, the last safe exit point from Ituri. Finally Jérôme left UPC, created FAPC on 6 September 2002 and extended his area of influence to Mahagi after reaching an agreement with FNI.

134. In the territory under FAPC control, Aru and also Mahagi, since UPC was driven out in March 2003, mass violence appears to have been limited. However, there were allegations of killing either to get rid of potential opponents or to maintain control over part of the economic activities.

135. In August 2003, MONUC human rights investigators were able to visit first Aru and Ariwara and, the day after, Mahagi, all under the control of Commander Jérôme. They spoke to a few victims but they were always followed by the civilian intelligence officers and told not to ask questions about security. In Uganda, investigators met with well-informed sources from Aru who reported the illegal arrest of two civilians by Jérôme. According to their testimony, which corroborates information received from other independent sources, the population under the control of Jérôme is living under serious psychological threat, with no way of showing opposition; the few who tried to oppose him were all executed.

136. On 22 May 2003, a group of FAPC elements under Commander Raymond Isala tried to overthrow Jérôme. The coup failed reportedly thanks to the assistance of UPDF Commander Justus Basisira, based in Arua, Uganda, who intervened with one platoon. On the same day, the commander of the airport, Jean Ngoyi Mwanawasa, was arrested by Jérôme, brought before a so-called tribunal and killed in the presence of Commander Justus. After this attempt, Jérôme declared that he would kill anybody who had been close to Raymond Isala. Two civilian victims who were close to the commander decided to leave Aru on the same day for Arua, together with Commander Idris Bobale. During the days that followed, the two victims, Commander Idris and his two body guards were all abducted in Ugandan territory on different days by a group composed of Jérôme's militia and elements of Ugandan military intelligence and put in a military jail under the command of Justus Basisira. They were kept in jail for 18 days without interrogation until 10 June, when they were told they would be set free. However, on the same day, Commander Ali, Jérôme's chief of military intelligence, arrived, accompanied by a Ugandan intelligence officer called Chris, and took them by force back to Aru to be put in a container with other detainees. The container that was used as a detention facility had also housed the former Administrator of Aru, Kanyi Lubara, for a period of two

⁴⁸ Commander Jérôme claims to be Banyamulenge but it is more likely that he is a Banyarwanda from North Kivu, in Rutshuru territory.

months. The Administrator was released after paying enough money to appease Jérôme. The two civilian victims and Commander Idris were called the day after by Jérôme, stripped naked and flogged. After being tortured, the three men were put back in the container and given no food or water for four days. On the fifth day, the Ugandan Commander Justus came back and took the two civilian detainees back to Arua. The victims were kept another two days in jail in Arua and released with no explanation. The bodyguards of Commander Idris who were taken out of the jail in Arua by Commander Justus to be brought back to Aru never reappeared and Commander Idris stayed in the container. As of December 2003, Idris was still in custody.

137. According to credible sources, Commander Justus of UPDF is paid by Jérôme to serve his interests. He is also policing Arua and catching military defectors from FAPC to take them back to Aru. MONUC has obtained the names of three such ex-FAPC who were reportedly brought back by Commander Justus and killed by Jérôme.

D. Children associated with armed groups

138. The information on children associated with armed groups was gathered during special investigations, as part of MONUC regular monitoring and advocacy work, through preliminary interviews with more than 200 children associated with armed groups, with partner organizations, during field visits, including to a small number of military camps, and interviews with military and other authorities. It is far from being a complete picture of the presence and use of children given the very limited, uneven and at times complete lack of access to children in the different groups and to their communities, both to obtain and to corroborate information. Taking testimony from children is also particularly sensitive. Nevertheless, as has been reported and witnessed many times, there can be no doubt that all of the armed groups have systematically recruited, used and abused children — ranging from 7 to 17 years old — throughout the district of Ituri.⁴⁹

139. The Democratic Republic of the Congo has ratified both the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict. Obligations under those international instruments, further defined under the terms of the African Charter on the Rights and Welfare of the Child and ILO Convention 182 on the Worst Forms of Child Labour, ban the recruitment of anyone under 18 years of age into the military forces of a State party. The Protocol also bans any armed group found within the national territory of the Democratic Republic of the Congo from recruiting any child below the age of 18. The Rome Statute of the International Criminal Court, ratified by the Democratic Republic of the Congo on 30 March 2002, defines as a war crime the conscription or enlistment of children under the age of 15 into national armed forces or armed groups and their active participation in hostilities.

140. Presidential Decree Law 66 of December 2000 and article 184 of the Interim Constitution of the Democratic Republic of the Congo brought these international obligations into the realm of domestic law, although recruitment has yet to be

⁴⁹ The youngest child associated with an armed group interviewed by the Child Protection Section of MONUC, in Tchomia in September 2003, was a 7-year-old boy who claimed that he had served for some time with PUSIC.

criminalized. The Luanda Agreement of 6 September 2002, concerning the resolution of the Ituri conflict and establishing the Ituri Pacification Commission, expressly recognized these international and national obligations to children associated with the armed groups in Ituri, including minimum protection measures for children found among the various armed groups. In April 2003, the Ituri Pacification Commission, within its peace agreement, made a solemn appeal to respect those national and international obligations through the creation of conditions for an environment facilitating the demobilization of those children.

1. A profile of children associated with armed groups in Ituri: fighting for survival

Children became soldiers because they were orphaned, sought vengeance or did not have anyone to care for them. Etienne Nembe, Chief of Intelligence, UPC (interview, 2003)

If I had to give a weapon to a two-year-old [to defend his community] I would do so. Chief Kawa, PUSIC (interview, 2003)

Many children decide to enrol because they lost their parents after the massacres. Everyone was obliged to resist, even women and children. Commander Banga, FNI/FRPI (interview, 2003)

[Children] were looking for protection or support when they joined [my] troops. Commander Jérôme Kakwavu Bukande, FAPC (interview, 2003)

141. As already indicated, all of the armed groups in Ituri have recruited children into their ranks over the past few years. Although the exact number of children is unknown, child protection partners believe that, as a conservative estimate, at least 40 per cent of each militia force are children below the age of 18, with a significant minority below the age of 15. Contacts and requests for information on the number of minors in each armed group have been made on a systematic basis since March 2003 but have not so far yielded accurate information, including in the context of the Comité de concertation des groupes armés. Groups that have recruited children into their ranks are often hesitant to give child protection agents reliable information on the full extent of child participation in their forces, and indeed at times have clearly given blatantly false information. For example, FAPC insisted to the MONUC Child Protection Section in an interview on 28 December 2003 that they had gathered all of their children at Aru. When the team travelled later that day to another FAPC-controlled area 100 km to the south at Kandoy, it was presented with four child members of the platoon stationed there. In addition, obtaining a fixed number of children associated with Ituri armed groups proves a difficult task, as the armed groups have divided and regrouped around the shifting political and military exigencies of the region throughout the conflict. A number of the children interviewed recounted how they had passed from one group to another at different times, some even alleging that they were first recruited by AFDL in 1998. Others claimed they started with FLC or APC before moving on to other groups.

142. The presence first of the multinational force (Operation Artemis) in June 2003 and its subsequent replacement by the MONUC Ituri Brigade had an impact on the number of children in armed groups by reducing the level of conflict and facilitating the release of children. It is difficult to know how many have been released by the armed groups as not all went through any kind of process, but some progress has been made (see paras. 156-158 below). Few new reports of recruitment have been

received over the past few months. Nevertheless, current estimates suggest that there are still several thousand children — possibly around 6,000 — in UPC, FAPC, FNI, FRPI, FPDC and PUSIC, with many more attached to loosely formed local defence forces or militia. In addition, the former APC also has numerous children in its ranks, though most are not in Ituri. In December 2003, MONUC interviewed several mothers who said that their children had joined APC in Ituri after the massacres of September 2002 in Nyankunde and remained in APC ranks in and around Beni.

143. Recruitment into all armed groups has been both “voluntary” and through abduction, often as the children were in the markets or in the streets where they were forced to get into trucks and taken away. UPC recruitment drives took place regularly throughout 2002 and early 2003. FAPC was reportedly recruiting as late as July 2003 around Aru and Mahagi. PUSIC also recruited in 2003, including in September according to some reports. During the frequent attacks on civilian settlements perpetrated by militia of one ethnicity against another, children and families were thrown into the logic of survival at any cost. FNI/FRPI Commander Augustin Ngabo-Tchepo stated that, in the Bambu area of Djugu territory, almost all the children of Bambu were recruited during the series of attacks on Bambu (in January/February 2003). Furthermore, the massive recruitment and utilization of children of all ethnicities on the part of RCD-K/ML in Ituri prior to the Hema-Lendu schism left large numbers of children at risk of re-recruitment by the forces that controlled their home areas at the time.

144. The scope of this report does not include examining in detail the (often complex) reasons why children joined armed groups in Ituri. As stated in interviews with children who have been released they include basic survival, the desire for revenge, especially for the killing of family members, adventure, and ethnic-based reasons. Whatever the reasons, the term “voluntary” must be treated with caution given the extremely limited options available. Whether “volunteer” or forced recruits, most children interviewed said they soon became disillusioned with the extreme conditions in the training camps and on the battlefield. The child’s choices to remain or leave at that moment were even more restricted. Even for children released from an armed group, the risk of re-recruitment remains, although for the time being there has been a reduction in the level of conflict.

145. When renewed fighting broke out in Ituri in 2003, most of a group of 163 children who had been repatriated from a Ugandan training camp and reintegrated into their families were cut off from protection agencies. According to the testimony of SOS-Grand Lacs at the time, 130 were reportedly re-recruited by UPC and sent into fighting units.⁵⁰ The Child Protection Section spoke with one of the children who returned from the UPDF camp at Chakwanzi in 2003. According to the child, “... in 2003, after the attacks on the [South Hema] town of Bogoro, I went back into the UPC under Commander Germain”. He was 12 years old at the time.

146. FNI/FRPI, although based in village units and having apparently demobilized a large majority of their child recruits into their home villages with the help of aid agencies, are not immune to the practice of re-recruitment of children. A child protection agency official alleged that FNI may still be using former FNI children in local defence forces, designed to protect their home villages from attack. The

⁵⁰ See Human Rights Watch, *Ituri: “Covered in Blood”* ...

official further stated that FNI/FRPI know very well that, if the security situation deteriorates, they will be able to call up these child ex-combatants and reintegrate them into their militia.

2. Training of children

147. Once recruited, whether forcibly or voluntarily, children were either trained in organized camps or in ad hoc sites in villages and towns. The attached map shows the locations of 28 training camps and 9 military bases, used by FNI/FPRI, UPC, APC, PUSIC and FAPC, where children were either seen being trained or themselves claimed to have been trained over the past two years. The training lasted from several days to several months depending on the capability of the armed group and/or its foreign backers. As a rule, the Lendu/Ngiti militias (FNI/FRPI) seem to have been offered a summary training either in their home villages or nearby, given that recruitment tended to be community-based and according to operational needs. Kpandroma and Zumbe were, however, known to be regular training sites for FNI/FRPI. UPC, PUSIC and FAPC were provided with military advisers and undertook the establishment of more stable camps. By all accounts, training conditions were generally physically gruelling and extremely hard, in terms of food rations and punishment regimes (children cited death threats, beatings and in one case an execution). At times trainers were minors themselves.

148. Rwandan and Ugandan trainers were also said to have been present in some of the camps, such as those at Mandro, Rwanpara and Montawa. In a number of cases, children were reportedly transferred to Uganda or Rwanda for specialist training with adults, the first such large-scale training (of APC child recruits) by Uganda occurring in 1999. The best known case is that of some 163 UPC children, cited above, who were located undergoing training in Uganda and returned and reintegrated into their families in Ituri by UNICEF in 2001. As late as July 2003, there were allegations of PUSIC transferring more than 200 children from Tchomia to UPDF training camps in Rwebisengo County and at Kibuku in Uganda. While PUSIC claimed that the children were taken for security and/or educational purposes, several boys and a girl interviewed subsequently alleged that they had received military training before being returned to the Democratic Republic of the Congo to fight in September 2003. Likewise, allegations that children were taken to Rwanda, for example in September 2002, for training in artillery have also been received from different sources. This is in clear violation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which condemns recruitment, training and use across national borders.

3. Use of children in combat and attacks

149. On completion of training, children were frequently used in hostilities, depending on the military of the time. Sending children into battle constitutes potential violation of their right to life, survival and development. There is little precise or complete verified information so far regarding the names and numbers of children who have died or suffered injuries as a result of taking part in hostilities in Ituri. Most children interviewed told of having been sent to fight in various battles in 2002 and 2003. Testimonies of individual children report losses of other children, for example in Dele and Nyankunde (September 2002); Irumu (November 2002) including a 10-year-old; Kasenyi (2003); Marabo, Tchai (December 2002/January 2003); Bambu (February 2003); Bule (March 2003); Bogoro (March 2003); Drodoro

(April 2003); and Linga (September 2003). Once conditions allow, further research needs to be done on this issue to document individual cases in detail, if only so that the families can be informed, but also as part of the documenting of violations committed by those who recruited the children in the first place.

150. In some cases, children did not necessarily take part in the fighting itself but in subsequent pillaging. This was particularly true in the case of attacks by Lendu/Ngiti groups; examples include an FNI attack on Tchomia on 31 May 2003 where women and children carried loot back to their bases in Zumbe and Loga; and in April 2003, when Lendu militia, accompanied by women and children, completely pillaged houses and other buildings and took away many items, as well as cows, goats and other animals.

4. Presence and use of girls in armed groups

151. All of the armed groups in Ituri recruited girls (very often forcibly) into their ranks, although few have been brought forward for official separation. Once released, a climate of denial, shame and fear prevents many of them from seeking assistance. Tenuous links with military commanders sometimes persist even after release. The girls have played a range of roles. Trained to handle weapons they have taken part in combat and worked as escorts and domestics.

152. For many, however, entry into an armed group meant being subjected to sexual abuse. A number of accounts indicate that the sexual abuse started in the training camps, with instructors being responsible, and persisted throughout the training. It should be noted that two girls interviewed by MONUC said that the presence of women officers in the respective training camps protected them from sexual abuses at the time. In some cases, sexual abuse, when it did occur, was of limited duration or was carried out in a sporadic manner, with different perpetrators depending on the situation at hand. Other girls were subjected to a more regular pattern of sexual abuse, effectively repeated rape, over longer periods, assigned to one military officer for example. These girls are commonly referred to as "war wives". In many ways the girls suffer a double jeopardy, many reportedly serving both as fighting elements in active combat and concomitantly being used to satisfy the sexual appetites of their commanders. Some, however, were reportedly abducted solely for use as sexual slaves.⁵¹

153. One witness stated that girls as young as 14 were abducted, apparently for sexual purposes, by members of FNI at Lalu, Goda, Vissa and Kakro villages in Djugu territory beginning in September 2003. One commander reportedly told the villagers that it was on his orders that the girls were taken, stating "... the soldier who takes a girl, that's his pleasure; the girl is his ... he will come to pay the dowry later ...". There is little information about the current whereabouts of these girls. A 15-year-old girl allegedly abducted in April 2002 in Luguba by UPC described how she was handed over to a commander "as his wife" as soon as she arrived at Bule training camp. In October and November 2003, the Child Protection Section received information that UPC forcibly abducted girls in another part of Djugu territory. On one occasion, a witness reported that a woman was beaten to death trying to prevent her 15-year-old daughter from being forcibly taken. In the same

⁵¹ The Cape Town Principles of 1997 identify any girls used as sexual slaves or "war wives" as child soldiers for identification purposes, whether or not they received previous training of a military nature.

S/2004/573

community, on 30 November, two girls, aged 14 and 15, were reportedly taken from their homes by military of the same unit, to be used as sexual slaves. One of the kidnappers was reportedly an adolescent of Bira ethnicity, aged 18. On 10 June, Lendu militias reportedly abducted at least seven girls as war wives during an attack on Nioka, where an FAPC group was based.

154. The deployment of international troops in Ituri in mid-2003 facilitated the release of some adolescent girls and access to support programmes to help them deal with some of the consequences. Even while members of armed groups, some of them had required medical and even hospital treatment for the consequences of violent abuse. Others are now child-mothers. But it is likely that many still remain within the groups. The question of the status of the undoubtedly numerous war wives is a serious one, as many traditional beliefs dictate that once a girl is sexually "taken" by a man, she is his property. The issue simply becomes one of payment to the family of a dowry. An FAPC colonel stated in an interview with the Child Protection Section on 9 November 2003, referring to these girl victims of abduction and sexual abuse within his ranks, that there would be "... difficulties in taking these girls out of these forced 'marriages'".

5. Use of children by armed groups in the exploitation of natural resources: a vicious circle

155. In December 2003, the Child Protection Section visited the Kilo-Etat and Iga Barrière/Nizi areas, where there are gold fields, the latter controlled by UPC militia and the former by FNI. In the UPC-controlled Iga Barrière area, the former headquarters of the Kilo Moto Mining Company, the Section staff saw that three quarters of a mine pit team were under 18 years of age, most being between 11 and 15. Sources at the site alleged that the children present in the mine were all active or former child soldiers who worked on behalf of their UPC commanders. At Kilo-Etat, an FNI commander acknowledged that he had 12 children in his armed group, the youngest of whom was 11 years old, and also that there were "a lot of child soldiers" at Bambumines (nearby). These preliminary reports merit further investigation to assess the extent of the use of children associated with armed groups in exploiting minerals, the profits of which are subsequently used to purchase weapons, some of which almost certainly end up in the hands of children.

6. Prospects for separating children from armed groups

156. Child protection partners and UNICEF have been actively participating in the planning for disarmament and reinsertion programmes for the Ituri armed groups. Since the start of the Ituri pacification process, the installation of the Ituri Interim Administration and the arrival of the multinational force in June 2003, representatives of armed groups have been changing their attitudes with regard to children. UPC and later FAPC began unilateral separation of minors from the camps without prior arrangements with child protection partners. FNI have sent many children directly back into their home communities, where a measure of school access has been provided to the children. Sixteen UPC commanders, without following procedures, reportedly released scores of children in November, telling them to go to Bunia where they were led to believe that a "school for child soldiers" had been set up. Many of them turned up at MONUC offices or one of the Transit and Orientation Centres. The PUSIC leadership even established a transit facility for former child combatants in the vicinity of Chief Kawa's residence in Tchomia.

Identification of local partners for child protection and reintegration work in the different communities is ongoing.

157. The first formal family reunifications from transit care facilities in Ituri started in September/October 2003. With improved access and communications, contacts between community networks have facilitated family-tracing activities. MONUC and the Comité de concertation des groupes armés have carried out verification missions to proposed *regroupement* sites, sometimes with child protection partners. Official figures of minors received are however far short of the real situation, owing perhaps to the deterrent factor of possible future criminal proceedings. In many instances, children have been demobilized and sent back to school by the communities who mobilized them in the first place. UPC commanders released children without letting them go through any formal process or transit facilities.

158. Prospects for the children still associated with armed groups in Ituri, and even those already released, will depend very much on the development of security, access to all parts of the district, and to the start of a viable disarmament, demobilization and reintegration plan for adults. This is important, as the investigation team spoke to a number of children demobilized from armed groups in Ituri who expressed extreme reluctance to return to their home villages for fear of re-recruitment by armed groups who still exercise control over the local population, often through intimidation and terror. A child protection worker in Ituri stated the situation plainly to the Child Protection Section in Bunia: "Even where disarmament, demobilization and reintegration of children is going well, such as in the FNI areas, it is clear that, should the situation turn bad, these armed groups know exactly where these children are and will certainly use them".

VI. Conclusion and recommendations

159. Despite the disengagement of foreign forces from the Democratic Republic of the Congo, the establishment of the Transitional Government and the integration of all of the armed groups into the new Congolese national army, Ituri remains a battlefield for the proxies of Rwanda, Uganda and Kinshasa. The security conditions improved by the end of 2003 only thanks to the Operation Artemis, the subsequent deployment of the Ituri Brigade under Chapter VII, and progress towards restoration of the rule of law resulting from the efforts of MONUC in cooperation with members of the international community. For security to stabilize and become sustainable it is now time for the Government of the Democratic Republic of the Congo to assume its responsibilities and assert its authority.

160. As a result of the robust action of the Ituri Brigade, some of the local warlords revised their policies, and created new alliances to actively resist the pacification efforts of MONUC. This volatile situation does not encourage the large number of internally displaced persons who are still in camps in Bunia and elsewhere in Ituri, as well as in North Kivu and Uganda, to return to their places of origin, where their homes and social structures are often completely destroyed or occupied by military elements.

161. To bring real peace to the region and end human rights abuses several issues need to be addressed together by the Government of the Democratic Republic of the Congo and the international community, including:

- (a) Continuation of a robust implementation of the MONUC mandate under Chapter VII of the Charter;
- (b) State control over natural resources to end their exploitation;
- (c) Full restoration of State authority, with adequate police, competent and impartial administration and military capabilities;
- (d) Intervention of the State to revise the land law and all existing land certificates;
- (e) Full implementation of the disarmament, demobilization and reintegration programme, beginning with the children;
- (f) Rebuilding of public infrastructure and repair of private housing;
- (g) Information campaigns to encourage the return of communities to their places of origin;
- (h) Restoration of local conflict management initiatives with the aim of rebuilding trust and reconciliation among all the inhabitants of Ituri.

Annex I

Armed and political groups involved in the Ituri conflict

A. Ituri armed groups

None of the Ituri armed groups can be considered an armed wing of a political movement, as they were originally created as military movements. The political wings were an afterthought, created to facilitate their integration into the local and national structures and negotiations, and to be used as an interface with the international community.

Union des patriotes congolais (UPC)

Initial leader: Thomas Lubanga

Current leaders: Lubanga for UPC-Lubanga group
Floribert Kisembo for UPC-Kisembo group

Ethnic composition: Predominately Hema North/Gegere

UPC was created as an embryo in January 2001, with funding from a large Gegere business community and the support of Uganda. Later, it enlarged its influence to some Hema South, notably Chief Kawa Panga Mandro. However, personal rivalries, as well as the Hema North monopoly of key positions, led to a split in September 2002. UPC began existing officially only in mid-2002, when Lubanga left RCD-K/ML and initiated the battle for control of Bunia. UPC eventually took control of Bunia in August 2002 with the help of the Ugandan army. It turned to Rwanda for support and formed an alliance with RCD-Goma in January 2003. Having turned from Uganda politically, it was ousted from Bunia by the Ugandan army in March 2003 but fought its way back into the town in May. After the departure of Lubanga for Kinshasa in August 2003, the Chief of Staff, Commander Kisembo, announced early in December 2003 that he was the new leader of UPC. This resulted in a split: those responding to Kisembo and located in Bunia and those responding to Lubanga represented in Ituri by his new Chief of Staff, Bosco.

Parti pour l'unité et la sauvegarde de l'intégrité du Congo (PUSIC)

Initial leader: Chief Kawa Panga Mandro

Current leader: Chief Kisembo Bitamara*

Ethnic composition: Predominantly Hema South

PUSIC was created in October/November 2002 by the former UPC member Chief Kawa. Its militia receives its supplies mainly from Uganda, as part of its proxy strategy. Uganda tried to merge it with FNI and FPDC, under the umbrella of FIPI. That has totally failed. PUSIC allied itself with UPC against the Lendu in Bunia in May 2003, but that alliance of convenience lasted only a few days. During June 2003, Chief Kawa spent two weeks in the Libyan Arab Jamahiriya, having been introduced to Colonel Al-Qadhafi by President Museveni, during which time he converted to Islam and is now reported to be receiving large monetary

* At the time of writing of the present report.

S/2004/573

contributions from the Libyan Arab Jamahiriya. PUSIC is reportedly increasingly involved in arms trafficking across Lake Albert.

Forces populaires pour la démocratie au Congo (FPDC)

Current leader: Thomas Unenkan (a Member of Parliament during the Mobutu era)

Ethnic composition: Predominantly Alur

FPDC was created in October 2002 by Uganda. It comprises mostly Alur from Mahagi with the support of Alur exiled in Paidha, Uganda, to counter UPC. Around 500 Congolese Alur received a brief military training in Uganda, close to Mahagi territory. It was supported by Uganda as part of the FIPI coalition, which did not last long. The military branch of the movement was dislocated by FAPC, which took the control of the Mahagi area with the support of FNI at the end of June 2003.

Forces armées du peuple congolais (FAPC)

Current leader: Commander Jérôme Kakwavu Bukande (a Banyarwanda from North Kivu)

Ethnic composition: Mostly non-Iturians

FAPC was created in March 2003 as the political umbrella for Commander Jérôme's battalion in control of Aru territory. Commander Jérôme has changed alliances several times, moving from FAC to RCD-K/ML, to RCD-N, to UPC, before creating his own group with the support of Uganda. Following an arrangement to share security and income in Mahagi together with FPDC and FNI, FAPC attacked its "partners" and claimed control over the town and the territory at the end of June 2003. Commander Jérôme remains in touch with Ugandans while claiming to be loyal to the Government of the Democratic Republic of the Congo.

Front nationaliste intégrationniste (FNI)

Initial/current leader: Floribert Ndjabu

Ethnic composition: Predominantly Lendu North

FNI was created at the beginning of 2003 as the political umbrella of the Lendu armed groups located mainly in Kpandroma and Rethy. The party claims broad support from the Lendu community in its efforts to oppose UPC. FNI has benefited from military training and support from RCD-K/ML and, through it, from Kinshasa. During 2001-2002, one of the Ugandan factions is likely to have supplied this group with light automatic weapons on an irregular basis. FNI established alliances with the Lendu militia groups based in Lipri and Zumbe as well as with the Ngiti FRPI and participated in the political negotiations of the Ituri Pacification Commission as the Lendu party representing the entire Lendu community. In the field different geographical armed groups seem to keep their independence, however. Supported by Uganda as part of the FIPI coalition, it joined the Ugandan army in driving UPC from Bunia in March 2003.

Front de résistance patriotique de l'Ituri (FRPI)

Current leader: Commander Germain Katanga

Ethnic composition: Predominantly Ngiti/Lendu South

FRPI was launched in November 2002 as the political umbrella of Ngiti armed groups mainly from Gety, Bogoro and Songolo. Ngiti militia initially benefited from the support of Ngiti defectors from APC. They have also received occasional support from one faction of the RCD-K/ML. FRPI joined the Ugandans in driving UPC from Bunia in March 2003 and, together with FNI, briefly controlled Bunia in May 2003. Since then, FRPI has created an alliance with FNI and one of its commanders, Germain, was appointed Chief of Staff of the united militia.

Front pour l'intégration et la paix en Ituri (FIPI)

Composition: Platform of three ethnic-based parties

A coalition of three parties, PUSIC, FNI and FPDC, created in December 2002 with Ugandan support. Its main objective was getting rid of UPC, with no apparent programme. After the attack on Bogoro by FNI, the coalition collapsed.

B. Regional political groups

Mouvement de libération du Congo (MLC)

Current leader: Jean-Pierre Bemba

Ethnic composition: Mixed ethnic groups

MLC, originally backed by Uganda, was based in Gbadolite. The movement tried twice to enter Ituri: in 2001 Jean-Pierre Bemba moved to Bunia as the President of the short-lived FLC coalition of Ugandan-backed rebel groups, and in 2002 MLC attacked Mambasa in western Ituri with the aim of taking control of Beni, but was forced to withdraw after a ceasefire agreement signed under the auspices of MONUC. MLC has an alliance with RCD-N and has occasionally fought alongside UPC. MLC was part of the inter-Congolese dialogue and its leader, Jean-Pierre Bemba, has one of the posts of Vice-President.

Rassemblement congolais pour la démocratie-Kisangani/Mouvement de libération (RCD-K/ML)

Current leader: Mbusa Nyamwisi

Ethnic composition: Predominantly Nande

RCD-K/ML was launched in September 1999 in Kampala when Wamba dia Wamba split from RCD-Goma. After several splits, and a short-lived alliance with MLC, because of leadership struggles, Mbusa Nyamwisi eventually took control of the movement. The RCD-K/ML military wing is the Congolese People's Army (APC). RCD-K/ML was part of the inter-Congolese dialogue and its leader is now Minister for Regional Cooperation. RCD-K/ML was involved directly in the Ituri conflict via MLC, then on its own and also providing a link for the pre-transition Government. It left Bunia in August 2002 after it was defeated by UPC and UPDF. After that date, it continued its support to Lendu militia groups.

S/2004/573

Rassemblement congolais pour la démocratie-National (RCD-N)

Current leader: Roger Lumbala

Ethnic composition: Mixed ethnic groups

Based currently in Isiro and Watsa, in the neighbouring Haut-Uele, RCD-N was initially supported by the Ugandans in exploiting the diamond riches of Bafwasende. In 2001 and 2002, RCD-N became a political movement with the assistance of Jean-Pierre Bemba to act as a politico-military front and provide a second support group (proxy) for MLC during the inter-Congolese dialogue. It has never had a military capacity of its own.

Annex II

Chronology of main political events and incidents of gross violations of human rights in Ituri, 1998 to 2003

1998

- 30 January 1998 Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Roberto Garretón (E/CN.4/1998/65 and Corr.1).
- 2 August 1998 RCD rebels launch armed rebellion against the President of the Democratic Republic of the Congo, Laurent-Désiré Kabila. Uganda and Rwanda back the rebels. The movement rapidly takes control of much of the eastern part of the country.
- November 1998 UPDF establish a base in Bunia.
- November 1998 Another rebel movement, MLC, is created in Equateur Province under Jean-Pierre Bemba with Ugandan backing.

1999

- 8 February 1999 Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Roberto Garretón (E/CN.4/1999/31).
- April 1999 Ernest Wamba dia Wamba, the first President of RCD, moves to Kisangani as the movement starts a series of splits.
- May 1999 UPDF Captain Kyakabale appointed Bunia sector commander.
- 16 May 1999 A new RCD (Goma faction) leader is named: Emile Ilunga. The Goma and Kisangani factions of RCD ally themselves with Rwanda and Uganda, respectively.
- June 1999 Following abusive and illegal extension of the concessions, the Lendu revolt against the Hema estate owners and attack their estates. UPDF supports the estate owners. The collectivity of Walendu Pitsi is completely destroyed by UPDF. Bombardment of hundreds of Lendu villages by UPDF in the three Lendu communities of Djugu. Local non-governmental organizations denounce indiscriminate and disproportionate bombing, of which between 5,000 and 7,000 people are victims.
- 18 June 1999 Adèle Lotsove, a Hema, appointed Governor of Ituri and Haut-Uele (two districts in the vast Orientale Province) by UPDF. She is later widely criticized for inflaming the situation and for her partisan handling of subsequent peace talks.
- 5 July 1999 Lotsove announces the formation of the "province" of Kibali-Ituri.
- 10 July 1999 Lusaka Ceasefire Agreement is signed in Zambia by the six States involved in the conflict. The rebel MLC signs on 1 August. RCD rebels sign on 31 August.

S/2004/573

6 August 1999	The Security Council authorizes the deployment of United Nations liaison personnel in support of the Lusaka Agreement.
September 1999	Military operation in Ame, <i>collectivité</i> of Walendu Pitsi, by UPDF under Captain Kyakabale. Lendu civilians are killed on the bridge over the River Aruda.
14 September 1999	Major attack by Lendu forces on Dhendro, a Hema village located in the <i>collectivité</i> of Bahema Nord; 416 Hema reported killed.
18 September 1999	The RCD-Kisangani faction is renamed RCD-ML. Wamba is confirmed President, with Bunia as his stronghold. Mbusa Nyamwisi and Jacques Depelchin are appointed prime minister and local administration minister, respectively.
18 October 1999	"Province" of Ituri splits from Haut-Uele district.
October 1999	A United Nations assessment mission declares the human rights and humanitarian situation in Ituri "catastrophic", estimating over 100,000 internally displaced persons and scores of villages burned to the ground. Estimates of deaths range from 5,000 to 7,000.
October 1999	RCD-ML appoints Jacques Depelchin as the chairman of a peace and security commission with the aim of promoting dialogue and reconciliation among the parties.
21 October 1999	First mission of United Nations liaison personnel to Bunia.
November 1999	Divisions between Wamba and Nyamwisi become more serious. Nyamwisi takes control of Beni.
28 November 1999	Slaughter by UPDF soldiers of 10 Lendu peasants who come to sell their food products at the market of Bambumines, <i>collectivité</i> of Banyari Kilo.
End of November 1999	Confrontations between Lendu combatants and UPDF soldiers based in Bambumines, the shopping centre of Kobu. Thousands of Lendu peasants leave their villages to take refuge in Bambumines, which they regard as a secure refuge because of the presence of the office of the gold mines of Kilo Moto.
1 December 1999	Killings of Lendu at Bambu, <i>collectivité</i> of Banyari Kilo; 300 civilian deaths reported.
13 December 1999	According to ICRC, up to 150,000 people are displaced as a result of fighting in Ituri.
December 1999	According to Wamba, Captain Kyakabale of UPDF is dismissed for "hiring out soldiers to Hema leaders". He is replaced by UPDF Lieutenant Colonel Arocha.
16 December 1999	Wamba dismisses Lotsove and replaces her with Ernest Uringi Padolo, an Alur.
20 December 1999	The Depelchin Commission publishes its report and a draft treaty for the pacification of the region.

December 1999	The human rights organization of the DRC, ASADHO, in <i>Rapport de l'Asadho sur le conflit inter-ethnique Hema-Lendu en territoire de Djugu dans la Province Orientale</i> , accuses Captain Kyakabale of massive human rights violations.
December 1999	The former President of Botswana, Ketumile Masire, is appointed to serve as facilitator of the inter-Congolese dialogue provided for in the Lusaka Agreement.
2000	
January 2000	MSF reports 180,000 internally displaced persons in Ituri. Humanitarian organizations attempt to gear up in a period of relative calm.
18 January 2000	Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Roberto Garretón (E/CN.4/2000/42).
24 January 2000	MONUC announces first phase of deployment of liaison officers to Bunia.
29 January 2000	MSF-Holland suspends all operations in Ituri and says that growing distrust among the population towards MSF with regard to its neutrality has led to a violent attack on an MSF team.
End of January 2000	The entire community of Walendu Djatsi is engulfed in inter-ethnic war. Many Lendu villages are set on fire by Ugandan soldiers. More than 1,000 Lendu are allegedly killed. The Lendu organize and create a military camp in Mbau.
February 2000	A report by the human rights group ASADHO says the conflict was sparked off in April 1999 when Hema landowners evicted Lendu farmers from land adjoining theirs, with the support of RCD-ML and the Ugandan authorities. ASADHO claims that Ugandan soldiers were actively involved in the killing of Lendu.
24 February 2000	The Security Council expands MONUC mandate in resolution 1291 (2000).
March 2000	MONUC deploys liaison officers to Bunia.
24 March 2000	A United Nations inter-agency assessment mission finds humanitarian situation "close to catastrophic".
April 2000	Ugandan authorities replace Colonel Arocha with Colonel Charles Angina.
4-10 June 2000	Heavy fighting breaks out between Ugandan and Rwandan forces in Kisangani.
August 2000	Training of Hema militia members in Uganda, in the camp of Kyakwanzi. In six months, 750 militia members are trained. Thomas Lubanga and Chief Kawa are reportedly among the trainees.
August 2000	The conflict gradually reaches the <i>collectivité</i> of Walendu Tatsi where several villages are burned, including the main town of Masumbuko.
September 2000	A group of Lendu seek refuge in the church of Lita located in Walendu Tatsi because of military operations in the region. Hema militiamen, accompanied by UPDF based in Katoto, enter the church and massacre the civilians.

S/2004/573

- hr/>
- 5 November 2000 UPDF appoints a new sector commander. Colonel Angina is replaced with Colonel Edison Muzora.
- 20 November 2000 Divisions in RCD-ML come to a head. Nyamwisi and Tibasima remove Wamba from power in the "November putsch". Uganda appears to give up protecting Wamba. Meanwhile splits in RCD-ML produce several militias and two new factions: RCD-ML dissident Roger Lumbala starts a movement called RCD-National and, in Beni, Governor Bwanakawa Nyonyi sets up the short-lived RCD-Populaire.
- 2001**
- December 2000-January 2001 Hema dignitaries of Irumu travel to Kampala to convince President Museveni to deploy three battalions in the *collectivité* of Walendu Bindi. Once on the ground, UPDF battalions target hundreds of villages, schools, dispensaries and parishes. Many die as a result of indiscriminate and disproportionate attacks.
- 6 January 2001 Lendu Ngiti militias attack Nyankunde town, killing some 50 persons, mostly Hema civilians, and displacing thousands.
- January 2001 The RCD-ML power struggle results in Governor Uringi and Depelchin being expelled from Bunia. Wamba remains in Kampala.
- 15 January 2001 At least 3,500 people, mainly Hema, in the territories affected by the conflict seek refuge over the border in Uganda.
- 16 January 2001 President Laurent-Désiré Kabila is shot dead. Joseph Kabila succeeds him.
- 18 January 2001 Ngiti militias from Irumu attack the UPDF base at Bunia airport in order to destroy the Ugandan helicopters, which they believe took part in the bombardment of Ngiti villages in Walendu Bindi. Several Ugandans are allegedly killed during the operation.
- 19-21 January 2001 An organized massacre of Lendu inhabitants is carried out in the Mudzipela area of Bunia. Each Lendu family is visited house by house by Hema of Bunia, and approximately 250 persons are killed, mostly by nail-studded sticks distributed before the attack, and their houses are set on fire.
- 16 January 2001 A new rebel alliance, FLC, is formed after weeks of talks in Kampala. It combines Bemba's MLC, RCD-ML and Lumbala's RCD-National. Bemba is to lead the group while Nyamwisi is appointed Vice-President and Tibasima Minister for Mines and Energy. Wamba rejects the deal.
- 1 February 2001 Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Roberto Garretón (E/CN.4/2001/40).
- February 2001 A major peace meeting is held in Bunia. A peace agreement is signed by Hema and Lendu community leaders. Bemba, now the most senior rebel leader in the region, states: "The militia will have to be disarmed and dispersed." A follow-up commission is to monitor and move the process forward.

20 February 2001	The United Nations estimates 140,000 displaced in Ituri.
27 February 2001	Dual Hema and Lendu deputy governors are appointed by FLC.
March 2001	Human Rights Watch publishes a 50-page report entitled <i>Uganda in Eastern DRC: Fuelling Political and Ethnic Strife</i> , alleging that Ugandan soldiers had involved themselves in the conflict and had "blatantly exploited Congolese wealth for their own benefit and that of their superiors at home".
29 March 2001	Bemba announces an agreement reached with the Mai-Mai militia and arrangements for the demobilization of the Ugandan rebels of ADF and NALU.
12 April 2001	The United Nations Panel of Experts issues its first report on the exploitation of resources in the Democratic Republic of the Congo, concluding that the Governments of Burundi, Rwanda and Uganda profited from the conflict by looting gold and other precious minerals, diamonds, timber, ivory and tax revenues.
26 April 2001	Six ICRC workers, four Congolese, one Colombian and one Swiss, are killed on the road between Djugu and Fataki. All international humanitarian agencies halt their activities. A group of Hema professors from the Institut supérieur pédagogique are alleged to have been among the organizers. Hema militias are alleged to have executed the killing.
9 May 2001	Colonel Mohammed Buli Bangolo, from Equateur Province, is appointed Governor of Ituri by FLC.
4 June 2001	Fighting between Bemba's and Nyamwisi's troops breaks out in Beni. Nyamwisi's forces appear to win. FLC starts to disintegrate, and Nyamwisi and Bemba part company by August, dividing the territory into spheres of influence in August. The Nyamwisi faction becomes known as RCD-Kisangani/ML, and Wamba continues to claim legitimacy as leader of the original RCD-ML.
11 June 2001	Uganda establishes a judicial commission of inquiry, which later becomes known as the Porter Commission, into allegations of the exploitation of natural resources in the Democratic Republic of the Congo.
27 June 2001	Humanitarian agencies resume work in Ituri.
27 June 2001	Nyamwisi and RCD-National of Lumbala announce an alliance. Lumbala is named as part of Nyamwisi's delegation to the inter-Congolese dialogue but remains allied to Bemba.
July 2001	UPC is created with Thomas Lubanga as leader. Lotsove is reportedly a co-founder. The party comes to prominence only a year later.
18 August 2001	Wamba's rump factions of RCD-ML ally themselves with Bemba's alliance, FLC, possibly to secure participation in the upcoming inter-Congolese dialogue.

S/2004/573

November 2001	Colonel Fred Seka Mwenge is appointed new UPDF commander.
11 November 2001	RCD-K/ML sets up as a separate party under Nyamwisi with Tibasima as Vice-President.
21 November 2001	Bemba's MLC withdraws troops from Bunia, citing "confusion" in RCD-ML and RCD-K/ML.
28 November 2001	Appointment of Iulia Motoc as Special Rapporteur on the human rights situation in the Democratic Republic of the Congo by the Commission on Human Rights.
December 2001	RCD-K/ML attempts to broaden its base by including Thomas Lubanga as Minister for Defence and bringing back Wamba and Uringi.
December 2001	Joseph Eneko Nguaza, from Aru, is appointed Governor of Ituri.
2002	
January 2002	Bemba and Lumbala make territorial gains against the RCD-K/ML, taking Isiro, Watsa and Bafwasende.
January 2002	Clashes reported for the first time between Alur and Lendu in Nioka, to the north of Bunia. Ugandan media report 50 deaths. The Alur and Lendu had previously been regarded as not hostile to one another.
1 February 2002	Ugandan Defence Minister Amama Mbabazi remarks that the situation in Bunia is explosive and calls on the United Nations to send troops to take control of the area.
2 February 2002	Jean-Pierre Lompondo Molondo from the Kasai is appointed Governor of Ituri by Nyamwisi. Lubanga is sidelined from the military control of RCD-K/ML.
9 February 2002	Hema militias and UPDF attack Gety. They destroy houses and allegedly kill 35 civilians.
19 April 2002	ICD Sun City peace meetings adjourn after reaching a wide agreement, but defer key provisions on power sharing. Both Wamba and Nyamwisi attend as representatives of RCD-ML. Lubanga starts to split from RCD-K/ML and initiates the creation of UPC.
17 May 02	Attack by Hema militia on Walu, <i>collectivité</i> of Babalebe, Irumu territory. A witness reports to MONUC having buried 42 bodies.
19 May 2002	A delegation from Kinshasa, including the Ministers of the Interior and Human Rights, visits Ituri. The Minister for Human Rights, Ntumba Lwaba, says that three years of fighting have led to 20,000 deaths.
May 2002	Humanitarian agencies estimate 500,000 people are displaced in Ituri.

June 2002	The first UPC delegation, including Chief Kawa, meets Rwandan authorities.
7 June 2002	Lendu militia attack Hema militia training camp at Mandro and claim to have killed Rwandan trainers.
10 June 2002	Heritage Oil Corporation announces it has signed an agreement with the Government of the Democratic Republic of the Congo to explore oil opportunities in a vast swathe of the north-eastern Democratic Republic of the Congo, including eastern Ituri.
9-12 June 2002	Following an attack by APC and Hema militias, Lendu forces agree not to attack Nyali provided that the Hema population leaves.
12 June 2002	The former Prime Minister of Senegal, Moustapha Niasse, appointed United Nations Special Envoy to help to advance the inter-Congolese dialogue.
13 June 2002	Lubanga and others arrested in Kampala and transferred to Kinshasa. At the same time, UPDF officers maintain close contact with the UPC movement in Bunia.
Early July 2002	Scores of people die in fighting in Bunia between RCD-K/ML and a militia supporting Lubanga. UPDF allegedly back Lubanga.
28 July 2002	The Institut supérieur pédagogique is empty, most of the Hema students having left for the military training camp in Mandro. They will stay there for two weeks. The students will then be organized, formed in patrols, and some of them will be given weapons.
30 July 2002	Peace agreement between Rwanda and the Democratic Republic of the Congo signed in Pretoria.
Beginning of August 2002	Deployment of UPC in Nyankunde.
6-9 August 2002	Fighting starts between UPC and APC in Bunia. UPDF supports UPC. Some 300 civilians are killed.
9 August 2002	Governor Lomondo and APC are chased out of Bunia, and UPC takes control of the city. UPC and UPDF continue to kill, plunder and destroy houses belonging to the ethnic group they wish to remove.
9-28 August 2002	Several military operations carried out by UPC against Lendu localities of Lipri, Zumbé, Penyi, Loga, Za and Ezekere. Villages are burned down and a large number of civilians killed, including Chief Pilo of Ezekele.
14 August 2002	Mbusa Nyamwisi agrees to withdraw his troops from Irumu in order to facilitate a negotiated approach, and states that there will be no counter-attack against Bunia.
18 August 2002	Cross-roads between Beni, Bunia and Komanda taken by UPC.
23 August 2002	Fighting between Ngiti and UPC in Komanda. High numbers of civilians are reportedly killed.

S/2004/573

23 August 2002	Mission report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances: note by the Secretary-General (A/57/349).
August 2002	Kidnapping and summary execution of Lendu and Bira civilians in Bunia and its surroundings. Other Bira and Lendu intellectuals have their houses burned but succeed in escaping to North Kivu.
31 August 2002	Military operation of UPC, from Nyankunde, against the Lendu locality of Songolo. The group finds mostly children and women and reportedly massacres around 140 of them.
27-29 August 2002	UPC attack is launched against the non-Iturian population in the gold mine of Mabanga, 32 km from Bunia. Around 150 civilians are killed.
29 August 2002	Human Rights Minister Ntumba Lwaba visits Bunia to bolster peace talks under way in Kinshasa. He is taken hostage by Chief Kawa in Mandro. The kidnapping is resolved with the release of nine UPC prisoners, including Lubanga, from Kinshasa's custody.
August 2002	In Boga, a Hema militia is organized in the city, with a majority of youths including minors.
1 September 2002	Community leaders at the Kinshasa peace talks demand the departure of the Ugandans and their replacement by a police force. Ntumba Lwaba alleges Rwanda is moving forces into Ituri in preparation for the departure of UPDF.
2 September 2002	A UPC government is formed in Bunia with Lotsove as Finance Minister, Jean-Baptiste Dhetchuvi as Foreign Minister and Eneko as Governor.
5 September 2002	A coalition of APC, Lendu, Ngiti and Mai-Mai militias attack Nyankunde, target Hema and Bira ethnic groups, and allegedly kill more than 1,000 people in the town and neighbouring villages.
6 September 2002	Luanda Agreement signed between Uganda and the Democratic Republic of the Congo. A 100-day timetable is set for UPDF withdrawal after the establishment of the Ituri Pacification Commission.
10 September 2002	Special report of the Secretary-General notes that, in the Ituri district, 200,000 people have been killed since June 1999, 500,000 newly displaced, and that 60,000 of those displaced are in Bunia; UPC have captured important towns on the Mahagi-Bunia-Beni axis and reduced the RCD-K/ML power base.
16 September 2002	APC and Lendu militia from Kpandroma, <i>collectivité</i> of Djugu, launch an attack against Mahagi, 53 km from Bunia.

29 September 2002	Interim report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Iulia Motoc (A/57/437).
7 October 2002	UPC elements occupy Mahagi.
15 October 2002	The second report of the Panel of Experts on the illegal exploitation of natural resources in the Democratic Republic of the Congo accuses UPDF of continuing to provoke ethnic conflict for economic gain, particularly in Ituri.
October 2002	Humanitarian agencies encounter difficulties in securing permission to land flights in Bunia from UPC which controls it. Relations between UPC and humanitarian agencies remain strained.
20 October-10 November 2002	UPC launches several military operations against the Lendu localities of Nombe, Kagabe, Songolo, Androzo, Pinga, Singo, Mongbwalu and Tseletsele. Hundreds of localities are burned down and an unknown number of civilians massacred.
22 November 2002	The former Governor of Ituri, Joseph Eneko Nguaza, is killed in an ambush 20 km from Mahagi, together with eight representatives of Iturian <i>collectivités</i> .
November 2002	Stalemate with regard to the Ituri Pacification Commission due to insistence of Lubanga that Ituri be recognized as a province, not a district. Kinshasa refuses.
End November-end December 2002	MLC together with RCD-N and UPC attack Mambasa, conduct systematic looting, rape and killing of hundreds of civilians. The operation is known to the population as " <i>effacer le tableau</i> ".
December 2002	UPC reportedly organizes a sizeable military operation in Mongbwalu with the assistance of MLC and finally succeeds in seizing Mongbwalu.
17 December 2002	Comprehensive peace deal signed at inter-Congolese dialogue talks in Pretoria.
20 December 2002	Creation of FIPI; including PUSIC, FPDC and FNI/FRPI in Ariwara.
31 December 2002	MLC, RCD-N and RCD-MI sign a ceasefire agreement under the auspices of MONUC in Gbadolite.
2003	
6 January 2003	RCD-Goma announces that it has formed an alliance with UPC.
6 January 2003	Rethy and Kpandroma captured by RCD-K/ML and Lendu militia during operations against UPC.
15 January 2003	UPC attacks Nioka and destroys the nutritional centre for children established by an international non-governmental organization. They arrest and beat priests accused of assisting the Lendu population.

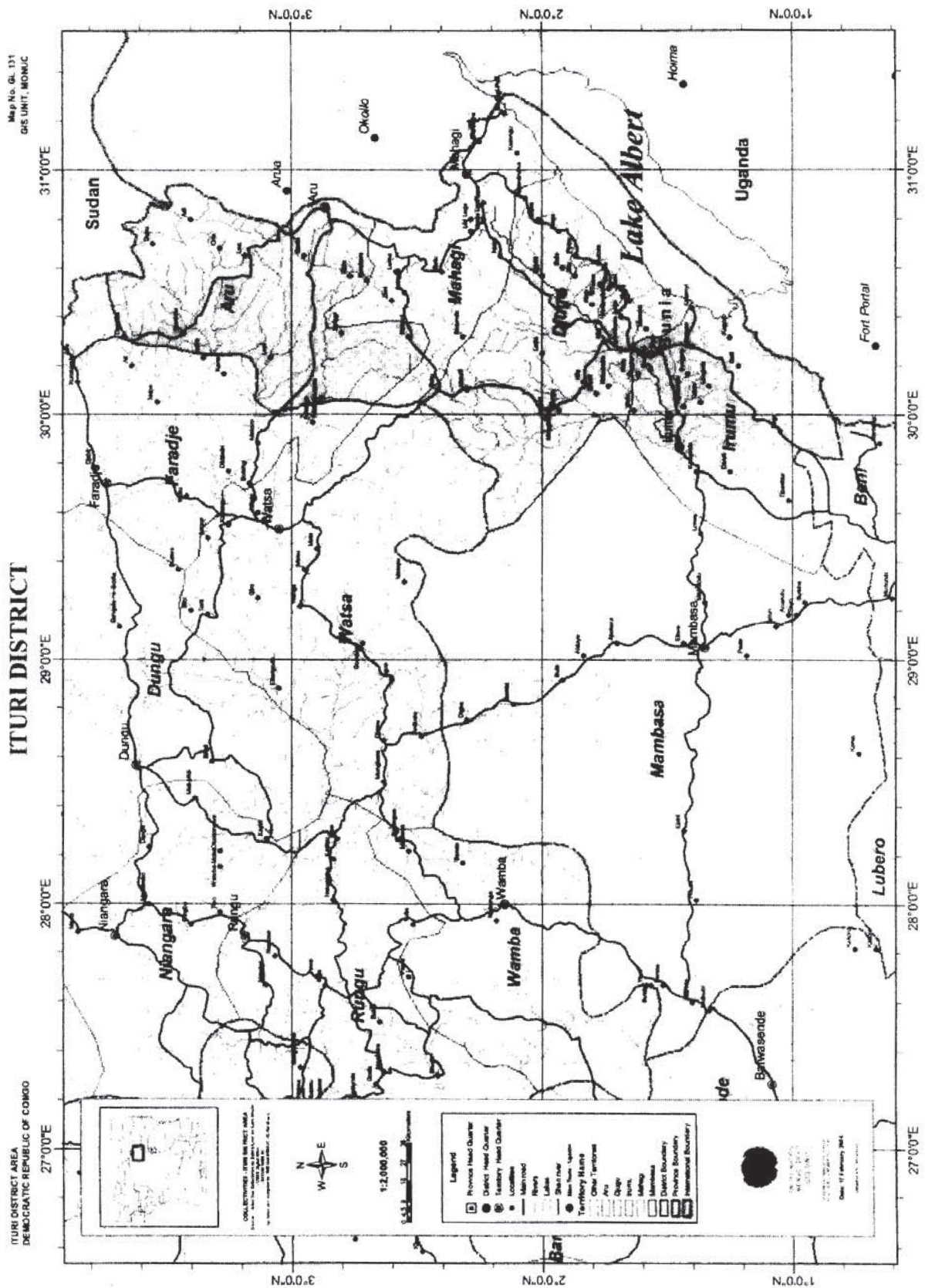
S/2004/573

17 February-6 March 2003	UPC attacks the Lendu localities of Lipri, Bambu and Kobu, in the <i>collectivité</i> of Banyari Kilo, and burns down all surrounding villages.
21 February 2003	The Secretary-General, in his thirteenth Report on the Democratic Republic of the Congo (S/2003/211), notes widespread insecurity, massive displacement and severely restricted humanitarian access in Ituri; displacement of 100,000 persons in the north-east since October 2002; ongoing human rights violations; ongoing fighting between Hema and Lendu aligned groups; and difficulties in monitoring by MONUC due to security conditions.
24 February 2003	Ngiti attack Bogoro, <i>collectivité</i> of Bahema Sud. Execution of around 350 civilians.
4 March 2003	Jérôme Kakwavu creates a new rebel group, FAPC.
6 March 2003	Fighting breaks out between UPDF and UPC in Bunia. UPC is chased out of Bunia.
17 March 2003	Attack on Drodoro Catholic compound results in deaths of 17 students.
20 March 2003	The Security Council in resolution 1468 (2003) requests Secretary-General to increase presence of MONUC in the Ituri district and to monitor developments on the ground.
2 April 2003	Final Act of the inter-Congolese dialogue is signed in Sun City.
3 April 2003	Lendu attack on Drodoro results in killing of some 400 civilians.
4-14 April 2003	First meeting of the Ituri Pacification Commission in Bunia.
7 April 2003	Joseph Kabila is formally sworn in as President for the transitional period.
15 April 2003	Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Iulia Motoc (E/CN.4/2003/43).
6 May 2003	UPDF troops leave Bunia.
10 May 2003	Killing of 2 priests and 16 civilians in Nyakasanza church, Bunia, by Lendu militia.
14 May 2003	Two MONUC military observers reported missing at Mongbwalu (bodies recovered on 18 May).
6-16 May 2003	Fighting breaks out between Lendu militias and UPC. Some 500 civilians are reportedly killed. Most of the population of Bunia flees the city.
17 May 2003	Ceasefire is negotiated by MONUC between UPC and FNI.
23 May 2003	Kilo, Itende and Lisey, in the <i>collectivité</i> of Banyari Kilo, are attacked by Lendu combatants from Nyangaraye; 35 villages are reportedly set on fire.

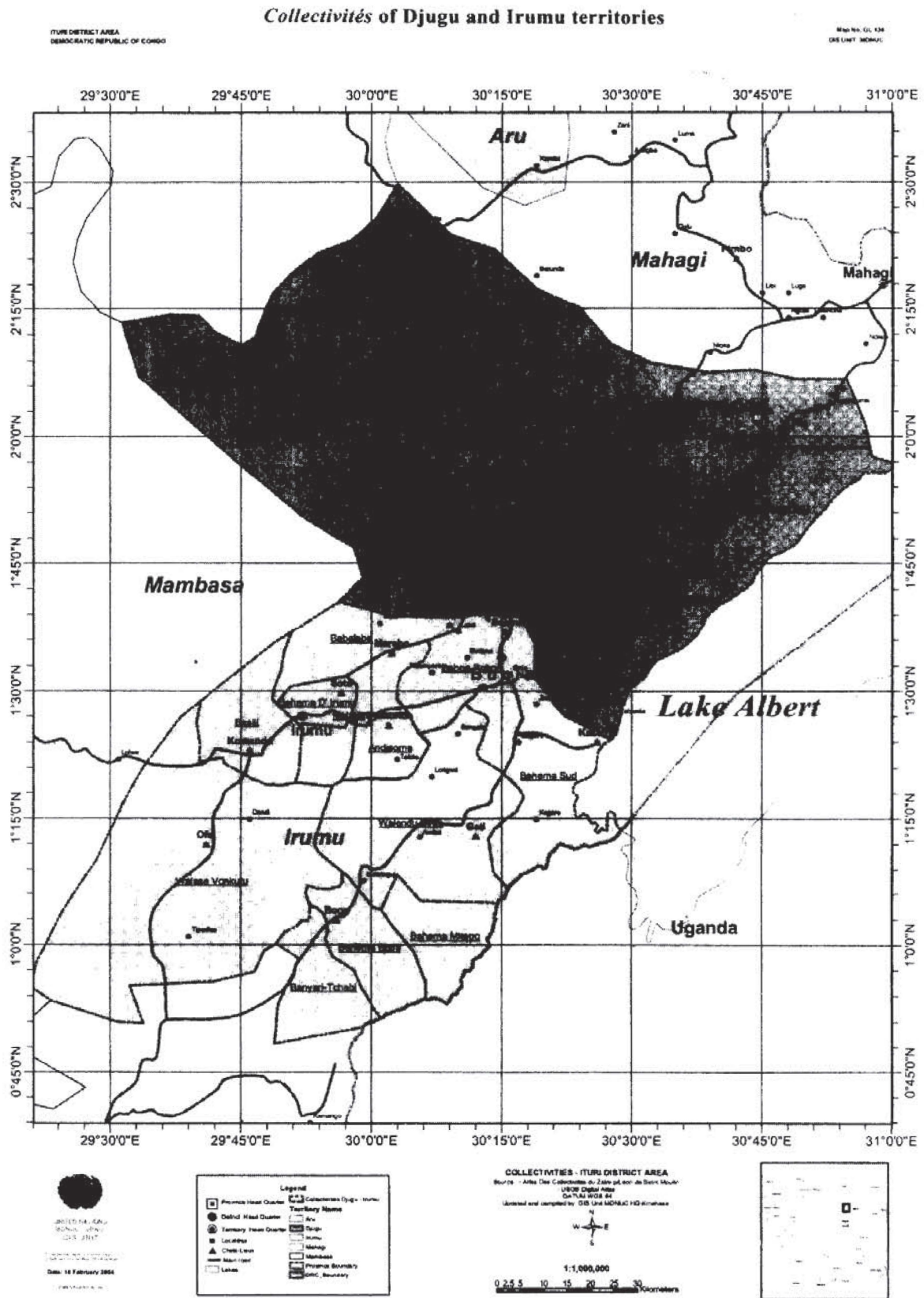
24 May 2003	Signature of a ceasefire agreement between FNI and UPC under the patronage of Joseph Kabila and Amos Namanga Ngongi, Special Representative of the Secretary-General.
27 May 2003	UPC drives FNI troops out of Bunia.
30 May 2003	The Security Council by resolution 1484 (2003) authorizes the deployment of an Interim Emergency Multinational Force in Bunia until 1 September 2003 to provide protection and security to civilians.
31 May 2003	Attack against Tchomia by Lendu and Ngiti militias with the alleged support of APC and FAC. Some 90 civilians are killed.
5 June 2003	The European Union Council by decision 2003/432/CFSP authorizes Operation Artemis in accordance with the mandate set out in resolution 1484 (2003) and establishes the logistics (France is the framework nation, Major General Neveux is appointed Commander).
10 June 2003	Following a Lendu attack on Nioka, the town is destroyed; according to investigations carried out by MONUC, some 60 civilians are killed.
11 June 2003	Lendu and Ngiti militias attack Kasenyi and kill at least 80 civilians.
12 June 2003	Operation Artemis begins; 400 soldiers deployed in Bunia and 500 in Entebbe for logistical support.
19 June 2003	Ceasefire agreement signed in Burundi.
1 July 2003	Transitional Government installed.
6-7 July 2003	Attack against Ambe and its surroundings by Lendu and Ngiti militias. At least 30 civilians are allegedly killed.
15 July 2003	Attack on Tchomia by Lendu and Ngiti militia results in 10 civilians killed.
19 July 2003	Attack on Fataki by FNI and FAPC; 22 civilians are allegedly killed.
23 July 2003	Attack on Kaseyni by Ngiti militia results in 16 civilians killed.
28 July 2003	By resolution 1493 (2003) the Security Council places the mandate of MONUC under Chapter VII and authorizes the Mission to take the necessary measures to protect civilians in Ituri and the Kivus.
5 August 2003	Attack on Fataki by FNI and FAPC. Perhaps as many as 100 civilians killed.
22 August 2003	Reports of massacre in the locality of Gobu, located between Mandro and Katoto. At least 23 people appear to have been killed.
End August-beginning September 2003	Reports of new attacks against the population of Fataki and Bule. First reports of the existence of forced labour camps near Fataki (Habo, Libi, Bali, Aleda, Ali and Beau Marché) run by Lendu combatants.
15 September 2003	The Multinational Force leaves Bunia and is replaced by the military elements of MONUC under the name Ituri Brigade.

S/2004/573

- 15 September 2003 UPC organizes demonstrations in Bunia to celebrate its anniversary and demands that leaders arrested by MONUC be released. The demonstrations provoke incidents that result in the arrest of 74 people, and 28 the following day. Kisémbó, Rafiki and Lobo are kept under house arrest for a few days, the rest are released the following day. During the incidents caused by UPC, at least 12 people are injured.
- 29 September 2003 Eight police officers arrested in May 2003 are released. Kisémbó, Rafiki and Lobo organize the handover to MONUC. The police officers are transferred back to Kinshasa.
- 6 October 2003 Lendu forces attack Kachele, near Bule, in the *collectivité* of Bahema Badjere, leaving 65 people dead.
- 17 October 2003 MONUC arrests Matthieu Ngudjolo, Chief of Staff of FNI.
- 9 November 2003 MONUC arrests Aimable Saba Rafiki, Chief of Security of UPC.
- 2004**
- January Magistrates and members of the Prosecutor's Office of the Tribunal de Grande Instance of Bunia return to Bunia with the assistance of MONUC, the European Union and French Cooperation. Victims of human rights violations start lodging complaints.



S/2004/573





ANNEX 1.7

United Nations Security Council, *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*, document S/2001/357, 12 April 2001

[Complete document]

United Nations

S/2001/357



Security Council

Distr.: General
12 April 2001

Original: English

Letter dated 12 April 2001 from the Secretary-General to the President of the Security Council

I wish to refer to the presidential statement dated 2 June 2000 (S/PRST/2000/20) in which the Security Council requested me to establish a Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo for a period of six months. The Council also requested that the expert panel, once established, submit to the Council, through me, its final report at the end of the mandate.

Further to my letter dated 2 April 2001, I have the honour to transmit to you the report of the Panel, submitted to me by the Chairperson of the Panel. I should be grateful if you would bring the report to the attention of the members of the Security Council.

(Signed) Kofi A. Annan

01-32354 (E) 130401



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

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1-24	3
A. Summary.....	4-8	3
B. Methodological framework.....	9-16	4
C. Overview.....	17-20	5
D. Background.....	21-24	6
II. Illegal exploitation of natural resources and other forms of wealth.....	25-108	6
A. Pre-existing structures that facilitated illegal exploitation.....	26-31	6
B. Mass-scale looting.....	32-45	8
C. Systematic and systemic exploitation.....	46-70	9
D. Current structures of illegal exploitation.....	71-86	14
E. Individual actors.....	87-93	17
F. Economic data: confirmation of the illegal exploitation of the natural resources of the Democratic Republic of the Congo.....	94-108	19
III. Links between the exploitation of natural resources and the continuation of the conflict.....	109-212	27
A. Budgets compared to military expenditures.....	110-124	27
B. Financing the war.....	125-172	29
C. Special features of the links between the exploitation of natural resources and the continuation of the conflict.....	173-180	36
D. Facilitators or passive accomplices?.....	181-212	37
IV. Conclusion and findings.....	213-218	41
V. Recommendations.....	219-242	42
Annexes		
I. Sample of companies importing minerals from the Democratic Republic of the Congo via Rwanda.....		46
II. Countries visited and representatives of Governments and organizations interviewed.....		48
III. Abbreviations.....		55

I. Introduction

1. By the statement of its President of 2 June 2000 (S/PRST/2000/20), the Security Council requested the Secretary-General to establish an expert panel on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, for a period of six months, with the following mandate:

- To follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including in violation of the sovereignty of that country;
- To research and analyse the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of the Congo and the continuation of the conflict;
- To revert to the Council with recommendations.

2. The Secretary-General, in his letter to the President of the Security Council dated 31 July 2000 (S/2000/796), notified the President of the Security Council that the composition of the Panel was as follows:

Mme Safiatou Ba-N'Daw (Côte d'Ivoire)
(Chairperson);

Mr. François Ekoko (Cameroon);

Mr. Mel Holt (United States of America);

Mr. Henri Maire (Switzerland);

Mr. Moustapha Tall (Senegal).

3. The Panel was assisted by a technical advisor, an associate political officer, an administrator and a secretary.

A. Summary

4. Illegal exploitation of the mineral and forest resources of the Democratic Republic of the Congo is taking place at an alarming rate. Two phases can be distinguished: mass-scale looting and the systematic and systemic exploitation of natural resources.

5. **Mass-scale looting.** During this first phase, stockpiles of minerals, coffee, wood, livestock and money that were available in territories conquered by the armies of Burundi, Rwanda and Uganda were

taken, and either transferred to those countries or exported to international markets by their forces and nationals.

6. **Systematic and systemic exploitation.** Planning and organization were required for this phase. The systematic exploitation flourished because of the pre-existing structures developed during the conquest of power of the Alliance of Democratic Forces for the Liberation of Congo-Zaire. These pre-existing structures were improved over time and new networks for channelling extracted resources were put in place. However, the systemic exploitation used the existing systems of control established by Rwanda and Uganda. In both cases, exploitation was often carried out in violation of the sovereignty of the Democratic Republic of the Congo, the national legislation and sometimes international law, and it led to illicit activities. Key individual actors including top army commanders and businessmen on the one hand, and government structures on the other, have been the engines of this systematic and systemic exploitation.

7. The consequence of illegal exploitation has been twofold: (a) massive availability of financial resources for the Rwandan Patriotic Army, and the individual enrichment of top Ugandan military commanders and civilians; (b) the emergence of illegal networks headed either by top military officers or businessmen. These two elements form the basis of the link between the exploitation of natural resources and the continuation of the conflict. Other contributing factors however exist — the roles played by some entities and institutions, and the opportunistic behaviour of some private companies and influential individuals, including some decision makers in the Democratic Republic of the Congo and Zimbabwe. Some leaders in the region bear a direct responsibility. The Panel concludes that tough measures must be taken to bring to an end the cycle of exploitation of the natural resources and the continuation of the conflict in the Democratic Republic of the Congo.

8. The Panel's recommendations revolve around six broad themes: (1) sanctions against countries and individuals involved in the illegal activities; (2) preventive measures to avoid a recurrence of the current situation; (3) reparations to the victims of the illegal exploitation of natural resources; (4) design of a framework for reconstruction; (5) improvement of international mechanisms and regulations governing some natural resources; and (6) security issues.

B. Methodological framework

9. **Methodology.** Owing to the nature of the work and the complexities of the issues, a methodology that allows flexible data collection was essential in order to complete this project. The Panel has therefore utilized:

(a) Primary data collection. Official documentation from ministries and other institutions as well as recorded minutes of meetings involving various relevant actors;

(b) Secondary sources. Reports, workshop proceedings, published and unpublished literature;

(c) Interviews. Structured, semi-structured and open interviews as well as interviews resulting from various network referrals.

10. A vast amount of data was obtained from three essential sources:

(a) Countries and other entities involved in the conflict in the Democratic Republic of the Congo, namely: Angola, Burundi, the Democratic Republic of the Congo, Namibia, Rwanda, Uganda, Zimbabwe, RCD-Goma and RCD-ML;

(b) "Third-party" sources such as Belgium, Cameroon, China, Denmark, France, Germany, Kenya, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Switzerland, various United Nations agencies, the International Monetary Fund, the World Bank, the World Trade Organization, OECD, the International Coffee Organization, De Beers, the Diamond High Council, the International Diamond Manufacturers Association, the University of Maryland, the World Resource Institute and CIFOR;

(c) Various individual actors and stakeholders who expressed an interest for various reasons in sharing their knowledge and understanding with the Panel.

11. The production and export data series available for the analysis cover the period 1995-2000. Data were systematically analysed separately and then compared with one another. Comparative analysis thus contributed to the Panel's ability to develop a good understanding of the issues. In addition, the Panel sought to cross-check every item of information received. In relation to this and to the extent possible, Panel members attempted to speak to individuals

against whom serious allegations were made. When access to those key witnesses or primary actors was denied, Panel members often relied on their closest collaborators for insight. The Panel however faced a problem of imbalance in the acquisition of data. Indeed data was abundant for Rwanda, Uganda, RCD-Goma, RCD-ML and MLC. This is partly due to the high number of insiders living in the Democratic Republic of the Congo and in Europe who were directly involved with those entities and who offered to share almost everything they knew or had experienced or gathered as documentation while they were involved with them. The same quantity and quality of data were not available for Angola, Namibia or Zimbabwe, although the Panel visited those countries. This constraint can be felt in the report. Overall the report was written using the empirical method combined with the economic analysis of data collected, supported by elements of evidence.

12. **Establishing boundaries.** Geographically, data were gathered for occupied and non-occupied territories within the Democratic Republic of the Congo as well as for any country involved in the conflict or of other strategic importance, geographic, financial or other. With respect to natural resources, the Panel focused on minerals, forest and agricultural products and other forms of wealth, primarily taxes. Given the high number of natural resources found in the Democratic Republic of the Congo, the high level of exploitation by numerous parties, and the limited time and resources available to the Panel, the following criteria for the selection of resources to be examined were developed:

- The commercial value of the resources in absolute terms;
- The interest of parties in the resources;
- The scale of exploitation.

13. Based on these criteria, three categories of products were of primary consideration: (a) mineral resources, primarily coltan, diamonds, gold and cassiterite; (b) agriculture, forests and wildlife, including timber, coffee and ivory; and (c) financial products, mainly in regard to taxes. Copper, cobalt, livestock, gorillas, okapis, tobacco, tea, palm oil and land allocation deserved to be among the resources and products to be studied. Some did not meet established criteria, however, and for others, such as copper and cobalt, time constraint was the main reason for a lack

of study. These resources are touched upon in the report for illustrative purposes, but were not systematically studied.

14. **Defining the key concepts.** In determining the parameters of the project the definition or interpretation of illegality and exploitation was vigorously debated.

15. *Illegality.* The most contentious concept in the mandate has been the term "illegality" with regard to exploitation. Almost all actors in the conflict and observers requested a clear definition of illegality. In the Panel's view, the understanding of illegality is underpinned by four elements all related to the rule of law, namely:

(a) Violation of sovereignty. The first element is based on the Security Council's understanding of illegality as described in the Panel's mandate (see the statement of the President of the Security Council of 2 June 2000 (S/PRST/2000/20)). 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 their nationals are carrying out illegal activities in the Democratic Republic of the Congo.

(b) Respect by actors of the existing regulatory framework in the country or territory where they operate or carry out their activities. The Panel considers that if authorities exerting effective power and control over their sovereign area recognize or set up a regulatory framework to govern the use or exploitation of resources, this framework shall be respected. Failure to do so may lead to the infringement of the law and, therefore, activities considered illegal or unlawful. In this case, the Panel deems illegality to be the carrying out of an activity in violation of an existing body of regulations.

(c) The discrepancy between widely accepted practices in trade and business and the way business is conducted in the Democratic Republic of the Congo. In this category, the Panel has considered that the use and abuse of power by some actors fall into 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.

(d) The violation of international law including "soft" law. The Panel considers that business activities carried out in violation of international law are illegal.

The Panel utilized the aforementioned elements in a complementary manner, refusing to be exclusive or to focus on one single element. On the basis of discussions with different members of the Security Council, the Panel has interpreted the wish of the Security Council to be a broad interpretation of the concept of illegality.

16. *Exploitation.* The Panel opted for a broad understanding and interpretation of exploitation. Exploitation was used beyond the mere consideration of production and extraction. It was viewed as all activities that enable actors and stakeholders to engage in business in first, secondary and tertiary sectors in relation to the natural resources and other forms of wealth of the Democratic Republic of the Congo. The broad interpretation enabled the Panel to look into extraction, production, commercialization and exports of natural resources and other services such as transport and financial transactions.

C. Overview

17. This section offers a general overview of the report. Initially, the Panel examined the pre-existing structures that have facilitated the illegal exploitation of natural resources in the Democratic Republic of the Congo. These elements encompass the financial/commercial links and the transportation networks that essentially laid the foundation for the current situation of illegal exploitation.

18. The Panel then reviewed the primary processes by which the natural resources are physically exploited by the occupying forces, primarily Rwanda and Uganda, in conjunction with their respective rebel counterparts in the Democratic Republic of the Congo. Subsequently, the current structures of exploitation were discussed in order to demonstrate the evolution of the process to its present state. Selected individuals were then profiled to illustrate the extent to which this is an organized and embedded venture. Economic data were then analysed to confirm the findings described above.

19. The focus then moved to exploring the complexities of the links between the continuation of the conflict and the exploitation of resources through the use of specific country examples. The aim is to demonstrate the varying means by which power structures can manipulate situations for the most favourable outcome. This section is directly linked to the previous one and, in some cases, information overlapped. This was unavoidable because of the intricate nature of the problem at hand.

20. The report goes on to discuss more incidental elements in this exploitation, which are nonetheless important and relevant: official and non-official fronts utilized as well as the facilitators or passive accomplices within the processes. The report concludes with a summary of the findings and recommendations for action.

D. Background

21. The Democratic Republic of the Congo is located in the heart of equatorial central Africa and has an area of 2,267,600 square kilometres and a current population estimated at 50 million. The Democratic Republic of the Congo is endowed with a unique biodiversity, vast mineral and forest resources, and rich soils conducive to agriculture (see map). These favourable conditions, concentrated in the eastern regions, are the setting for the current ongoing occupation and struggle to exploit these natural resources.

22. The initial disruption, predominantly affecting the eastern Democratic Republic of the Congo, began with the 1994-1995 refugee crisis in the region, spawned by the war in neighbouring Rwanda. The sudden influx of hundreds of thousands of refugees, including members of the Interahamwe, created a new demographic dynamic in the subregional population, abruptly disturbed the delicate balance of the ecosystems and generated a new security situation along the border between the Democratic Republic of the Congo and Rwanda.

23. The situation further deteriorated in 1996 with the war between the Zairian forces and the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), the rebel movement led by the late Laurent-Désiré Kabila and supported by the Angolan, Rwandan and Ugandan forces. 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.

24. In August 1998, fighting erupted again in the northern, western and eastern parts of the Democratic Republic of the Congo, this time between Rwandan and Ugandan troops and the Congolese army, with the assistance of Angolan, Namibian and Zimbabwean armies, as well as Sudanese and Chadian forces. The last two countries have since withdrawn their soldiers from the Democratic Republic of the Congo.

II. Illegal exploitation of natural resources and other forms of wealth

25. The illegal exploitation of resources by Burundi, Rwanda and Uganda took different forms, including confiscation, extraction, forced monopoly and price-fixing. Of these, the first two reached proportions that made the war in the Democratic Republic of the Congo a very lucrative business. Prior to defining the type and manner of illegal exploitation, however, it is important to examine the pre-existing structures which facilitated this process.

A. Pre-existing structures that facilitated illegal exploitation

26. Illegal exploitation¹ 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 then 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

¹ In the context of the Panel's mandate.

wave of "new businessmen" speaking only English, Kinyarwanda and Kiswahili had commenced operations in the eastern Democratic Republic of the Congo.² 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 Democratic Republic of the Congo. 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.

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.

28. 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.

² Cross-border commercial exchanges between people of the region have traditionally existed.

29. **Financial and commercial links.** During the early months of the rebellion, the financial setting and networks were already in place. At the heart of the financial setting is the Banque de commerce, du développement et d'industrie (BCDI) located in Kigali. According to some sources, there was an understanding between the President of Rwanda, Paul Kagame, President Museveni and the late Laurent-Désiré Kabila on the collection and use of financial resources during the time of the AFDL rebellion. This collaboration led many sources to believe that the three leaders were shareholders in BCDI. But this was not the case.

30. The following example illustrates the nature of the financial transactions and links involving BCDI, Citibank New York as a corresponding bank, and some companies and individuals. In a letter signed by J. P. Moritz, General Manager of Société minière de Bakwanga (MIBA), a diamond company, and Ngandu Kamenda, the General Manager of MIBA ordered a payment of US\$ 3.5 million to la Générale de commerce d'import/export du Congo (COMIEX),³ a company owned by late President Kabila and some of his close allies, such as Minister Victor Mpoyo, from an account in BCDI through a Citibank account. This amount of money was paid as a contribution from MIBA to the AFDL war effort.

31. **Transportation networks.** Illegal activities also benefited from the old transportation network that existed prior to the 1998 war. This network consists of key airlines and trucking companies, a number of which aided AFDL troops in their war against the Mobutu regime. The pattern of transport remains similar today: merchandise or arms are flown in and natural resources or their products are flown out. For example, Aziza Kulsum Gulamali, a businesswoman operating within the region for some time, utilized this network even in the 1980s. She contracted Air Cargo Zaire to transport arms to the FDD Hutu rebels in Burundi and smuggled cigarettes on the return flight. Since 1998, aircraft also fly from the military airports at Entebbe and Kigali, 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. The Panel

³ COMIEX is registered as follows: immatriculé No. 43797, identification nationale No. 31837T, Siège sociale Kinshasa/Gombé No. 4 Avenue de la Justice. Administrateur Directeur générale: Frédéric Kabarele.

S/2001/357

concludes that these pre-existing networks and structures constitute the basis for the current exploitation of the natural resources of the Democratic Republic of the Congo.

B. Mass-scale looting

32. Between September 1998 and August 1999, occupied zones of the Democratic Republic of the Congo were drained of existing stockpiles, including minerals, agricultural and forest products and livestock. Regardless of the looter, the pattern was the same: Burundian, Rwandan, Ugandan and/or RCD soldiers, commanded by an officer, visited farms, storage facilities, factories and banks, and demanded that the managers open the coffers and doors. The soldiers were then ordered to remove the relevant products and load them into vehicles. The Panel received numerous accounts and claims of unlawful removal of products by Rwandan or Ugandan armies and their local RCD allies. The Panel has chosen to illustrate this point with some examples.

33. In the mining sector, SOMINKI (Société minière et industrielle du Kivu) had seven years' worth of columbo-tantalite (coltan) in stock in various areas. From late November 1998, Rwandan forces and their RCD allies organized its removal and transport to Kigali. Depending on the sources, between 2,000 and 3,000 tons of cassiterite and between 1,000 and 1,500 tons of coltan were removed from the region between November 1998 and April 1999. A very reliable source informed the Panel that it took the Rwandans about a month to fly this coltan to Kigali. The Panel, however, received official documents including one in which RCD acknowledged removing 6 tons of coltan and 200 tons of cassiterite from SOMINKI for a total of US\$ 722,482.

34. Late in late August 1998, General Kazini's soldiers absconded with the stockpiles of timber belonging to the logging company Amex-bois, located in Bagboka. In December that year, the same General ordered the confiscation of all the stocked timber belonging to the logging company La Forestière. General Kazini was reportedly seen in the area at least twice during the period when the looting occurred and temporarily established his headquarters in the area.

35. Then, in January 1999, in Equateur Province, Jean-Pierre Bemba and General Kazini organized a

large operation for the confiscation of coffee beans. Mr. Bemba initiated, encouraged and perpetuated such practices in the Province. In a written letter to one of his commanders, he urged him to release a bigger vehicle he was using because it was needed urgently. The source indicated that this was later used to carry away tons of coffee beans. A participant in this operation, who has since left the movement, explained that two months were required to remove the enormous quantities of coffee. In the past, this province produced 60 per cent of the country's robusta coffee. The localities of Bumba, Lisala, Bosonzo, Binga and Mindembo for a year did not have coffee stocks to export because of these seizures. The Société congolaise du café, the largest owner of coffee stocks in the area, went bankrupt. The mass-scale looting reached such levels that, in one instance, Mr. Bemba seized 200 tons of coffee beans from the SCIBE company, which was owned by his father, Saolona Bemba. The matter remains unresolved in court.

36. In some cases, factories were dismantled or machinery spare parts were taken away, as in the case of the sugar factory of Kaliba in South Kivu. When the Panel asked about the dismantling of some factories, the RCD cabinet replied that investors were free to dismantle their factories and relocate wherever they wanted. In essence, RCD recognized the phenomenon, but explained it in terms of the investors' decision to relocate the factories while taking the raw materials from the Democratic Republic of the Congo. Cars and other items were apparently also taken from the country, as statistics on Ugandan registered cars reflected an increase of about one quarter in 1999.

37. The financial sector was not left untouched either. A defector from RCD who participated in some looting informed the Panel that Rwandan soldiers systematically targeted local banks as soon as they conquered a town. In many cases, they would use the RCD soldiers to collect the money while those who were armed would surround the bank. For example, the Kisangani Bank, a branch of the central bank, received a visit of RCD staff accompanied by Rwandan soldiers. Depending on the source (central bank in Kinshasa or eyewitness), anywhere between \$1 million and \$8 million worth of Congolese francs was taken. The Panel was told that the operation took place a couple of days after the central bank and Ministry of Finance officials deposited money to pay civil servants and old Congolese franc notes were replaced by new ones.

38. Under the escort of soldiers, the money was taken to the Palm Beach Hotel. The hotel management recalled that bags full of money were stored in one of the rooms and that during those few days armed soldiers who could not speak Lingala (the most commonly spoken Congolese language) guarded the hotel premises. Could such an operation involving a number of armed soldiers be carried out without the knowledge and consent of the highest Rwandan commander in the Democratic Republic of the Congo?

39. Aides of Jean-Pierre Ondekane (an RCD leader) reportedly collected the money from the Palm Beach Hotel, flew with it to Goma and handed it over to Emmanuel Kamanzi (former chief of the Finance Department of RCD), who then flew on to Kigali. The Panel could not identify the final recipient of the money or how much disappeared between Kisangani, Goma and Kigali. However, some sources told the Panel that Mr. Kamanzi was imprisoned briefly at some point after this transaction. According to the same sources, he had apparently helped himself to the money he was ordered only to transport. Mr. Kamanzi told friends that he simply took a break of two months in Kigali.

40. During the period when this operation was under way, in Equateur Province, Mr. Bemba's men visited several banks. According to a reliable source Mr. Bemba's instructions to his soldiers were to systematically empty the bank once a town was captured. His troops took an equivalent of \$400,000 from the Banque commerciale du Congo branch in Bumba, \$500,000 in Lisala, and approximately \$600,000 in Gemena.

41. The pilfering was also occurring in Kinshasa. The Panel has evidence of a widespread practice by which the late President Kabila would by proxy have companies give a certain percentage of their profits. For example, certain oil companies in the Democratic Republic of the Congo, under the umbrella of *taxe parafiscale*, were delivering sums of money, in hard cash, daily or weekly to the late President via his Minister, friend and right-hand man, Mr. Mpoyo. Other companies, such as MIBA, were asked to hand over part of their profits to the late President's regime, and all parastatals and important private companies were invited to open bank accounts in the Banque de commerce et du développement (BCD) (see para. 78).

42. However, over time the mass-scale looting described above diminished and theft by individual soldiers became more visible. For example, in Bunia, during Panel discussions, local non-governmental organizations, eyewitnesses and victims mentioned cases in which Congolese civilians were injured or murdered for resisting the attempted seizure of property by the RCD rebels and foreign soldiers. In Bukavu, individuals have told Panel members how Rwandan soldiers confiscated their life savings in dollar notes and some of the gold they were buying and keeping as *monnaie refuge* in the face of the repeatedly devalued Congolese franc. Partially, this has contributed to the increasing resentment felt by the Congolese population towards foreign soldiers and some rebels.

43. The lootings of manufacturing plants, stocks and private property were not only acts of isolated individual soldiers but were encouraged, sometimes organized and coordinated, by the highest army commanders of both Rwanda and Uganda.

44. General Kazini used the same method to facilitate looting activities. He would appoint loyal commanders and reliable civilian Congolese in the civil administration in areas potentially rich in natural resources in order to secure his networks. This was exactly the case in Ituri, where he appointed Adele Lotsove in 1999 (see para. 71). In turn, these top layers of collaborators, colonels and majors utilized their right-hand men to carry out the actual looting.

45. The Panel has strong indications after talking to numerous witnesses (key and others) that key officials in the Governments of Rwanda and Uganda were aware of the situation on the ground, including the looting of stocks from a number of factories. In some cases, the level of production of mineral resources would have alerted any government, such as those of gold for Uganda and coltan for Rwanda (from 99 tons in 1996 to 250 tons in 1997).

C. Systematic and systemic exploitation

46. **Extraction phase.** The mass-scale looting carried out on many levels within the Democratic Republic of the Congo by rebels and foreign soldiers overshadowed extraction activities during the first 12 months of the second war. When resource stockpiles were looted and exhausted by occupying forces and their allies, the

S/2001/357

exploitation evolved to an active extraction phase. Both Congolese (civilians and soldiers) and foreigners (civilians and soldiers) became involved in the extraction of natural resources. This section highlights one particular case study rather than offering a number of shorter illustrative examples. The study will in effect demonstrate how a company used illicit business practices and complicity with occupying forces and the Government as well as its international connections to exploit the natural resources of the Democratic Republic of the Congo.

47. **DARA-Forest case study.** A Ugandan-Thai forest company called DARA-Forest moved to the Ituri area late in 1998. 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. 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 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. 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.

48. 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. 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.

49. 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.

50. 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. 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. 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.

51. 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. 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. 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. 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. 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.

52. 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 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. Some unconfirmed information indicates that members of President Museveni's family are shareholders of DGLI, although more investigation is needed.

53. 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 Bundbujyo 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.

54. 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 m³ of timber per year.

55. **Other extraction schemes.** Burundians and Rwandans have also extracted timber or have been associated with Congolese loggers. Roads to evacuate timber from places deeper in the forest are in a very bad state. Yet Congo timber, as it is referred to in Bujumbura, is readily available in Burundi and Rwanda. Some Burundians, however, are also involved in the harvesting of bark from *prunus Africana*. This tree is known and used in medicine for prostate treatment. Statistics gathered from the Tanzanian Port Authority clearly indicate that Burundi exported those barks in 1998 and 1999. *Prunus Africana* is not found in Burundi, however, but rather in the forests of South Kivu.

56. **Mining sector.** In the mining sector, direct extraction was carried out in three ways, namely (a) by individual soldiers for their own benefit; (b) by locals organized by Rwandan and Ugandan commanders; and (c) by foreign nationals for the army or commanders' benefit.

57. The Panel came across a number of cases in which soldiers were directly involved in mining in Watsa. In September 1999, the UPDF local commander demanded the extraction of gold on the pillars of the Gorumbwa mine galleries in which dynamite was used. On 9 September, the galleries collapsed, leading to the death of a number of Congolese miners. Some months

later, Ugandan soldiers who came to mine in the same area contracted respiratory disease. Other returning UPDF soldiers have themselves told friends how they operated in order to acquire the gold. From these accounts, it appears that, even when the local commanders were informed about these activities, there was an acceptable level of tolerance. Although the Panel qualifies this behaviour as passive complicity on the part of some commanders, it is not clear whether soldiers shared the acquired minerals with their allies.

58. Local Congolese have been mining for years for their own benefit. The novelty of their involvement lies in the fact that some of them were used as "convincible labour" to mine gold, diamonds or coltan. In the Bondo locality within Equateur Province, young men from 12 to 18 years were recruited by Jean-Pierre Bemba. The Ugandan allies trained the recruits and shared with them the idea that the Ugandan army was an "army of development" that aimed at improving ordinary people's living conditions. After the one-hour morning physical training session, they were sent to gold mines to dig on behalf of the Ugandans and Mr. Bemba. According to eyewitnesses, in Kalima, RPA commander Ruto enrolled two teams of local Congolese to dig coltan; these Congolese worked under the heavy guard of Rwandan soldiers.

59. In the Kilo-Moto mineral district, Ugandan local commanders and some of the soldiers who guarded the different entry points of the mining areas allowed and encouraged the local population to mine. The arrangement between the soldiers and the miners was that each miner would leave at the entry/exit point one gram of gold every day. A key informant of the Panel indicated that on average 2,000 individuals mined this large concession six days a week. This source, confirmed by other sources, informed the Panel that it was so well organized that the business ran smoothly. On average 2 kg of gold are delivered daily to the person heading the network.

60. The last pattern of organized extraction by the occupying forces involves the import of manpower for mining. Occupying forces brought manpower from their own countries and provided the necessary security and logistics. In particular, Rwanda utilized prisoners to dig coltan in exchange for a sentence reduction and limited cash to buy food. The Panel was recently informed that there is a presence of 1,500 Rwandan prisoners in the Numbi area of Kalehe. According to the same report, these prisoners were seen mining

coltan while guarded by RPA soldiers. Human Rights Watch also reported the same information in March 2001. This recent report confirms numerous other reports and eyewitness accounts of the involvement of prisoners, some of whom are former refugees.

61. **Impact on wildlife.** Wildlife has also suffered a great deal from the conflict. Numerous accounts and statistics from regional conservation organizations show that, in the area controlled by the Ugandan troops and Sudanese rebels, nearly 4,000 out of 12,000 elephants were killed in the Garamba Park in north-eastern Democratic Republic of the Congo between 1995 and 1999. The situation in other parks and reserves is equally grave, including Kahuzi-Biega Park, the Okapi Reserve and Virunga Park. The number of okapis, gorillas and elephants has dwindled to small populations. In the Kahuzi-Biega Park, a zone controlled by the Rwandans and RCD-Goma and rich in coltan, only 2 out of 350 elephant families remained in 2000. There is serious concern among conservationists that the rest fled of their own accord or were killed, as two tons of elephant tusks were traced in the Bukavu area late in 2000. Already by April 2000, about three tons of tusks were temporarily seized by RCD-ML in Isiro. After strong pressure from Uganda, the cargo was released and transferred to Kampala.

62. The Panel has indications that, in most cases, poaching of elephants in violation of international law (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)) was well organized. Either soldiers hunted directly with the consent of the commander or they provided equipment and protection to local villagers to execute the task with the objective of collecting elephant tusks. For example, in August 2000, UPDF Colonel Mugeni 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. Eyewitnesses reported to the Panel several incidents that involved Rwandan soldiers in the trading of elephant and buffalo meat. In the Bukavu and Goma areas, there appears to be a pattern: high commanders take the tusks, soldiers negotiate the wholesale price with some locals, and the locals sell the meat in the market place as retailers.

63. Harvesting of coffee by non-owners has been another feature of the exploitation of natural resources. Jean-Pierre Bemba, the leader of MLC and now the

President of the Front de libération du Congo, a partner in the coffee business with General Kazini, has been harvesting coffee directly from plantations he does not own. During our visit to Gbadolite, some locals mentioned that coffee was harvested by Mr. Bemba's men from some private plantations that belonged to individuals who had fled the region.

64. Monopolies and price-fixing. In addition to looting and extracting resources, rebels and Rwandan and Ugandan troops have abused the commerce and trade system. In some cases, they forced locally owned and some foreign-owned businesses to close down. The methods used varied from looting to harassing the owners. The end objective was to gain control of local commerce. The result is unprecedented control of the economy of the eastern and north-eastern Democratic Republic of the Congo. During its field visit, the Panel noted that consumer goods and other merchandise found in Gbadolite and Bunia originated mostly in Uganda. During its field visit to Bunia, the Panel members witnessed the unloading of beer crates from an aircraft coming from Uganda. In Gbadolite, most cigarettes, beverages, toilet paper etc. are imported from Uganda. Equally, goods in Kisangani, Bukavu and Goma come mainly from Burundi or Rwanda. Imported goods for the occupied zones arrive via the ports of Mombasa and Dar es Salaam. This was confirmed during the Panel's visit to the customs services (Internal Revenue Authority) in Kampala. Furthermore, depending on the importer of the goods, taxes are not paid. The failure to pay taxes, especially in Orientale Province, was acknowledged to the Panel by RCD-ML during our discussions in Bunia in October 2000.

65. Rwandan and Ugandan troops and their Congolese allies have also been exploiting local farmers. They have imposed prices and conditions on the farmers. In one instance, a farmer living near the Ubangi River, 20 km from Gbadolite, explained to a member of the Panel how he is dependent on the coffee dealers for the supply of the bags imposed by the coffee collectors (buyers). Failure to use these bags leads to an automatic reduction in the price of the coffee. These bags are not produced in the eastern Democratic Republic of the Congo and they have to buy them.

66. In another instance, one woman explained how she and her husband could no longer sell their palm oil to the neighbouring Central African Republic or ship it

to Kinshasa for a better price. The control of trade and other business networks for commercial crops, such as coffee and palm oil, is almost total within the occupied zones. This translates into a de facto monopoly like the one Jean-Pierre Bemba has on coffee exports in Equateur Province. The locals who desperately remain in the villages work more for less, if anything at all. Humanitarian organizations working in the occupied zones told the Panel stories of a number of women in some villages who have simply stopped taking their children to the health centres because they no longer possess simple items of clothing to preserve their dignity.

67. Exploitation of resources becomes even more questionable, as some of the players not only produce counterfeited Congolese francs, but use them to purchase natural resources. According to reliable sources, the Victoria Group, whose key shareholder is General Khaleb Akandwanaho, alias Salim Saleh, was involved in the making of counterfeit Congolese francs. These notes are used for the purchase of commercial crops, primarily coffee. A very reliable source told the Panel that in mid-1999 Jean-Pierre Bemba ordered the production of 100-franc Congolese notes. Simultaneously the Victoria Group also produced counterfeit Congolese francs. By the end of 1999, Equateur Province was flooded with counterfeit Congolese currency so that Mr. Bemba decided to suspend all 100-franc notes, including the ones he had produced, so as to stop inflation in the areas he controlled.

68. The Panel has evidence that the illegal exploitation of natural resources goes beyond mineral and agricultural resources. It is actively occurring also in respect of financial transactions, taxes and the use of cheap labour, which our mandate qualified as other forms of wealth. Local banks and insurance companies operating in Goma, Bukavu, Kisangani, Bunia and Gbadolite deal directly with Kigali or Kampala. A system of tax collection — enforced in some cases — has been implemented by MLC, RCD-ML and RCD-Goma with their established Ugandan and Rwandan counterparts. In the rebels own words, these taxes are aimed at "financing or supporting the war effort". Indeed, part of the funds collected is sent to Kigali (in the case of RCD-Goma). In the case of the former RCD-ML and MLC, not only was part of the taxes sent to Kampala but also individual colonels would claim direct payment from RCD-ML. In Bunia and Bukavu,

people protested, demonstrated and denounced this practice of abuse. In areas controlled by Mr. Bemba, peasants carrying palm oil on bicycles have to pay taxes on the bicycles.

69. The use of child labour is also rampant in the occupied territories. Some children are reportedly mining gold in the Kilo Moto mines. In Equateur Province, some children were seen in the diamond mines. The Panel members witnessed the presence of young MLC recruits at Gbadolite airport and in the city. They were at the airport waiting for a flight, having recently completed their military training.

70. The aforementioned demonstrates that the procedures and processes for exploiting the natural resources of the Democratic Republic of the Congo are continuously evolving. Occupying forces began with the easiest method, looting stockpiles. As the wells ran dry, they developed efficient means of extracting the additional resources necessary to keep the coffers full. Eventually, any means necessary was recognized as a legitimate mode of acquisition. From all the evidence offered above, it appears that this process will continue to evolve as is deemed necessary.

D. Current structures of illegal exploitation

71. **Administrative structures.** The illegal exploitation of natural resources is facilitated by the administrative structures established by Uganda and Rwanda. Those countries' leaders directly and indirectly appointed regional governors or local authorities or, more commonly, appointed or confirmed Congolese in these positions. Typical examples are, on the Ugandan side, the appointment of the Governor of Ituri Province. On 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. On the Rwandan side, according to one reliable source, Rwandan authorities have helped secure the appointment of Gertrude Kitembo as Governor of Maniema.

72. **Modes of transportation.** Illegal activities have benefited from the evolution of the means of transportation in the region. Prior to the second war most exchanges of goods and products were conducted through road transportation. To a large extent, smugglers utilized Lake Kivu and Lake Tanganyika to smuggle goods and products to and from the Democratic Republic of the Congo and, in limited circumstances, used aircraft. The shift over the past four years has been noticeable. An increasing number of aircraft are utilized to transport products and arms into the Democratic Republic of the Congo, while transferring out vast quantities of agricultural products and minerals, in particular to Kampala and Kigali. The other novelty of increased air transport has been the use of aircraft leased by the army for commercial and non-military functions. Different categories of people, including soldiers, journalists and traders, have told the Panel about their journeys in aircraft alongside bags of coffee and other non-military products.

73. This change in mode of transportation was accompanied by a change in players as well as a redefining of transportation companies. Traditional and well-established companies such as TMK saw their share of the market erode while others simply disappeared (Air Cargo Zaire). At the same time, new companies emerged and expanded, such as Air Navette and Jambo Safari; they are owned or controlled by the relatives and friends of generals, colonels and Presidents. At the other end, outsiders who entered the region with the AFDL "conquest" of Kinshasa during the first war, by transporting troops, remained and consolidated their position; that is the case of Victor Butt, a notorious arms dealer in the region. Most flights to and from Equateur and Orientale Provinces originate from the Entebbe military airport. During a visit to Kampala, the Panel was informed about the concern expressed by the Ugandan Internal Revenue to the Ministry of Defence. This complaint raised the issue of revenue loss to the treasury due to the fact that products entering or leaving the Democratic Republic of the Congo by air to and from Entebbe military airport are not checked, and taxes are not levied by the customs services.

74. On the Ugandan side, three main private companies are involved:

- Air Alexander, whose owner is Jovia Akandwanaho, the wife of Salim Saleh and sister-in-law of President Museveni. Her company

mainly operated between Entebbe and Kisangani before the last battle of Kisangani. According to some sources, the company continues to operate in the territory held by Ugandan troops.

- Air Navette has dealings with General Salim Saleh and Jean-Pierre Bemba. The company flies to Gbadolite, Gemena, Kisangani, Bunia and Kampala. This company uses an Antonov 26 and an Antonov 12.
- Uganda Air Cargo, which mainly deals with the Ugandan Ministry of Defence. Previously, it was using a C-130, but currently uses an Ilyushin 76 and an Antonov 12. This company flies to Entebbe, Gemena, Basankasu, Isiro and Buta.

The Panel has indications that most private air companies do not own the aircraft they use; the owners are usually people like Victor Butt.

75. On the Rwandan side, a number of private companies operate in the territory. These are:

- New Gomair, which flies to Kisangani-Goma and Kigali. According to some sources, the wife of the current Minister of Finances of Rwanda is a shareholder.
- Air Navette flies to Goma, Bukavu, Kisangani and Kigali. According to some sources, one of the major shareholders, Modeste Makabuza, also owner of Jambo Safari, is a known figure in the entourage of President Kagame.
- Air Boyoma is a shuttle between Goma and Lodja; according to some sources Mr. Ondekane, former first Vice-President of RCD-Goma, is a shareholder.
- Other companies, such as Compagnie aérienne des Grands Lacs et Cargo fret international, Sun Air Services and Kivu Air Services, operate in the area.

76. Clients and other very reliable sources have indicated that Sabena Cargo is transporting illegal natural resources extracted from the Democratic Republic of the Congo. Sabena Cargo is said to carry coltan extracted from the Democratic Republic of the Congo from Kigali airport to European destinations. The Panel asked to meet with the management of Sabena in Kampala and in Brussels, but no one was made available to speak to the Panel members.

77. **Financial network.** All illegal activities in the eastern Democratic Republic of the Congo, primarily the commercial and trade operations, utilize the financial network to some extent. One of the characteristics of this network has been its ability to quickly adapt to the new political and economic environment. Cities like Kisangani and Goma were already big trading centres for diamonds and consumer goods. Most banks operating in the occupied zones were already in operation in the Democratic Republic of the Congo before the August 1998 war. Their headquarters or corresponding banks were generally in Kinshasa. With the occupation, headquarters and corresponding banks tended to move to Kigali. Some of these banks are:

- Union des banques congolaises. Although the headquarters remains in Kinshasa, it has ongoing operations in areas controlled by Rwanda.
- Banque commerciale du Congo. The headquarters is in Kinshasa and it has branches in the eastern Democratic Republic of the Congo. The Director was transferred to Kigali in order to oversee operations in the eastern Democratic Republic of the Congo. This bank is linked to the Belgolaise, a Belgian bank consortium.
- Banque commerciale du Rwanda. The headquarters is in Kigali, but it has operations in Kisangani, Bukavu and Goma. The Government of Rwanda is said to be one of the shareholders.
- Banque à la confiance d'or (BANCOR). One of the newest banks in Kigali which started its activities in 1995. It was family owned until 1999 but early in 2000 a businessman, Tibere Rujigiro, purchased the bank at a very low price according to various sources.

78. **Special cases: BCDI and BCD.** The Banque de commerce, du développement et d'industrie is the newest bank, created in November 1996 and headquartered in Kigali. Its involvement with the Democratic Republic of the Congo dates back to the beginning of the AFDL conquest of the former Zaire. BCDI operated most AFDL financial transactions before Laurent-Désiré Kabila took power. The Panel was told that its shareholders are essentially the Rwandan Patriotic Front, COMIEX, Alfred Khalissa and some Angolans. The real shareholders are the allies, except Uganda. Some documents, receipts for payments and authorization for payments made by

some large companies in the Democratic Republic of the Congo between early and late 1997 clearly indicate that payments are to be made through BCDI for the contribution to "the war effort". When the late President Kabila came to power, he created the Banque de commerce et du développement, which has the peculiarity of having as shareholders Tristar, COMIEX and Alfred Khalissa of BCDI. The Rwandan Patriotic Front remains, through BCDI and Tristar, a shareholder in BCD in spite of the war situation.

79. Other private companies. A number of companies were created to facilitate illegal activities in the Democratic Republic of the Congo. Others have existed in the region for decades and joined the bandwagon to pursue the obvious financial windfalls involved in the exploitation of the country. On the Ugandan, MLC and RCD-ML side, rebel leaders and/or Ugandan military officials created new companies and businesses using *prête-noms*. Most, if not all, of these companies are privately owned by individuals or a group of individuals.

80. Among the companies involved in the illicit acquisition of natural resources in the Democratic Republic of the Congo, Trinity and Victoria seem to be the most interesting given their *modus operandi*, activities and respective shareholders. Victoria Group is chaired by Mr Khalil and its headquarters is in Kampala. According to reliable sources, Mr. Khalil deals directly with Mrs. Akandwanaho on diamond issues. Mr. Khalil has two collaborators in the Democratic Republic of the Congo, based in Kisangani and Gbadolite. Both are said to be from Lebanon, they are Mohammed Gassan and Mr. Talal. During its visit to Gbadolite, the Panel received confirmation of the presence of one of them and his leading role in the purchase of diamonds in the region. A reliable source told members of the Panel that the Victoria Group belongs jointly to Muhoozi Kainerugabe, son of President Museveni, and Jovia and Khaleb Akandwanaho. Victoria Group is involved in trading diamonds, gold and coffee. The Group purchases these mineral and agricultural products in Isiro, Bunia, Bumba, Bondo, Buta and Kisangani. The company paid taxes to MLC, but failed to do so with RCD-ML. When counterfeit currencies (Congolese francs and United States dollars) were found in areas where the company buys the natural resources, fingers were pointed at the Victoria Group. Other sources have confirmed to the

Panel the involvement of the Victoria Group in the making of counterfeit currency.

81. Trinity is an equally interesting case. Ateenyi Tibasima, second Vice-President of RCD-ML and now the *Commissaire général adjoint* of FLC, was the "manager" of the company. According to reliable sources, Trinity is a fictitious company and a conglomerate of various businesses owned by Salim Saleh and his wife. Its primary purpose was to facilitate their business activities in Orientale Province. To this end, Mr. Tibasima granted a tax holiday to all Trinity activities in the areas controlled by Uganda and administered by RCD-ML in November 1999. Trinity has imported various goods and merchandise and has taken from Orientale Province gold, coffee and timber without paying any tax. Different individuals, Ugandans as well as Congolese, have taken the opportunity created by the confusion over Trinity to export from the Democratic Republic of the Congo (on behalf of Trinity) various natural resources, also without paying taxes.

82. On the Rwandan side, most companies with important activities related to the natural resources of the Democratic Republic of the Congo are owned either by the Government or by individuals very close to the inner circle of President Kagame. Rwanda Metals, for example, is a company involved in coltan dealing. It purchases coltan and exports it out of the continent. The Panel has strong indications that RPF controls Rwanda Metals. In mid-January 2001, some very reliable sources met with the senior management of Rwanda Metals in Kigali. During these discussions, the Director told them that Rwanda Metals was a private company with no relation to the army. He further explained that he was expecting key partners that very morning for discussions. As discussions continued, the so-called partners arrived as planned; unfortunately they were in Rwandan army uniforms and were top officers. This incident confirms accounts from various sources indicating that Rwanda Metals is controlled by RPF. Meanwhile there are also indications that RPA is a shareholder of Grands Lacs Metals, a company also dealing in coltan.

83. Jambo Safari is another company whose emergence and growth has raised some eyebrows in Goma and Bukavu. When the August 1998 war started, Modeste Makabuza was buying oil from Kenya and selling it in the eastern Democratic Republic of the Congo. Jambo Safari has benefited from an internal

network of false receipts within RCD-Goma and RPA. According to a very reliable source, Jambo Safari would charge RCD-Goma for three times the quantities of oil delivered and any attempt to question the figures would be suppressed. In a rare attempt to clarify the situation, some members of RCD-Goma during the last General Assembly meeting, in June 2000, requested that a commission be set up to conduct an internal audit. Kigali agreed to send a colonel to conduct the audit along with an RCD team. When the issue of false receipts and overpayment was established, Kigali recalled the colonel and suspended the inquiry. Some sources have confirmed the close ties between Mr. Makabuza, the apparent owner of Jambo Safari, and President Kagame. Jambo Safari has diversified since its original business venture, is now dealing in coffee, recently purchased a fleet of new trucks and is also involved in air transport with Air Navette.

84. Other minor companies also operate with the protection of some local commanders. For example, Établissement Habier is involved in the distribution of oil and petrol in Goma and Bukavu. This company is said to belong to Ernest Habimana, who is closely linked to RPA, especially to Major Karasira and Mr. Gakwerere. STIPAG, a company owed by Mr. Mbugiye operating in collaboration with Major Kazura (chief of security of the Rwandan Army in the Democratic Republic of the Congo) and Major Gatete, is among those junior companies involved in coffee and diamond dealing. Finally a myriad of small companies was created and their shareholders are invariably powerful individuals in the Rwandan nomenclature or in RCD structures. That is the case of Grands Lacs Metals, where Majors Gatete, Dan and Kazura are reportedly shareholders. In other cases, foreign companies incorporate local potentates on their board, as in the case of Gesellschaft für Elektrometallurgie (GFE), with Karl Heinz Albers and Emmanuel Kamanzi as partners, or MDM with Mr. Makabuza.

85. The Panel, on the basis of the data, accounts and documents received and analysed, came to the conclusion that the systems of illegal exploitation established by Ugandans and Rwandans differ from each other. In the case of Uganda, individuals, mainly top army commanders, using their hold over their collaborators and some officials in rebel movements, are exploiting the resources of the Democratic

Republic of the Congo. However, this is known by the political establishment in Kampala.

86. In the case of Rwanda, things are more systemic. There are linkages and bridges between some key companies, as in the case of Tristar and BCDI and, above all, the relationship between RPA, RPF, BCDI, Rwanda Metals, Grands Lacs Metals and Tristar. The senior management of these companies seems to report separately to the same people at the top of the pyramid. On the other hand, all key managers have personal relationships with different army commanders who themselves report to the leadership. This pyramidal and integrated structure coupled with the strict discipline of the group has made the exploitation of the resources of the Democratic Republic of the Congo more systematic, efficient and organized. There is equally a bridge between the internal Rwandan structures of illegal exploitation and the RCD-Goma structures. The Government of Rwanda made arrangements with RCD-Goma to drain resources from the Democratic Republic of the Congo. There is a case of loans made by BCDI to RCD to pay suppliers whose business is related to RPA. This "financial bridge" is statutory; indeed the RCD statute indirectly recognizes the role of Rwanda in overseeing the finances of the movement and its participation in decision-making and control/audit of finances.

E. Individual actors

87. The list that follows is not exhaustive, but the Panel's choice was based on the crucial roles played by these persons and their direct involvement in either providing support, entertaining networks or facilitating the exploitation of natural resources within the Democratic Republic of the Congo. On the Ugandan side, some familiar names surface frequently, such as Major General Salim Saleh, Brigadier General James Kazini, Colonel Tikamanyire, Jovia Akandwanaho, Colonel Utafire, Colonel Mugeni, Mr. Khalil, Ateenyi Tibasima, Mbusa Nyamwisi, Nahim Khanaffer, Roger Lumbala, Jean-Yves Ollivier, Jean-Pierre Bemba, Adele Lotsove, Abdu Rhaman and latecomers such as Colonel Muyombo.

88. The Panel has selected to focus on three key actors. First and second are Major General (retired) Salim Saleh and his wife, Jovia Akandwanaho. Khaleb Akandwanaho, alias Salim Saleh, and his spouse Jovia are at the core of the illegal exploitation of natural

S/2001/357

resources in areas controlled by Uganda. He is the younger brother of President Museveni (very popular in the army) and he pulls the strings of illegal activities in areas controlled by Uganda and allies. James Kazini is his executing arm and his right hand. He controls and protects Mbusa Nyamwisi and Ateenyi Tibasima. In return, they protect his commercial and business interests in regions controlled by the former RCD-ML. He used both the Victoria Group and Trinity for the purchase and the commercialization of diamonds, timber, coffee and gold. Very reliable sources have told the Panel that behind Salim Saleh there is Jovia Akandwanaho, who is more aggressive on the issue of exploitation of the natural resources of the Democratic Republic of the Congo. She is particularly interested in diamonds. According to very reliable sources, she is at the root of the Kisangani wars. She wanted control of the Kisangani diamond market after having confirmation from Mr. Khalil, "Director" of the Victoria Group, that it was a good idea and that it was feasible to control the Kisangani market.

89. The third is Brigadier General James Kazini, former Chief of Staff of UPDF and former commander of military operations in the Democratic Republic of the Congo. He is the master in the field; the orchestrator, organizer and manager of most illegal activities related to the UPDF presence in north and north-eastern Democratic Republic of the Congo. He is the right hand of Salim Saleh. He very much relies on the established military network and former comrades and collaborators, such as Colonels Tikamanyire and Mugeni. He has been close to Messrs. Nyamwisi, Tibasima and Lumbala and to Jean-Pierre Bemba, all of whom have facilitated his illegal dealings in diamonds, coltan, timber, counterfeit currency, gold and coffee, and imports of goods and merchandise in Equateur and Orientale Provinces. He is said to have a good relationship with Mr. Baramoto, a former general of President Mobutu. In spite of being discharged from his responsibilities as commander of UPDF forces in the Democratic Republic of the Congo, his networks remain in place. The Panel asked to meet with these key actors, but the request was turned down.

90. Actors from Rwanda and RCD-Goma involved in the illegal exploitation of natural resources in the Democratic Republic of the Congo cannot be separated from the structure they serve. Most of these people serve a system. The Panel has, however, noticed a recurrence of some names or the particular role that

some individuals have played at a given time and for some operations. In addition to the names mentioned in the paragraphs on main companies, certain names can be highlighted.

91. First, Ali Hussein, who plays a major role in diamond and gold deals in Bukavu and Kisangani. Those who have dealt with him in the past have mentioned the presence of a Rwandan national during commercial negotiations. There are indications that the Rwandan citizen attending the meetings is a civil servant working in the President's office in Kigali. Second is Colonel James Kabarebe, who is the RPA facilitator for some deals. According to some sources he has been in contact with Victor Butt [or Bout] for the lease of an Ilyushin 76 that served to carry coltan from the Democratic Republic of the Congo to Kigali. He is said to be a partner to Mohamed Ali Salem, manager of the company Global Mineral. This company is involved in coltan purchasing in Bukavu and Goma. Third, Tibere Rujigiro, member of RPF, who is considered to be one of the main money providers to the party during the 1990-1994 war. He is a major shareholder in Tristar Investment, a company equally close to RPF. He is said to be also involved in the tobacco business.

92. The fourth, Aziza Kulsum Gulamali, is a unique case among key actors in the illegal exploitation of the natural resources of the Democratic Republic of the Congo. Mrs. Gulamali is said to hold several passports. She lives in Bukavu, Brussels or Nairobi, depending on her schedule. Mrs. Gulamali has acknowledged having been involved in the past in the Burundi civil war. According to reliable sources she armed and financed the Hutu rebels of FDD in Burundi. Yet she built new alliances with the Government of Rwanda and has become a major ally of the Kigali regime and RCD-Goma. Mrs. Gulamali is involved in gold, coltan and cassiterite dealings in territories controlled by the Rwandans. Prior to that, she was involved in arms trafficking for the benefit of the Burundian Hutus and was equally involved in gold and ivory trafficking. Her name was also mentioned in connection with cigarette smuggling. Very reliable sources told the Panel that she covered her illegal dealings by her cigarette factory, now in bankruptcy. In the coltan business, her clients include Starck, Cogecom and Sogem; the Bank Bruxelles Lambert handles some of her financial transactions. The Panel requested RCD-Goma several times for a meeting with Mrs. Gulamali and also

contacted her aides, but she never arranged a meeting with the Panel.

93. She was recently appointed by RCD-Goma as General Manager of SOMIGL, a conglomerate of four partners, which obtained the monopoly for the commercialization and export of coltan. This monopoly has strengthened her position as a major player in the trade in coltan in the region. RCD-Goma, in an attempt to explain this partnership, said that she is a very useful person and would bring \$1 million to RCD monthly. Some sources have told the Panel members that her network of contacts is impressive and that she controls almost every official in RCD-Goma. According to some sources, she is also involved with her daughter Djamila in counterfeiting currency. Mrs. Gulamali is famous for forging customs declarations, especially for the products she exports. Confronted recently with a false customs declaration where coltan was declared as cassiterite, she replied, "in this business everybody does that". Her declaration alerted the Panel to the extent to which fraud is prevalent among the companies that export coltan.

F. Economic data: confirmation of the illegal exploitation of the natural resources of the Democratic Republic of the Congo

94. All the empirical evidence provided above is complemented by the economic analysis of data provided by different sources.

Uganda

95. At the request of the Panel, the Ugandan authorities provided extensive data, including production and export values for agricultural products such as coffee, cotton, tea and tobacco. In terms of minerals, the data also cover gold and coltan production and export figures.

96. The official data contain substantial discrepancies. First, export figures for gold are consistently greater than production values, as shown in table 1 and figure 1.

97. The gap between production and export could originate from the exploitation of the natural resources of the Democratic Republic of the Congo. The Central Bank of Uganda has reportedly acknowledged to IMF

officials that the volume of Ugandan gold exports does not reflect this country's production levels but rather that some exports might be "leaking over the borders" from the Democratic Republic of the Congo. The central bank reported that, by September 1997, Uganda had exported gold valued at \$105 million, compared with \$60 million in 1996 and \$23 million in 1995.

98. Second, the data from the Ugandan authorities are silent with regard to diamond production and export. Several third party sources (WTO, World Federation of Diamond Bourses, Diamond High Council) indicate diamond exports from Uganda during the last three years. These diamond exports are suspicious for many reasons:

(a) Uganda has no known diamond production;

(b) Diamond exports from Uganda are observed only in the last few years, coinciding surprisingly with the occupation of the eastern Democratic Republic of the Congo as shown in table 2 and figure 2;

(c) Finally, these facts corroborate the Panel's findings from field investigation, discussions and external observers on the need to control the rich diamond zone near Kisangani and Banalia.

99. These figures are understated and there are indications that Uganda exported more diamonds. However, this is not well captured in the statistics because of the loose regulations governing the free zone areas. These regulations permit diamonds originating in any country to be repackaged, and then to be sold from any country as diamonds from a country of origin that is not necessarily the one mentioned in the statistics.

S/2001/357

Table 1
Uganda: mineral exports and production, 1994-2000

Year	Gold	Tin	Coltan	Cobalt
A. Mineral exports (tons)				
1994	0.22	-	-	-
1995	3.09	-	-	-
1996	5.07	3.55	-	-
1997	6.82	4.43	2.57	-
1998	5.03	-	18.57	-
1999	11.45	-	69.5	67.48
2000	10.83	-	-	275.98
B. Mineral production (tons)				
1994	0.0016	3.704	0.435	-
1995	0.0015	4.289	1.824	-
1996	0.003	0.38	-	-
1997	0.0064	1.81	-	-
1998	0.0082	1.102	-	-
1999	0.0047	-	-	76.74
2000	0.0044	-	-	287.51

Source: Uganda, Ministry of Energy and Mineral Development. 2000 data are from January to October.

Figure 1. Uganda: gold production and exports, 1994-2000

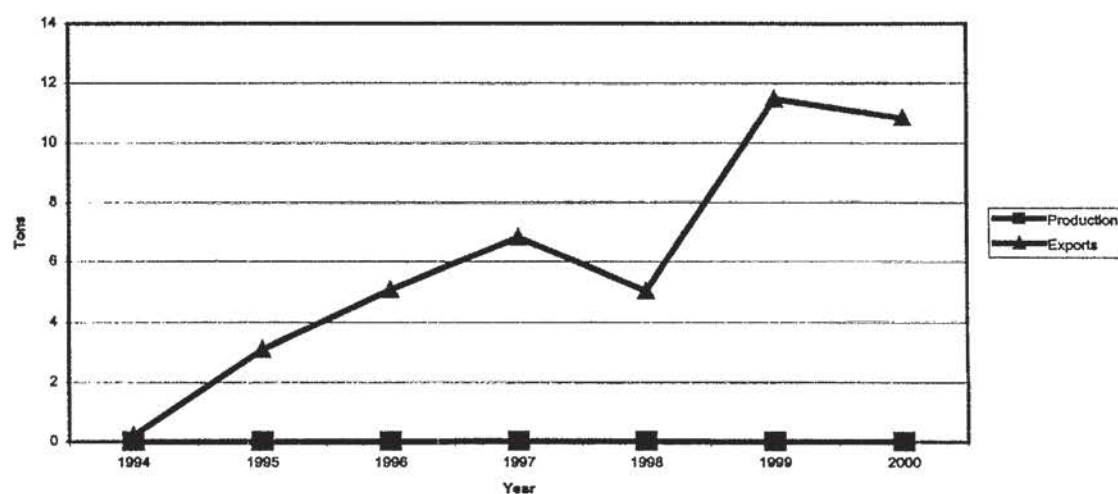


Table 2
Uganda: rough diamond exports, 1997-October 2000

<i>Year</i>	<i>Volume (carats)</i>	<i>Value (United States dollars)</i>
1997	1 511.34	198 302
1998	11 303.86	1 440 000
1999	11 024.46	1 813 500
2000	9 387.51	1 263 385

Source: Diamond High Council.

100. Data collected from any third party consistently show that Uganda has become a diamond exporting country; they also show that diamond exports from Uganda coincide with the years of the wars in the Democratic Republic of the Congo, that is from 1997 onward.

101. As far as niobium is concerned, the pattern appears to be the same: no production prior to 1997 followed by a series of increases in exports as shown in table 3 and figure 3.

Table 3
Uganda: niobium exports, 1995-1999

(thousands of United States dollars)

<i>Year</i>	<i>Niobium</i>
1995	0
1996	0
1997	13
1998	580
1999	782

Source: World Trade Organization (aggregated data).

102. Third, the Ugandan authorities, in their response to the Panel's questionnaire, stated that there was no record of transit of mineral products. However, the Panel received information from one Ugandan customs post at the border between the Democratic Republic of the Congo and Uganda. Records for 1998, 1999 and 2000 reveal that mineral products as well as other commodities left the Democratic Republic of the Congo and entered Uganda (presumably this would also prove true for the other dozen or so points of entry). The following three examples show an increase

in the transboundary movement of natural resources between 1998 and 1999.

Coffee	1998: 144,911 bags
	1999: 170,079 bags
	2000: 208,000 bags
Timber	1998: 1,900 m3
	1999: 3,782 m3 and 46,299 pcs
	2000: 3,272 m3 and 3,722 pcs
Cassiterite*	1998: None
	1999: 30 kgs
	2000: 151 drums

* The sudden increase in the import of cassiterite may also mean an increase in the import of coltan. The Panel discovered that cassiterite is often listed in lieu of coltan, as coltan possesses a higher value, which implies high import taxes in Uganda.

Rwanda

103. In response to the request for statistics by the Panel, the Rwandan authorities provided the following data:

Table 4
Rwanda: mineral production, 1995-2000

<i>Year</i>	<i>Gold (kg)</i>	<i>Cassiterite (tons)</i>	<i>Coltan (tons)</i>
1995	1	247	54
1996	1	330	97
1997	10	327	224
1998	17	330	224
1999	10	309	122
2000	10	437	83

Source: Rwanda Official Statistics (No. 227/01/10/MIN).

Figure 2. Uganda: rough diamond exports, by volume, 1997-October 2000

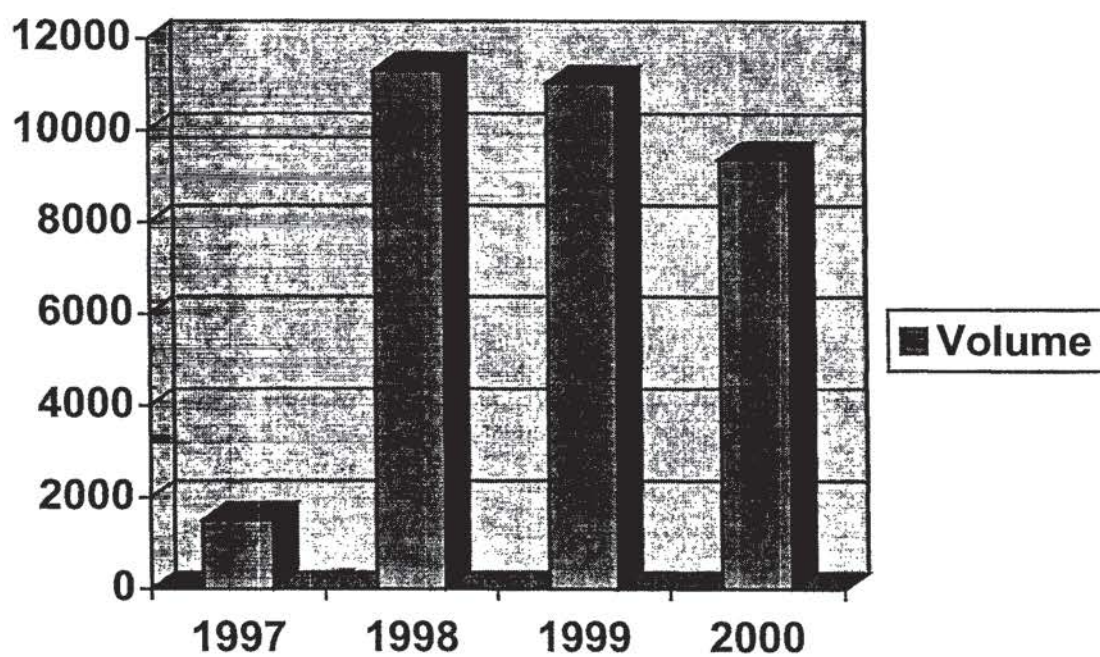


Figure 3. Uganda: niobium exports by volume, 1995-1999

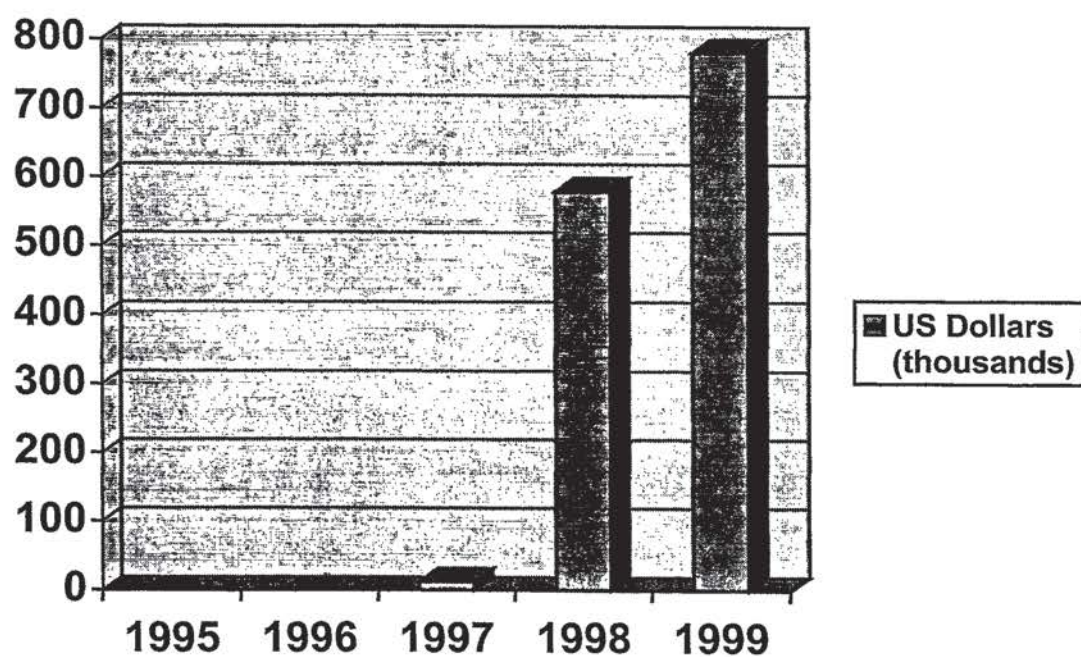


Figure 4.A. Rwanda: mineral production, 1995-2000

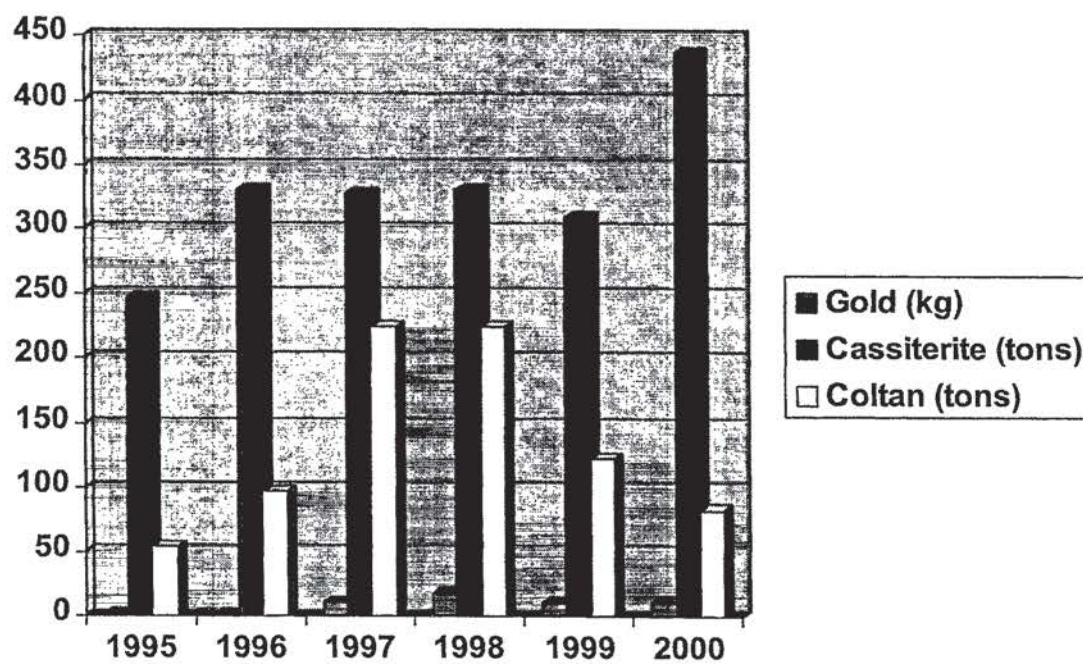
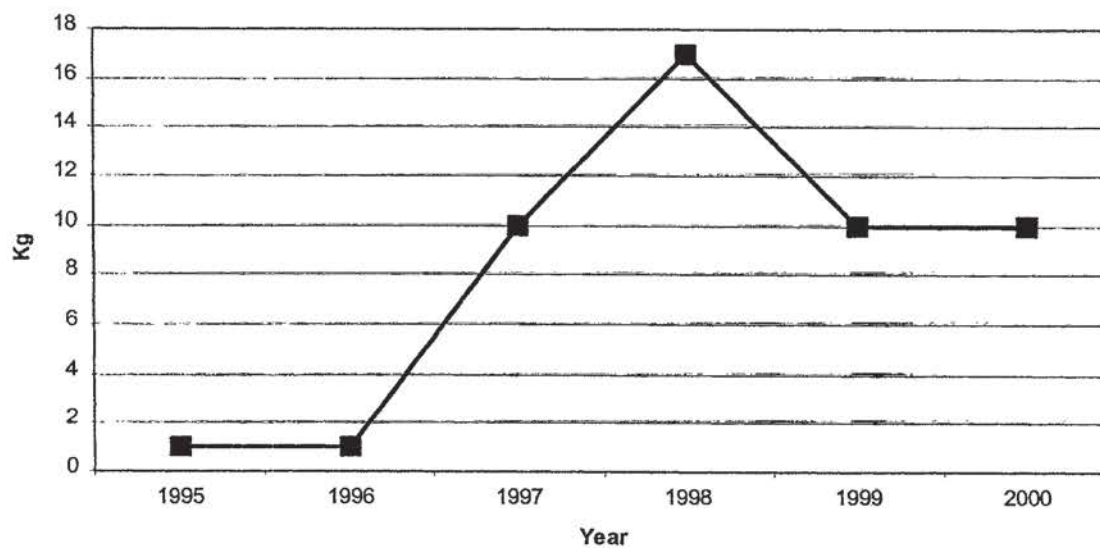


Figure 4.B. Rwanda: gold production, 1995-2000 (kg)



104. The Rwandan authorities also underline the fact that "Rwanda has no production of diamond, cobalt, zinc, manganese, and uranium". However, in spite of this statement, there is substantial evidence that Rwanda has been exporting diamonds. In fact, several organizations such as WTO and the High Diamond Council, and Belgian statistics, have computed import data for selected commodities and provide support for the fact that Rwanda has been exporting diamonds (see table 5 and figure 5). Production figures display some irregular patterns for gold and coltan starting from 1997 (see figures 4.A and B). It is revealing that the increase in production of these two minerals appeared to happen while AFDL, backed by Rwandan troops, was taking over power in Kinshasa.

Table 5
Rwanda: rough diamond exports, 1997-October 2000

Year	Volume (carats)	Value (United States dollars)
1997	13 060.39	720 425
1998	166.07	16 606
1999	2 500.83	439 347
2000	30 491.22	1 788 036

Source: Diamond High Council.

105. **Burundi.** An IMF office memorandum indicates that "Burundi does not produce gold, diamonds, columbo-tantalite, copper, cobalt, or basic metals". Burundi however has been exporting minerals it does not produce. As in the case of Uganda and Rwanda, Burundi's export of diamonds dates from 1998, coinciding with the occupation of the eastern Democratic Republic of the Congo. The coltan exports span a longer period (1995-1999), perhaps suggesting that this might be a regular activity.

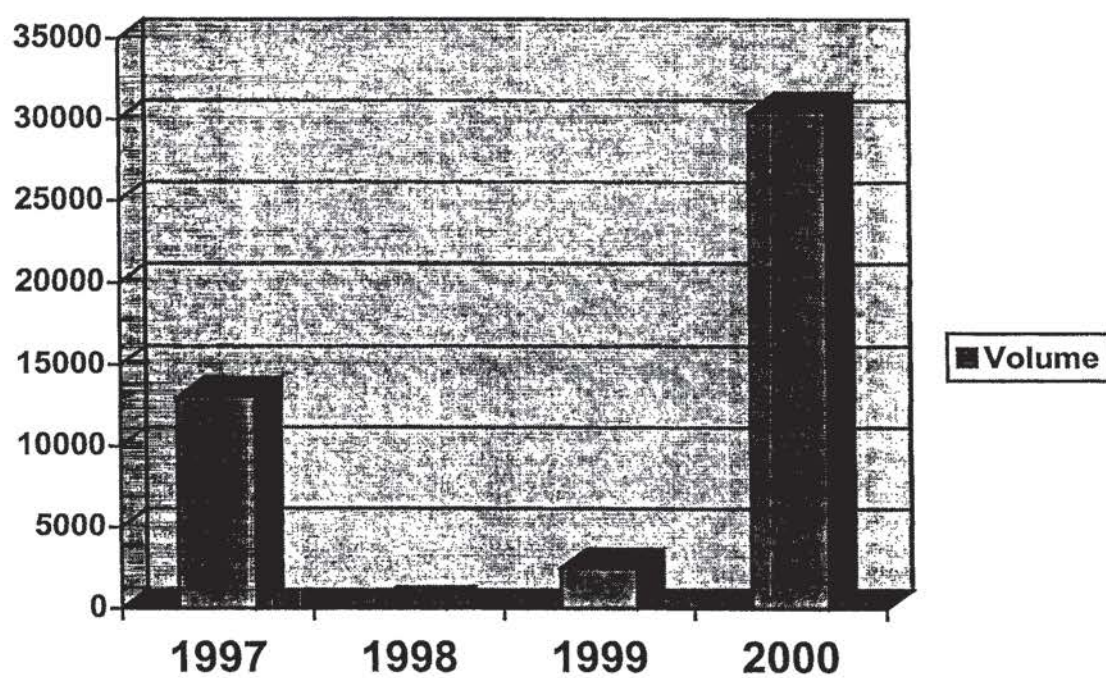
106. **Angola, Namibia and Zimbabwe.** Only third party sources were used to determine whether production and export trends in these countries displayed abnormalities. Available production and export statistics relative to Angola, Namibia and Zimbabwe were fairly normal in terms of trend. They did not reveal any suspicious behaviour. Additional data are however needed for a definite stand on the issue. In the case of Zimbabwe, accounts of ongoing

and pending deals give clear indications of their potential impact on the balance of payments.

107. The economic and resource-based analysis above, by using the figures given by the respective Governments, reveals that Uganda and Rwanda have been exporting diamonds, and that this activity is hidden and does not appear in the statistics they disseminate. They do not produce diamonds, nor do they officially export this mineral. It is probable that these minerals are coming from the Democratic Republic of the Congo and would constitute the basis for the re-exportation economy.

108. Regarding the Democratic Republic of the Congo, mineral production and export display a declining trend, imputable partly to the occupation of the eastern side of the country. However, the deterioration of the rural infrastructure represents a limiting factor for mining as well as for agricultural activities.

Figure 5. Rwanda: rough diamond exports, by volume, 1997-October 2000



III. Links between the exploitation of natural resources and the continuation of the conflict

109. The following sections explore the links between the exploitation of natural resources and the continuation of the conflict in the Democratic Republic of the Congo. The sections are interrelated, but separated for clarity. The first section outlines the countries' budget allocations for their respective armed forces versus the actual expenditures. It will be demonstrated that military expenditures far outweigh the supposed money allocated for such expenses. The subsequent section will explore in depth the means by which these countries find the necessary additional financial resources to continue the war.⁴ The panel finds a link between the exploitation of the natural resources of the Democratic Republic of the Congo and the continuation of the conflict.

A. Budgets compared to military expenditures

Rwanda

110. Rwanda spends about 3 per cent of its GDP or 29 per cent of its annual budget on its defence needs. In the current fiscal year, \$70 million was allocated to defence in the national budget. These official figures provided by the Minister of Finance comprise every single expense of the army, including, soldiers' pay and bonuses and the maintenance and acquisition of new military equipment.

111. Military specialists with a great deal of experience in the region agreed on the fact that Rwandan soldiers use light equipment, so that expenses on equipment have for a long time been limited. They also recognize that, given the size of the Democratic Republic of the Congo and the portion of the territory under Rwandan control, there is a minimum number of soldiers needed to cover this area, which could be estimated at 25,000 soldiers on average during the period of the conflict. Moreover, the use of aircraft for the transport of troops and some types of equipment and supplies may be costly.

⁴ The number of soldiers has fluctuated during the period of the war; the numbers used are therefore average estimates.

112. An aircraft owner operating in the region has indicated that he charges on average \$2,000 per hour. Based on his experience of three rotations per day in a smaller area, the Panel estimates five rotations for Rwanda at an average of six hours each. A simple calculation gives a figure of \$1.8 million per month and \$21.6 million per year.

113. Based on the minimum number of 25,000 soldiers in the Democratic Republic of the Congo and an average \$100 for pay and bonuses, the Panel has calculated a total of \$2.5 million per month and \$30 million per year. Transportation and pay of troops alone in the Democratic Republic of the Congo amount to \$51.6 million per year, which is about three quarters of the total Rwandan official defence budget. By taking into consideration the remaining 20,000 soldiers stationed in Rwanda and their average pay of \$50 per month, almost the total defence budget (\$63 million) is used on two items. RPA soldiers in the Democratic Republic of the Congo have other basic needs, however, such as ammunition for even their light equipment, and maintenance and replacement of the equipment.

114. All military experts consulted suggested that the official defence budget of Rwanda cannot alone cover the cost of their war and presence in the Democratic Republic of the Congo. The Panel concurs with President Kagame, who described the conflict in the Democratic Republic of the Congo as "a self-financing war".

Uganda

115. Uganda officially spends about 2 per cent of its GDP on defence, which is being monitored by the Bretton Woods institutions. For the fiscal year 2000, the defence budget was about \$110 million. This budget covers pay of about \$70 per month for 50,000 soldiers, 10,000 of whom are stationed in the Democratic Republic of the Congo, pays for the pension of retired soldiers, buys equipment and addresses other needs.

116. According to various sources, UPDF has on average 10,000 soldiers in the Democratic Republic of the Congo out of the 50,000 total. Indeed, the budget line for pay alone for a year is about \$41 million for the 50,000 Ugandan soldiers. If a bonus of \$20 is paid to each of the 10,000 soldiers, that would amount to

S/2001/357

\$200,000 per month (in 1998 and 1999), a total of \$2.4 million per year.

117. On the basis of a rate of \$2,000 per hour and six hours on average for a return journey and three rotations a day, UPDF spends on average \$12.96 million per year on transportation alone. Other expenses for purchase, maintenance and replacement of equipment are important. According to some sources, Uganda spent about \$126 million on its armed forces in 1999, an overspending of about \$16 million.

Democratic Republic of the Congo

118. Of all the warring parties, the Democratic Republic of the Congo presented the greatest challenge as far as defence budget figures and number of troops were concerned. Lack of reliable data and the barely existent State apparatus have made the collection of data very difficult. The country has been at war since 1996 and prior to that the army was already disintegrating. Various military experts that the Panel members met agree on one point: the extreme difficulty of giving an estimate of the Democratic Republic of the Congo army. Those who try to give an estimate speak of 50,000 to 55,000 soldiers.

119. According to some government sources, the Democratic Republic of the Congo relies on Chinese and Eastern European companies to supply its military arsenal and required equipment. The Panel has strong indications that the Government, despite its economic problems, has invested a great deal in the defence of its territory.

Zimbabwe

120. Zimbabwe's overall defence budget has been decreasing at the very moment ZDF has troops engaged in the Democratic Republic of the Congo. A reduction was announced early in January 2000, lowering the budget from Z\$ 15.3 billion in 2000 to Z\$ 13.3 billion in 2001. Yet, ZDF with approximately 10,000 troops engaged in the Democratic Republic of the Congo spent on average about \$3 million per month, a total of \$36 million in a year.

Angola and Namibia

121. Angola's presence is smaller than Zimbabwe's in terms of troops. According to some sources, Angolan troops number about 3,000. Namibia's presence is limited to 2,000 troops. The defence budget of

N\$ 24 million has remained at the same level since 1999 in spite of the support given to the Democratic Republic of the Congo. However, the emergency or additional budget for the armed forces has decreased from N\$ 89 million in 1999 to N\$ 76 million in 2001.

Rebels

122. The rebel movements MLC, RCD-Goma and RCD-ML have their own troops. MLC troops are evaluated at 12,000 to 15,000 men. They usually use light military equipment bought from Kampala. In some cases, deals are done between Jean-Pierre Bemba and other traders and businessmen. These deals consist of giving them the opportunities to carry out business activities or granting a mining concession, in exchange for which the beneficiary would supply some military items. In 1999, when Mr. Khalil demanded of Mr. Bemba a concession for a diamond mine, he obtained a concession in exchange for military fatigues and socks, all made in Uganda.

123. The pay of these soldiers is unknown. The Panel gathered however that these young men were not paid, but could receive from time to time some money as "help". The consequence has been their involvement in the exploitation of natural resources. The cost of war appears to be minimal. The war expenses are the purchase of ammunition and light weapons, transport of soldiers by air and the money MLC paid to UPDF and individual top officers for their support. A similar scenario was played out with RCD-ML, which has approximately 3,000 soldiers.

124. The RCD-Goma troops are estimated to be around 12,000 to 15,000. According to some sources, the Rwandan army until recently used to supply the RCD-Goma troops with military equipment. The military budget was not offered to the Panel in spite of its request, and the estimates are very difficult to make. Military equipment and the transport of troops as well as supplies of oil and petrol are the major expenses. Pay is apparently uncertain, so that the soldiers when possible try to survive, even at the expense of the local population and the wildlife. For all parties involved in the conflict in the Democratic Republic of the Congo, this war seems to be expensive by African standards. The question is: how do the different parties finance their war effort?

B. Financing the war

125. There are three primary means of financing this war: (a) purchase of arms and equipment through direct payment; (b) barter (arms for mining concessions); and (c) creation of joint ventures. The economies of Rwanda and Uganda, unlike those of Angola and Namibia, have to varying extents financially benefited from the conflict. Zimbabwe is a special case given the potential of concessions attributed to Zimbabwean companies. Data received from various sources, including the countries involved in the conflict, OECD and the Bretton Woods institutions, demonstrate that in broad terms the mineral production of those three countries has decreased. However there are some interesting peaks between 1997 and 1999 (see sect. II.F above). Isolated and varied examples of how these countries finance their military presence in the Democratic Republic of the Congo are given below.

Rwanda

126. Rwanda's military appears to be benefiting directly from the conflict. Indeed, the Panel has noted a great integration between the military apparatus, the State (civil) bureaucracy and the business community. RPA finances its war in the Democratic Republic of the Congo in five ways: (a) direct commercial activities; (b) profit from shares it holds in some companies; (c) direct payments from RCD-Goma; (d) taxes collected by the "Congo desk" and other payments made by individuals for the protection RPA provides for their businesses; and (e) direct uptake by the soldiers from the land.

127. Since 1998, the Department of External Relations, through the Congo desk has been receiving substantial amounts of money from various *comptoirs*. Several diamond *comptoirs* were operating in Kisangani before the monopoly was given to two in July 2000. According to very reliable sources, taxes were paid directly to the Congo desk. On average, a *comptoir* with a turnover of \$4 million per month would pay \$200,000 per month to the Congo desk. Every diamond dealer who intends to purchase diamonds in the eastern Democratic Republic of the Congo or at Kigali would pay 5 per cent of the diamond value to the Congo desk before the transaction. This amount is consistent with the so-called mandatory 5 per cent of the value of purchased diamonds that the Congo desk takes from

the two *comptoirs* controlling the Kisangani diamond market. Messrs. Nassour and Arslanian, the "conflict diamond dealers" in the eastern Democratic Republic of the Congo, provided on average \$2 million per year, each directly to the Congo desk. A similar percentage is applied for other mineral resources in the area controlled by RCD-Goma.

128. Before July 2000, monopoly holders used to pay the sum of \$200,000 per month in its entirety to Kigali; this has changed slightly since RCD-Goma claimed its share. The larger diamond *comptoirs* would therefore pay \$100,000 to the Congo desk and \$100,000 to the RCD-Goma authority. The Panel believes that over a period of two years the Congo desk would have received about \$4 million as direct payment for granting the authorization to operate in the areas under its control.

129. Some documents point to a direct implication of the Rwandan Patriotic Army in commercial activities. As mentioned earlier, RPA, through the companies Rwanda Metals and Grands Lacs Metals, has big stakes in the coltan business. Most of the coltan extracted by civilians and prisoners is sold to intermediaries (civilians or soldiers) who in turn sell it to *comptoirs*, some of which are controlled by the Rwandan military. The quasi-totality of this coltan is sent to Kigali, and generally stored in facilities owned by the Government. A good portion goes to Rwanda Metals and the rest is exported directly by some professionals. Rwanda Metals and Grands Lacs Metals, directly or through Congo desk, contact clients on the availability of coltan. Some of the letters sent to potential clients in Europe and the United States of America are signed Dan, who was the head of the Congo desk.

130. Given the substantial increase in the price of coltan between late 1999 and late 2000, a period during which the world supply was decreasing while the demand was increasing, a kilo of coltan of average grade was estimated at \$200. According to the estimates of professionals, the Rwandan army through Rwanda Metals was exporting at least 100 tons per month. The Panel estimates that the Rwandan army could have made \$20 million per month, simply by selling the coltan that, on average, intermediaries buy from the small dealers at about \$10 per kg. According to experts and dealers, at the highest estimates of all related costs (purchase and transport of the minerals), RPA must have made at least \$250 million over a period of 18 months. This is substantial enough to

finance the war. Here lies the vicious circle of the war. Coltan has permitted the Rwandan army to sustain its presence in the Democratic Republic of the Congo. The army has provided protection and security to the individuals and companies extracting the mineral. These have made money which is shared with the army, which in turn continues to provide the enabling environment to continue the exploitation. The last illustration of how Rwanda finances its war deals with the financial transactions involving Rwandan banks, RPA suppliers and RCD institutions. In these particular cases, Rwanda has used BCDI and SONEX to pay RPA suppliers.

131. SONEX was founded in March 1999 in Kigali. It belonged to RCD-Goma and was managed by Emmanuel Kamanzi, former chief of the Finance Department of RCD-Goma. Its primary purpose was to serve as the commercial and financial arm of RCD, handling most commercial and financial deals. SONEX was dissolved late in 2000, but it had sufficient time to put in place a pattern for the transfer of resources from RCD to Kigali. The Panel received documents highlighting the financial transactions of SONEX and BCDI. According to those documents, BCDI released \$1 million in mid-1999 for SONEX as a loan to pay fuel bills to Jambo Safari. SONEX was to repay this loan with the money obtained from the selling of coltan and cassiterite. By February 2000, \$200,000 to \$300,000 had already been reimbursed to BCDI. This loan seems to be part of the financial transaction by which money is transferred to Kigali, and some individuals in RCD take their own substantial cut.

132. The same year, SONEX requested another loan of \$10 million from BCDI in Kigali, and \$5 million was approved. According to one of the actors at the time, the \$5 million loan was not physically paid to SONEX. Instead, BCDI ordered Citibank in New York to pay RCD suppliers with the loans technically given to SONEX. This financial arrangement is suspicious in many ways.

133. First, RPF through Tristar is a shareholder in BCDI. Second, the suppliers of RCD are mostly Rwandan companies whose owners are closely acquainted with RPA or RPF. Third, the deal with SONEX is handled by Major Dan, at the Congo desk, who is related by marriage to Mr. Kamanzi, head of the Finance Department and mastermind of the whole operation.

134. The BCDI loans to SONEX could be well-crafted operations to transfer money from BCDI to RPA and to pay RPA suppliers by using SONEX. Paying RPA suppliers is one way of financing the war without taking from the official budget. Reliable sources report that about \$700,000 has already been paid back by RCD. According to a RCD-Goma document explicitly detailing how debts should be repaid with money made out of the coltan sale, part of the \$1 million per month in taxes that Mrs. Gulamali pays to RCD for the monopoly on coltan could also be used to pay back the BCDI loan.

Uganda

135. 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. 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.

136. The re-exportation economy implies that natural resources imported from the Democratic Republic of the Congo are repackaged or sealed as Ugandan natural resources or products and re-exported. That is the case for some gold, diamonds, coltan and coffee exported by Uganda. The re-exportation economy has had a tremendous impact on the financing of the war, in three ways.

137. First, it has increased the incomes of key businessmen, traders and other dealers. In the coffee sector, gains have been substantial for the traders in Kampala and Bujumbura. According to an expert in the sector who lives in the region, there is a trick used by coffee exporters in the region. Arabica coffee produced in Bujumbura is of a higher grade than the one produced in Kivu. The difference in price could be in some cases one third. Burundian dealers by importing Congolese coffee and mixing it, then presenting it as Burundian coffee, gain a higher price. The Ugandan traders use the same schemes. In the case of Uganda, the dealers gain both ways. The trader buys inexpensive coffee in the Democratic Republic of the Congo, often with counterfeit currency, eventually mixes it with Uganda coffee, and then re-exports this coffee as Ugandan robusta, which is of better quality than Congolese robusta.

138. Second, the illegal exploitation of gold in the Democratic Republic of the Congo brought a significant improvement in the balance of payments of Uganda. This in turn gave multilateral donors, especially IMF, which was monitoring the Ugandan treasury situation, more confidence in the Ugandan economy. Third, it has brought more money to the treasury through various taxes on goods, services and international trade. Discussions with the Deputy Commissioner of the Ugandan Revenue Authority revealed that the tax collection level has increased dramatically over the past five years. IMF figures on Ugandan fiscal operations confirm this positive evolution over the past three years. A detailed analysis of the structure and the evolution of the fiscal operations reveals that some sectors have done better than others, and most of those tend to be related to the agricultural and forestry sector in the Democratic Republic of the Congo. Logs, sawn wood or planks destined for Uganda, Kenya or for export out of the continent pay customs duties as they enter Uganda.

139. Between 1998 and 2000, about 1,800 trucks carrying logs, timber, coffee, medicinal barks, cassiterite, pyrochlore, iron ore, tea and quinina have transited through Uganda. The official figures from the Government of Uganda show an average of 600 lorries per year, all registered by customs officers. As Mrs. Lotsove once noted, the tax exoneration given to the Victoria and Trinity companies represents a net loss of \$5 million per month (there are 15 points of entry). The Panel concludes that, given the absence of the exoneration on the Ugandan side, and a higher level of taxes in Uganda, customs duties related to the transiting of Congolese natural resources exploited by Ugandans and some Congolese in Equateur and Orientale Provinces would bring the treasury at least \$5 million every month.

140. Another way of financing the presence of the army in the Democratic Republic of the Congo was to purchase military supplies on credit. The Ugandan army has purchased petrol on credit from a number of private companies. The accruing debt is treated as internal debt.

141. The Panel also gathered that the local commanders of UPDF turn a blind eye to soldiers' racketeering among the populations or their involvement in small business. This is seen as a way to pay their bonuses and this has proved to be a very successful method. Information received from friends

and relatives of UPDF soldiers who served in the Democratic Republic of the Congo clearly shows that there were elements of self-payment much more satisfactory than the official bonus. Overall, the military, its leaders and other involved individuals manage to manipulate budgetary and other factors to retain their control in the occupied territories.

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 1999.⁵ 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.

MLC, RCD-Goma and RCD-ML

143. Officially, the rebel movements receive the bulk of their military equipment through UPDF and RPA. During discussions with the Ugandan Minister of Defence and the Chief of Staff of UPDF, the Panel was informed that weapons seized from the Congolese armed forces are usually given to MLC and RCD-ML. According to other sources, some military equipment is acquired by these groups through direct purchase and barter. The Panel came across a very interesting case in which Mr. Bemba, at the instigation of General Kazini, bargained with the highest authorities of Uganda for the release of some Ukrainian pilots whose Antonov has been captured. A very reliable source told the Panel that in exchange Mr. Bemba received military fatigues, boots and medical supplies for his soldiers from a third party.

⁵ Uganda's GDP has been increasing since the early 1990s. However, a slight decrease was noted in 1999.

144. RCD-Goma has designed a fiscal system based mainly on the mining sector. About six different forms of tax exist in this sector, and they are applied on approximately eight different types of minerals, including the most important (coltan, gold and diamonds). From RCD official statistics the Panel notes that in 1999 on average 60 kg of gold was extracted every month from the area controlled by RCD. That is about 720 kg a year. In 2000, the extraction was higher, up to 100 kg a month. With regard to coltan, 27 tons were extracted every month in 1999, while 29 tons were produced every month in 2000. Given the number of *comptoirs* (19 for coltan), and the six types of tax, the Panel concludes that substantial revenues through tax collection are available to RCD. It is however difficult to estimate the figures, although some insiders have told the Panel that the financial situation has been improving since late 2000, and the prospects for a balanced budget are better than two years ago. Information obtained from documents and individuals suggests that, in addition to taxes levied and shares it holds in SOMIGL, RCD-Goma has given a monopoly of coltan to SOMIGL, in exchange for which it receives \$1 million monthly.

145. **Illustration of the commercial activities of RCD.** A preponderance of information obtained from documents and individuals regarding the activities of RCD-Goma in the Democratic Republic of the Congo, Dar es Salaam, United Republic of Tanzania, and elsewhere during the current hostilities overwhelmingly suggests that RCD-Goma and others are marketing the natural resources of the Democratic Republic of the Congo — gold, diamonds and timber — through Dar es Salaam. Gold and diamonds belonging to RCD-Goma are shipped through their financial and logistical network, via Dar es Salaam, for sale on the international market. In order to facilitate the movement of the commodities and to give the appearance of legitimacy, RCD-Goma obtains documents to hide or cover their ownership. The documents covering the shipments of gold and diamonds are completed forms of the Democratic Republic of the Congo. The forms indicate issuance from a government organization, complete with the required stamps and signatures indicating approval and issuance in Kinshasa and Lubumbashi. RCD-Goma's representatives in Dar es Salaam coordinate the receipt, forwarding and sale of gold and diamond shipments. The gold shipments transit through Dar es Salaam international airport for sale to buyers in Sri Lanka and

elsewhere. The diamond shipments are held at the Bank of Tanzania before being forwarded to Belgium, the Netherlands and South Africa.

146. The gold and diamonds are being sold by RCD-Goma in exchange for cash or bartered for armaments and medicines to support continuation of the current hostilities. RCD-Goma's representatives in Dar es Salaam also arrange for the purchase of foodstuffs and other logistical needs for the war effort. In addition, timber resources from the Democratic Republic of the Congo are being shipped through Dar es Salaam to Greece and Belgium. In the case of Greece, the timber transaction is being partially arranged by an import/export business located in Goma. The shipments of gold, diamonds and timber are also processed in Dar es Salaam in cooperation with RCD representatives by a company believed to be a covert business entity created for the purpose of facilitating support for the financial and logistical operations of RCD-Goma. It is important to note that the activities described above represent an RCD-Goma operation and are exclusive of operations handled by the Government of Rwanda, via Kigali.

147. The Panel concludes on this point that the major rebel groups are gradually becoming autonomous (MLC/FLC and RCD-Goma) in terms of supply of military equipment. They are capable of raising substantial amounts of cash, enough to buy the light equipment they use. Equally they have put in place their own network and contacts, which would allow them to purchase their own equipment when necessary. This growing autonomy has manifested itself recently as RCD-Goma has requested that money usually given to the Congo desk by diamond dealers be shared equally between both entities. Equally, RCD-Goma has initiated some military attacks on RCD-ML positions in order to occupy mineral-rich areas as shown earlier. As the need for an autonomous supply of weapons grows, so does the need to find additional resources, and therefore clashes for the control of mineral-rich areas will be recurrent; so goes the vicious circle of war and exploitation of natural resources on the side of the rebellion.

Democratic Republic of the Congo

148. The Government of the Democratic Republic of the Congo has relied on its minerals and mining industries to finance the war. Between 1998 and early 2001, the strategy for financing the war was based on

three pillars, namely (a) search for cash through the attribution of monopolies; (b) direct and indirect uptake of funds from parastatals and other private companies; and (c) creation of joint ventures between parastatals and foreign companies in countries allied with the Democratic Republic of the Congo.

149. Search for cash. The late President used different schemes to raise funds. He instituted the *tax parafiscale* (see para. 41) and also implemented schemes such as the creation of a monopoly for the commercialization of diamonds.

150. Monopoly on diamonds granted to International Diamond Industries (IDI). According to government sources, the objective of this monopoly was twofold: first, to have fast and fresh money that could be used for the purchase of needed arms, and address some of the pending problems with the allies. Second, to have access to Israeli military equipment and intelligence given the special ties that the Director of International Diamond Industries, Dan Gertler, has with some generals in the Israeli army.

151. This deal turned out to be a nightmare for the Government of the Democratic Republic of the Congo and a disaster for the local diamond trade as well as an embarrassment for the Republic of the Congo, which is currently flirting with illicit diamonds. According to different sources, IDI paid only \$3 million instead of \$20 million and never supplied military equipment.

152. President Joseph Kabila has expressed willingness to liberalize the diamond trade in the Democratic Republic of the Congo, and IMF and the World Bank are very supportive of this move. IDI is, however, threatening to sue the Government of the Democratic Republic of the Congo. The IDI deal also turns out to be a disaster for the local diamond trade. As the monopoly was granted to IDI, most diamond dealers operating in the Government-controlled area crossed to Brazzaville to sell their diamonds. It is estimated that during the first three months of the monopoly, \$60 million worth of diamonds from the Democratic Republic of the Congo were sold on the international market, and the Republic of the Congo was mentioned as the country of origin. This smuggling of diamonds deprived the already ailing economy of the Democratic Republic of the Congo of substantial sums of money and the treasury of substantial tax revenues. This case shows that the desperate need for quick cash to finance the defence of

its territory has instead brought other problems to the Government and has paradoxically deprived the treasury of substantial revenue.

153. Uptaking money from parastatals. Another way of financing the war has been the direct and indirect uptake of money from parastatals and other private companies, mainly the Société minière de Bakwanga and the Générale des carrières et des mines (Gecamines). The Government has claimed from MIBA since August 1998 on average two fifths of their earnings. The Panel was told that in some cases three fifths, the equivalent of \$4 million per sale, was sent to the President's office. The Panel has also confirmation that oil companies gave important sums of money as *taxes parafiscales* to the Government. In most cases, this cash in Congolese francs was delivered to Victor Mpozo, who then reported to the late President Kabila. This money was used for the salary and bonuses of Congolese soldiers in the battlefield. According to some Congolese officials, the *taxes parafiscales* were never used for the purchase of weapons.

154. MIBA receives from the Government the equivalent of two fifths of its sales of diamonds in Congolese francs changed at the official rate, which is only one quarter of the black market rate. It is believed that about 75 Congolese francs for each dollar changed is unaccounted for and possibly used for defence needs.⁶

155. The contribution of Gecamines to the war effort appears to be on two levels. On the one hand, one third of the company's profit was taken directly by the Government in 1999 and in 2000. On the other, the Government contributed indirectly to the expenses of the Zimbabwe Defence Forces between May 1999 and October 2000.

A special case: Zimbabwe

156. Zimbabwe has financed its involvement in the conflict in two different ways: (a) by using the defence budget — the bulk of Zimbabwe's military expenses seem to be covered by the regular budget; (b) by indirect financing of the war through direct payment by some Congolese entities, mainly companies. According to two very reliable sources, during the tenure of Billy Rautenbach money from Gecamines paid bonuses to the Zimbabwean soldiers. These payments might be

⁶ In 2000, the official exchange rate was one dollar for 23 Congolese francs.

linked to the contract between the Government and Ridgepoint. Indeed, part of the rights to exploit Gecamines mines was transferred to Ridgepoint without apparent compensation. According to some sources, the compensation, which is not mentioned in the contract, could be the sharing of profits between the Government of the Democratic Republic of the Congo and Ridgepoint, on the basis of 80 per cent for the Government and 20 per cent for Ridgepoint. According to some sources, curiously, Mr. Mpoyo, the Congolese minister, signed the contract as one of the officials of Ridgepoint rather than signing on behalf of the Government. Two months after the contract of Mr. Rautenbach as Director of Gecamines came to an end, discontent among Zimbabwean soldiers in Katanga over their lack of bonuses was reported.

157. The Panel has, however, noted a practice which is neither the financing of war nor the provision of direct assistance. The practice is qualified in this report as "incentives for assistance". The former Government of the Democratic Republic of the Congo often used the potential of its vast resources in the Katanga and Kasai regions to secure the assistance of some allies or to cover some of the expenses that they might incur during their participation in the war. Among all of its allies, Zimbabwean companies and some decision makers have benefited most from this scheme. The following examples illustrate how different schemes were implemented and benefited the decision makers, the very group of officials who can decide about ZDF assistance to the Democratic Republic of the Congo. The most utilized scheme has been the creation of joint ventures.

158. **Joint ventures.** One way of securing the engagement of some allies in the war has been the provision of financial incentives by way of creating business opportunities in the mining sector. At least three features emerged from the scheme: (a) Zimbabwean companies received interesting mining concessions; (b) Zimbabwean companies using their influence with the Government of the Democratic Republic of the Congo developed business partnerships with private companies and parastatals; and (c) in turn, received preferential treatment for their businesses.

159. **Sengamines: example of a joint venture.** The Panel gathered that, late in 1998, a private Zimbabwean company, Operation Sovereign Legitimacy (OSLEG), whose shareholders are Lieutenant General Vitalis Musungwa Zvinavashe, Job

Whabira, former Permanent Secretary in the Ministry of Defence, Onesimo Moyo, President of Minerals Marketing Corporation of Zimbabwe, and Isaiah Ruzengwe, General Manager of Zimbabwe Mining Development Corporation, got into a partnership with COMIEX; COSLEG was born of this partnership. Through COSLEG, Zimbabwe (ZANU-PF) could exploit and market minerals, timber and other resources of the Democratic Republic of the Congo.

160. Reliable sources told the Panel that a Zimbabwean delegation headed by the then Minister of Justice, Emmerson Munangagwa, visited the Kasai region to see the various mining concessions given by the late President Kabila to ZDF as barter payment for its military support. The team was composed of the former Permanent Secretary in the Ministry of Defence, Moven Mahachi; the Chief of the Armed Forces, General Zvinavashe; and the President of MIBA, Kadende Muya. President Kabila's gift to the Zimbabwean military was causing a problem, however, as they did not have the financial and technical expertise to exploit their mining concessions. Late in 1998, Thamer Al Shanfari, Chairman of Oryx Natural Resources, was asked to provide the needed financial and technical expertise. Mr. Al Shanfari decided to create Oryx Zimcon, Ltd., a joint venture between Oryx Natural Resources and COSLEG.

161. Instead of selecting one of the various mines belonging to COSLEG to start its investment, Oryx Zimcon wanted the best mines which initially belonged to MIBA. At the request of ZDF and on the advice of Victor Mpoyo and Mwenze Kongolo,⁷ the late President Kabila transferred two of MIBA's richest concessions — the kimberlite deposits in Tshibua and the alluvial deposits in the Senga Senga River, to Oryx Zimcon. Oryx Zimcon and COSLEG together created Sengamines.

162. As promised, Mr. Al Shanfari started investing in Sengamines and used the Breco group of companies of John Bredenkamp to transport mining equipment to the mines. As the technical and financial partner, Oryx was to receive 40 per cent, OSLEG 40 per cent and COSLEG 20 per cent. As the need for money grew,

⁷ According to some sources, Mwenze Kongolo is involved in most COMIEX dealings. Most importantly, it is said to be the main bridge between Zimbabwean officials such as the influential Emmerson Munangagwa and the Government of the Democratic Republic of the Congo.

Mr. Al Shanfari decided to launch Oryx on London's Alternative Investment Market under the name Oryx Diamonds. Upon strong objections from various stakeholders, Oryx Diamonds was withdrawn from the market. The new statute of the company does not mention the name OSLEG.⁸ The Panel was informed, however, that the increase in the shares of COMIEX as seen in the new statute was meant to preserve the interests of Zimbabweans. The Panel was also told that payment would be made to the Government of the Democratic Republic of the Congo only after the loan taken for this operation (about \$25 million) was repaid.

163. The ease with which the Tshibua and Senga Senga River concessions were given to Oryx without due regard for the legal requirements and the preferential treatment given to Oryx show the determination of the former Government of the Democratic Republic of the Congo to reward some of its allies.

Attribution of concessions

164. According to some sources, a very recent (26 February 2001) concession of cobalt and copper in Kambove-Kakanda was to be given KMC Group of the Zimbabwean Billy Rautenbach. According to very reliable sources, different ministers had signed the concession two days before the assassination of the late President Kabila and only his signature was missing. The trade unionist of Gecamines has indicated that the cession was completed, but President Joseph Kabila told the Panel that the deal has not been signed yet. If it is signed, there could be a rapprochement of activities.

165. This case shows rapprochement of the activities and interests of some Zimbabwean businessmen, and a possible link between arms dealing and mining activities in the Democratic Republic of the Congo. Indeed Mr. Bredenkamp is said to have an interest in this venture, although he was alleged to be an arms dealer. In November 2000, a month after the departure of Mr. Rautenbach from Gecamines, Mr. Bredenkamp is said to have established a direct link with Mr. Rautenbach. According to three reliable sources, Mr. Rautenbach, Mr. Bredenkamp and Mr. Munangwana, the current Speaker of the House of Zimbabwe, Chairman of ZANU-PF and director of many

companies belonging to ZANU-PF, met with the late President Kabila to negotiate this contract of the central part of the Gecamines concessions. The Panel does not draw any conclusions, but wishes to highlight the quality of the people involved in the negotiations, their past records, current activities and position in Zimbabwe.

166. Many other deals are ongoing such as the one concerning the supply of foodstuffs to the Congolese army, for which General Zvinavashe's company is said to have been attributed the transport. President Robert Mugabe once told interlocutors that the late President Kabila had given him a mine concession.

167. The Government of the Democratic Republic of the Congo, in its effort to defend its territory and secure the supply of military equipment, has signed a contract worth several million United States dollars with the Government of China. Official sources in Kinshasa, while confirming this deal, have informed the Panel that in exchange a mining concession was awarded to a joint venture between a Chinese company and a parastatal of the Democratic Republic of the Congo.

168. In the same vein, the Government of the Democratic Republic of the Congo has made a deal with the Democratic People's Republic of Korea, which trains troops of the Democratic Republic of the Congo and in exchange, it is believed, has received a mining concession around Shinkolobwe, very rich in uranium. The Americans in the past extracted uranium from this mine. Challenged on this issue, officials of the Democratic Republic of the Congo mentioned high radioactivity in the area, making it impossible for anyone to work there.

169. According to some officials, the Democratic Republic of the Congo has asked the United States of America to consider addressing the problem of radioactivity in the area, given their historical presence in mining that particular area for uranium. The official denial of a deal between the Democratic Republic of the Congo and the Democratic People's Republic of Korea was based on the fact that the Government of the Democratic Republic of the Congo has sought United States assistance — which it cannot receive if the Koreans are mining the same area.

170. The Panel has enough elements and evidence to suggest that the Government of the Democratic Republic of the Congo under the late President Kabila,

⁸ The distribution of shares is as follows: Oryx 49 per cent, COMIEX 33 per cent, MIBA 16 per cent and Congolese partners 3 per cent.

gave strong incentives in the form of access, exploitation and management of mineral resources. These incentives in turn have "convinced" the Zimbabwean authorities to remain engaged in the Democratic Republic of the Congo. The incentives have, however, been so important that the whole balance of the mining industries is likely to be affected. The question in the region is which course of action will sidelined companies take in the future to guarantee their presence in the mining sector? Will it be another cycle of war or intensification of war in relation to the securing of access to the rich cobalt and copper area of the Democratic Republic of the Congo?

Angola and Namibia

171. These two countries have financed their participation in the conflict with their regular defence budget. In the case of Angola, some deals, minor compared to those of Zimbabwe, have been signed, such as the creation of Sonangol, in which Sonangol Angola has 60 per cent of shares and COMIEX 40 per cent. Sonangol Angola is a 100 per cent State-owned company (Sonangol supplies oil to the Democratic Republic of the Congo). The two countries have also signed a letter of intent to jointly exploit crude oil off their coast when peace returns to the region.

172. In the case of Namibia, the Panel was informed by the Namibian authorities of the existence of a joint venture between a Namibian company called August 26, whose main shareholder is the Ministry of Defence, an American company and a "company" of the Democratic Republic of the Congo. Other deals involving individuals have been signed. At this point, the Panel has not found substantial evidence that Angola and Namibia have signed commercial deals in the nature of "arms and support for natural resources". Their motivation seems to be solely political and strategic (for Angola). According to very reliable sources, joint ventures proposed to these two countries were a sign of gratitude rather than an incentive for their support and they never pressed for it.

C. Special features of the links between the exploitation of natural resources and the continuation of the conflict

173. It is often said that the conflict in the Democratic Republic of the Congo is low-intensity warfare, as

armies do not confront each other on a daily basis and battles or rather serious battles are not frequent. The Panel noted that the conflict, especially in occupied zones, is fought on three levels:

(a) Government forces and the allies versus the rebels and their Ugandan-Rwandan and Burundian allies;

(b) RCD-Goma and its Rwandan allies versus MLC or RCD-ML and their Ugandan allies;

(c) Rebel movements and their allies (Rwanda or Uganda versus the so-called negative forces: Interahamwe, Maï-Maï and other dissident groups).

174. Indeed, the conflict in the Democratic Republic of the Congo is being fought on two fronts, official and unofficial. The official front is that of classic warfare — two or more armies confronting each other. This front goes from Pweto to Mbandaka on an uneven line crossing various localities. The unofficial front is concentrated inside zones controlled by rebels and their Ugandan and Rwandan allies.

175. The analysis of battles and skirmishes recorded from mid-1999 to 2001 shows that:

(a) Overall, the number of battles on the official front with the engagement of the army is lower than the number of skirmishes, about 96 between 1999 and 2001;

(b) The number of battles has been decreasing over the years. In the first quarter of 2001, only eight confrontations were reported on the official front line;

(c) Current big battles have been fought in areas of major economic importance, towards the cobalt- and copper-rich area of Katanga and the diamond area of Mbuji Mayi. Military specialists argue that the Rwandan objective is to capture these mineral-rich areas to deprive the Government of the Democratic Republic of the Congo of the financial sources of its war effort. Without the control of this area, the Government of the Democratic Republic of the Congo cannot sustain the war. This rationale confirms that the availability of natural resources and their exploitation permits the continuation of the war. This may be true for all the parties. In view of the current experience of the illegal exploitation of the resources of the eastern Democratic Republic of the Congo by Rwanda and Uganda, it could also be thought that the capturing of this mineral-rich area would lead to the exploitation of

those resources. In that case, control of those areas by Rwanda could be seen primarily as an economic and financial objective rather than a security objective for the Rwandan borders.

176. The number of skirmishes between rebel forces and their allies, and the armed group Maï-Maï has increased. From May to December 2000, about 177 clashes were reported. The battlefields are generally around coltan- and diamond-mining or coltan-rich areas. The Panel has strong indications that most of the fights between Rwandan soldiers and Maï-Maï have occurred in the so-called "coltan belt". Some areas experienced up to 10 skirmishes in 2000. According to some sources, numerous reports and accounts of eyewitnesses mention the presence of Rwandan and Ugandan soldiers providing security around coltan and diamond mines. Officials of RCD-Goma have confirmed the risk posed by the Maï-Maï and "negative forces" in those areas. A senior RCD official specified that only very well organized entities with the necessary security infrastructure can carry out the exploitation of coltan in those areas. In this particular case, the Rwandan army is the only institution with that capability in the eastern Democratic Republic of the Congo.

177. **Rwanda's "unusual" tactics.** The Rwandan forces will attack the same area for two days then pull back. According to our sources, these attacks seem to coincide with the period when coltan has been extracted and put in bags for evacuation by the Maï-Maï. Attacked, the Maï-Maï abandon their coltan, which is then taken away by small aircraft. The Rwandan soldiers retreat again waiting for the next information on available coltan. In the areas where their grip is weaker, Rwanda in particular has designed strategies to retain control within certain echelons of the existing local hierarchies. In those areas controlled by the Interahamwe and Maï-Maï forces, either RPA, from time to time, mounts military operations that allow it to capture the areas temporarily and evacuate the coltan, or else middlemen are used for the purchase of coltan from the Maï-Maï and "negative forces".

178. Battles between rebel movements are also reported in areas rich in mines. On 18 November 2000, RCD-Goma and its Rwandan allied troops based in Kisangani attacked positions of MLC in Bengamisa, 50 km north-west of Kisangani, and took control of this rich diamond area. On 31 December 2000, RCD-Goma and its allies launched an attack on the area controlled

by RCD-ML and captured Kandole, an area rich in diamonds and with some coltan. Also late in December 2000, RCD-Goma initiated an attack from Lindi to conquer Lakutu, another diamond-rich area.

179. Finally, in areas where the risks are too high, adversaries, if not enemies, become partners in business. That is the case of the Maï-Maï doing business with RPA civilian coltan dealers, who in turn sell to *comptoirs* controlled by Rwandans and their companies Grands Lacs Metals and Rwanda Metals. The most famous case was when the Maï-Maï chief, General Padiri, informed people in Kigali in November 2000 that he was selling 60 tons of coltan.

180. **Strategies to sustain the vicious circle of war and exploitation: the example of Uganda.** Top UPDF commanders have essentially used the Hema/Lendu conflict. The Panel has received very reliable information clearly showing how General Kazini and Colonels Kyakabale and Arocha assisted in training different Hema militia, and manipulated those groups to fight each other. Reports clearly showed that while the Kazini camp was helping with the training of the Hema, the Colonel Peter Karim camp was assisting in training the Lendus. Both camps belonging to UPDF. There are strong indications that some UPDF elements may spark violence so as to remain in the region in an attempt to control the gold-rich area and the potentially coltan-rich areas of Nyaleki. There is, therefore, a clear intent of the military commanders to control these mineral-rich areas and keep them for long-term exploitation. The Nia-Nia confrontation in October 2000, in which UPDF General Kazini and Roger Lumbala fought another UPDF group and RCD-ML is a variation of the fighting inside UPDF for control of coltan-rich areas. According to different sources, Roger Lumbala, of RCD-national, has been used by General Kazini to control the Bafwasende area, rich in diamonds and coltan.

D. Facilitators or passive accomplices?

181. The link between the continuation of the conflict and the exploitation of natural resources would have not been possible if some entities, not parties in the conflict, had not played a key role, willingly or not. Bilateral and multilateral donors and certain neighbouring and distant countries have passively facilitated the exploitation of the resources of the Democratic Republic of the Congo and the

continuation of the conflict; the role of private companies and individuals has also been vital.

182. The Panel has gathered information showing that linkages between different actors and stakeholders are very well structured to the point that Governments and large reputable companies operate in confidence. In the case of coltan, all the needed documentation for its export is provided in Kigali, but there are accomplices in Kinshasa in the Ministry of Mines. The importing companies and their facilitators are aware of the real origin of the coltan, however. According to manifests that the Panel received, Sabena Cargo as well as SDV of the Bollore group have been among the key companies in this chain of exploitation and continuation of war. Thousands of tons of coltan from the Democratic Republic of the Congo were carried from Kigali or through the port of Dar es Salaam.

183. The Panel also has indications of the direct and indirect involvement of some staff of the embassies and cooperation agencies of developed countries. They have facilitated the purchase of illegal minerals. The United States honorary consul in Bukavu, as he presented himself, Ramnik O. Kotecha, in addition to promoting deals between American companies and coltan dealers in the region, is himself Chairman of the Kotecha group of companies based in Bukavu and deals in coltan.

184. On the basis of the facts and their analysis, the Panel reaches the conclusion that the increase in revenues of the Rwandan army from coltan sales was made easy by three key factors:

(a) The passive role of some private companies such as Sabena and SDV for the transport of coltan, Citibank for the financial transaction as the corresponding bank of BCDI, the self-proclaimed United States honorary consul in Bukavu and some staff in various embassies in Kigali;

(b) The rush to profit of some foreign companies that were ready to do business regardless of elements of unlawfulness and irregularities (see annex I for a sample of companies);

(c) The political legitimization provided by some developed countries. In November 2000 in Kigali, the Panel was told that the illegal exploitation of resources and the financial gains of RPA were justified as the repayment for the security that Rwanda provides.

Bilateral donors

185. The main bilateral donors to Rwanda and Uganda have been the United Kingdom of Great Britain and Northern Ireland, Denmark, Germany and the United States of America in various sectors. The analysis of their cooperation shows that sectors benefiting from this assistance are related to poverty, education and governance. Priority sectors have been water and sanitation, health and governance, including institutional reforms, justice and human rights, especially for Rwanda. In some cases, direct aid to the budget is provided. The balance of payments of Rwanda shows that budget support has steadily increased, from \$26.1 million in 1997 to \$51.5 in 1999. While such support is legitimate, the problem is that expenditures and services which were supposed to be provided and covered by the Governments of Rwanda and Uganda and which are covered by the bilateral aid constitute savings in the national budget. Were these savings used to finance this war?

186. The German Ambassador in Kigali told the Panel about German support to German business dealing in pyrochlore and coltan in the occupied Democratic Republic of the Congo. In this particular case, German cooperation has given a preferential loan of DM 500,000 to Karl Heinz Albers, a German citizen, to expand his coltan business in the Democratic Republic of the Congo (SOMIKIVU) and Mr. Albers's business is guarded by RCD-Goma soldiers.

Multilateral donors

187. The World Bank has praised Uganda for its economic performance and the reforms under the structural adjustment programme as a success story and has promoted its case for the new debt relief programme, the Highly Indebted Poor Countries initiative.

188. The Panel has however indications that this economic performance was driven in part, especially over the past three years, by the exploitation of the resources of the Democratic Republic of the Congo. Notes exchanged between World Bank staff clearly show that the Bank was informed about a significant increase in gold and diamond exports from a country that produces very little of these minerals or exports quantities of gold that it could not produce (see para. 97). Internal discussions of the World Bank staff also confirm this knowledge of the situation: in one of those

internal exchanges, a staff member warned his colleague that the World Bank silence would blow up in the Bank's face.

189. In the case of Uganda and its exploitation of the natural resources of the Democratic Republic of the Congo, the World Bank never questioned the increasing exports of resources and in one instance a staff member even defended it. During the Panel's visit to Uganda, the representative of the Bank dismissed any involvement of Uganda in the exploitation of those resources. The Bank not only encouraged Uganda and Rwanda indirectly by defending their case, but equally gave the impression of rewarding them by proposing these countries for the Highly Indebted Poor Countries debt relief initiative.

190. The Bank's shadow on the conflict in the Democratic Republic of the Congo is even more apparent on the budget. The balance of payments of both Uganda and Rwanda shows a significant increase in long-term borrowing in support of the budget. The defence budget however has increased in absolute terms, allowing Uganda and Rwanda to continue the conflict. There seems to be a precedent for the Bank's behaviour. During the Cambodian crisis in the 1980s, the Bank turned a blind eye to the illicit exploitation of Cambodian timber; the question is whether it is World Bank policy to ignore broad governance issues (hard or soft) while dealing with its clients.

Transit countries

191. Countries in the region have indirectly and passively facilitated the cycle of exploitation of the natural resources of the Democratic Republic of the Congo and the continuation of the conflict. This has usually happened without any intent to cover up or protect some interests. That is particularly the case of countries with seaports. Those countries have served as the hub for the export of natural resources. They were bound by regulations and agreements signed within the framework of subregional organizations such as COMESA for the seaports of Mombasa and Dar es Salaam and UDEAC/CEMAC for the port of Douala. Mombasa and Dar es Salaam were the main ports used by Uganda, Rwanda and Burundi to export some natural resources, such as timber, cassiterite, coffee and various barks. Douala seaport was also used for coffee from Equateur Province and transported from Bangui.

192. According to some sources, the Government of the Central African Republic was aware of the commercial activities of MLC in Bangui. Jean-Pierre Bemba's friends, Jean-Yves Ollivier, Jean-Pierre Dupont and Jean-Pierre Saber, have all used Bangui as the *arrière-base* for their diamond and coffee deals. The Government never prevented MLC from using the Central African Republic for economic activities. In addition, some individuals were using the territory of the Central African Republic to carry out their illegal activities, as was the case with Victor Butt, who used Bangui airport to load and offload coffee and arms.

193. According to some sources, some countries in the region have been very attractive to Rwandan families with an acceptable level of wealth. Army salaries cannot sustain such lucrative properties and standards of living. How do they sustain these families? Where did the money come from?

194. Kenya has played a different role in the exploitation of the resources of the Democratic Republic of the Congo. It has been the base for the supply of counterfeit United States dollars and also the venue of financial transactions of various traders who export their resources (timber, coffee and tobacco) through the port of Mombasa.

The pivotal role of leaders

195. This section aims to show how Presidents and other decision makers tolerate, organize or put in place the framework and conditions to maintain the status quo of exploitation and war. The Panel refrains from making allegations about the personal involvement of Presidents in the illegal and financial activities until further investigation is carried out. For instance, the Panel received but dismissed, for lack of evidence, allegations of the involvement of President Kagame's family in diamond dealing; it focused rather on the objective elements of the President's political responsibility. In some reports and accounts, the name of President Museveni was mentioned as a shareholder in a specific company. The Panel refrains from citing these accounts until further research is conducted.

196. **President Paul Kagame.** His position in the State apparatus with regard to the exploitation of the natural resources of the Democratic Republic of the Congo and the continuation of the war has evolved, yet his role has remained pivotal. This role can be situated on three levels: his relations with the Rwandan

business community operating in the Democratic Republic of the Congo, control over the army, and the structures involved in the illegal activities.

197. According to some reliable sources, President Kagame has close relationships with top Rwandan businessmen. For instance, he maintains good relations with Modeste Makabuza, "owner" of Jambo Safari. He is also close to Alfred Khalissa, the "founder" of BCDI and former manager of BCD. The same sources told the Panel that President Kagame is very close to Tibere Rujigiro, who is known for generous financial support to RPF during the 1990-1994 war. Mr. Rujigiro is one of the shareholders of Tristar Investment, with very close ties to RPF. This close aide to President Kagame has business relationships with Faustin Mbundu, who is known for his arms dealing activities. What all these businessmen have in common is their direct involvement in the exploitation of natural resources in the areas that Rwanda controls. Different sources have told the Panel that each of these businessmen has at a certain point benefited from the President's "help".

198. President Kagame, when he was Minister of Defence, reorganized or approved the reorganization of the Rwandan army and the Ministry of Defence, which subsequently led to the creation of the Department of External Relations in which the Congo desk is located. This unit has been the cornerstone of the financial transactions of RPA. The former Minister of Defence should have been aware of the functioning of RPA as well as the daily operations of the army.

199. Two very reliable sources told the Panel that in September 1998 the then Vice-President, during a meeting with various officials of RCD and RPA top commanders, informed the participants that there was a need to raise \$50 million to make it possible to reach Kinshasa in two months.

200. Finally, when faced with the question of the involvement of RPA in the exploitation of the resources of the Democratic Republic of the Congo, the President announced in a radio interview that private Rwandan citizens were carrying out commercial activities in the Democratic Republic of the Congo. Was this a deliberate act to mislead various partners or was it translating the President's lack of information on the issue? Meanwhile, the President has admitted in the past that the conflict in the Democratic Republic of the Congo was self-financing. All these elements combined suggest the President's degree of knowledge

of the situation, his implicit approval of the continuation of the illegal exploitation of the resources of the Democratic Republic of the Congo and somehow his complicity as well as his political and moral responsibility.

201. **President Yoweri Museveni.** President Yoweri Museveni's role in the exploitation of the natural resources of the Democratic Republic of the Congo and the continuation of the war can be situated at the following levels: his policy towards the rebel movements, his attitude towards the army and the protection provided to illegal activities and their perpetrators.

202. He has shaped the rebellion in the area controlled by Uganda according to his own political philosophy and agenda. He opted for a more decentralized authority and only intervenes when major problems arise, but he has a very good knowledge of the situation on the ground.

203. Messrs. Mbusa Nyamwisi and Tibasima, former first and second Vice-Presidents close to General Salim Saleh and General Kazini, are more inclined to business and the extraction of natural resources. In December 1999, a report was handed over to the President of Uganda, specifically pointing out the embezzlement of \$10 million by Mr. Nyamwisi and \$3 million by Mr. Tibasima. Another report was handed to President Museveni in February 2000, specifically denouncing the collusion between Trinity Group and Mr. Tibasima and the impact on the collection of customs duties. President Museveni chose to give the direction of the Congolese Liberation Front to those who are the accomplices of illegal cartels.

204. President Museveni was also informed of the situation on the ground, the exploitation being carried out and the involvement of officials of MLC and RCD-ML, including the conflict between Hemas and Lendus.

205. The President's family has also been very involved in business in the Democratic Republic of the Congo in the occupied zones. General Salim Saleh and his wife, shareholders in Victoria and Trinity, have confidently carried out their activities undisturbed.

206. The Panel concludes that when the information is passed to the President and he chooses not to act, when he appoints the very people who carry out criminal activities, and when his family members get away with

criminal activities, it becomes overwhelming that the President has put himself in the position of accomplice.

207. **The late President Laurent-Désiré Kabila.** His role in the continuation of the war has survived his death. On three levels, he bears part of the responsibility for the current situation. First, as the chief of AFDL, he created a precedent in giving a character of "legality" or legitimacy to otherwise illegal operations. During his advance on Kinshasa, he granted concessions even though he did not have authority to do so. These are the same methods being used by some armed groups to fight for power.

208. Second, he allowed and tolerated some unlawful ventures as a way of rewarding allies. He also initiated the barter system in order to defend his territory. This is gradually becoming the normal practice for the rebel groups.

209. Third, he offered a good excuse and a pretext to those who had carefully planned the redrawing of the regional map to redistribute wealth. Many sources have told the Panel how they were approached and asked to think about the distribution of wealth of the Democratic Republic of the Congo in terms of their personal enrichment.

210. According to the facts, accounts and information gathered, the pivotal roles of the Ugandan and Rwandan leaders reside in the way in which they diverted the primary mission of their armies from protection of their territory and made them armies of business. By the same token, they indirectly created within their armies conditions for top officers to put in place networks that they controlled. These networks are becoming cartels, which will take over the war for natural resources.

211. Presidents Kagame and Museveni are on the verge of becoming the godfathers of the illegal exploitation of natural resources and the continuation of the conflict in the Democratic Republic of the Congo. They have indirectly given criminal cartels a unique opportunity to organize and operate in this fragile and sensitive region. Finally, the attitude of the late President has possibly planted the seeds for another round of war for resources in the Democratic Republic of the Congo. Politicians such as Jean-Pierre Bemba, Mwenze Kongolo, Victor Mpoyo, Adolphe Onusumba, Jean-Pierre Ondekane and Emmanuel Kamanzi are ready to make any deal for the sake of power or for personal enrichment. Companies such as

IDI and Sengamines some of which reportedly have ties with arms dealers, are likely to create a more troubling situation in the Democratic Republic of the Congo. Equally, joint ventures and concessions given to some allies as rewards may cause some problems given the nature of the shareholders who are either armed forces or powerful and influential politicians. The situation is now deeply embedded and the regional power structures are consequently not stable.

212. The link between the exploitation of natural resources and the continuation of the conflict in the Democratic Republic of the Congo does exist, and it is based on five factors which are not mutually exclusive. First, the capacity of countries to use their own resources to sustain the war up to a certain stage, as in the case of Angola. Second, the ability of countries to take resources from enemies and use it to fight the so-called "self-sustaining" war, as in the case of Rwanda. Third, the intent of some Governments to take advantage of the war situation and use it to transfer wealth from one country to their national economy, as is the case with Rwanda and Zimbabwe. Fourth, the will of private citizens and businesses who endeavour to sustain the war for political, financial or other gains; for example, generals and other top officers in the Ugandan and Zimbabwean army and other top officials and unsavoury politicians (Victor Mpoyo, Gaëtan Kakudji, Mwenze Kongolo) in the Government of the Democratic Republic of the Congo. Fifth, the capacity of one of the warring parties to give incentives (mineral and others) to its allies and soldiers, for example the Democratic Republic of the Congo.

IV. Conclusion and findings

213. The conflict in the Democratic Republic of the Congo has become mainly about access, control and trade of five key mineral resources: coltan, diamonds, copper, cobalt and gold. The wealth of the country is appealing and hard to resist in the context of lawlessness and the weakness of the central authority.

214. Exploitation of the natural resources of the Democratic Republic of the Congo by foreign armies has become systematic and systemic. Plundering, looting and racketeering and the constitution of criminal cartels are becoming commonplace in occupied territories. These criminal cartels have ramifications and connections worldwide, and they

represent the next serious security problem in the region.

215. The role of the private sector in the exploitation of natural resources and the continuation of the war has been vital. A number of companies have been involved and have fuelled the war directly, trading arms for natural resources. Others have facilitated access to financial resources, which are used to purchase weapons. Companies trading minerals, which the Panel considered to be "the engine of the conflict in the Democratic Republic of the Congo" have prepared the field for illegal mining activities in the country.

216. Bilateral and multilateral donors have sent mixed signals to Governments with armies in the Democratic Republic of the Congo.

217. Top military commanders from various countries, for different reasons, needed and continue to need this conflict for its lucrative nature and for temporarily solving some internal problems in those countries as well as allowing access to wealth. They have realized that the war has the capacity to sustain itself, and therefore have created or protected criminal networks that are likely to take over fully if all foreign armies decide to leave the Democratic Republic of the Congo.

218. The conflict in the Democratic Republic of the Congo, because of its lucrative nature, has created a "win-win" situation for all belligerents. Adversaries and enemies are at times partners in business (Maï-Maï and Rwandans and Congolese rebels), prisoners of Hutu origin are mine workers of RPA, enemies get weapons from the same dealers and use the same intermediaries. Business has superseded security concerns. The only loser in this huge business venture is the Congolese people.

V. Recommendations

Prerequisite

219. The Panel acknowledges the validity of Security Council resolutions 1304 (2000) and 1341 (2001), as well as the Lusaka Agreement, and puts its report and recommendations within their broad framework. The Panel believes its report and recommendations are consistent with those resolutions.

Follow-up

220. The Panel recommends that the Security Council extend the mandate of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, to allow it to conduct a follow-up investigation and report on the structures and networks put in place or facilitated by warring parties to illegally exploit the natural resources of the Democratic Republic of the Congo, including the situation after the withdrawal of foreign military forces.

Sanctions

221. The Security Council should immediately declare a temporary embargo on the import or export of coltan, niobium, pyrochlore, cassiterite, timber, gold and diamonds from or to Burundi, Rwanda and Uganda until those countries' involvement in the exploitation of the natural resources of the Democratic Republic of the Congo is made clear and declared so by the Security Council. All countries should abstain from facilitating the import or export of these resources. Any country breaking this embargo should face sanctions; Governments should take the measures necessary to ensure that companies registered in their territory and individuals breaking the embargo are punished.

222. The Security Council should decide that all Member States without delay should freeze the financial assets of the rebel movements and their leaders. Member States should take the necessary measures to ensure that their public and private financial institutions stop doing business with banks named in this report that are located in Burundi, Rwanda and Uganda.

223. The Security Council should strongly urge all Member States to freeze the financial assets of the companies or individuals who continue to participate in the illegal exploitation of the natural resources of the Democratic Republic of the Congo immediately after the publication of this report.

224. The Panel recommends that the Security Council declare an immediate embargo on supply of weapons and all military materiel to the rebel groups operating in the Democratic Republic of the Congo and consider extending this embargo to the States that support or assist those groups.

225. The Panel recommends that the Security Council decide that all military cooperation with States whose military forces are present in the Democratic Republic of the Congo in violation of its sovereignty be suspended immediately until those armies withdraw from the Democratic Republic of the Congo.

Financial and economic matters

226. The Panel recommends that the Security Council urge Member States to suspend balance of payments support to the countries of the region involved in the illegal exploitation of the natural resources of the Democratic Republic of the Congo, until the Security Council has evidence to its satisfaction that the illegal exploitation of natural resources has stopped.

227. The Panel recommends that the Security Council requests the World Bank and IMF to consider suspending their support to the budgets of these countries until the end of the conflict. If, within two months after the publication of this report, clear evidence and signs of the disengagement of these countries from the exploitation of the natural resources of the Democratic Republic of the Congo are not given to the Security Council, cooperation between those institutions and the countries involved should be suspended. The World Bank and IMF should design a policy guideline on cooperation between each institution and countries involved in conflicts.

228. The Panel recommends that the Security Council urge Member States sharing a common border with the Democratic Republic of the Congo or serving as transit countries for goods and natural resources from the Democratic Republic of the Congo to form a commission to investigate financial and economic activities conducted on their territories in connection with the war in the Democratic Republic of the Congo, and take the necessary action to curb or halt activities that contribute to the continuation of hostilities.

Diamond business

229. The Security Council should call upon the Democratic Republic of the Congo to take the necessary steps to curb the flow of illicit diamonds by liberalizing the diamond trade. A clear signal in this regard should be sent to all companies that resist and obstruct the liberalization of the mineral markets.

230. All diamond dealers operating in the territories occupied by foreign forces should immediately stop

doing business with rebels and Burundi, Rwanda and Uganda. Failure to do so should lead to action through the World Diamond Council. The Republic of the Congo and the Central African Republic should take the necessary measures to stop abetting the trade in illicit and conflict diamonds.

231. Furthermore, the Panel endorses all the relevant recommendations on diamonds made by the Panel of Experts established by resolution 1306 (2000) in relation to Sierra Leone in its report (S/2000/1195, paras. 155 to 166), in particular:

(a) A certification scheme similar to that adopted by Sierra Leone should be required of the Democratic Republic of the Congo and all other diamond-exporting countries in the region, within a period of six months;

(b) Major trading centres should agree on a recording and public documentation system for rough diamond imports that clearly designates countries of origin and provenance;

(c) All countries importing rough diamonds must apply a "rough control" system whether they have free trade zones or not;

(d) The European Union should have few entry points for diamonds;

(e) The United Nations and the World Diamond Council should form a commission to conduct an annual review of the proper implementation of the certification system;

(f) An annual statistical production report should be compiled by each exporting country and gathered into a central annual report, compiled by the World Diamond Council and/or by the certification body that is expected to emerge from the "Kimberley process".

Forest and timber

232. The Panel proposes that countries with seaports and those with transit facilities report to the United Nations Forum on Forests on the transit of timber through their territory. As the timber from the Democratic Republic of the Congo transits through the ports of Mombasa and Dar es Salaam, the Governments of Kenya and the United Republic of Tanzania should declare to the Forum on Forests the origins of the

timber that is being shipped from their seaports, as well as the certification documents of such timber.

233. The Panel recommends that the United Nations Forum on Forests unify the different schemes and procedures for timber certification. The certification scheme should be based on the broad framework of principles, criteria and indicators promoted by the International Panel on Forests and the International Forum on Forests. New criteria on "conflict timber" should be considered. The Forum on Forests should become or designate one single accrediting body for timber certification. The composition of such a body should reflect the diversity of actors and interests as well as the specificity of regions. Such a unified mechanism would prevent some "loose codification" and purely commercial certifying bodies from delivering or attempting to deliver certificates. The Panel urges the Security Council to declare timber and non-timber forest products coming from warring areas, "conflict timber and non-timber forest products". Countries importing non-certified timber should put in place minimum guidelines and sanctions for companies that import timber and non-timber forest products from countries at war or experiencing civil war related to the allocation or distribution of natural resources.

234. The Panel proposes, following the declaration on the control of illegal logging made by the Group of Eight in 1998, and the ongoing discussions on "conflict timber products", that a mandate be given to the United Nations Forum on Forests:

(a) To compile information in collaboration with various non-governmental organizations on illegal logging and "conflict timber products" in the world;

(b) To publish annually a list of countries involved in illegal and "conflict timber products" trade;

(c) To submit an annual report to the General Assembly of the United Nations.

235. The Panel recommends that countries of transit and final destination of the timber trade request from logging companies certificates of origin for the timber that is transiting through or arriving in their territory. Those countries should send copies of these certificates to Governments of countries of origin within three days. Failure to abide by this should be considered to be complicity on the part of those countries and they should be listed as countries facilitating "illicit timber"

and "conflict timber product" trade in the report of the Forum on Forests.

Reparation and compensation

236. The Panel recommends that individuals, in particular farmers, religious groups and companies whose properties, livestock and crops were damaged, looted or expropriated by the Burundian, Rwandan or Ugandan armed forces and their allies should be compensated by the States concerned. Properties confiscated should also be returned to their legitimate owners. The Governments of Burundi, Rwanda and Uganda and their allies should pay compensation to the companies whose properties and stocks of coltan, cassiterite, gold, timber and other materials which were confiscated or taken between 1998 and 2000. The Security Council may consider how the Office of the United Nations Resident Coordinator in Kinshasa could help in gathering information on the claims.

237. UNESCO, in collaboration with UNEP, the secretariat of CITES and non-governmental organizations working in the Democratic Republic of the Congo should assess the extent of damage to wildlife in Garamba Park, Kahuzi-Biega Park, the Okapi Reserve and Virunga Park, and propose sanctions to be taken against those Governments whose soldiers were involved in the mass killing of endangered species.

Framework for reconstruction

238. The Security Council would give mandate and means to a United Nations commission created to help the Government of the Democratic Republic of the Congo manage the transition in the formerly occupied regions. The Commission will help design and put in place the legal and administrative framework and create an enabling environment for economic activities. The Commission will also help put in place the necessary conditions for the enhancement of State authority and security over its territory.

General

239. The Panel recommends that the Security Council consider establishing an international mechanism that will investigate and prosecute individuals involved in economic criminal activities (such as Khaleb Akandwanaho alias Salim Saleh, Jean-Pierre Bemba, James Kazini, Mbusa Nyamwisi, Ateenyi Tibasima,

Roger Lumbala, Aziza Kulsum Gulamali and others named in this report), companies and government officials whose economic and financial activities directly or indirectly harm powerless people and weak economies.

240. The Panel recommends that the Security Council consider establishing a permanent mechanism that would investigate the illicit trafficking of natural resources in armed conflicts so as to monitor the cases which are already subject to the investigation of other panels, such as those of Angola, the Democratic Republic of the Congo and Sierra Leone.

241. Member States should be encouraged to adopt legislation that will forbid companies registered in their territory from importing or exporting natural resources to or from invading countries.

Security

242. The Panel urges the Security Council to hold Governments of countries parties to the conflict in the Democratic Republic of the Congo, rebel movements and those military representatives cited in the report responsible if any harm is done to any member of the Panel. The Security Council should encourage individual countries to assist the Panel members by providing security to each of them well after the Panel is dissolved. The Security Council should urge the Secretary-General to make the necessary arrangements to ensure the security of the Panel members well after the Panel is dissolved. The Panel has received information of harassment in Bunia and other localities of individuals who may have been in contact with the Panel members. The Security Council should hold the authorities of Rwanda, Uganda, RCD and FLC responsible for any harm to witnesses who shared their knowledge with the Panel.

Annex I

Sample of companies importing minerals from the Democratic Republic of the Congo via Rwanda

<i>Company</i>	<i>Country of destination</i>	<i>Merchandise</i>
Cogem	Belgium	cassiterites
Muka-Enterprise	Belgium	cassiterites
Issa	Germany	cassiterites
Chpistopa Floss	Germany	cassiterites
Redemi	Rwanda	cassiterites
Banro-Resources Corp.	Malaysia	cassiterites, coltan
	Canada	cassiterites
Bharat	United Republic of Tanzania	cassiterites
Extano-Office	Rwanda	coltan
Coopimar	Rwanda	coltan
Geologistics Hannover	Germany	coltan
Rwasibo-Butera	Switzerland	coltan
Eagleswings	Netherlands	coltan
Veen	Netherlands	coltan
Soger	Belgium	coltan
Patel Warehouse	Netherlands	coltan
Afrimex	United Kingdom of Great Britain and Northern Ireland	coltan
	Netherlands	cassiterites
Chimie Pharmacie	Netherlands	coltan
	Belgium	coltan
Sogem	Belgium	coltan, cassiterites, tin
Cogecom	Belgium	coltan, cassiterites
Cogea	Belgium	coltan
Panalpina	Kenya	coltan

<i>Company</i>	<i>Country of destination</i>	<i>Merchandise</i>
Tradement	Belgium	coltan, cassiterites
Ventro Star	United Kingdom of Great Britain and Northern Ireland	coltan
Raremet	India	coltan
Finconord	Pakistan	coltan
Finiming Ltd.	Belgium	coltan
Finconcorde	Russian Federation	cassiterites, coltan
Patel	India	cassiterites
Cicle International	Belgium	coltan
Masingiro	Germany	coltan
Union-Transport	Germany	coltan
Specialty Metal	Belgium	coltan
MDW	Belgium	cassiterites, coltan
Transintra	Belgium	cassiterites

Source: The Rwandan Revenue Authority.

Annex II

Countries visited and representatives of Governments and organizations interviewed

The Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo wishes to express its deep appreciation to the government officials, diplomats, non-governmental organizations, individual relief workers, journalists, and others who assisted it in its enquiries and helped to make this report possible.

The Panel further wishes to extend special thanks to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), in particular Ambassador Kamel Morjane; to the United Nations Office at Nairobi, in particular Klaus Töpfer and Alexander Barabanov; and to the Office of the Special Representative of the Secretary-General for the Great Lakes Region of Africa, in particular Ambassador Berhanu Dinka.

Among countries involved in the conflict in the Democratic Republic of the Congo, the Panel would like to make special note of the cooperation received from the Republic of Uganda, which provided the Panel with all information that was requested.

The following list is incomplete in deference to the wishes of those who requested anonymity, in particular Congolese individuals who put their lives at risk in order to provide the Panel with information.

Angola

Government officials

Vice-Minister of External Relations
Vice-Minister of Finance
Minister of Petroleum
Minister of Geology and Mines

United Nations agencies and offices

Representative of the Secretary-General and Head of the United Nations Office in Angola
United Nations Office in Angola

Belgium

Government officials

Ministry of Foreign Affairs
Ministry of Communications, Civil Aviation Administration
Ministry of Finance
Ministry of Economy and Finance
Cabinet of Deputy Prime Minister and Minister for Foreign Affairs
Department of Customs and Accounts
Office belge du commerce extérieur
Département de douanes et droits indirects

International organizations

Eurostat
World Customs Organization

Other

Belgolaise
BHP Diamonds and Minerals
BHV
Diamond High Council
Independent Diamond Valuers
Institute of Politics and Development Management
Langer Diamonds
Nordiska Afrikainstitutet (Nordic Africa Institute)
Royal Museum for Central Africa, Department of Geology and Mineralogy
SwissCargo
World Federation of Diamond Markets

Burundi

Government officials

His Excellency Major General Pierre Buyoya, President of the Republic of Burundi
Minister of Agriculture and Livestock
Ministry of Finance
Minister of International Relations and Cooperation
Minister of National and Regional Development and Environment
Minister of Transportation, Post and Telecommunications

Representatives of States

Belgium
Democratic Republic of the Congo
France
United States of America

United Nations agencies and offices, and international organizations

MONUC
Office of the Special Representative of the Secretary-General in Burundi
UNDP
World Bank

Democratic Republic of the Congo

Government officials

His Excellency Major General Joseph Kabila, President of the Democratic Republic of the Congo
Commissariat général du Gouvernement chargé des affaires de la MONUC
Banque nationale du Congo
Banque centrale
Département des Forêts
Direction générale des contributions (DGC)
Direction générale des recettes administratives, judiciaires, domaniales et de participations (DGRAD)
Institut congolais pour la conservation de la nature (ICCN)
Ministre des affaires foncières de l'Environnement, de la conservation de la nature et du développement touristique
Ministre de l'agriculture et élevage
Ministre des droits humains

Ministre de l'économie, du commerce, et de l'industrie
Ministre de l'énergie
Ministre des finances et du budget
Ministère des mines
Ministre d'Etat chargé du pétrole
Ministre des transports et communications
l'Office des douanes et accises (OFIDA)

Representatives of States

Belgium
China
France
Italy
United States of America
Diplomatic Corps of Kinshasa

United Nations agencies and offices

FAO
Office of the Special Representative of the Secretary-General
MONUC
Office for the Coordination of Humanitarian Affairs
Office of the United Nations High Commissioner for Human Rights
UNDP
UNHCR
UNICEF
WFP
WHO

Other

COSLEG Holding
Fédération des entreprises du Congo (FEC)
Georges Forrest International
Governor of South Kivu and Provincial Directors
Observatoire gouvernance-transparence (OGT)
Kotecha Group of Companies
Mouvement pour la libération du Congo
Olive Company
RCD-Goma
Rally for Congolese Democracy-ML/Kisangani
Trafca
World Resource Institute

France

Government officials

Ministry of Foreign Affairs
Ministry of Defence
Ministry of the Economy, Finance and Industry – Department of the Treasury
French Development Agency
Inspector General of Civil Aviation and Meteorology
Direction générale des douanes et droits indirects – Sous-Direction de l'Union
douanière et de la coopération internationale
Bureau of Geological and Mining Research (BRGM)

International organizations

Organization for Economic Cooperation and Development

Kenya

Government officials

Minister for Foreign Affairs

Kenya Ports Authority

Representatives of States

Belgium

Democratic Republic of the Congo

France

Japan

Russian Federation

United Kingdom of Great Britain and Northern Ireland

United Kingdom of Great Britain and Northern Ireland Special Representative
for the Great Lakes

Zimbabwe

International organizations

Office of the Facilitator for the peace process in the Democratic Republic of
the Congo

United Nations agencies and offices

MONUC

Office for the Coordination of Humanitarian Affairs

Office of the Special Representative of the Secretary-General for the Great
Lakes Region

UNDP

UNEP

United Nations Office at Nairobi

Other

International Crisis Group (ICG)

Namibia

Government officials

Deputy Minister for Foreign Affairs, Information and Broadcasting

Minister of Finance

Deputy Minister of Defence

Minister of Mines and Energy

Minister of Agriculture, Water and Rural Development

Minister of Environment and Tourism

Representatives of States

China

France

Russian Federation

United Kingdom of Great Britain and Northern Ireland

United States of America

Rwanda

Government officials

His Excellency Major General Paul Kagame, President of the Republic of Rwanda

Chef d'Etat major

Minister of Energy, Water and Natural Resources

Minister for Foreign Affairs

Minister of Finance and Economic Planning

Minister of Agriculture, Forests and Livestock

Minister of Works, Transport and Communications

Minister of Energy, Mines and Water

Minister of Land, Resettlements and Environment

National Bank of Rwanda

Secretary-General of Commerce, Industry and Tourism

Rwanda Revenue Authority

Representatives of States

Belgium

Canada

China

France

Germany

Netherlands

Russian Federation

Switzerland

United Kingdom of Great Britain and Northern Ireland

United States of America

Office of the European Union Delegation

United Nations agencies and offices

ECA

FAO

Heads of United Nations agencies represented in Rwanda

International Criminal Tribunal for Rwanda

MONUC

Office for the Coordination of Humanitarian Affairs

UNDP

South Africa

Government officials

Ministry of Foreign Affairs

Other

Anglo-American

De Beers

Switzerland

Government officials

Department of Foreign Affairs, Chef de la direction politique

Swiss Federal Administration

International organizations

World Trade Organization

Other

Société générale de surveillance

Uganda

Government officials

His Excellency Yoweri Kaguta Museveni, President of the Republic of Uganda

Civil Aviation Authority

Internal Revenue Authority

Minister of Agriculture

Minister of Defence

Minister of Energy and Mineral Development

Minister of State for Environment, Water and Land

First Deputy Prime Minister and Minister for Foreign Affairs

Minister of Finance

Minister of State for Planning and Investment

Ministry of Works, Transport and Communications

Parliamentary Committee on Presidential and Foreign Affairs

Vice-President of the Republic of Uganda

Representatives of States

Belgium

Denmark

France

Italy

Russian Federation

United Kingdom of Great Britain and Northern Ireland

European Union Special Envoy to the Great Lakes

United Nations agencies

Office for the Coordination of Humanitarian Affairs

UNDP

Heads of United Nations agencies in Kampala

Media

East African

Monitor

New Vision

Radio Uganda

Top Radio

Ugandan Television

United Kingdom of Great Britain and Northern Ireland

Government officials

Foreign and Commonwealth Office

Other

Cluff Mining
De Beers
The Economist
International Coffee Organization
World Diamond Council

United States of America

Government officials

Department of State
– Bureau of African Affairs
– Bureau of International Organization Affairs
Congresswoman Cynthia McKinney, Fifth District, Georgia

United Nations agencies and offices

UNESCO and United Nations Foundation/White Oak Conference

International organizations

World Bank

Other

Oregon Certification Group
SmartWood
University of Maryland

Zimbabwe

Government officials

Senior Secretary for Foreign Affairs
Minister of Energy and Mines
Chief Executive Officer, Civil Aviation Authority

Representatives of States

Belgium
China
France
Russian Federation
United Kingdom of Great Britain and Northern Ireland
United States of America

United Nations agencies and international organizations

UNDP
Heads of all United Nations agencies represented in Zimbabwe

Media

Zimbabwe Independent newspaper
Daily News

Other

First Banking Corporation Limited
Zimbabwe Transparency International
ZimTrade

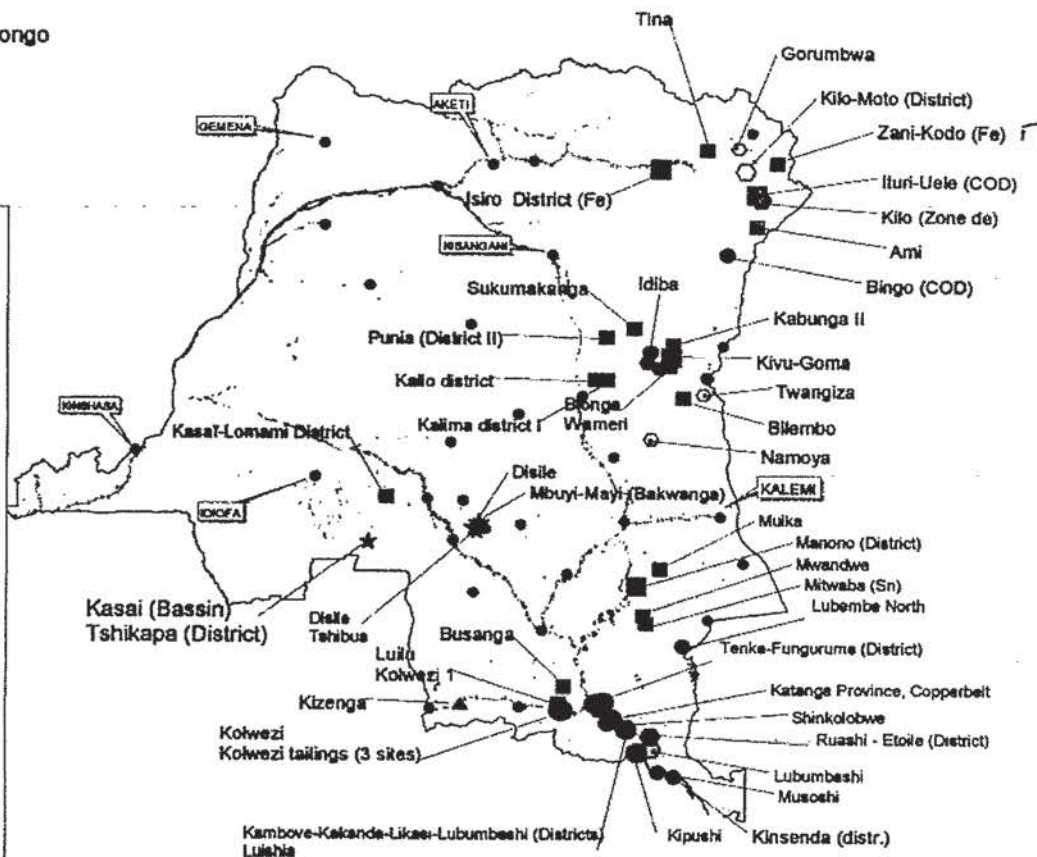
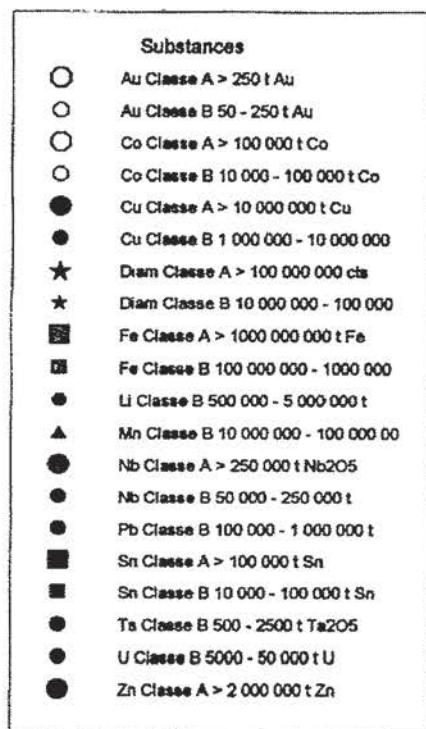
Annex III

Abbreviations

AFDL	Alliance des forces démocratiques pour la libération du Congo-Zaïre (Alliance of Democratic Forces for the Liberation of Congo-Zaire)
BCD	Banque de Commerce et du développement (Trade and Development Bank)
BCDI	Banque de commerce, du développement et d'industrie, Kigali
CEMAC	Communauté économique et monétaire de l'Afrique centrale (Central African Economic and Monetary Community)
CIFOR	Centre for International Forestry Research
coltan	columbo-tantalite
COMESA	Common Market for Eastern and Southern Africa
COMIEX (1)	Compagnie mixte d'import-export
COMIEX (2)	La Générale de commerce d'import/export du Congo
COSLEG	COMIEX-OSLEG joint venture
ECA	Economic Commission for Africa
FAO	Food and Agriculture Organization of the United Nations
FDD	Forces pour la défense de la démocratie
FLC	Front de libération du Congo (merger of MLC and RCD-ML)
Gecamines	Générale de carrières et des mines
IDI	International Diamond Industries
IMF	International Monetary Fund
MIBA	Société minière de Bakwanga (Mining Company of Bakwanga)
MLC	Mouvement de libération congolais (Congolese Liberation Movement)
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
OECD	Organisation for Economic Cooperation and Development
OSLEG	Operation Sovereign Legitimacy
RCD	Rassemblement congolais pour la démocratie (Rally for Congolese Democracy)
RCD-Goma	Rassemblement congolais pour la démocratie, based in Goma
RCD-Kisangani	Rassemblement congolais pour la démocratie, based in Kisangani, later based in Bunia and referred to as RCD-ML

RCD-ML	Rassemblement congolais pour la démocratie — Mouvement de Libération, first based in Kisangani, later in Bunia
RCD-National	Rassemblement congolais pour la démocratie — National, located in Bafwasende
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
SOMIGL	Société minière des Grands Lacs (Great Lakes Mining Company)
SOMIKIVU	Société minière du Kivu
SOMINKI	Société minière et industrielle du Kivu
UDEAC	Union douanière et économique de l'Afrique centrale (Central African Customs and Economic Union)
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UPDF	Uganda People's Defence Forces
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization
ZANU-PF	Zimbabwe African National Union Patriotic Front
ZDF	Zimbabwe Defence Forces

République Démocratique du Congo
Gisements de classe A et B



Au : Or
Li : Lithium
Ta : Tantale

Co : Cobalt
Mn : Manganese
U : Uranium

Cu : Cuivre
Nb : Niobium
Zn : Zinc

Diam : Diamant
Pb : Plomb

Fe : Fer
Sn : Etain

ANNEX 1.8

United Nations Security Council, *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*, document S/2001/1072, 13 November 2001

(Excerpts)

United Nations

S/2001/1072



Security Council

Distr.: General
13 November 2001

Original: English

Letter dated 10 November 2001 from the Secretary-General to the President of the Security Council

I wish to refer to the presidential statement dated 3 May 2001 (S/PRST/2001/13), in which the Security Council extended the mandate of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo for a final period of three months. I also wish to refer to the President's letter, by which the Panel's mandate was extended until 30 November 2001 (S/2001/951), and the Panel was requested to submit, through me, an addendum to its final report.

I have the honour to transmit to you the addendum to the report of the Panel, submitted to me by the Chairperson of the Panel. I should be grateful if you would bring the report to the attention of the members of the Security Council.

(Signed) Kofi A. Annan



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

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–9	4
II. Historical perspective	10–11	5
III. Situation in the Great Lakes region	12–14	5
IV. Exploitation of the natural resources	15–55	6
Coltan (columbo-tantalite)	17–25	6
Gold	26–29	8
Copper and cobalt	30–35	8
Diamonds	36–47	9
Timber	48–55	11
V. The link between exploitation of resources and the continuation of the conflict . . .	56–104	13
Democratic Republic of the Congo	61–75	14
Zimbabwe	76–82	16
Angola	83–86	18
Namibia	87–90	18
Rwanda	91–94	19
Uganda	95–100	20
Burundi	101–104	21
VI. Transit countries	105–122	21
South Africa	106–109	21
Zambia	110–114	22
United Republic of Tanzania	115–117	22
Kenya	118	23
Central African Republic and Republic of the Congo	119–122	23
VII. Armed groups	123–142	23
National armed groups	123–134	23
Foreign armed groups (the negative forces)	135–142	25
VIII. Conclusions	143–151	26
IX. Recommendations	152–160	27

Annexes

I. Countries visited and representatives of Governments and organizations interviewed	29
II. Abbreviations	37

S/2001/1072

I. Introduction

1. By the statement of its President of 2 June 2000 (S/PRST/2000/20), the Security Council requested the Secretary-General to establish a Panel of Experts on the illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of the Congo with the following mandate:

(a) To follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo, including in violation of the sovereignty of that country;

(b) To research and analyse the links between the exploitation of the natural resources and other forms of wealth in the Democratic Republic of Congo and the continuation of the conflict.

2. By his letter dated 12 April 2001 (S/2001/357), the Secretary-General transmitted the report of the Panel. The Security Council, in the statement of its President of 3 May 2001 (S/PRST/2001/13), requested the Secretary-General to extend the mandate of the Panel for a final period of three months, at the end of which the Panel would present an addendum to the report which 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 other actors for which necessary quantity and quality 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 of 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 new Panel was composed as follows:

Ambassador Mahmoud Kassem (Egypt),
Chairman;

Brigadier General (Ret.) Mujahid Alam
(Pakistan);

Mel Holt (United States of America);

Henri Maire (Switzerland);

Moustapha Tall (Senegal).

4. The Panel was assisted by a technical adviser, Gilbert Barthe, two political officers, as well as an administrator and a secretary.

5. Following a brief period of consultations in New York, the Panel began its work in Nairobi on 30 July 2001. Panel members, together or individually, because of time constraints, visited Angola, Belgium, Botswana, Burundi, Central African Republic, the Democratic Republic of the Congo, France, Kenya, Namibia, the Republic of the Congo, Rwanda, South Africa, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Zambia and Zimbabwe.

6. In acquiring and updating its information, the Panel relied on meetings with heads of State, government officials, non-governmental organizations and stakeholders, business people, academics, members of the press, individuals and others. Meetings were also held with parties cited in the report, representatives of Governments, entities, private companies and individuals who had submitted written reactions to the report.

7. The Panel did not have the power to compel testimony and thus relied on information voluntarily provided by States and other sources. Information was not forthcoming from South Africa, the United Republic of Tanzania, Zambia and Zimbabwe. Information was finally received, but with considerable delay, from Angola. This factor, as well as the constraints of its short mandate, limited the Panel's ability to present a more complete addendum.

8. Throughout its consultations and work, the Panel was mindful of the progress being achieved in the ongoing peace process in the Democratic Republic of the Congo, regarding the implementation of the Ceasefire Agreement signed at Lusaka on 10 July 1999 (S/1999/815) and, in particular, the inter-Congolese dialogue.

9. The Panel tried its best to address the complaints and reactions as a consequence of the report and succeeded in meeting most of the parties. However, owing to severe time constraints, it was not possible to address this issue in its totality.

II. Historical perspective

10. The Panel wishes to emphasize that the history of the Democratic Republic of the Congo, regardless of the political system or governing authority in place, has been one of systematic abuse of its natural and human resources. This exploitation has almost always been backed by the brutal use of force and directed to the benefit of a powerful few. As the country's precious resources were plundered and mismanaged, an informal economy based on barter, smuggling and fraudulent trade in commodities thrived, becoming the sole means of survival for much of the population. This commerce reinforced pre-existing ties based on ethnicity, kinship and colonial structures between the Kivu regions and neighbouring States such as Burundi and Rwanda, as well as Kenya, Uganda and the United Republic of Tanzania. Similar patterns of informal trade closely linked Katanga Province with Zambia and Angola.

11. The result was that a country renowned for its vast natural wealth was reduced to one of the poorest and debt-ridden States by the early 1990s. From the early days of the rebellion of the Alliance of Democratic Forces for the Liberation of Congo-Zaire, President Laurent-Désiré Kabila perpetuated many of the practices of his predecessors. He wielded a highly personalized control over State resources, avoiding any semblance of transparency and accountability. Management control over public enterprises was virtually non-existent and deals granting concessions were made indiscriminately in order to generate quickly needed revenues and to satisfy the most pressing political or financial exigencies. Familiar patterns of unaccountability, corruption and patronage re-emerged rapidly. This is the setting in which the war of August 1998 began.

III. Situation in the Great Lakes region

12. Since 12 April 2001, the ceasefire has held along the confrontation line among the parties. Uganda began pulling out some troops and Namibia withdrew almost all its troops. Disengagement to new defensive positions, in accordance with the Lusaka Ceasefire Agreement, appears to have been completed. Sporadic fighting nonetheless continued, shifting the conflict towards the east along the borders with Rwanda and Burundi and the shores of Lake Tanganyika. Much of this fighting has pitted the Rwandan and Burundi

armed groups or "negative forces" and the Congolese Mayi-Mayi militias against the Rwandan Patriotic Army, the Burundi Army and the RCD-Goma rebel forces. ALIR I, regrouping ex-FAR and Interahamwe, moved through the Kivus and crossed the border to attack RPA. The attack was repelled by RPA. The most recent armed activity has centred on the town of Fizi in South Kivu near Lake Tanganyika. There have also been reports of sporadic clashes between Mayi-Mayi fighters and different forces in the north-eastern regions of Orientale Province and North Kivu. Some fighting was also reported to have broken out among different factions of the Ugandan-backed rebel groups.

13. Efforts towards reconciliation and reunification moved forward. In August 2001, the preparatory meeting for the inter-Congolese dialogue, the negotiations among the Congolese parties on a post-conflict political transition, was held at Gaborone. A sense of compromise and cooperation reigned and one result was the signing of a Declaration of Commitment by all the participants. Among the many issues on which the participants committed themselves to start taking action was the protection of natural resources from illegal exploitation. The dialogue itself began at Addis Ababa in September; the talks, which adjourned prematurely, in part because of funding problems, will reportedly resume in December in South Africa. The Kinshasa Government continued to push for the participation of the Mayi-Mayi groups in the negotiations. Talks aimed at building confidence were held between President Joseph Kabila and the heads of State of the signatories to the Lusaka Ceasefire Agreement. As a gesture of good will, intended to encourage the withdrawal of Rwandan troops, President Kabila announced that 3,000 soldiers in Katanga Province, identified as ex-FAR and Interahamwe, would be disarmed and demobilized under the supervision of the United Nations.

14. As regards the exploitation of natural resources, Zimbabwe is the most active of the allies. Many of its joint ventures are in the development stage and likely to mature with the help of badly needed capital from outside investors. While many of the investors are offshore companies, Zimbabwe also appeared to be considering a less active role for its army in these commercial activities and more involvement by government ministries. On the side of the uninvited forces, the commercial networks put in place by UPDF commanders have allowed them to continue their

exploitation activities despite the withdrawal of a significant number of troops. RPA continued to collect and channel profits from trade in natural resources through a sophisticated internal mechanism.

IV. Exploitation of the natural resources

15. Investigations conducted by the Panel, which focused on evaluating whether changes in trends had occurred since the release of the report, confirmed a pattern of continued exploitation. The exploitation is carried out by numerous State and non-State actors, including the rebel forces and armed groups, and is conducted behind various facades in order to conceal the true nature of the activities. While some of these activities may be conducted under the umbrella of joint ventures, other activities are carried out by the de facto authority in the area, which purports to exercise the same authority and responsibilities as the legitimate Government. Still others take different forms, which will subsequently be highlighted. Given its mandate, the Panel limited its examination of specific material resources to coltan, gold, copper and cobalt, diamonds and timber, since they best illustrate the current patterns of exploitation. Selecting these resources also permitted the Panel to examine some of the reactions presented to the report.

16. The Panel would also like to emphasize another very important aspect of the exploitation that previously was not given sufficient importance. This relates to the exploitation of human resources by all parties to the conflict, a far graver phenomenon than the exploitation of material resources. This form of exploitation has resulted in flagrant and systematic violations of the fundamental human rights of the Congolese people. Human resources constitute the most important wealth of a nation, and the Panel strongly feels the need to reinforce the international community's attention to this situation so that urgent measures are taken.

Coltan (columbo-tantalite)

17. An excellent conductor, this metal ore occurs throughout the eastern region of the Democratic Republic of the Congo. After increased demand from the hi-tech, communications and aerospace industries

drove coltan prices to an all-time high of more than \$300 per pound in 2000, prices plummeted during the first six months of 2001, levelling off at the current \$20 to \$30 per pound. This price fluctuation, due to an increase in world production — in particular in Australia — and diminished demand, coincided with the publication of the Panel's report. There have been some accounts that part of the decrease in demand resulted from manufacturers' desire to disassociate themselves with what became known, following release of the report, as "blood tantalum".

18. The fluctuation in the price, as well as the Panel's report, have had a number of effects on the coltan trade from the eastern region of the Democratic Republic of the Congo. In response to the recommendations of the Panel, a bill was introduced in September 2001 in the United States House of Representatives to prohibit temporarily coltan imports from certain countries involved in the conflict in the Democratic Republic of the Congo. Some United States corporations that process and use tantalum, such as Kemet and Cabot Corporation, cancelled orders for coltan originating from the region. The Panel also confirmed that the Belgian company Sogem, a subsidiary of Umicore (formerly Union Minière), which was cited in the report, ended its partnership with its coltan supplier, MDM, in Bukavu in November 2000. Sogem, it should be added, had been operating and was established in the area long before the outbreak of hostilities.

19. These factors have also led to a change in tactics by the Rwandan army. Congolese operators were selected as partners to handle the coltan trade. In addition, the Rwandans relocated some of their *comptoirs*, which had operated in Bukavu and Goma, back to the Rwandan border towns of Cyangugu and Gsenyi. In addition, the decrease in coltan prices has meant a sharp reduction in revenues for the Congolese rebel groups such as RCD-Goma. For example, the Panel received reports that only one of the six remaining *comptoirs d'achat* has been able to pay its mandatory contribution to RCD-Goma. The rebel group has, as a result, resorted to other means of collecting revenue. RCD-Goma officials are now retroactively demanding higher taxes from local businesses and have imposed much higher customs tariffs. Desperately short of funds, RCD-Goma has even begun imposing customs duties on relief material brought in by humanitarian organizations.

covered in the early 1990s for economic losses incurred because of the wars in the east of the Democratic Republic of the Congo". The Government of Germany has emphasized that it does not offer "trade promotion measures" to SOMIKIVU or any other company named in the report.

Gold

26. Gold deposits can be found in the north-east and eastern regions, in the Kivus and Maniema and Ituri Provinces. During the last days of the Mobutu era, this was the only mineral that was recording increases in sales. Following an initial attempt at privatizing the gold mines through joint ventures, industrial gold mining practically came to a halt as a result of the civil war that began in 1996. However, artisanal gold mining continued and continues to this date on a large scale.

27. The Panel's report sheds light on the gold mining activities carried out by the Ugandan army, which assumed control of this gold-rich area. The sharp rise in Ugandan gold exports, which also exceeded national production, was given as further evidence that this gold is transported by UPDF elements to Kampala, from where it is exported. The Government of Uganda contested the findings of the Panel in its report, attributing the increase in its exports to 1993 policies liberalizing gold sales and exports, where the revamped policies permitted artisanal miners in Uganda to keep hard currency earned from sales. Officials claimed that as a result of the ease with which gold can be smuggled, Uganda became the preferred destination for gold produced by artisanal miners in the surrounding region.

28. The discrepancy between the gold export figures registered by the Ministry of Energy and Mineral Development and those recorded by the Uganda Revenue Service was attributed to the fact that the Ministry's figures reflect the quotas set for the production of the Ugandan export permit holders. These permit holders can buy from artisanal miners, the total of which appears on the export permits. While small-scale smuggling may in part explain the discrepancy in Uganda's production and export figures, the Panel has evidence that artisanal gold mining activities in the north-east by UPDF and RCD-ML, as well as the short-lived rebel coalition FLC, have continued. In the Kilo-moto area for example, operations at the Gorumbwa and Durba sites are under

the control of UPDF and RCD-ML. The Malaka site reportedly employs 10,000 diggers and generates amounts of gold valued at \$10,000 per day. Gold produced is still being sold through the Victoria *comptoir* in Kampala.

29. Another destination for the gold originating in the Democratic Republic of the Congo is Bujumbura. The Panel has learned from official and business sources in Bujumbura that gold smuggling into Burundi from Bukavu, Fizi Baraka and Uvira is a traditional activity because of the porous borders and Bujumbura airport's capacity to handle large cargo planes. In Bujumbura, gold dealers from countries such as Senegal, Pakistan and Greece buy this smuggled gold, which they subsequently transport personally to Europe and other destinations.

Copper and cobalt

30. Gécamines, the largest mining operation in the Democratic Republic of the Congo and once wholly State-owned, has holdings in government-controlled Katanga Province, which contain one of the largest concentrations of high-grade copper and cobalt in the world. Embezzlement, theft and pilfering, mismanagement and a lack of re-investment transformed it from the pillar of the Congolese economy, once earning 70 per cent of the country's hard currency in exports, into a dilapidated enterprise with production now at only one tenth of its former capacity.

31. Although Australian, United States, Canadian, Belgian and South African companies have established joint ventures in Gécamines' concession areas, the Government of the Democratic Republic of the Congo has primarily relied on it as a means to ensure the continued support of Zimbabwe. Zimbabwean Billy Rautenbach was named the Managing Director of Gécamines in November 1998 during a visit to Harare by President Laurent-Désiré Kabila. According to this deal, some of Gécamines' best cobalt-producing areas were also transferred to a joint venture between Mr. Rautenbach's Ridgepoint Overseas Development Ltd. and the Central Mining Group, a Congolese company controlled by Pierre-Victor Mpoyo, then Minister of State. Mr. Rautenbach also acted as Managing Director of the joint venture, a blatant conflict of interest. The Panel has information that President Kabila's decision to appoint Mr. Rautenbach — a man with no mining

experience but with close ties to the ruling ZANU-PF party in Zimbabwe — was made at the request of President Robert Mugabe during that visit.

32. However, President Kabila replaced Mr. Rautenbach with Georges Forrest, a Belgian businessman, in March 1999, reportedly after the former failed to pay the Government's share of the profits from the joint venture. President Kabila accused him of transferring profits to a shell company, as well as stockpiling cobalt in South Africa. Shipments of cobalt had allegedly been seized in Durban to pay Gécamines' South African creditors. Mr. Rautenbach has since taken legal action against the Government of the Democratic Republic of the Congo.

33. Under Zimbabwean pressure, in January 2001 John Bredenkamp's Tremalt Ltd. formed a joint venture with Gécamines, the Kababancola Mining Company (KMC). In a 25-year agreement, KMC acquired rights to a concession representing the richest Gécamines holdings. Mr. Bredenkamp, who pledged to invest \$50 million in the mining operations, controls 80 per cent of this venture. Profits from his company's share will be split between the Government of the Democratic Republic of the Congo (68 per cent) and Tremalt (32 per cent).

34. The management of Gécamines changed hands again following an audit of all State-owned enterprises. The Minister to the Presidency, who has oversight for all public enterprises through his other post as Minister of the Portfolio, supervised an audit of these enterprises early in 2001. The audit reportedly revealed gross mismanagement and led to the firing of senior management officials at these enterprises in August 2001. A relative of the Minister was subsequently appointed to an influential post in the new management committee of Gécamines.

35. As in the past, Gécamines still continues to serve as a source of revenue for the Government of the Democratic Republic of the Congo. However, Gécamines' revenue-generating capacity no longer stems primarily from actual production, as it did during the early years of President Mobutu's regime. Instead, revenue mainly flows from the initial payments pledged by potential foreign joint-venture partners in return for the granting of concessions. The Panel has established that the amount of the payment is one of the primary considerations for the cash-strapped Government in granting concessions. As a result,

unsustainable and environmentally hazardous mining operations currently characterize Gécamines' copper and cobalt mining activities. The future of what was once the giant of the country's economy appears bleak.

Diamonds

36. Owing to the size of the industry and the relatively stable price of diamonds, it is now an established fact that diamonds have had a significant effect on conflicts in Africa. In Angola and Sierra Leone, "conflict diamonds" mined in rebel-held areas¹ have served as a motivation for and a means by which some of the longest and bloodiest civil wars in Africa have been and are still being fought. The Democratic Republic of the Congo is not an exception. In this respect, the Panel would like to emphasize the importance of efforts by those involved in the "Kimberley process" in developing an international regulatory framework that will prevent conflict diamonds from being marketed and traded through legitimate industry channels. The Government of the Democratic Republic of the Congo has recently begun participating in these efforts.

37. In 1998, the former Governor of Kasai Oriental Province, Jean Charles Okoto, was named Managing Director of Société minière de Bakwanga (MIBA). Statistics obtained by the Panel show that while industrial and lower grades of diamonds have consistently accounted for over 90 per cent of MIBA production over the past decade, the small proportion of gem and near-gem quality stones, which averaged around 4 per cent of production, has shrunk progressively since 1999. By 2001, they represented barely 1.8 per cent of total production. The data, together with information provided by highly reliable sources, suggest that much of the company's most valuable diamond production is being embezzled and sold for personal profit by high-level MIBA and possibly other Government officials. The Panel believes, on the basis of credible, independent reports, that a portion of these embezzled gems are being smuggled through South Africa for sale in third countries. Credible information also suggests that

¹ Diamonds that originate in areas controlled by forces or factions opposed to legitimate and internationally recognized Governments, and are used to fund military action in opposition to those Governments or in contravention of the decisions of the Security Council.

Congolese authorities regularly skim millions of dollars from the proceeds of MIBA sales. In some cases, the funds are directly transferred from the company's Brussels account at the Banque Belgoise. There are also widespread allegations, which the Panel was not able to substantiate, that diamonds from the Angolan rebel force UNITA are being laundered through MIBA in its tenders.

38. One of the largest joint ventures involving the Zimbabwe Defence Forces is the Sengamines diamond concession. The 25-year concession clearly represents the richest diamond deposits of MIBA holdings, with a potential production value estimated at over several billion dollars.

39. The joint venture originally featured a partnership between the ZDF-owned OSLEG (Operation Sovereign Legitimacy) and the Congolese company COMIEX-Congo. COMIEX-Congo is a State-private venture that acts as the Government's main platform for commercial deals and is reportedly linked to the Presidency and senior government ministers. The resulting joint venture, COSLEG, had neither the capital nor the expertise to develop the full potential of the concession. In a pattern that has developed in all of Zimbabwe's commercial investments in the Democratic Republic of the Congo, technical and financial support was sought from a third party. In this case, the party was Oryx Natural Resources, a British-Omani company.²

40. The exact capital structure of Sengamines remains somewhat unclear. Information obtained from Sengamines representatives and COMIEX in the Democratic Republic of the Congo indicated that Oryx retained 49 per cent of the shares, COMIEX 33.8 per cent and MIBA 16 per cent. The remaining 1.2 per cent is divided among several individuals, including the Minister for Public Security. Sengamines representatives also told the Panel that COMIEX would soon be dissolved and the government share in the venture would be controlled by the Ministry of the Portfolio. In a document concerning a planned reverse takeover of Oryx Natural Resources in 2000, reference is made, however, to dividing the "distributable profits" from the concession on the following basis: 40 per cent to the Oryx group, 20 per cent to OSLEG and 20 per cent to COMIEX-COSLEG. In this scenario, the

Congolese partners would be considerably marginalized, especially MIBA. The separate Oryx Zimcon joint venture, involving yet another ZDF-owned company, is described as holding 90 per cent of the concession mining rights. Many well-informed sources emphasized to the Panel that the concession granted to Sengamines was the last strategic diamond reserve of MIBA and that MIBA has been irreparably weakened by the loss of this concession. Some sources even alleged that the granting of the concession is the prelude to liquidating MIBA, with Sengamines replacing it as the new premier diamond producer in the Democratic Republic of the Congo.

41. While the Congolese partner provides the resources to be exploited, Oryx furnishes the necessary capital and expertise. Through Abadiam, its agent in Antwerp, Oryx is also directly involved in the marketing process. Although sharing substantially in the profits, the Zimbabwean side in this complex joint venture has no apparent role, apart from its strategic troop deployment in the diamond-rich Kasai region. This area is known for its secessionist tendencies and being the stronghold of popular opposition politician Etienne Tshisekedi of the Union pour la démocratie et le progrès social (UPDS).

42. An estimated one third of the total rough diamond production of the Democratic Republic of the Congo, valued at \$300 million a year, is smuggled to the Central African Republic and the Republic of the Congo because the export duties are much lower in those countries. A significant percentage of these diamonds also find their way to South Africa. The Panel believes that the stones are mostly exported from these transit points, to the major diamond trading centres in Belgium, the Netherlands, Israel and the United Kingdom. The smaller diamond centres in Mauritius, India and the United Arab Emirates (Dubai), reportedly receive a lesser share. The new mining code of the Government of the Democratic Republic of the Congo, being drafted with assistance from the World Bank and advice from the World Diamond Council, is expected to redress the issue of the heavy taxes levied by the revenue-starved Government on diamond exports, which helps spur this illicit trade.

43. In following the trail of diamond exports from the Zimbabwean ventures in the Democratic Republic of the Congo, the Panel learned from the Ministry of Mines of Zimbabwe that the import of rough diamonds into Zimbabwe is prohibited. This information was

² The company, directed by an Omani entrepreneur, is registered in the Cayman Islands.

corroborated by data provided by other credible sources, which showed no diamond imports originating from Zimbabwe. The Panel has been able to establish that these diamonds are handled by the South African-based Petra Diamonds Ltd.,³ which now owns Oryx Natural Resources, following a reverse takeover in 2000.

44. Diamonds from artisanal mining in the northern Kisangani area have provided a source of revenue for the rebels, RPA and UPDF for the continuation of the conflict. The high combined taxes imposed by the RCD-Goma rebel group and RPA ultimately resulted in diamonds mined in this area being redirected to Kampala, where lower tax rates prevail. Data on Ugandan diamond exports confirm this. From 1987 to 1996, no diamond exports from Uganda were recorded for this market. From 1997 to 2000, exports from Uganda ranged from 2,000 to 11,000 carats, with values of up to \$1.7 million per year. Figures for 2001, extrapolated from the sales for the first eight months, show an estimated 35,000 carats, valued at \$3.8 million, in Ugandan diamond exports to Antwerp.

45. To gain a better understanding of the diamond exploitation activities carried out in the rebel-held and occupied territories, the Panel has taken a closer look at the activities of the Belco-Diamant *comptoir* in Kisangani. Following the rebel administration's cancellation of the monopoly on diamond exports granted to Mr. Nassour in Kisangani, the Belco *comptoir* was established. This *comptoir* is owned by Mr. Lukasa, a former minister under President Mobutu, as well as Emile Serphati, and was licensed to export diamonds by the rebel administration. Although Belco pays a 5 per cent export tax to the RCD-controlled Ministry of Mines, the Panel has information that a 10 per cent tax is also levied on the *comptoir* by the "Congo desk" in Kigali. Buyers, such as Arslanian Frères, purchase diamonds from Belco, which are then shipped directly to Antwerp in Belgium. As there is no sanctions regime in effect against diamonds originating in the Democratic Republic of the Congo, the Diamond High Council in Antwerp inspected and approved

Arslanian Frères' imports of diamonds originating in the rebel-controlled region of Kisangani. The owner, Raffi Arslanian, told the Panel that Arslanian Frères had ceased all imports from Belco in May 2001 and furnished purchase receipts to substantiate this.

46. Statistics from credible sources also showed that diamond exports from Rwanda to Antwerp, in contrast to Uganda, have not increased. They informed the Panel that the reason behind this is the Rwandan Congo desk's relatively high tax (10 per cent) levied on the export of diamonds from the Democratic Republic of the Congo, added to the 5 per cent tax charged by the Congolese rebel administration. These taxes have driven many of the artisanal miners from the Kisangani area to smuggle their production through the Central African Republic and the Republic of the Congo. Diamonds are also reportedly transported personally by Asian and Lebanese traders operating in the eastern region, to South Africa and to Belgium and other European countries.

47. Belgium, along with the Diamond High Council in Antwerp, has taken serious steps to halt imports of conflict diamonds, for example from Angola and Sierra Leone, by instituting strict controls and by playing a leading role in the design and adoption of an international diamond certification system. However, it still remains an important destination for those tainted diamonds owing to the lack of similar controls in other European Union countries. Another related issue raised in the Kimberley process is the difficulty of adapting a certification and inspection regime to the customs and other trade procedures of a single integrated trade market such as the European Union.

Timber

48. The Democratic Republic of the Congo is endowed with some of the finest hard woods in the world. Most timber products from the eastern region have traditionally been shipped via the Congo River for export in Kinshasa. The Panel learned, however, that since the beginning of the 1998 war, logging companies in the eastern region have used the port of Mombasa in Kenya for exports. Although the Panel has evidence to show that timber from the eastern Democratic Republic of the Congo is exported both from the port of Dar es Salaam and through Kampala to the port of Mombasa, the Governments of both the United Republic of Tanzania and Uganda denied that

³ Petra Diamonds Ltd. is actually registered in Bermuda although most of its operations and holdings are in South Africa. The company also has subsidiaries or concessions, some active and other not, in Namibia, Botswana and Angola. Its directors include a former United States diplomat, an Omani government official and a Commonwealth Secretariat official.

any transited through either country. Information provided to the Panel proves however that timber processed at Mangina (North Kivu) transits through Uganda on its way to Mombasa, transported by the freight company TMK. With regard to the United Republic of Tanzania, the Panel has obtained documents that clearly indicate that, during the period from December 2000 to March 2001, at least two shipments of timber originating in the Democratic Republic of the Congo were transported across the United Republic of Tanzania by railway from Kigoma to the port of Dar es Salaam. The documents also show that both shipments were intended for transit through the port. These shipments were consigned to companies in Greece and Belgium.

49. The exploitation of timber is also occurring in the Government-held territories. In 2000 COSLEG, the joint venture between the ZDF-owned OSLEG and COMIEX, established a subsidiary, Société congolaise d'exploitation du bois (SOCEBO), for the exploitation and commercialization of timber in the Democratic Republic of the Congo. It was set up with the aim to "contribute in the war effort in the framework of South-South cooperation".

50. The Panel has gathered contradictory information about the exact size of the concessions granted to the joint venture, as well as its operational status and investment strategies. SOCEBO representatives told the Panel that six concessions had been applied for in the Bandundu, Bas-Congo, Kasai and Katanga Provinces, totalling 1.1 million hectares. However, the United Kingdom non-governmental organization Global Witness reports that four concessions totalling 33 million hectares were granted, making it the largest timber exploitation operation in the world. According to Global Witness, these concessions cover 15 per cent of the national territory. The by-laws show COSLEG as holding 98.8 per cent of the shares in the joint venture, with the remaining 1.2 per cent of shares divided between Mawapanga Mwana Nanga, Abdoulaye Yerodia Ndombasi, Godefroid Tchamlesso, Charles Dauramanzi, Collins Phiri and Francis Zvinavashe.

51. According to some sources, timber from the Kasai and Katanga concessions would be transported by train from Lubumbashi, through Zambia to the port of Durban in South Africa, where it would be exported to Asia, Europe and the United States. The Panel also received very credible information that SOCEBO target markets would include South Africa.

52. President Mugabe told the Panel at a meeting in Harare that, although SOCEBO was supposed to commence logging activities in May 2001, it had been delayed owing to an inability to pay the customs duties to the Zimbabwe Revenue Service on machinery imported for the project. The SOCEBO Directors in Kinshasa emphasized, however, that a lack of sufficient capital had been the main obstacle to making SOCEBO fully operational. The Panel also received credible reports that the initial start-up capital of \$600,000 intended for SOCEBO operations had been embezzled by representatives of the diamond buying office, Minerals Business Company, another COSLEG subsidiary. The Panel learned that a police inquiry into the disappearance of those funds had been suspended.

53. Heavy investment will still be required in order for the company to realize its objectives, over \$5 million according to the company's own business plan. The Panel has not been able to substantiate reports that ZDF have contacted Malaysian, Lebanese and French investors to explore the possibility of forming joint ventures to develop these concessions.

54. According to information provided by SOCEBO, however, in July 2001 a joint venture was established with Western Hemisphere Capital Management (WHCM), described by some as a United Kingdom company based in Harare. The venture, SAB-Congo, was formed to develop one of the concessions in Katanga Province. WHCM, which is providing the needed capital and equipment, currently owns 60 per cent of the shares. SOCEBO holds 35 per cent, while the Institut National pour l'étude et la recherche agronomique (INERA), a Congolese State-run institute for agriculture, holds 5 per cent. The duration of the agreement is 10 years. The first timber sales from the venture are expected in November 2001. The Panel was unable to determine if WHCM is in any way linked to Western Hemisphere Resource Exploration (WHRE),⁴ which recently formed a diamond mining joint venture with COSLEG, the Société congolaise d'exploitation minière. SOCEBO is also currently conducting negotiations with Assetfin, a Zimbabwean company owned by Time Bank, in a similar arrangement for another concession.

55. The Directors of SOCEBO told the Panel during an interview in September in Kinshasa that, while it

⁴ WHRE is registered in the Isle of Man and according to the by-laws is owned by Elki Pianim.

continues to seek investors, it is currently exporting timber bought from local small-scale loggers. It is also in the process of annulling a partnership deal with a private Congolese logging company for its concession in the Bas-Congo, which it described as “unprofitable”. While SOCEBO directors painted a picture of a company still struggling to get operations under way and burdened by debts and back-tax bills, the Panel has received credible reports that Zimbabwean military personnel have been carrying out intensive logging operations in the SOCEBO concession in Katanga, apparently in conjunction with SAB-Congo.

V. The link between exploitation of resources and the continuation of the conflict

Overview

56. Through its fact-finding, the Panel attempted to analyse to what degree the exploitation of natural resources and other forms of wealth constitutes the motivation behind each party’s activities in the Democratic Republic of the Congo, and to what extent the exploitation provides the means for sustaining the conflict. In doing so, it assessed the recent developments in the conflict area and their implications for the exploitation activities. The Panel then evaluated, on an individual basis, the activities of the different States involved in the exploitation process.

Recent developments and their implications

57. There are indications that clashes during the past seven months in the Oriental and Kivu regions between the Mayi-Mayi, who appear to be better equipped and coordinated than before, and UPDF and the MLC rebel group have been directly related to control of coltan and gold. Similar short-lived battles have been fought by the Mayi-Mayi with RPA over access to coltan throughout the Kivus. The Panel also believes that the infighting among the Congolese rebel groups in recent months, which has caused them to splinter and led to occasional violence, has been related to control over coltan, gold and diamonds in the Beni and Bafwasende areas.

58. The Panel received credible information, corroborating reports from independent sources, that Zimbabwe is supporting the Burundian FDD rebel

forces by supplying them with weapons and expertise. Many reliable sources have informed the Panel in this regard that the Zimbabwe Defence Forces are training FDD in Lubumbashi, where the FDD leadership is based and where Zimbabwean copper and cobalt investments are located. Another sign of their loosely structured coordination with the Burundian rebels is that the ALIR II forces are based near FDD in South Kivu and also have a command and liaison presence in Lubumbashi. The Panel concluded that the arming of these irregular groups is contributing to sustaining what could be viewed as a war by proxy in the east. It allows the ceasefire to remain intact, while creating a “controllable” conflict in the occupied zone that satisfies the interests of many parties. With this sporadic, low-intensity conflict dragging on, a certain status quo is being maintained in this region where many precious resources are extracted, traded and routed for export. Zimbabwe and Rwanda have the most important commercial presence in the Democratic Republic of the Congo as a result of their involvement in the war. The role that Zimbabwe plays in regard to continuing the conflict may well be shared with the Government of the Democratic of the Republic of the Congo, or at least some elements in it, as well as others. This armed activity can continue to feed Rwandan and Burundian security concerns, becoming an added justification for those two countries to maintain their military positions. In the case of Rwanda, control can then be legitimately deepened over a considerable expanse of territory, as well as its population and resources. As Zimbabwe’s joint ventures in mining and timber begin to mature and become profitable, it may be tempted to retain a sizeable military presence in the Democratic Republic of the Congo. The profiteering of private businesses of all kinds in illicit and criminal activities gives them vested interests in seeing the conflict continuing, in particular businesses in South Africa, Kenya and the United Republic of Tanzania.

59. The link to the control and commercialization of the resources of the Democratic Republic of the Congo is more implicit than explicit. The Fizi Baraka region, where the most recent and intense fighting has occurred, is strategic for many reasons. It has been a stronghold for certain Mayi-Mayi groups and a base for the Burundian rebel forces, particularly FDD. ALIR II forces, which many military sources describe as the better armed and commanded of the Interahamwe and ex-FAR groups, use this area and nearby Shabunda to

66. Documentary evidence gathered shows that, in 1999, over 30 per cent of the first semester earnings of MIBA were transferred to Government accounts. Those transfers were vaguely labelled "payments to fiscal accounts" (*paiements accomptes fiscaux*). It is not clear who within the Government of the Democratic Republic of the Congo controls these accounts, or what the funds transferred to them are used for. Another 11 per cent of the earnings from that period were funnelled directly to the Congolese armed forces. Other transfers from MIBA sales are described in official documents as "deductions for the war effort", amounting to tens of millions of dollars. Testimony from very credible sources corroborates what these documents suggest: a pattern over the past three years of diverting a hefty percentage of MIBA earnings to high-level government officials for their personal benefit, as well as to cover war or military-related expenses.

67. In some cases, it appears that deals were concluded because they were linked, directly or indirectly, to arms and military support. In 1997, the Kabila Government ended the exclusive contract it had with De Beers to buy all of the industrial diamond output of MIBA. Following a period in which Congolese diamonds were sold on the international auction market to the highest bidder, President Kabila reached an agreement with the Israeli-owned International Diamond Industries in August 2000 for a monopoly on diamond sales. According to the terms of the agreement, IDI agreed to pay \$20 million in return for a monopoly on sales valued at \$600 million annually. The Panel was informed by very credible sources that this deal included unpublished clauses, in which IDI agreed to arrange, through its connections with high-ranking Israeli military officers the delivery of undisclosed quantities of arms as well as training for the Congolese armed forces.

68. IDI ultimately paid only \$3 million from the agreed sum of \$20 million. President Joseph Kabila decided in April 2001 to end the contract, citing failure to pay as the reason. In his statement, the owner of IDI, Dan Gertler, claimed that IDI had complied with its obligations and alleged that the Government's decision was motivated by the fact that information about the agreement was included in the Panel's final report. The statement also insisted that the Panel did not consult with IDI and demanded that the Panel rectify its report. The Panel requested to meet with IDI representatives in

Kinshasa in September 2001. IDI declined this request. IDI is reportedly trying to negotiate some form of compensation for breach of contract with the Government of the Democratic Republic of the Congo.

69. It is important to look at this failed Kabila-Gertler deal as a number of key aspects are significant. On the Congolese side, it comes within a pattern of miscalculated decisions taken by the cash-strapped Laurent-Désiré Kabila, whose main interest was the immediate cash flow. Although there was some discontent within Kabila's entourage at the outrageousness of the deal, it was, nonetheless, not revoked until seven months after it was signed. The Panel has credible information indicating that there is a growing involvement of Israeli businessmen in the region. Taking advantage of the withdrawal of De Beers from conflict diamond regions, a whole network of Israelis was established, including Mr. Gertler in the Democratic Republic of the Congo, Lev Leviev in Angola and Shmuel Shnitzer in Sierra Leone. In all three cases, the pattern is the same. Conflict diamonds are exchanged for money, weapons and military training. These diamonds are then transported to Tel Aviv by former Israeli Air Force pilots, whose numbers have significantly increased both in UNITA-held territory in Angola and in the Democratic Republic of the Congo. In Israel, these diamonds are then cut and sold at the Ramat Gan Diamond Centre.

70. During their meetings with the Panel, members of the Congolese Commission indicated that, as the country moves towards greater political openness, the Kinshasa Government will have to take action on the issue of Zimbabwe's activities in the Democratic Republic of the Congo. The Commission also expressed their view that the question should figure on the agenda of the inter-Congolese dialogue, and that a *protocol d'accord* must be established between the Democratic Republic of the Congo and Zimbabwe to rectify the irregularities, including agreements secretly signed under pressure of the military situation at the time.

71. Further evidence of this collapse of a functional State, and its inability to make decisions in its national interest, is reflected in the stance currently adopted by the Government of the Democratic Republic of the Congo towards the activities being carried out in the rebel-held areas. The Panel has learned, from commercial companies and individual business people who have operated under both the Kinshasa

Government and rebel authorities, that the regulations and procedures have not, for the most part, changed under rebel administrations. In fact, civil servants appointed by the Government are still performing such duties as customs control and tax collection in rebel-held areas. However, the taxes are not received by the Government in Kinshasa but are diverted for the use of the rebels and Uganda and Rwanda. This is acknowledged by the Government of the Democratic Republic of the Congo, which, offered in September 2001 to pay the 37-month arrears and salaries of those civil servants. Furthermore, the Government in Kinshasa appears to have recognized the activities of the commercial entities in the rebel-held areas. One of the many examples is the German-owned company Somikivu, which operates in the eastern Democratic Republic of the Congo, but continues to pay taxes to the rebels and maintains an office in Kinshasa. When asked about the legal status of the commercial entities operating in the rebel-held and occupied territories, the Congolese Minister of Justice informed the Panel during a meeting in September 2001 that none of the concessions had been revoked thus far, and that an evaluation on a case-by-case basis would be conducted when the Government regained control of the areas in which they are operating.

72. To further demonstrate this, the Panel has taken a closer look at the legal status of DARA Forest, a Thai-owned company operating in North Kivu Province. DARA Forest is a Congolese-registered logging company owned by five shareholders. Royal Star Holdings is the main shareholder, and is partly owned by the managing director of DARA Forest, John Kotiram. Besides Mr. Kotiram, there are three Congolese shareholders. In March 1998, DARA Forest registered as a Congolese company in Kinshasa, after which work was begun on building a sawmill in Mangina in North Kivu Province. In June 1998, DARA Forest was granted a 35,000-hectare logging concession from the North Kivu Provincial Authority, which grants these concessions following registration with the central Government. DARA Forest also acquired an exploitation licence from the same authority to buy and export from local loggers. Its exports, which were to the United States and China, started early in 1999, months after the beginning of the war.

73. DARA Forest, which the Panel has found to have complied with all the regulations in effect, currently

pays its taxes at the same bank as it did before the area came under rebel control. It also deals with the same customs officials as it did before the rebels took control of the area when it exports its products and imports production equipment. The Panel has also learned that a bimonthly check is conducted by the local Congolese authorities in North Kivu to ensure that DARA Forest is complying with the terms of licences granted to it. Furthermore, DARA Forest was granted on 12 September 2001 a certificate of registration from the Ministry of Justice in Kinshasa. This would appear to be a clear sign of recognition of the company and acceptance of its work in the rebel-held areas by the Government of the Democratic Republic of the Congo.

74. The case of Arslanian Frères also demonstrates the ambiguity of the Government's approach. The diamond company Arslanian Frères, based in Belgium, has an agreement to buy all the stock of the Belco Diamants *comptoir* in Kisangani and to "help them financially when needed" and has been travelling to Kisangani to openly purchase diamonds mined in the rebel-held areas surrounding the town. Nevertheless, one of the owners of the company, Raffi Arslanian, was approached in writing in 2001 by the Government's Minister of Mines to invest in a multi-million-dollar project aimed at reorganizing the State-owned diamond-producing enterprise MIBA.

75. There are many indications that President Joseph Kabila is genuinely interested in bringing about positive changes in his country. The Panel has noted that, notwithstanding the political considerations involved in the granting of favourable concessions to his allies, there are serious attempts to attract foreign investment to restructure, modernize and liberalize the remaining State assets in the mining business. In this respect, the country's new mining code is expected to bring about some fundamental and positive changes to the mining industry in the Democratic Republic of the Congo.

Zimbabwe

76. According to information available to the Panel, there are five main factors at play, which helped to shape the Zimbabwean objectives in its involvement in the Democratic Republic of the Congo. One determining factor is Zimbabwe's desire to assert its role within SADC. Supporting the Democratic Republic of the Congo militarily presented such an opportunity. A second factor lies in Zimbabwe's ailing

S/2001/1072

of the shares in BCDI. The 2000 audit report on BCD, set up as a joint venture by the AFDL-controlled COMIEX, shows that Tristar owns 10 per cent of the shares. Mr. Kalisa told the Panel that information in its report regarding a banking transaction for monies paid to COMIEX-AFDL in 1997 was inaccurate. The Panel has been able to corroborate Mr. Kalisa's description of the transaction, in which \$3.5 million were transferred from the Banque Belgoise through Citibank to BCDI for payment to COMIEX. Mr. Kalisa also told the Panel that information in the report regarding a \$1 million loan to the RCD-Goma controlled SONEX for payment of fuel bills with Jambo Safari airlines was incorrect. The loan was made, according to Mr. Kalisa, for payment of fuel from Alliance Express airlines.

Uganda

95. Uganda also has some legitimate security threats, which prompted its military intervention in the Democratic Republic of the Congo. In so intervening, the Government of Uganda enacted a protocol between the Democratic Republic of the Congo and Uganda, signed in April 1998, allowing two battalions from each country to cross the border in pursuit of perpetrators of terrorist activities.

96. The Panel notes that Uganda has complied with the presidential statement (S/PRST/2001/13) by establishing a national Commission of Inquiry, the Porter Commission.

97. While the effect of the Panel's report and the significant withdrawal of UPDF troops have given the impression that the exploitation activities have been reduced, they are in fact continuing. The commercial networks put in place by Ugandan army commanders and their civilian counterparts that were described in the report are still functioning in Oriental Province and Kampala. The Trinity and Victoria companies, for example, are still actively exploiting diamonds, gold, coffee and timber. UPDF have thus been able to pull out their troops, while leaving behind structures that permit military officers and associates, including rebel leaders, to continue profiting.

98. While the Government of Uganda does not participate directly in the exploitation activities, the culture in which its military personnel function tolerates and condones their activities. The commercial activities of senior UPDF officers are public knowledge. In an interview with the Panel in August

2001, the now retired General Salim Saleh admitted that, while never having been in the Democratic Republic of the Congo, one of his companies had been engaged in exporting merchandise to the eastern part of the country. He noted that the aircraft transporting the merchandise was initially confiscated by General James Kazini. General Kazini, who also participated in the interview, in turn described his role in facilitating the transport of Ugandan merchandise to Kisangani and other areas in the Democratic Republic of the Congo. In full control of the areas under their administration, General Kazini and others used this power, as they would have done elsewhere, to establish a mechanism to promote their business interests. The characteristics of the area under their control predominantly determine the kind of exploitation activities carried out by UPDF personnel.

99. The Panel has noted that the UPDF officers usually conduct their business through a Congolese affiliate, on whom they bestow power and support. This was the case with Jean-Pierre Bemba, Adele Lotsove and, more recently, Roger Lumbala of the now defunct RCD-National, as well as Mbusa Nyamwisi. Sources have informed the Panel that RCD-National was formed by General Kazini in 2000 from RCD-Goma defectors, who gave them Bafwasende as their base. More recently, the Panel learned that Mr. Lumbala had signed two commercial agreements bearing the signatures of UPDF Commander Kahinda Otafire and Belgian and Austrian parties. In addition, the Panel has learned that, late in December 2000, Lumbala — who is reportedly a front for the monopoly of the Victoria company on the Bafwasende diamonds — was in Kampala delivering diamonds to what the sources termed his "masters". Another activity UPDF officers are involved in is the liberal siphoning off of the customs revenues on the illicit trade between the Democratic Republic of the Congo and Uganda. A very credible source informed the Panel in that regard that Mr. Nyamwisi "skims" up to \$400,000 off the tax revenues collected from the Beni customs post at the Uganda border. According to the same source, Mr. Nyamwisi shares this money with General Kazini and General Salim Saleh.

100. There is a link between the continuation of the conflict and the exploitation of the natural resources, in the case of Uganda. Influential Government officials, military officers and businessmen continue to exploit

the security situation for their vested commercial interests.

Burundi

101. The Panel found no evidence directly linking the presence of Burundi in the Democratic Republic of the Congo to the exploitation of resources. Although its army is positioned in the Democratic Republic of the Congo near a traditional trade and transit point for minerals, its presence has been and continues to be directed at blocking attacks from the Burundi rebel groups, particularly FDD, which are based in South Kivu and Katanga.

102. In its reaction to the Panel's report, the Government of Burundi contested the Panel's conclusions that Burundi had been exporting minerals it did not produce, and specifically mentioned the case of diamond exports coinciding with the 1998 occupation of the eastern Democratic Republic of the Congo. In an effort to verify this information, the Panel contacted the Africa Department of IMF, requesting a copy of an IMF memorandum which supports the report's statements. Although IMF representatives confirmed that they were trying to locate the document, the Panel has not been able to obtain a copy of it. In addition, the Minister of Energy and Mines and representatives of Burundi's mining sector provided the Panel with information supporting Burundi's claims that gold, coltan and cassiterite deposits can be found in its northern and north-eastern regions. Modest quantities of coltan and cassiterite have also been produced and exported during the past eight years. The Panel found however that the data on gold production and exports were not coherent, as they confirmed that artisanal gold mining has continued over the past eight years, whereas export statistics recorded zero gold exports from 1997 to 2000. Concerning cobalt, the Panel was informed that there are significant deposits, but that production has not yet been developed. Private sector and Government representatives also stressed that there is no domestic production of copper or diamonds at this time.

103. The Panel confirmed that Burundi has traditionally served as a re-export and transit centre for gold and diamonds originating in the Democratic Republic of the Congo. Much of this trade has however subsided following a three-year embargo imposed on Burundi in 1996. Officials also emphasized that Burundi's inability to control its borders, together with

its tradition of cross-border trade, has led to widespread smuggling by small-scale operations.

104. The Government of Burundi also provided the Panel with information to the effect that it had had a legitimate opportunity to profit from the mineral wealth of the Democratic Republic of the Congo in 1997 and had turned it down. A copy of the draft agreement shows that the Congolese Minister of Mines had offered the Government of Burundi and businessmen a joint mining venture in the Bafwasende region for a concession area of 20,000 km², with abundant deposits of gold, diamonds, coltan and cassiterite.

VI. Transit countries

105. Although they are not directly involved in the conflict, the Panel has investigated the role of some of the neighbouring countries in the region to establish a more comprehensive picture of the exploitation activities.

South Africa

106. South Africa maintains a neutral stance towards the conflict in the Democratic Republic of the Congo, and is calling for the implementation of the Lusaka Ceasefire Agreement and the end of the conflict. South Africa also maintains close ties with all the parties and is actively involved in the peace process. Its former President, Nelson Mandela, is also the mediator for the Arusha peace process in Burundi.

107. On the commercial level, South Africa is very much involved in the Democratic Republic of the Congo. The Panel was able to see this at first hand during its visit to the northern Zambian border area with the Democratic Republic of the Congo. Around 150 large trucks cross this border every day, carrying foodstuffs, machinery and other products predominantly from South Africa. Many of the trucks transport copper and cobalt to South Africa on the return trip, where it is processed and shipped from the ports of Durban and Nelson Mandela (Port Elizabeth) to its final destinations, thus effectively ending the role of the port of Dar es Salaam as the traditional port of exit for Congolese copper and cobalt. As South Africa is a country with potential water shortages, South African businessmen are currently studying the option

S/2001/1072

142. ALIR II, over 5,000 strong, is mostly based in South Kivu, near Shabunda, Fizi and Baraka, but also has a command and liaison presence in Lubumbashi in Katanga Province. Some of its troops are reportedly recruited from the Zambian refugee camps. As part of a fluid, ongoing alliance with FDD and the Mayi-Mayi, they reportedly have been clashing with RCD-Goma and Rwandan and Burundian forces in the South Kivu region. The continued, and sometimes intensifying, fighting appears aimed, in the opinion of many informed sources, at either controlling a corridor into Burundi or continuing to destabilize the region so as to prevent an effective demobilization effort from getting under way. Credible sources also indicate that several thousand ALIR combatants were recently incorporated into the Congolese Armed Forces. During the visit of the Secretary-General to the Democratic Republic of the Congo in September, President Kabila announced that 3,000 ex-FAR and Interahamwe soldiers located in Kamina (Katanga Province) would be demobilized, under the supervision of the United Nations Organization Mission in the Democratic Republic of the Congo.

VIII. Conclusions

143. The systematic exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo continues unabated. These activities involve a large number of State and non-State actors, belonging both to the region and outside, some directly involved in the conflict, others not. The exploitation has resulted in the further enrichment of individuals and institutions, who are opportunistically making use of the current situation to amass as much wealth as possible.

144. Without a resolution of the broader conflict in the Democratic Republic of the Congo and the region, it would be highly unrealistic to expect an end to the exploitation of natural resources and other forms of wealth in the country. Exploitation of natural resources in the Democratic Republic of the Congo cannot be viewed and dealt with in isolation, disregarding the factual situation existing in the area. It needs to be realized that this is one part of the problem which is inextricably linked to other serious issues in the region.

145. A primary and fundamental reason for the continuing and systematic exploitation by various "predatory" groups operating in the country is the

effective collapse of all State institutions and structures of the Democratic Republic of the Congo. Unable or unwilling to resist any pressure, it is vulnerable in the extreme. It must be remembered that a weak State offers significant financial opportunities and rewards to unscrupulous elements operating under the garb of various Governments, businesses, mafias, individuals etc. It would be highly unrealistic to expect a State under such conditions to exercise even a modicum of authority over its territory. In order to redress this grave condition, it is of the utmost importance to start rebuilding the State institutions. This will require a systematic and sustained approach stretching over many years, and with the full assistance and cooperation of the international community.

146. The conflict continues at a low intensity level, mainly by the various armed groups confronting the foreign forces so as to deny them access to and control of various resources. However, the ceasefire is generally respected on the front line, leaving the exploitation of the resources as the main activity of the foreign troops, as well as the different armed groups, where the former tolerate the activities of the latter as a controlled military opposition to ensure the continuation of the security threats, and hence justify their continued military presence in the Democratic Republic of the Congo.

147. Accordingly, there is a clear link between the continuation of the conflict and the exploitation of natural resources. It would not be wrong to say that one drives the other. The military operations and presence in the Democratic Republic of the Congo of all sides have been transformed into self-financing activities, whereby no real budgetary burden is borne by the parties concerned. This allows them a greater degree of freedom and no financial compulsion to end the conflict.

148. The initial motivation of foreign countries or armies to intervene in the Democratic Republic of the Congo was primarily political and security-related in nature; over a period of time, and owing to the evolving nature of the conflict, it has become the primary motive of extracting the maximum commercial and material benefits. This holds true for both government allies and rebel supporters.

149. Owing to the prolonged nature of conflict and civil war in the region, many countries appear to have a sense of heightened insecurity and suspicions about

their neighbours' motives. Countries involved in the conflict should not, however, be allowed to use this as a pretext for furthering their own national ambitions and agendas.

150. Contrary to its strong protestations, the Government of the Democratic Republic of the Congo has been involved in allowing some foreign companies to continue the exploitation of resources in rebel-occupied areas without renouncing or cancelling any concessions. This is borne out by the fact that some ministries in Kinshasa maintain contacts with these companies, with whom they actively interact.

151. The actual sources for financing the war effort by all parties in the conflict, including the Democratic Republic of the Congo, remain shrouded in mystery. No clear answer was given by anyone the Panel questioned and it was evident that there was much to conceal and not make public. The official defence budgets of countries engaged in the hostilities, in those cases where selected information was provided, clearly indicate that these countries could not afford the cost of their involvement in the Democratic Republic of the Congo. It is evident that in such cases the war effort was financed from extrabudgetary sources, giving rise to much suspicion and misgivings. Some of the international aid may have been misused for financing the conflict. This can be misconstrued as recognition and acceptance of their activities in perpetuating the conflict in the Democratic Republic of the Congo.

IX. Recommendations

Institutional

152. To enable the Democratic Republic of the Congo to have effective control over its territory and to protect its natural resources from illicit activities, the international community should assist in formulating a plan of action on the rebuilding of State institutions in the Democratic Republic of the Congo. This should be linked to the convening of an international conference on peace and development in the Great Lakes region.

153. All concessions, commercial agreements and contracts signed during the era of Laurent-Désiré Kabila (1997-2001) and subsequently in the rebel-held areas, including such concessions, contracts and commercial agreements signed secretly and under duress, should be reviewed and revised to address and correct all the irregularities. In redressing these

contractual obligations, the renegotiation process should be conducted under the auspices of a special body to be created by the Security Council. This process will enhance President Joseph Kabila's efforts towards rebuilding and reconstructing his country in a transparent and structured manner, which would encourage the genuine foreign investment of which the Democratic Republic of the Congo is in such dire need. Establishment of a broad-based government of national unity may facilitate this process.

154. The United Nations Organization Mission in the Democratic Republic of the Congo should accelerate the disarmament, demobilization and reintegration process in order to reduce the security concerns expressed by a number of States in the region, including the Democratic Republic of the Congo, to a level that makes it possible for the countries concerned to negotiate among themselves the modalities of securing their borders without infringing upon the sovereignty of any State.

Financial and technical

155. The World Bank, IMF and the other international donors are best placed to critically evaluate their assistance. Those international donors may consider submitting to the Security Council, within the shortest possible time, their assessment of the role of their assistance in helping to finance the continuation of the conflict and the maintenance of the status quo in the Great Lakes region.

156. A moratorium should be declared for a specific period of time banning the purchase and importing of precious products such as coltan, diamonds, gold, copper, cobalt, timber and coffee originating in areas where foreign troops are present in the Democratic Republic of the Congo, as well as in territories under the control of rebel groups.

157. During the period of the moratorium, countries directly or indirectly involved in the conflict in the Democratic Republic of the Congo — in particular transit countries such as Zambia, South Africa, Kenya and the United Republic of Tanzania — should review their national legislation, and pass the necessary laws to investigate and prosecute the illicit traffickers of the high-value products from the Democratic Republic of the Congo.

158. During the same period, all technical measures that are under consideration should be finalized, such

S/2001/1072

as the standardization of certificates of production, harmonization of tax regimes and verification regulations, compilation of analyses of diamond production and trade statistics. These measures should be monitored to verify their effectiveness by the related bodies such as the World Diamond Council, the United Nations Forum on Forests and CITES. Emphasis on standardization and unification of procedures and regulations should also be placed at the ports of entry at the final destination.

159. Revenues from the resources of the Democratic Republic of the Congo should be channelled through States' budgets. Tax collection and use should be rigorously controlled, transparent and accountable.

Sanctions

160. The Security Council may consider the imposition of sanctions. The timing of such sanctions would depend, however, on the evolution of the situation with regard to the exploitation of the natural resources of the Democratic Republic of the Congo, as well as developments in the Great Lakes region, after the present addendum is issued. Pending any action that the Security Council may decide to take, there is a need to establish a monitoring and follow-up mechanism, which would report on a regular basis to the Security Council on whether progress has been made in exploitation activities and other issues under consideration by the Council, prior to a decision on sanctions.

(Signed) Mahmoud **Kassem**, Chairman

(Signed) Mujahid **Alam**

(Signed) Mel **Holt**

(Signed) Henri **Maire**

(Signed) Moustapha **Tall**

(Signed) Gilbert **Barthe**

Annex I

Countries visited and representatives of Governments and organizations interviewed

The Panel wishes to express its deep appreciation to the government officials, diplomats, non-governmental organizations, journalists and others with whom the Panel met and who have assisted it in making possible the present addendum. The Panel would especially like to express its gratitude for the high level of cooperation extended to it by the Governments of Burundi, Namibia and Uganda.

The Panel, however, expresses its disappointment at the lack of adequate cooperation from the Governments of South Africa, the United Republic of Tanzania, Zambia and Zimbabwe.

The Panel also wishes to extend special thanks to the United Nations Organization Mission in the Democratic Republic of the Congo, and, in particular, both Ambassador Kamal Morjane and Ambassador Amos Namanga Ngongi; the United Nations Office at Nairobi, the United Nations Office in Angola and the United Nations Office in Burundi, as well as the United Nations Development Programme offices in Bujumbura, Dar es Salaam, Harare, Kampala, Kigali, Lusaka, Pretoria and Windhoek.

The following is the list of government officials and others with whom the Panel met during the course of its mandate. This list does not include many others with whom the Panel met, who, in their interest, did not wish to be mentioned.

Angola

Government officials

Minister for Foreign Affairs

Minister of Defence

Minister of the Interior

Minister and Vice-Minister of Geology and Mines

Minister of Petroleum

Governor of the Central Bank

Vice-Minister of Commerce

Vice-Minister of Finance

Chairman of Sonangol

State representatives

Ambassador of Belgium

Ambassador of France

Ambassador of the United Kingdom of Great Britain and Northern Ireland

Embassy of Portugal

Embassy of the United States of America

International organizations

Representative of the Secretary-General in Angola

Others

Chairman and General Director of the Angola Selling Corporation (ASCORP)

S/2001/1072

Belgium

Government officials

Ministry of Foreign Affairs

Ministry of Economic Affairs

Others

Chairman of the Belgian (Geens) Parliamentary Commission of Inquiry on the
Illegal Exploitation of the Natural Resources and Other Forms of Wealth of
the Democratic Republic of the Congo

Diamond High Council (HRD), Antwerp

University of Antwerp

International Peace Information Service (IPIS)

Burundi

Government officials

His Excellency President Pierre Buyoya

His Excellency Vice-President Domitien Ndayizeye

Minister for Foreign Affairs

Minister of Defence

Minister of Commerce and Industry

Minister of Energy and Mines

Minister of Finance

Department of Customs

Bank of the Republic of Burundi

State representatives

Embassy of Belgium

Embassy of the Democratic Republic of the Congo

Embassy of the United States of America

International organizations

Representative of the Secretary-General in Burundi

Heads of the United Nations agencies

World Bank

Others

Association de banques commerciales

Comptoir minier des exploitations du Burundi (COMEBU)

Burundi Mining Company (BUMINCO)

International Rescue Committee

Central African Republic

Government officials

Ministry of Mines, Energy and Hydraulics

Central Bank of the States of Central Africa

Office de la réglementation de la commercialisation et du contrôle des produits
agricoles

State representatives

Embassy of France
Embassy of the Democratic Republic of the Congo
Honorary Consul of Belgium
European Union

International organizations

Representative of the Secretary-General in the Central African Republic
UNDP

Others

Diamond export *comptoirs*

Democratic Republic of the Congo

Government officials

His Excellency President Joseph Kabila
Minister for Foreign Affairs
Minister to the Presidency
Minister of National Security and Public Order
Minister Delegate of Defence
Minister of Economy, Finance and Budget
Minister of Justice
Minister of Planning and Reconstruction
Minister of Agriculture
Minister of Health
Minister of Environment and Tourism
Minister of PTT
Minister of Transport and Communications
Minister and Vice Minister of Mines and Hydrocarbons
OFIDA (Office of Customs and Excise)

State representatives

Ambassador of Angola
Ambassador of Belgium
Ambassador of Namibia
Ambassador of the United Kingdom of Great Britain and Northern Ireland
Embassy of France
Embassy of the United States of America

International organizations

Special Representative of the Secretary-General in the Democratic Republic of the Congo
MONUC Force Commander and Chief of Staff
Major General Chingombe, SADC Task Force Commander
UNDP Resident Coordinator and Deputy Resident Coordinator

Others

Jean-Pierre Bemba, MLC/FLC
Banque de commerce et du développement
Commission of National Experts on the Pillaging and Illegal Exploitation of Natural Resources and Other Forms of Wealth
COMIEX
COSLEG

S/2001/1072

Catholic Relief Services
Group Forrest
International Human Rights Law Group
Kababankola Mining Company
Kisenge Manganese
Oxfam (United Kingdom)
Sengamines
SOCEBO
SODIMICO

France

Ministry of Foreign Affairs

Kenya

Government officials

Minister of Foreign Affairs
Office of the President
Ministry of Finance and Planning
Ministry of Trade and Industry
Ministry of Transport and Communications
Ministry of the Environment and Natural Resources
Department of Defence
Customs and Excise Division
Port Authority, Port of Mombasa
Customs Division, Port of Mombasa

State representatives

Ambassador of Belgium
Ambassador of China
Ambassador of France
Ambassador of Rwanda
Ambassador of Switzerland
Ambassador of Thailand
Ambassador of the United States of America
High Commissioner of Uganda
High Commissioner of the United Republic of Tanzania
High Commissioner of Zambia
Embassy of the Democratic Republic of the Congo
Embassy of Germany
Embassy of the Netherlands
Embassy of the Sudan
High Commission of South Africa
High Commission of the United Kingdom
Head of the European Commission delegation

Namibia

Government officials

His Excellency President Sam Nujoma
Minister and Deputy Minister for Foreign Affairs
Minister of Defence
Minister of Trade and Industry

Minister of Mines and Energy
Permanent Secretary of the National Planning Commission
Office of the President

State representatives

High Commissioner of the United Kingdom of Great Britain and Northern Ireland
Ambassador of France
Head of the European Commission delegation

International organizations

UNDP Resident Coordinator

Others

August 26 Holding Company

Republic of the Congo

Government officials

Department of Customs

State representatives

Ambassador of Belgium
Ambassador of France
Embassy of the Democratic Republic of the Congo
European Union

Rwanda

Government officials

His Excellency President Paul Kagame
Office of the President, Special Envoy for the Democratic Republic of the Congo and Burundi
Deputy Chief of Staff of the Rwandan Patriotic Army
Minister of Commerce
Minister of Energy, Water and Natural Resources
Permanent Secretary of the Ministry of Foreign Affairs
Permanent Secretary of the Ministry of Finance
Permanent Secretary of the Ministry of Defence
Ministry of Justice
National Bank of Rwanda
Rwanda Revenue Authority
Magasins généraux du Rwanda (MAGERWA)

State representatives

Ambassador of the United Kingdom of Great Britain and Northern Ireland
Embassy of Belgium
Embassy of Canada
Embassy of France
Embassy of Germany
Embassy of the Netherlands
Embassy of South Africa
Embassy of Switzerland
Embassy of the United States of America

S/2001/1072

International organizations

World Bank

Heads of the United Nations agencies

Others

Federation of the Rwandan Private Sector (FSPR)

Federation of Customs Clearance Commissioners

Bank of Commerce, Development and Industry (BCDI)

Rwandan Bankers Association

Banque commerciale du Rwanda

Banque de Kigali

Eagles Wings Resources

Rwanda Metals SARL

SOGERMI SARL

South Africa

Government officials

Department of Foreign Affairs

Government Diamond Valuator

State representatives

Ambassador of Belgium

Ambassador of the Democratic Republic of the Congo

Ambassador of France

International organizations

Heads of the United Nations agencies

Others

Institute for Strategic Studies

Anglo American Corporation

Uganda

Government officials

His Excellency President Yoweri Museveni

Minister for Foreign Affairs

Minister of Defence

Minister of Finance, Planning and Economic Development

Minister of Agriculture

Minister of Tourism, Trade and Industry

Minister of State for Mineral Development

Minister of State for Environment

General James Kazini

Lieutenant Colonel Nobel Mayumbu

State representatives

High Commission of the United Kingdom of Great Britain and Northern

Ireland

Embassy of France

International organizations

Resident Representative of the World Bank

Resident Representative of the International Monetary Fund

Others

General (Ret.) Salim Saleh
The Ugandan Commission of Inquiry (Porter Commission)
British Broadcasting Corporation (BBC)
The East African
The Monitor
The New Vision
DARA Forest

United Kingdom of Great Britain and Northern Ireland

Government officials

Foreign and Commonwealth Office
Customs and Excise

Others

Amnesty International
Africa Confidential
Global Witness
British Petroleum
De Beers
Anglo American Corporation
America Mineral Fields
Oxfam
Hart Ryan Productions

United Republic of Tanzania

Government officials

Permanent Secretary of the Ministry of Foreign Affairs
Permanent Secretary of the Ministry of Defence
Permanent Secretary of the Ministry of Energy and Minerals
Ministry of Industry and Trade
Ministry of Home Affairs
Governor of the Bank of Tanzania
Tanzania Harbour Authority

United States of America

World Bank
International Monetary Fund

Zambia

Government officials

His Excellency President Frederick Chiluba
Minister of Defence
Minister of Finance and Economic Development
Minister of Commerce, Trade and Industry
Minister of State for Presidential Affairs
Permanent Secretary of the Ministry of Foreign Affairs
Permanent Secretary of the Ministry of Mines and Mineral Development

S/2001/1072

State representatives

Ambassador of the United States of America
Embassy of the Democratic Republic of the Congo
Embassy of France

International organizations

Secretary-General of COMESA
SADC Mining Coordinator

Others

Afronet

Zimbabwe

Government officials

His Excellency President Robert Mugabe
Minister of Mines and Energy
Minister of Transport and Communications
Minister of Environment
Permanent Secretary of the Ministry of Foreign Affairs
Chief of the Army

State representatives

Ambassador of Belgium
Ambassador of France

International organizations

United Nations Resident Coordinator

Others

Commercial Farmers' Union
Zimbabwe Defence Industries

Annex II

Abbreviations

AFDL	Alliances des forces démocratiques pour la libération du Congo-Zaïre (Alliance of Democratic Forces for the Liberation of Congo-Zaire)
ADF	Allied Democratic Forces
ALIR	Armée pour la libération du Rwanda (Army for the Liberation of Rwanda)
BCD	Banque de commerce et du développement (Trade and Development Bank)
BCDI	Banque de commerce, de développement et d'industrie, Kigali
coltan	columbo-tantalite
COMESA	Common Market for Eastern and Southern Africa
COMIEX	Compagnie mixte d'import-export
COSLEG	COMIEX-OSLEG joint venture
FAC	Forces armées congolaises
ex-FAR	former Forces armées rwandaises
FDD	Forces pour la défense de la démocratie
FLC	Front de libération du Congo
FLEC	Frente para a Libertação do Enclave de Cabinda (Front for the Liberation of the Enclave of Cabinda)
FNL	Forces nationales pour la libération
Gécamines	Générale des carrières et des mines
IDI	International Diamond Industries
IMF	International Monetary Fund
LRA	Lord's Resistance Army
MIBA	Société minière de Bakwanga
MLC	Mouvement de libération congolais
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
OSLEG	Operation Sovereign Legitimacy
PRA	People's Redemption Army
RCD	Rassemblement congolais pour la démocratie (Rally for Congolese Democracy)
RCD-Goma	Rassemblement congolais pour la démocratie, based in Goma

S/2001/1072

RCD-ML	Rassemblement congolais pour la démocratie — Mouvement de libération, initially based in Kisangani, now based in Bunia
RCD-National	Rassemblement congolais pour la démocratie, was based in Bafwasende
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
SADC	Southern African Development Community
SCEM	Société congolaise d'exploitation minière
SOCEBO	Société d'exploitation du bois
SOMIKIVU	Société minière du Kivu
Sonangol	Sociedade Nacional de Combustiveis de Angola
UNDP	United Nations Development Programme
UNITA	União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola)
UPDF	Uganda People's Defence Forces
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZDF	Zimbabwe Defence Forces
ZDI	Zimbabwe Defence Industries

ANNEX 1.9

United Nations Security Council, *Interim 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*, document S/2002/565, 22 May 2002

United Nations

S/2002/565



Security Council

Distr.: General
22 May 2002

Original: English

Letter dated 22 May 2002 from the Secretary-General addressed to the President of the Security Council

I wish to refer to the presidential statement (S/PRST/2001/39) dated 19 December 2001, in which the Security Council extended the mandate of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo for a period of six months. The Security Council requested the Panel to submit an interim report after three months and a final report at the end of its mandate.

I have the honour to transmit to you the interim report of the Panel submitted to me by the Chairman of the Panel. The report contains the Panel's independent assessment of the situation on the ground and its observations on the illegal exploitation of the natural resources of the Democratic Republic of the Congo. I should be grateful if you could bring the report to the attention of the members of the Security Council.

(Signed) Kofi A. Annan

Interim 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

I. Introduction

1. At the request of the Security Council, the Panel of Experts returned to Nairobi on 18 February 2002 to carry out a third round of fact-finding on the plundering of the natural resources and other forms of wealth of the Democratic Republic of the Congo and the links between those activities and the continuation of the conflict.

2. Two Panels were earlier mandated by the Security Council (see S/PRST/2000/20 and S/PRST/2001/13) to investigate these same issues and submit reports. The Panel's first report to the Security Council was issued on 12 April 2001 (S/2001/357). The second Panel continued the investigations in order to provide an update, gather information on the countries and actors that had not been sufficiently covered in the report and respond to the reactions generated by the report. It submitted to the Security Council an addendum to the report, dated 13 November 2001 (S/2001/1072). In the addendum, the Panel examined the role in the illegal exploitation of Congolese resources not only of the seven countries directly engaged in the conflict but also of six African transit countries.

3. The Security Council, in a statement by its President dated 19 December 2001 (S/PRST/2001/39), requested the Secretary-General to renew the Panel's mandate for six months and asked the Panel to submit both an interim and a final report. The mandate, which has been enlarged, stipulates that the reports should include the following:

(a) An update of relevant data and analysis of further information from all relevant countries, in particular from those which thus far have not provided the Panel with the requested information;

(b) An evaluation of the possible actions that could be taken by the Council, including those recommended by the Panel in its report and the addendum thereto, in order to help bring to an end the plundering of the natural resources of the Democratic Republic of the Congo, taking into account the impact of such actions on the financing of the conflict and their potential impact on the humanitarian and economic situation in the country;

(c) Recommendations on specific actions that the international community, in support of the Government of the Democratic Republic of the Congo, might take, working through existing international organizations, mechanisms and United Nations bodies, to address the issues in the report and the addendum;

(d) Recommendations on possible steps that might be taken by transit countries as well as end-users to contribute to ending the illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of the Congo.

4. The Council also stressed the importance of the Panel's "maintaining a high level of collaboration with all the Congolese players, governmental and non-governmental, throughout the national territory".

5. The current Panel is composed of:

Ambassador Mahmoud Kassem (Egypt),
Chairman
Jim Freedman (Canada)
Mel Holt (United States of America)
Bruno Schiemsy (Belgium)
Moustapha Tall (Senegal).

6. The Panel has been assisted by a part-time technical adviser, Gilbert Barthe (Switzerland) and two political officers, as well as an administrator and a secretary. Certain administrative difficulties have hampered the Panel's work during this period. Some have been resolved, but the Panel continues to operate without one member and one part-time technical adviser. The Panel has nevertheless striven to fulfil its mandate to the best of its ability.

7. To guide its work, the Panel developed a plan of action, which was transmitted to the Security Council. The Panel decided during the first three months to focus on four aspects of its mandate, namely, an update of information; the role of transit and end-user countries; the humanitarian and economic impact of the exploitation activities and the armed conflict; and maintaining a high level of collaboration with all Congolese actors. Several of these elements are being carried out in preparation for evaluating which measures would be most effective in curbing the illegal exploitation. Fact-finding is being limited to diamonds,

gold, coltan, copper, cobalt, timber, wildlife reserves and fiscal resources. The relationship between the exploitation activities and arms trafficking and other organized criminal activities is also a part of the Panel's investigations.

II. Activities in Africa

8. The Panel visited three of the countries in the Great Lakes region that have been involved in the conflict and which have also served as transit points for certain natural resources: Uganda, Rwanda and Burundi. The Panel visited the Democratic Republic of the Congo twice, as well as two African transit countries outside the region, the Republic of the Congo and the Central African Republic. During those visits, the Panel met with high-level government authorities, technical officials, leading members of Congolese rebel groups, representatives of the diplomatic corps, MONUC, United Nations agencies, multilateral donors, non-governmental organizations and civil society associations. It also met with private commercial operators. Technical meetings were held with officials in each of the five transit countries visited to discuss Governments' responses to questions submitted by the Panel regarding transit trade in resources such as coltan, diamonds and gold.

Uganda, Rwanda and Burundi

9. As the mandate of the Judicial Commission of Inquiry established by the Government of Uganda was originally due to expire in March, the Panel scheduled its first visit in the region to Kampala. A working session was held with the Commission, headed by Justice David Porter. The Commission is also investigating the illegal exploitation of resources in the Democratic Republic of the Congo, and specifically the involvement of the Government and other Ugandan parties. This was the third meeting between the Panel and the Porter Commission.

10. At the request of the Commission and government authorities, and with the encouragement of members of the international community, the Panel decided to transmit to the Commission three pieces of documentary evidence gathered in the course of its own investigations. This evidence, which the Panel feels is of considerable value, was presented to Justice Porter in mid-March. The Panel hopes that this gesture of cooperation will assist the Porter Commission in

advancing its inquiry and formulating constructive recommendations for action by the Government of Uganda. The Commission's mandate has been extended to the end of May 2002.

11. During the Panel's visit to Kigali, Rwandan authorities continued to insist on the persistent and extensive nature of their security concerns as a result of the actions of Hutu armed opposition groups in the Democratic Republic of the Congo. They emphasized that the Government of the Democratic Republic of the Congo should address these concerns within the framework of the Lusaka Ceasefire Agreement. They also expressed the view that the exploitation of the natural resources of the Democratic Republic of the Congo and trade in many of these commodities, which has traditionally existed across the two countries' borders, are secondary issues which cannot be properly resolved before progress is made on the fundamental political and security issues.

12. The Panel also visited Bujumbura. The relationship between the conflicts in Burundi and the Democratic Republic of the Congo and the possible repercussions for regional stability were one important aspect of the Panel's fact-finding during this visit.

Democratic Republic of the Congo

Inter-Congolese dialogue

13. In accordance with its mandate and its plan of action, the Panel had intended to visit South Africa in order to meet with representatives of the various sectors participating in the inter-Congolese dialogue at Sun City. The Panel consulted with the office of the facilitator, the Government of South Africa and MONUC regarding the advisability and the timing of its proposed visit to South Africa to meet with the delegates at the inter-Congolese dialogue. On the advice of the facilitation team, which expressed the view that the Panel's presence might have a detrimental impact, the Panel decided not to visit South Africa before the end of the dialogue. As a result, the Panel has been obliged to seek out representatives of the sectors invited to the dialogue in different regions of the Democratic Republic of the Congo. These efforts will continue under the second half of its mandate.

S/2002/565

Kinshasa and the eastern Democratic Republic of the Congo

14. The extension of the inter-Congolese dialogue for one week coincided with the Panel's visit to Kinshasa, making it difficult for the Panel to meet with leading members of various delegations. Despite these complications, the Panel was able to meet with some ranking government and civil society representatives, as well as a few opposition party and Mayi-Mayi group members during its visit.

15. Congolese actors and international observers communicated their views on developments at the inter-Congolese dialogue and the potential ramifications of decisions taken at Sun City. The Panel pursued its enquiries into different strategies, mechanisms and actors implicated in the exploitation of resources. Environmental and human rights issues relating to the exploitation activities and the conflict were an important focus of this visit. Part of the Panel's fact-finding also concerned reforms being undertaken by the Government of the Democratic Republic of the Congo that could contribute to curbing the exploitation. The Panel met twice with members of the Commission of National Experts, established by the Government in May 2001. The Panel submitted a series of questions to the Commission relating to various elements of its mandate.

16. Two Panel members visited the eastern Democratic Republic of the Congo, travelling for almost three weeks in Orientale Province and North and South Kivu. Panel members collected extensive information on the plight of civilian populations and the state of local economies in the eastern region as a consequence of the armed conflict and the economic exploitation. They also investigated the strategies and mechanisms for the exploitation of natural resources, appropriation of fiscal resources and control of trade by foreign armies and a variety of armed parties present in the region, with the collusion of private operators in some instances.

Republic of the Congo and Central African Republic

17. Part of the Panel's fact-finding visit in the Republic of the Congo focused on the illicit trade in diamonds originating in the Democratic Republic of the Congo. Authorities and some private operators emphasized the difficulties in controlling the transit trade entering from the Democratic Republic of the

Congo via the Congo River. The Panel also visited Bangui. Transit trade in coffee as well as trafficking in diamonds and gold were among the issues raised in discussions with officials of the Central African Republic.

Briefing for the Security Council mission in South Africa

18. At the request of the head of the Security Council mission, Ambassador Jean-David Levitte, the Panel travelled to Pretoria to meet on 28 April with the mission to the Great Lakes region, which was intended to bolster support for peace initiatives in the region. During the closed-door meeting, the Panel briefed the Security Council mission about recent developments in the Great Lakes region and the recent findings of its fieldwork.

III. Activities outside Africa

Consultations in New York and Washington

19. Before resuming its work in the Great Lakes region, the Panel reconvened at United Nations Headquarters on 4 February. The Panel held consultations with the Permanent Representatives of 17 Member States, including members of the Security Council and countries involved in the conflict, who expressed their support for the Panel's work. The Panel met with United Nations Secretariat officials and representatives of United Nations agencies and non-governmental organizations. In Washington, the Panel met with representatives of the World Bank and the International Monetary Fund. They discussed the types of assistance provided to countries involved in the conflict and the extent to which their respective institutions could contribute to curbing the illegal exploitation of the resources of the Democratic Republic of the Congo in those countries.

Belgium, France, Germany and the United Kingdom

20. **Secondary transit and end-user countries.** One of the methodologies being used in the Panel's investigations is an analysis of the commercial chains for specific commodities originating from the Democratic Republic of the Congo. The Panel has attempted to piece together these chains, from the extraction and production phases to the processing and end-use phases, including transport networks. This

approach was adopted in order not only to identify those involved in the commercialization of the commodities and where they are located, but also with a view to developing proposals for the most effective measures to curb the illicit trade. On the basis of a partial analysis of these chains, the Panel has been able to identify various countries which are not only end-users of the processed or refined commodities but are also key secondary transit points for primary commodities. Among them are several western European countries, which are the principal locations for some of the wholesale traders, assayers, trade associations and air transport companies dealing in commodities targeted by the Panel. The Panel visited the United Kingdom, Belgium, Germany and France from 1 to 10 April. Meetings were held with officials from government ministries, representatives of Parliament, members of non-governmental organizations and commercial operators. Private operators in the coltan and diamond trade, as well as representatives of one trade association, expressed the view that they had gained a better understanding of the implications of the exploitation of the resources of the Democratic Republic of the Congo as a result of meetings with the Panel.

IV. The donor community

21. Pursuing contacts it had initiated in Washington with donors, the Panel in the course of its enquiries in both Europe and Africa has sought to meet with both multilateral and bilateral donors, as well as international non-governmental organization donors. The Panel regards these contacts with the donor community as integral to its work. In Belgium, the Panel met with the European Commission's Development Directorate-General. These officials briefed the Panel on the various types of aid granted to countries in the Great Lakes region and their respective control and auditing mechanisms. The issues of the fungibility of European Community financial assistance and the monitoring of financial flows used for money-laundering were also discussed. It was agreed that the Panel and representatives of the Commission's delegations in the Great Lakes region would meet at the end of May in Kinshasa for further discussions on how international donor assistance might contribute, either indirectly or directly, to the continuation of the conflict in the Democratic Republic of the Congo.

22. In both Europe and Africa the Panel has detected a growing interest among donors in exploring ways in which aid policies may be used as effective vehicles for conveying the convictions of donor organizations, and perhaps for influencing the policies of these countries.

V. Transit trade

23. The Panel was mandated by the Security Council to submit recommendations on possible steps that could be taken by transit as well as end-user countries to contribute to curbing the illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of the Congo.

24. In accordance with its plan of action, the Panel submitted a series of questions to 11 African transit countries. Some of those countries are directly involved in the conflict in the Democratic Republic of the Congo, namely, Burundi, Rwanda, Uganda and Zimbabwe. The Panel also contacted other African countries it identifies as key transit routes for commodities from the Democratic Republic of the Congo: the Central African Republic, Kenya, Mozambique, the Republic of the Congo, South Africa, the United Republic of Tanzania and Zambia.

25. Through its nine questions, the Panel enquired about relevant legislation, official investigations into the illicit flow of commodities, measures already taken to try to curb the flow, the effectiveness of those measures, other possible measures that could be enacted and those Governments' needs for additional assistance and expertise.

26. The Panel followed up with a number of on-site visits to Uganda, Rwanda, Burundi, the Central African Republic and the Republic of the Congo, during which it met with representatives from various ministries and institutions in charge of different aspects of the transit trade. Written responses promised by some Governments are still pending. Consultations with other government officials for the purpose of gathering additional information will be necessary before the Panel can complete its analysis.

VI. Context and orientations of the Panel's work: resource exploitation, its links to the conflict and the humanitarian and economic crisis

Exploitation of natural resources and other forms of wealth and the links to the conflict

27. The Panel continues to pursue investigations into the different strategies used by both local and foreign actors in the exploitation of resources and the degree to which these different strategies contribute to the continuation of the conflict. The following are some of the trends and investigative leads that have guided and will continue to guide the Panel's work in the field.

28. On the basis of two months of fact-finding within and outside the region, the Panel's tentative assessment is that the illegal exploitation of Congolese resources is continuing, and that it is being consolidated in many areas. For example, despite the sharp decrease in coltan prices in 2001, coltan mining operations are continuing throughout the eastern Democratic Republic of the Congo. While several commercial operators based outside the Great Lakes region have stopped exporting coltan from the Democratic Republic of the Congo because the price decrease drastically reduced the profitability of this trade, operators linked to the parties involved in the conflict have continued to export a substantial volume of coltan. Another example of the continuing exploitation is an increase in licensing fees, taxes and customs levies, apparently to compensate for decreased revenues from the trade in coltan.

29. The Panel is gaining a more incisive understanding of the varying roles of foreign armies, foreign armed opposition groups, Congolese rebel groups and Mayi-Mayi groups¹ in the exploitation of resources and the armed conflict. Enquiries are also being focused on how the diverse types of conflict that exist among these armed parties, some of which seem

¹ Mayi-Mayi groups are a distinctly Congolese phenomenon and should not be confused with the foreign armed groups explicitly mentioned in the Lusaka Ceasefire Agreement. The term generally refers to community-based fighters who organize themselves to defend their local territory, including against foreign armies and their allies. However, the structure, military capability and political orientation of the many groups scattered throughout the eastern Democratic Republic of the Congo that identify themselves as Mayi-Mayi vary widely.

to be intensifying while others appear to be diminishing, may be linked to control of resources, territory, fiscal revenues and trade in general. It appears that the scope, intensity and modalities of the activities related to the exploitation of resources are in some cases reflected in the highly commercialized power bases of certain military and political actors in the conflict. In the case of the foreign armies present in the Democratic Republic of the Congo, the Panel is investigating the direct, institutionalized involvement of some in the exploitation of resources and in exercising far-reaching control over local economies.

30. There are indications that criminal networks and activities are being imported into the Great Lakes region from other African countries and regions outside Africa. The Panel is looking into alleged criminal networks based outside Africa that may be using trade in certain resources from the Democratic Republic of the Congo for the purposes of money-laundering. The Panel is also following up on the activities of an organized crime network which has been involved in the extraction of Congolese resources, the transport of certain commodities out of the Democratic Republic of the Congo for export and the import of arms into the Great Lakes region. That network's operations are now the target of judicial investigations in at least one country. Another network, based in Africa, is purportedly financing one set of criminal activities through profits garnered from the smuggling of certain resources. Other networks may be connected to poaching and related smuggling activities. Additional investigations are being carried out into allegations linking the trafficking in the natural resources of the Democratic Republic of the Congo to certain organizations inside and outside Africa. Those organizations have reportedly begun to use precious mineral resources for transactions instead of hard currencies, which are more and more easily traced by financial institutions and Governments. Some of these organized criminal activities may also aim at political destabilization.

31. The Panel is continuing to study the commercial chains for specific commodities. This study has permitted the Panel to gain more insight into various aspects of the commerce in these commodities and progressively verify certain patterns, for example:

(a) The well-established links between certain individual commercial operators and private companies and government officials and institutions;

(b) The varying degrees to which individuals, companies or entities and Governments are implicated in the trafficking in natural resources;

(c) Which segments of the commercial chains involve criminal networks;

(d) The importance of the use of military bases by different actors in the conflict for the evacuation of commodities to the initial export point;

(e) The lack of adequate controls in the civil aviation systems in different regions in Africa, resulting in part from outdated legal instruments and procedures, poor implementation of existing regulations and procedures and insufficient resources;

(f) A growing awareness among some commercial operators, who wish to conduct trade in a more transparent and ethical manner, that certificate of origin regimes should be established for commodities other than diamonds;

(g) How market factors are affecting the exploitation activities;

(h) How those involved in the illicit trade in Congolese resources are once more evolving their operations and tactics in an attempt to dissimulate their activities.

The Panel has learned that transit routes for commodities are again being altered and Congolese resources are apparently being relabelled during transit to disguise their origins. "Congolese" or foreign business partners are being used as a legitimizing facade, while commercial entities are being reconfigured so as to obscure links and activities. A greater emphasis is also being placed by different actors on controlling customs and tax revenues resulting from trade in general, specifically the trade in natural resources, as well as on the seizure of assets.

32. A substantial volume of certain resources continues to transit through countries bordering the Democratic Republic of the Congo, some by clandestine means and some openly under the guise of legitimate transit trade. The Panel is in the process of identifying which operators are involved in these commercial flows and determining whether they are connected to the main actors in the conflict.

33. The Panel is reviewing the impact on the exploitation of resources of a series of reforms being undertaken by the Government of the Democratic

Republic of the Congo. These include the implementation of a diamond certification scheme already concluded on a bilateral basis with the Diamond High Council in Belgium, the pending implementation of the new mining code and the drafting of a forestry code, the latter two activities being carried out with the support of the World Bank. During the remaining part of its mandate, the Panel will also evaluate the potential impact of the application of the resolution on the review of all commercial agreements and contracts signed during the conflict, adopted during the inter-Congolese dialogue at Sun City, and the establishment of an anti-corruption and ethics commission, one of the civic institutions created under the partial agreement on the democratic transition reached during the dialogue. In addition, the Panel is following the participation of the Government of the Democratic Republic of the Congo in the Kimberley Process, which is scheduled to finalize an international diamond certification scheme by late 2002.

34. The status and functioning of joint ventures in certain resource sectors in the Democratic Republic of the Congo also continue to be the focus of the Panel's fact-finding.

The current nature of the conflict in the Democratic Republic of the Congo

35. In the Panel's view, direct confrontation among the principal adversaries that are parties to the Lusaka Ceasefire Agreement has all but disappeared. In a conventional sense, the armies of the Democratic Republic of the Congo and its allies no longer militarily engage their enemies, the Congolese rebel forces and the foreign armies backing them. Overall, the main adversaries remain separated by the ceasefire line, which has de facto partitioned the country and has virtually eliminated direct encounters between the previously warring parties. The most notable exception to this was the ousting in March 2002 of Government troops (FAC) and Burundian rebel forces (FDD) from the village of Moliro in Katanga Province during an offensive by the RCD-Goma army, with support from RPA.²

² Moliro is a strategic point on the southernmost shores of Lake Tanganyika near the Zambian border. Despite the agreements worked out under the Kampala and Harare disengagement plans in 2000, it seemed that claims on Moliro as a new defensive position had never been properly resolved. The build-up of forces around this area over the course of several months infused preparations for the inter-Congolese dialogue with uncertainty and

36. On either side of the ceasefire line, foreign armies have consolidated their presence and the struggle over maintaining control of natural resources and territory has become a principal preoccupation. Conflict over the resources has a different complexion on either side of the ceasefire line. Foreign forces in the west, in concert with certain Congolese parties, have entrenched themselves and continue to pursue their economic interests in the natural resources of the Democratic Republic of the Congo, while adopting a more discreet profile. Their activities may also include asserting a certain control over local economies. For example, while Zimbabwe has officially declared the withdrawal of a substantial number of troops over the past year and a half, the Panel has received reports that replacement troops are being brought into areas such as Kasai, where Zimbabwean parties have interests in diamond mining. In Government-controlled regions, there may not be open armed conflict among competitors for resources or political adversaries as in the eastern region. The Panel has, nevertheless, received reports of the continuing negative impact that the presence of foreign troops, in particular Zimbabwean forces, has had on civilian populations. These include grave human rights violations and abuses of authority.

37. In contrast to the relative calm along the ceasefire corridor and the quieter pursuit of the exploitation of resources in the west, the quest for natural resources in the east is characterized by armed violence of varying degrees of intensity among foreign armies, foreign armed groups, rebel armies and Mayi-Mayi groups. These conflicts incite others. Some of the conflicts are about dispersing opposition forces. Some are linked to rekindled ethnic tensions. Others are about large numbers of people bearing arms for survival purposes.

38. Over the past five months, fighting has re-erupted continuously throughout the east. The fighting has at times been heavy. The areas where the clashes have occurred are strung out across the entire length and breadth of the eastern Democratic Republic of the Congo, stretching from the centre of Orientale Province east to the areas bordering Uganda, throughout the Kivus and west and south into the

tension. Following the attack, the Security Council adopted resolution 1399 (2002), demanding the immediate withdrawal of RCD-Goma troops from Moliro and Pweto in Katanga Province and for all parties to pull back to positions defined under the disengagement plans.

Maniema and Katanga Provinces. Reports and testimony indicate that civilian populations have suffered greatly as a result, with casualties, forced displacements, increased food insecurity and malnutrition. A state of generalized insecurity reigns in many rural areas in the Orientale Province and the Kivus, as bands of youthful “soldiers” or free-floating militias attack, loot and burn villages and fields.

39. In the area of the north-eastern Democratic Republic of the Congo where two battalions of Ugandan troops are still stationed, violent armed conflicts have primarily been among the three Ugandan-backed Congolese rebel groups that dominate the northeast — MLC, its purported ally RCD-N and RCD-ML. Some of these rebel armies have been reinforced at times by highly fluid alliances with what have been described as Mayi-Mayi groups. In some cases, UPDF soldiers also intervened. Battles have been fought over control of Buta, Isiro, Watsa, Bafwasende and Bunia, all endowed in varying degrees with deposits of gold, diamonds, coltan or cassiterite as well as stands of timber. Butembo, a major import and distribution centre where the country’s second largest customs post is located, was also attacked repeatedly. Control of precious resources and customs and tax revenues, all vital to the consolidation of the highly commercialized power bases of certain individuals and groups, have reportedly fuelled these battles. Over the course of three-and-a-half years of conflict, various armies have clashed over these economically strategic areas, trading control back and forth among them.

40. Well ensconced in four of the mineral-rich provinces of the eastern Democratic Republic of the Congo, Rwandan-controlled forces, RCD-Goma and RPA, have been pushing northward in North Kivu in recent months and advancing north-west of Kisangani in Orientale Province in April, towards territories occupied by RCD-ML and MLC forces respectively. RPA forces recently occupied Kowe, an area in North Kivu where diamond deposits have been discovered. More or less simultaneously, additional forces were being deployed farther south in Katanga Province. Few of these troop movements reportedly resulted in any engagements of Rwandan Hutu armed groups.

41. Since February, RCD-Goma and the Rwandan army have come under pressure from intensifying attacks in the south. Offensives have multiplied against Rwandan-backed forces in South Kivu, Maniema and upper Katanga, regions rich in coltan, cassiterite, gold

and diamonds. In these areas both RCD-Goma and RPA have a long-established presence and appear to be expanding their control of territory, assets, tax revenues and mineral wealth. These conflicts, some short-lived, but recurring, have mostly been initiated by different Mayi-Mayi groups, occasionally allied with ALIR II forces. The Panel recently received reports that various Mayi-Mayi groups have adopted a strategy of attacking the locations of mining activities controlled by RCD-Goma or RPA, in an effort to either wrest control of them or disrupt them and make them less profitable. The locations of a few recent battles led by Mayi-Mayi groups correspond with such tactics, such as fighting in South Kivu in Shabunda (gold and coltan as well as the location of an airport) and Kitutu near Kamituga (gold and cassiterite or coltan).

Humanitarian and economic situation: the toll of the exploitation and the conflict

42. The Panel has been compiling and reviewing reports on the economic, social and humanitarian impact of the conflict and the exploitation activities. It is applying this to orienting its fact-finding and developing its own analysis and conclusions.

43. The Panel's investigations are in part focusing on how different strategies for the exploitation of resources affect populations at the local level, according to conditions that are unique to each locality, and how this in turn shapes the specific humanitarian impact of both the conflict and the trade in resources, which also varies from locality to locality. There are some broad generalizations that can be made, particularly with regard to the eastern Democratic Republic of the Congo, and this has been the primary focus of the Panel's work during the first half of its mandate.

44. In the eastern Democratic Republic of the Congo, population displacement, repeated outbreaks of violent armed conflict and generalized insecurity are common. One of the consequences is the destruction of crop and grazing fields in rural areas, halting food production and increasing pressure on existing food resources. This has resulted in mounting food insecurity. Humanitarian organizations, refused protection by armies or militias, find it difficult to gain access to these areas to provide assistance.

45. A variety of sources report that local populations, including children, are being conscripted and used as

forced labour in the extraction of resources by some military forces in different regions. Other tactics, such as the destruction of the infrastructure for agricultural production, are allegedly employed by different armed parties in order to constrain local populations to participate in the extraction of resources.

46. In some areas, entire communities have been forcibly displaced by armed forces so that they can take control of resource-rich zones or the access roads for those zones. Military forces and militia have reportedly evicted local artisanal diggers in order to seize production or take control of informal mining sites. Other serious human rights violations, including killings, sexual assaults and abuse of power for economic gain, have been reported as directly linked to military forces' control of resource extraction sites or their presence in the vicinity of such sites.

47. Excessive taxes, revenue siphoning, seizure of local resources, forced requisitioning of assets and deepening control over general trade by foreign and local military, with or without the collusion of commercial operators, have paralysed local economies. As a result, very few commercial enterprises are still operational in many areas. Conditions in some towns, which have become more and more like enclaves, are increasingly similar to those that might result from an embargo.

48. Almost no revenues are allocated for public services such as utilities, health services and schools. Infrastructures and services are quasi-inexistent. The Panel has learned that few, if any, State administration employees are paid salaries. This appears also to be the case for members of local armies and police. With most workers unemployed or unpaid in urban areas, and food production plummeting in rural areas, malnutrition rates are rising to very high levels, especially in areas where economic exploitation is most intensive.

49. Large numbers of conflict-related deaths are adding to an even greater number of deaths from malnutrition and disease, resulting in extremely elevated mortality rates for all ages. Infants and children have been particularly affected. Mortality rates surveyed in conflict areas in the eastern Democratic Republic of the Congo are among the highest recorded in the world.

Environment: other consequences of the conflict and the exploitation activities

50. The Panel is updating its earlier investigations regarding the extent of the ecological destruction that the conflict has engendered. One focus of the Panel's enquiries concerns the situation within the national parks of the Democratic Republic of the Congo, particularly in terms of the illicit exploitation of wildlife, forest and other resources. The intensive and unsustainable mining and logging activities being conducted outside these protected wildlife reserves, in both the eastern Democratic Republic of the Congo and Government-controlled regions, also present real environmental dangers, which will require further investigation. In the course of its information gathering, the Panel was informed of the negative impact of the conflict, due to massive refugee movements, on the environments of neighbouring countries such as the Republic of the Congo and the Central African Republic.

51. Five of the eight national parks established in the Democratic Republic of the Congo are located in the eastern region. This region features one of the highest mountain ranges in Africa and is renowned for its unique diversity of habitats and wildlife. Of the five wildlife reserves, many of which are home to rare endangered species, four have been designated as World Heritage sites by UNESCO — Virunga National Park, Kahuzi-Biega National Park, Garamba National Park and Okapi Wildlife Reserve. One of the reserves, Okapi, is also the traditional habitat of nomadic pygmy tribes.

52. The combination of the exploitation activities and ongoing conflict has effectively eliminated State administrative control over the parks and led to the militarization of many of them, for example, the Virunga, Kahuzi-Biega and Okapi reserves. These parks are strategically located along the eastern border, and are regularly used as crossing points by military forces to gain access to the interior of the eastern region. The increased presence of foreign military, local rebel forces and armed groups, some of which occupy areas within the parks on a quasi-permanent basis, has resulted in the development of highly organized and systematic exploitation activities at levels never before seen. These activities include poaching for ivory, game meat and rare species, logging, and mining for coltan, gold and diamonds. Exploitation activities reportedly involve a wide range

of Congolese operators and armed groups. They are mostly carried out under the control of foreign military, however, often with their logistical support and under their protection. Much of the production or bounty is transported first to neighbouring countries, to be exported to third countries. Poaching activities and the massive military presence have given rise to arms trafficking within some parks. The reserves are also occasionally the sites of violent clashes between some of the armed parties. Armed conflict has exacted its toll in human lives in the parks. Over 50 park guards and other staff employed by the Congolese Institute for Nature Conservation³ have been killed since 1996.

53. The impact of the conflict on the economies of nearby communities has also spurred local populations to relocate in increasing numbers to the parks, settling there to carry out more and more subsistence logging, fishing and poaching activities. There are additional reports that populations from neighbouring countries have moved to the parks. The natural migration patterns of many wildlife species have been significantly disrupted, contributing to long-term problems in terms of repopulating certain park areas or maintaining population balances within others.

VII. Observations

Recent strategies for profiteering and sustaining the conflict

54. Control over fiscal resources — licensing fees, export taxes, import duties and general state and community taxes — seems to be gaining increasing importance in the eastern Democratic Republic of the Congo for the rebel groups and the foreign armies. Some of the revenues are reportedly diverted to individuals or groups of individuals for their personal profit. Others are allegedly siphoned off for payments to foreign armies, either to maintain their support against rival groups or to finance continuing, extensive military operations. Recent periods have seen tax rates double or triple in certain areas and increasingly harsh penalties imposed when payment is not made. With many land routes impracticable and unsecured and river traffic having ceased, some areas have become increasingly isolated, making control of trade all the easier. The immediate impact of these strategies has been the further collapse of most local economies and

³ The government body that oversees the wildlife reserves.

the deepening impoverishment of most Congolese families.

The inter-Congolese dialogue and the issue of the exploitation of resources

55. Regarding the general issue of the illegal exploitation of natural resources, the Panel was informed by a variety of sources that repeated attempts by civil society representatives at the inter-Congolese dialogue to open discussions on this subject were thwarted. It was interesting to note that there was a great reluctance on the part of at least the three major belligerent parties to discuss the issue. This raises the question whether those three parties, as well as others, are implicated in and benefit from the exploitation activities.

56. At the inter-Congolese dialogue, the Economic and Finance Committee adopted resolutions on setting up mechanisms for the review of all commercial agreements and contracts signed during the current conflict as well as evaluating the costs of both conflicts fought since 1996. The review and revision of all concessions and agreements was one of the Panel's previous recommendations, the issue of the cost of the war being the subject of the Panel's earlier fact-finding. Those resolutions reflected the views of most Congolese. However, certain Congolese officials expressed the view that only the concessions and agreements relating to the rebel-held eastern region of the Democratic Republic of the Congo should be reviewed, in accordance with the new mining code. On the other hand, representatives of civil society organizations, the private sector and the political opposition were of the opinion that all the concessions and agreements signed, whether on the side of the allies or the rebel groups, should be reviewed or revised.

The humanitarian tragedy

57. The occupation of large portions of the Democratic Republic of the Congo by the armies of neighbouring States has caused considerable suffering among all segments of the population, affecting farmers, traders, businessmen, public servants, professionals, men and women of all ages, as well as children. Military support to the rebel movements and the use of national armies from neighbouring States to support the exploitation of resources have resulted in widespread conflict, indiscriminate arming of large portions of the population and considerable insecurity. A minimum of 15 per cent of the population of North

and South Kivu has been displaced over the past 18 months as a result of the conflicts. The economies of many of the principal urban centres and surrounding areas have collapsed while rural economic activities have ceased altogether in many places. Food insecurity is rampant, unemployment may be as high as 80 to 90 per cent in many areas, reducing both rural and urban populations to extreme poverty. Acute malnutrition rates are alarmingly high. While mortality levels vary greatly from place to place depending on the extent of conflict and the availability of health services, overall they are among the highest in the world.

(Signed) Mahmoud **Kassem**, Chairman

(Signed) Jim **Freedman**

(Signed) Mel **Holt**

(Signed) Bruno **Schiemsky**

(Signed) Moustapha **Tall**

(Signed) Gilbert **Barthe**

Annex I

Countries visited and representatives of Governments and organizations interviewed

The Panel wishes to express its deep appreciation to the Government officials, diplomats, United Nations agencies, donor institutions, non-governmental organizations, civil society groups, journalists, commercial operators and others with whom it met and who have assisted in making possible the present report.

The Panel also wishes to extend special thanks to the United Nations Organization Mission in the Democratic Republic of the Congo, and in particular to the Special Representative of the Secretary-General in the Democratic Republic of the Congo, Amos Namanga Ngongi. In addition, the Panel would like to thank the United Nations Office in Burundi and the UNDP offices in Bangui, Brazzaville, Bujumbura, Kampala, Kigali, Kinshasa and Yaounde for their assistance and support.

Belgium

Government officials

Parliamentary Commission of Inquiry on the Illegal Exploitation of the Natural Resources of the Democratic Republic of the Congo
Inter-Ministerial Ad Hoc Working Group on the Illegal Exploitation of the Natural Resources of the Democratic Republic of the Congo

State representatives

European Union

Others

Tantalum Niobium International Study Center
SOGEM mineral trading company (division of Umicore)
Arslanian Frères
International Peace Information Service

Burundi

Government officials

Minister of Defence
Minister of Energy and Mines
Minister of Finance
Minister for Foreign Affairs
Department of Customs (Ministry of Finance)

State representatives

Embassy of Belgium
Embassy of France

International organizations

Acting Special Representative of the Secretary-General in Burundi
Office for the Coordination of Humanitarian Affairs
UNDP
UNHCR
UNICEF
Office of the United Nations High Commissioner for Human Rights in Burundi

Others

ASYST mineral trading company
Affimet gold trading company
Comptoir minier des exploitations du Burundi (COMEBU)
HAMZA mineral trading company

Central African Republic

Government officials

Minister of Mines, Energy and Hydraulics
Minister of Trade and Industry
Ministry of Economy
Ministry of Equipment, Transport and Settlement
Ministry of Finance and Budget
Department of Customs

State representatives

Embassy of the Democratic Republic of the Congo
Embassy of France
European Union

International organizations

Representative of the Secretary-General in the Central African Republic
ASECNA
UNHCR
UNDP

Democratic Republic of the Congo

Government officials

Minister of Defence
Minister of Land Affairs, Environment and Tourism
Vice-Minister for Foreign Affairs
Vice-Minister of Mines
Deputy Chief of Staff of the Armed Forces
Governor of the Central Bank
Centre d'évaluation, d'expertise et de certification des matières précieuses
Comité interministériel du Small Scale Mining (CISSCAM)
Régie des voies aériennes

State representatives

Ambassador of Belgium
Ambassador of Canada
Ambassador of Germany
Ambassador of the United Kingdom of Great Britain and Northern Ireland
Embassy of Denmark
Embassy of France
Embassy of the United States of America
European Union

International organizations

Special Representative of the Secretary-General in the Democratic Republic of the Congo
ECHO
GTZ
MONUC
Office for the Coordination of Humanitarian Affairs
Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo
UNDP
UNICEF
World Bank
World Food Programme

RCD-Goma

Vice-President
Department of Mines and Energy
Vice-Governor of Kisangani

RCD-ML

Second Vice-President
Minister of the Interior
Acting Chief of Staff for APC
Governor of Ituri Province
Mayor of Butembo

Others

Anglican Church
Ashanti Goldfield
Association africaine des droits de l'homme (ASADHO)
Banque internationale de commerce
Centre national d'appui au développement et à la participation populaire (CENADEP)
Church of Christ of the Congo
Conseil apostolique des laïques catholiques au Congo (CALCC)
Dara Forêt
Exploitation forestière, sciérie raffinage de la papaine (ENRA)

Fédération des entreprises du Congo (FEC — Kinshasa, Kisangani, Beni, Goma, Bukavu)
Groupe Lotus
Groupe musulman des droits de l'homme
Héritiers de la Justice
International Human Rights Law Group
International Rescue Committee
Mayi-Mayi representatives
Medecins sans Frontières (Belgium and France)
Mennonite Church
National Commission of Experts on the illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of the Congo
National Council of Development NGOs
Okimo
Parti démocrate et social chrétien (PDSC)
Peace and Justice Commissions
Pharmakina
Pole Institute
Programme d'appui aux femmes victimes des conflits et des catastrophes
Regional Committee of Development NGOs
SOCEBO
Société civile du Congo (SOCICO)
Société de renforcement de communauté de base (SERACOB)
Société minière de Bakwanga (MIBA)
Solidarité
TOFEN-CONGO
TRAFCO freight company
UDPS (provincial committee of Goma)
UPDF Sector Commander in Bunia
UPDF Battalion Commander in Butembo
UPDF Colonel Peter Karim
Union des banques congolaises

France

Government officials

Ministry of Foreign Affairs
Ministry of Economy and Finance

Others

Air France Cargo

Germany

Government officials

Ministry of Foreign Affairs

Others

Karl-Heinz Albers Mining and Minerals Processing
H. C. Starck

Kenya

Government officials

Kenya Revenue Authority

State representatives

Ambassador of Belgium
Ambassador of Rwanda
High Commissioner of Uganda
Belgian Ministry of Defence
Embassy of the Democratic Republic of the Congo
High Commissioner of the Republic of South Africa

International organizations

Special Representative of the Secretary-General for the Great Lakes Region
World Customs Organization

Others

Chairman of the Association of Cargo Airlines
International Crisis Group
Kencargo
Martin Air
Oxfam
World Vision

Republic of the Congo

Government officials

Minister of Environment
Ministry of Transport
Department of Customs (Ministry of Finance)

State representatives

Embassy of Belgium
Embassy of the Democratic Republic of the Congo
European Union

International organizations

UNDP

Rwanda

Government officials

Special Envoy of the President for the Democratic Republic of the Congo
and Burundi
Office of the President of Rwanda
Minister for Foreign Affairs
Ministry of Commerce, Industry and Tourism
Customs Commission

State representatives

Ambassador of Belgium
Ambassador of France
Ambassador of the United Kingdom of Great Britain and Northern Ireland
Ambassador of the United States of America
European Union

International organizations

MONUC
UNICEF
World Bank

Others

Adolphe Onusumba, President of RCD-Goma
SDV transportation company
Eagles Wings Resources
SOGERMI mineral trading company

Uganda

Government officials

First Deputy Prime Minister
Acting Minister for Foreign Affairs
Minister of Defence
Chief of Staff of UPDF
Ministry of Tourism, Trade and Industry
Bank of Uganda
Department of Geological Survey and Mines
Uganda Bureau of Statistics
Uganda Civil Aviation Authority
Uganda Coffee Development Authority
Uganda Revenue Authority

State representatives

Ambassador of Belgium
Ambassador of Denmark
Ambassador of France
High Commissioner of the United Kingdom of Great Britain and Northern
Ireland
Ambassador of the United States of America
Head of the delegation of the European Union

International organizations

UNDP
UNICEF
World Bank

Others

Amnesty International
Judicial Commission of Inquiry
Uganda Debt Network

United Kingdom of Great Britain and Northern Ireland

Government officials

Ministry of Foreign Affairs

United States of America

State representatives

Permanent Representatives of Security Council members and other Member States

International organizations

International Monetary Fund
Office of the Special Representative of the Secretary-General for Children and Armed Conflict
UNDP
Forum on Forests
Office for the Coordination of Humanitarian Affairs
World Bank

Others

Human Rights Watch

Annex II

Abbreviations

ALIR	Armée pour la libération du Rwanda (Army for the Liberation of Rwanda)
APC	Congolese Patriotic Army (of the RCD-ML rebel group)
ASECNA	Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar
coltan	columbo-tantalite
ECHO	European Commission Humanitarian Aid Office
FAC	Forces armées congolaises
ex-FAR	former Forces armées rwandaises
FDD	Forces pour la défense de la démocratie
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Government agency for international cooperation)
MLC	Mouvement de libération congolais
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
Okimo	Office des Mines d'or de Kilo-Moto
RCD	Rassemblement congolais pour la démocratie (Rally for Congolese Democracy)
RCD-Goma	Rassemblement congolais pour la démocratie, based in Goma
RCD-ML	Rassemblement congolais pour la démocratie — Mouvement de libération, initially based in Kisangani, now headquartered in Bunia
RCD-N	Rassemblement congolais pour la démocratie-National
RPA	Rwandan Patriotic Army
SOCEBO	Société d'exploitation du bois
UDPS	Union pour la démocratie et le progrès social
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPDF	Uganda People's Defence Forces

ANNEX 1.10

United Nations Security Council, *Final 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*, document S/2002/1146, 16 October 2002

United Nations

S/2002/1146



Security Council

Distr.: General
16 October 2002
English
Original: French

Letter dated 15 October 2002 from the Secretary-General addressed to the President of the Security Council

I have the honour to refer to the statement by the President of the Security Council dated 19 December 2001 (S/PRST/2001/39), whereby the Security Council renewed for a period of six months the mandate 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 Council requested the Panel to submit to it an interim report after three months, followed by a final report at the end of its mandate. I refer also to the letter dated 12 July 2002 from the President (S/2002/763), by which the Security Council extended the mandate of the Panel until 31 October 2002.

I have the honour to transmit to you the final report of the Panel, which was submitted to me by its Chairman, Mr. Mahmoud Kassem. This independent report comprises an evaluation of the situation on the ground and the Panel's observations on the illegal exploitation of the natural resources of the Democratic Republic of the Congo. I should be grateful if you would bring the report to the attention of the members of the Security Council.

(Signed) Kofi A. Annan

S/2002/1146

Annex

Letter dated 8 October 2002 from the Chairman of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo addressed to the Secretary-General

[Original: English]

In accordance with the statement of the President of the Security Council (S/PRST/2001/39) dated 19 December 2001 and the letter dated 12 July 2002 addressed to you by the President of the Council, the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo is pleased to submit its report for transmission to the President of the Security Council.

(Signed) Mahmoud **Kassem**
Chairman

Panel of Experts on the Democratic Republic of the Congo

Final 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

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–11	4
II. Change in tactics by elite networks	12–21	5
III. Government-controlled area	22–64	7
IV. Rwanda-controlled area	65–96	14
V. Uganda-controlled area	97–131	19
VI. Collaboration of the Panel with the Porter Commission in Uganda	132–138	24
VII. Transit and end-user trade issues	139–148	26
VIII. Observations	149–154	28
IX. Conclusions	155–160	29
X. Recommendations	161–188	30

Annexes

- I. Companies on which the Panel recommends the placing of financial restrictions
- II. Persons for whom the Panel recommends a travel ban and financial restrictions
- III. Business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises
- IV. Countries visited and representatives of Governments and organizations interviewed
- V. Abbreviations

I. Introduction

1. The Security Council, in a statement by its President dated 19 December 2001 (S/PRST/2001/39), requested the Secretary-General to renew for six months the mandate of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, and asked the Panel to submit both an interim and a final report. The new mandate stipulated that the reports should include the following:

(a) An update of relevant data and an analysis of further information from all relevant countries, including in particular from those which thus far had not provided the Panel with the requested information;

(b) An evaluation of the possible actions that could be taken by the Council, including those recommended by the Panel in its report (S/2001/357) and the addendum thereto (S/2001/1072), in order to help bring to an end the plundering of the natural resources of the Democratic Republic of the Congo, taking into account the impact of such actions on the financing of the conflict and their potential impact on the humanitarian and economic situation of the Democratic Republic of the Congo;

(c) Recommendations on specific actions that the international community, in support of the Government of the Democratic Republic of the Congo, might take, working through existing international organizations, mechanisms and United Nations bodies, to address the issues in the report and its addendum;

(d) Recommendations on possible steps that might be taken by transit countries as well as end-users to contribute to ending illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of the Congo.

2. The Security Council also stressed the importance of the Panel's maintaining a high level of collaboration with all the Congolese players, governmental as well as non-governmental, throughout the national territory.

3. The Panel submitted to the Security Council an interim report (S/2002/565) on 22 May 2002. At the request of the Council, the Panel responded in writing to questions and comments from Council members regarding the interim report and the Panel's ongoing work. Prior to presenting its interim report, and at the request of the head of the Security Council mission to

the Great Lakes region, the Panel travelled to Pretoria on 28 April to brief the mission's members.

4. To orient its work under the current mandate, the Panel developed two successive plans of action, which were transmitted to the Council. Under these plans, fact-finding focused on diamonds, gold, coltan, copper, cobalt, timber, wildlife reserves, fiscal resources and trade in general.

5. The Panel determined that a central focus of its work should be gathering information about politically and economically powerful groups involved in the exploitation activities, which are often highly criminalized. As a result, the Panel developed the central concept of the elite network (outlined in section II) as an operational thesis.

6. In organizing its investigations, the Panel divided the Democratic Republic of the Congo into three areas, namely, the Government-controlled area, the Rwanda-controlled area and the Uganda-controlled area. These descriptors are based on the identity of the actors that constitute the three principal networks involved in the exploitation. The Panel also concluded that each of these three areas, while conforming to the Panel's understanding of the elite networks, featured substantive variations.

7. The Panel obtained information from a wide variety of sources, including from Governments (civilian and military representatives), intergovernmental organizations, non-governmental organizations, businesses and private individuals. Owing to the nature of its mandate, gaining access to information has been difficult. Nevertheless, the Panel collected well-substantiated and independently corroborated information from multiple sources. These knowledgeable sources provided documents and/or eye-witness observations. It is this type of information — consisting mostly of documentary evidence — that the Panel has relied on its report.

8. The Panel has operated under a reasonable standard of proof, without recourse to judicial authority to subpoena testimony or documents. It obtains information from sources on a strictly voluntary basis. Furthermore, the Panel has made every effort to fairly and objectively evaluate the information it has gathered.

9. Throughout its work, the Panel has paid close attention to the evolution of the peace process in the

Democratic Republic of the Congo, as well as that in neighbouring Burundi. The Lusaka Ceasefire Agreement of 1999 and the Arusha Agreement on Peace and Reconciliation, of 2000, served as important points of reference for its work. The Sun City, Pretoria and Luanda Agreements have also informed the Panel's work.

10. The Panel was composed as follows:

Ambassador Mahmoud Kassem (Egypt),
Chairman
Jim Freedman (Canada)
Mel Holt (United States of America)
Bruno Schiemsy (Belgium)
Moustapha Tall (Senegal).

11. Two part-time technical advisers, Gilbert Barthe (Switzerland) and Patrick Smith (United Kingdom of Great Britain and Northern Ireland), also served with the Panel. In addition, two political officers, an administrator and a secretary assisted the Panel.

II. Change in tactics by elite networks

12. The regional conflict that drew the armies of seven African States into the Democratic Republic of the Congo has diminished in intensity, but the overlapping microconflicts that it provoked continue. These conflicts are fought over minerals, farm produce, land and even tax revenues. Criminal groups linked to the armies of Rwanda, Uganda and Zimbabwe and the Government of the Democratic Republic of the Congo have benefited from the microconflicts. Those groups will not disband voluntarily even as the foreign military forces continue their withdrawals. They have built up a self-financing war economy centred on mineral exploitation.

13. Facilitated by South Africa and Angola, the Pretoria and Luanda Agreements have prompted the recent troop withdrawals from the eastern Democratic Republic of the Congo. Welcome as they may be, these withdrawals are unlikely to alter the determination of Rwanda and Zimbabwe, and Ugandan individuals, to exercise economic control over portions of the Democratic Republic of the Congo. The departure of their forces will do little to reduce economic control, or the means of achieving it, since the use of national armies is only one among many means for exercising it. All three countries have anticipated the day when pressure from the international community would make

it impossible to maintain large forces in the Democratic Republic of the Congo. The Governments of Rwanda and Zimbabwe, as well as powerful individuals in Uganda, have adopted other strategies for maintaining the mechanisms for revenue generation, many of which involve criminal activities, once their troops have departed.

14. The Uganda People's Defence Forces continue to provoke ethnic conflict, as in the past, clearly cognizant that the unrest in Ituri will require the continuing presence of a minimum of UPDF personnel. The Panel has evidence that high-ranking UPDF officers have taken steps to train local militia to serve as a paramilitary force, directly and discreetly under UPDF command, which will be capable of performing the same functions as UPDF. There will be little change in the control that Ugandans now exercise over trade flows and economic resources. As UPDF continue to arm local groups, only less conspicuously than before, the departure of Ugandan armed forces is unlikely to alter economic activities by those powerful individuals in the north-eastern Democratic Republic of the Congo.

15. Like UPDF, and under pressure from its closest allies, Rwanda has started withdrawing. It has prepared for withdrawal by putting in place economic control mechanisms that do not rely on an explicit presence of the Rwandan Patriotic Army. It has replaced Congolese directors of parastatals with businessmen from Kigali to ensure continuing revenue from water, power and transportation facilities. It has replaced local currency with Rwandan currency. RPA battalions that specialize in mining activities remain in place, though they have ceased wearing RPA uniforms and will continue the activities under a commercial guise. The Panel's sources have reported that RPA recently undertook an operation to obtain a large number of Congolese passports so as to give an appropriate identity to RPA officers who continue to be stationed at strategically important sites in the Democratic Republic of the Congo.

16. The Panel has learned of other tactics for disguising the continuing presence of an armed force loyal to Rwanda. Reliable sources have reported an initiative by the Chief of Staff of the Armée nationale congolaise, Major Sylvain Mbuki, to reorganize the RCD-Goma forces in order to accommodate large numbers of RPA soldiers inside ANC units and local defence forces made up of pro-Rwanda elements. Most of the ANC units have had RPA leadership for some

S/2002/1146

time, and now, with this reorganization, a significant number of RPA soldiers will be integrated into the ANC rank and file. Instead of departing for Rwanda, large numbers of Rwandan Hutus serving in RPA have been provided with new uniforms and assigned to ANC brigades as Congolese Hutu. Rwanda has diverted attention from those soldiers staying in the Democratic Republic of the Congo by drawing particular attention to those who depart. Ceremonies have been held at points of re-entry. In fact, the number of soldiers who have left the Democratic Republic of the Congo is so far only a portion of the total number of RPA troops in the eastern Democratic Republic of the Congo, which various sources estimate at between 35,000 and 50,000. Simultaneously with the RPA troop withdrawals, Rwandan officials have repatriated to North Kivu thousands of Congolese Tutsi refugees under duress from the camps around Byumba and Kibuye Provinces in Rwanda. Schools in the Rwandan camps have remained closed and some camp structures have been razed to encourage further repatriations. All the Panel's sources have also suggested that this movement could be part of the new tactic for maintaining Rwanda's presence in the eastern Democratic Republic of the Congo.

17. Although troops of the Zimbabwe Defence Forces have been a major guarantor of the security of the Government of the Democratic Republic of the Congo against regional rivals, its senior officers have enriched themselves from the country's mineral assets under the pretext of arrangements set up to repay Zimbabwe for military services. Now ZDF is establishing new companies and contractual arrangements to defend its economic interests in the longer term should there be a complete withdrawal of ZDF troops. New trade and service agreements were signed between the Democratic Republic of the Congo and Zimbabwe just prior to the announced withdrawal of ZDF troops from the diamond centre of Mbuji Mayi late in August 2002.

18. Towards the end of its mandate, the Panel received a copy of a memorandum dated August 2002 from the Defence Minister, Sidney Sekeramayi, to President Robert Mugabe, proposing that a joint Zimbabwe-Democratic Republic of the Congo company be set up in Mauritius to disguise the continuing economic interests of ZDF in the Democratic Republic of the Congo. The memorandum states: "Your Excellency would be aware of the wave of negative publicity and criticism that the DRC-

Zimbabwe joint ventures have attracted, which tends to inform the current United Nations Panel investigations into our commercial activities." It also refers to plans to set up a private Zimbabwean military company to guard Zimbabwe's economic investments in the Democratic Republic of the Congo after the planned withdrawal of ZDF troops. It states that this company was formed to operate alongside a new military company owned by the Democratic Republic of the Congo.

19. At the same time, local militias and local politicians have supplemented the role that State armies previously played in ensuring access to and control of valuable resources and diverting State revenue. The looting that was previously conducted by the armies themselves has been replaced with organized systems of embezzlement, tax fraud, extortion, the use of stock options as kickbacks and diversion of State funds conducted by groups that closely resemble criminal organizations.

20. Such activities have become increasingly prominent in the techniques of exploitation in the Democratic Republic of the Congo. The Panel has identified three distinct groups engaged in activities in three different areas and refers to them as elite networks. These elite networks have control over a range of commercial activities involving the exploitation of natural resources, diversion of taxes and other revenue generation activities in the three separate areas controlled by the Government of the Democratic Republic of the Congo, Rwanda and Uganda, respectively.

21. The Panel has identified the following elements that are common to all of the elite networks and that are essential to understanding the nature of the exploitation carried out by these networks in the Democratic Republic of the Congo:

- The networks consist of a small core of political and military elites and business persons and, in the case of the occupied areas, selected rebel leaders and administrators. Some members of the elite networks occupy key positions in their respective Governments or rebel groups.
- Members of these networks cooperate to generate revenue and, in the case of Rwanda, institutional financial gain.

- The elite networks ensure the viability of their economic activities through control over the military and other security forces that they use to intimidate, threaten violence or carry out selected acts of violence.
- The networks monopolize production, commerce and fiscal functions.
- The elite networks maintain the facade of rebel administrations in the occupied areas to generate public revenues that they then divert into the networks, thereby depleting the public treasury.
- The elite networks derive financial benefit through a variety of criminal activities including theft, embezzlement and diversion of “public” funds, undervaluation of goods, smuggling, false invoicing, non-payment of taxes, kickbacks to public officials and bribery.
- The elite networks form business companies or joint ventures that are fronts through which members of the networks carry on their respective commercial activities.
- The elite networks draw support for their economic activities through the networks and “services” (air transport, illegal arms dealing and transactions involving the natural resources of the Democratic Republic of the Congo) of organized or transnational criminal groups.

III. Government-controlled area

22. The elite network of Congolese and Zimbabwean political, military and commercial interests seeks to maintain its grip on the main mineral resources — diamonds, cobalt, copper, germanium — of the Government-controlled area. This network has transferred ownership of at least US\$ 5 billion of assets from the State mining sector to private companies under its control in the past three years with no compensation or benefit for the State treasury of the Democratic Republic of the Congo.

23. This network benefits from instability in the Democratic Republic of the Congo. Its representatives in the Kinshasa Government and the Zimbabwe Defence Forces have fuelled instability by supporting armed groups opposing Rwanda and Burundi.

24. Even if present moves towards peace lead to a complete withdrawal of Zimbabwean forces, the network’s grip on the richest mineral assets of the Democratic Republic of the Congo and related businesses will remain. Zimbabwe’s political-military elite signed six major trade and service agreements in August 2002 with the Government of the Democratic Republic of the Congo. Reliable sources have told the Panel about plans to set up new holding companies to disguise the continuing ZDF commercial operations in the Democratic Republic of the Congo and a ZDF-controlled private military company to be deployed in the country to guard those assets.

The elite network

25. The elite network in the Government-held area comprises three circles of power, namely, Congolese and Zimbabwean government officials and private businessmen. Chief figures in the Congolese branch of the network are the National Security Minister, Mwenze Kongolo, a shareholder and deal-broker for both diamond and cobalt ventures; the Minister of Presidency and Portfolio, Augustin Katumba Mwanke, a former employee of Bateman’s mining company in South Africa and a key power broker in mining and diplomatic deals; the President of the State diamond company, Société minière de Bakwanga (MIBA), Jean-Charles Okoto; the Planning Minister and former Deputy Defence Minister, General Denis Kalume Numbi, a stakeholder in the lucrative Sengamines diamond deal and in COSLEG; and the Director General of Gécamines, Yumba Monga, pivotal in facilitating several asset-stripping joint ventures between the State mining company and private companies.

26. The Congolese branch also includes active, but less visible members. Frédéric Tshineu Kabasele is a director of three joint ventures with Zimbabwe using the COSLEG platform — the diamond trading Minerals Business Company, the logging company SOCEBO and the First Banking Corporation Congo. The Director of the National Intelligence Agency, Didier Kazadi Nyembwe, has oversight of many of the private commercial operations and has been linked by several sources to arms supplies for Burundi opposition groups and Mayi-Mayi groups in Maniema and South Kivu. COSLEG, a Congo-Zimbabwe joint stock company, remains a key vehicle for military-backed

S/2002/1146

commerce involving mostly diamonds, banking and timber in the Government-held areas. The Technical Director of COSLEG, Mfuni Kazadi, specializes in the writing of joint venture contracts to accommodate the private interests of the elite network.

27. The key strategist for the Zimbabwean branch of the elite network is the Speaker of the Parliament and former National Security Minister, Emmerson Dambudzo Mnangagwa. Mr. Mnangagwa has won strong support from senior military and intelligence officers for an aggressive policy in the Democratic Republic of the Congo. His key ally is a Commander of ZDF and Executive Chairman of COSLEG, General Vitalis Musunga Gava Zvinvashe. The General and his family have been involved in diamond trading and supply contracts in the Democratic Republic of the Congo. A long-time ally of President Mugabe, Air Marshal Perence Shiri, has been involved in military procurement and organizing air support for the pro-Kinshasa armed groups fighting in the eastern Democratic Republic of the Congo. He is also part of the inner circle of ZDF diamond traders who have turned Harare into a significant illicit diamond-trading centre.

28. Other prominent Zimbabwean members of the network include Brigadier General Sibusiso Busi Moyo, who is Director General of COSLEG. Brigadier Moyo advised both Tremalt and Oryx Natural Resources, which represented covert Zimbabwean military financial interests in negotiations with State mining companies of the Democratic Republic of the Congo. Air Commodore Mike Tichafa Karakadzai is Deputy Secretary of COSLEG, directing policy and procurement. He played a key role in arranging the Tremalt cobalt and copper deal. Colonel Simpson Sikhulile Nyathi is Director of defence policy for COSLEG. The Minister of Defence and former Security Minister, Sidney Sekeramayi, coordinates with the military leadership and is a shareholder in COSLEG. The Panel has a copy of a letter from Mr. Sekeramayi thanking the Chief Executive of Oryx Natural Resources, Thamer Bin Said Ahmed Al-Shanfari, for his material and moral support during the parliamentary elections of 2000. Such contributions violate Zimbabwean law.

29. In June 2002, the Panel learned of a secret new ZDF diamond mining operation in Kalobo in Kasai Occidental run by Dube Associates. This company is linked, according to banking documents, through

Colonel Tshinga Dube of Zimbabwe Defence Industries to the Ukrainian diamond and arms dealer Leonid Minim, who currently faces smuggling charges in Italy. The diamond mining operations have been conducted in great secrecy.

30. Among the businessmen in the elite network, a Belgian national, George Forrest, pioneered the exploitative joint venture agreements between private companies and Gécamines. Mr. Forrest owes his commercial ascendancy to his long-standing ties to the establishment in the Democratic Republic of the Congo. One of his companies also makes and markets military equipment. Since 1994, he has owned 100 per cent of New Lachaussée in Belgium, which is a leading manufacturer of cartridge casings, grenades, light weapons and cannon launchers. In a flagrant conflict of interest, Mr. Forrest was appointed Chairman of Gécamines from November 1999 to August 2001 while his private companies negotiated new contracts with the explicit intention of using Gécamines' assets for personal gain. During that time he built up the most wide-ranging private mining portfolio in the Democratic Republic of the Congo. He benefits from strong backing from some political quarters in Belgium where some of his companies are based. His operations have been strongly criticized (one Belgian diplomatic cable referred to Mr. Forrest running a "strategy of attrition" in the mining sector of the Democratic Republic of the Congo) and have recently come under the scrutiny of the Belgian Senate's investigation into resource exploitation in the Democratic Republic of the Congo.

31. The techniques used by Mr. Forrest have since been replicated by Zimbabwean-backed entrepreneurs John Arnold Bredenkamp and Mr. Al-Shanfari. Mr. Bredenkamp, who has an estimated personal net worth of over \$500 million, is experienced in setting up clandestine companies and sanctions-busting operations. Mr. Al-Shanfari has gained privileged access to the Government of the Democratic Republic of the Congo and its diamond concessions in exchange for raising capital from some powerful entrepreneurs in the Gulf such as Issa al-Kawari who manages the fortune of the deposed Amir of Qatar. Also working with ZDF is a convicted criminal based in South Africa, Nico Shefer, who has arranged for Zimbabwean officers to be trained in diamond valuation in Johannesburg. Mr. Shefer's company, Tandan Holdings, has a 50 per cent stake in Thorntree

Industries, a joint venture diamond-trading company with ZDF.

32. Zimbabwean Billy Rautenbach headed a joint venture cobalt-mining company and was Chief Executive of Gécamines from November 1998 to March 2000. Although stripped of his cobalt concessions in Katanga, Mr. Rautenbach told the Panel that the Government of the Democratic Republic of the Congo had offered his company, Ridgepointe International, mining rights to Gécamines concessions at Shinkolobwe, which include substantial deposits of uranium, copper and cobalt. Mr. Rautenbach's representatives said that any new agreement would be subject to the new mining code of the Democratic Republic of the Congo and any uranium mining operations would be open to inspections by the International Atomic Energy Agency.

33. Such high levels of mineral exploitation would be impossible without the collusion of highly placed government officials who provide mining licences and export permits in return for private gain. The Panel has compiled extensive documentation of such facilitations. For example, in its attempts to buy rights to the Kolwezi Tailings, First Quantum Minerals (FQM) of Canada offered a down payment to the State of \$100 million, cash payments and shares held in trust for Government officials. According to documents in the possession of the Panel, the payments list included the National Security Minister, Mwenze Kongolo; the Director of the National Intelligence Agency, Didier Kazadi Nyembwe; the Director General of Gécamines, Yumba Monga; and the former Minister of the Presidency, Pierre-Victor Mpoyo. The FQM share offer to those officials was premised on a sharp rise in its share price once it was announced that it had secured some of the most valuable mineral concessions in the Democratic Republic of the Congo.

34. The Panel has documents showing that three "clans" of Lebanese origin, who operate licensed diamond businesses in Antwerp, purchased diamonds from the Democratic Republic of the Congo worth \$150 million in 2001, either directly through Kinshasa or through *comptoirs* in the Republic of the Congo. The three "clans" — Ahmad, Nassour and Khanafer — are distinct criminal organizations that operate internationally. Their activities, known to intelligence services and police organizations, include counterfeiting, money-laundering and diamond smuggling. Several credible sources have reported that

the clans also have ties with Amal and Hezbollah. Some businesses associated with the clans are Sierra Gem Diamonds, Asa Diam, Triple A Diamonds and Echogem. A group linked to the clans operations is providing counterfeit United States dollars to former generals from the time of President Mobutu, who are trying to overthrow the Government of the Democratic Republic of the Congo.

Strategies and sources of revenue

35. The Panel has identified five strategies for generating revenues for the elite network through diamond, copper and cobalt mining companies. The network coordinates its operations between its political, military and business wings to generate maximum income.

Asset stripping of State mining companies

36. The richest and most readily exploitable of the publicly owned mineral assets of the Democratic Republic of the Congo are being moved into joint ventures that are controlled by the network's private companies. These transactions, which are controlled through secret contracts and off-shore private companies, amount to a multi-billion-dollar corporate theft of the country's mineral assets. Some 30 businessmen, politicians and military officers are the main beneficiaries of the arrangements. The elite network has been trying to legitimize such corporate theft and market these assets to legitimate international mining companies.

37. The Panel has now obtained documentary evidence that Mr. Al-Shanfari's company, Oryx Natural Resources, is being used as a front for ZDF and its military company OSLEG. Sengamines claims an 800 square kilometre concession, just south of Mbuji Mayi, carved out of the concession of the Société Minière de Bakwanga. According to company officials, Sengamines' diamond concessions would be worth at least \$2 billion if they were put into full production.

38. Sengamines claimed that it had reconfigured its equity after a failed attempt to be listed on the London Stock Exchange in June 2000, as follows: 49 per cent for Oryx Natural Resources, 35 per cent for COMIEX-Congo, and 16 per cent for MIBA. The Panel has learned that this purported buyout never happened. It was a device to disguise the close association between

S/2002/1146

Sengamines and ZDF, and to deceive international investors. ZDF, through OSLEG, owns the 49 per cent of Sengamines that is publicly claimed by Oryx. In the course of a meeting held on 1 August 2000, OSLEG nominated Oryx to hold its 49 per cent interest in Sengamines; 35 per cent is held by COMIEX-Congo, and 16 per cent has been allocated to MIBA.

39. Tremalt Ltd., represented by Mr. Bredenkamp, holds the rights to exploit six Gécamines concessions containing over 2.7 million tons of copper and 325,000 tons of cobalt over 25 years. Tremalt paid the Government of the Democratic Republic of the Congo just \$400,000, but the estimated worth of the six concessions exceeds \$1 billion. The joint venture running the concession is the Kababankola Mining Company, in which Tremalt has an 80 per cent share to Gécamines' 20 per cent. Under this agreement, the Panel has learned that Gécamines derives no direct financial benefit. Although Tremalt representatives told the Panel that they have invested \$15 million to date, there are no signs of substantial investments having been made on the concessions, nor has any schedule of investment in the form of a business plan been released to Gécamines.

40. Like Oryx, Tremalt insists that its operations are not linked to ZDF or the Government of Zimbabwe. However, the Panel has obtained a copy of the confidential profit-sharing agreement, under which Tremalt retains 32 per cent of net profits, and undertakes to pay 34 per cent of net profits to the Democratic Republic of the Congo and 34 per cent to Zimbabwe. This profit-sharing agreement was the subject of a confidential memorandum from the Defence Minister, Mr. Sekeramayi, to President Mugabe in August 2002. Tremalt also undertakes to provide the Congolese and Zimbabwean militaries with motor vehicles, trucks, buses and cash payments as necessary. These are to be subtracted from the two countries' part of the profit share. A forum has been established between Tremalt and ZDF to plan strategy in the Democratic Republic of the Congo and "look after the interests of the Zimbabweans". Meeting monthly, the forum's main members are General Zvinvashe, Brigadier Moyo, Air Commodore Karakadzai, Mr. Bredenkamp, the Managing Director of KMC, Colin Blythe-Wood, and the Director of KMC, Gary Webster.

41. Gécamines officials told the Panel that the National Security Minister of the Democratic Republic

of the Congo, Mwenze Kongolo had pressured their negotiators to agree to the joint venture contract despite its negative implications for the State company's finances. The ultimate owners and beneficiaries of Tremalt are hidden behind a web of trusts and private holding companies registered in the British Virgin Islands and the Isle of Man to whose records the Panel was not allowed direct access.

Control of procurement and accounting

42. Management control is essential to the elite network's strategy for extracting maximum revenue from the joint ventures. Much of the revenue from the joint ventures is off the balance sheet in overpriced subcontracting and procurement arrangements with companies and individuals linked to the network. The two biggest Zimbabwe-Democratic Republic of the Congo joint ventures — Sengamines and KMC — are declaring huge losses.

Enterprise General Malta Forrest and Groupe George Forrest

43. Groupe George Forrest (GGF) in partnership with the United States-based OM Group currently runs one of the most profitable mining operations from the Democratic Republic of the Congo with only the most marginal benefit for the State mining company, Gécamines. Through this venture, the Scories du Terril de Lubumbashi (STL), also known as the Big Hill Project, Mr. Forrest and OM Group have secured access to a copper and cobalt stockpile which contains over 3,000 tons of germanium, a rare metal used in optical fibres, infrared lenses and telecommunication satellites. This stockpile, formerly the property of Gécamines, has a current market value of more than \$2 billion. Although the shareholdings for the STL project are divided between OM Group (55 per cent), GGF (25 per cent) and Gécamines (20 per cent), the State company has been expressly excluded from the revenues derived from the germanium processing.

44. Gécamines officials complain that OM Group and GGF have deliberately ignored the agreed technical plan for the STL project, which provided for two electric-powered refineries and a converter to be built adjacent to the copper and cobalt stockpile. This would have meant that all the germanium would have been processed within the Democratic Republic of the Congo, and Gécamines would have been entitled to a revenue share. Instead the semi-processed ore is

shipped to OM Group's plant in Finland where the germanium is extracted. The former Chairman of Gécamines, Mr. Forrest, whose construction companies built the STL project, has declined to intervene on behalf of the State company. Gécamines has rejected an offer by OM Group to cede the State company just 5 per cent of the revenues from the germanium processing in Finland.

45. Mr. Forrest has used his position in the elite network in an attempt to control the mining sector in the Democratic Republic of the Congo, according to several reliable sources. For example, the Kinross Gold Corporation of Canada had sought to invest up to \$1 billion in copper and cobalt mining operations, but was thwarted by interventions from Mr. Forrest and senior Government officials. The company returned to the Democratic Republic of the Congo late in 2001 as part of Kinross-Forrest Ltd., a company registered in the British Virgin Islands. A smaller Belgian-based company, Madsa, obtained the support of the World Bank and the United Nations Industrial Development Organization for a \$20 million development package to build processing plants to service the mining sector: a smelter, an acid manufacturing plant and a cement factory. Mr. Forrest and his business allies have opposed this development, in part, it seems, because it would cut their profits from the current overpriced procurement contracts.

Tremalt Ltd. (John Bredenkamp)

46. Tremalt's 80 per cent stake in KMC gives it management control over day-to-day administration and longer-term strategic decisions about exploiting the concession. Tremalt also procures equipment for ZDF and the Congolese Armed Forces (FAC), the cost of which it deducts from their share of KMC profits. Although Ridgepointe International, run by Mr. Rautenbach, the previous foreign investor in the Kababankola concessions, had to operate with much more dilapidated processing plants, it generated more than \$20 million profit within 18 months of taking over. Industry analysts say that Tremalt's claimed losses of more than \$13 million from February 2001 to July 2002 are not credible.

Organized theft

47. FAC and ZDF officers who controlled security at the main joint venture sites have been involved in and facilitate high levels of theft from production. Reliable

sources have informed the Panel that managers in several companies, with support from the members of the elite network, collude in these thefts.

48. The State-owned Société minière de Bakwanga diamond company has been plundered by a management that condones widespread theft by company insiders. Three theft rings operate in the MIBA compound known as the *polygone*. The first of these rings was organized and operated by 48 Zimbabwean soldiers who had been stationed at five different locations throughout the large mining site. Zimbabwe military personnel allow groups of people to enter the *polygone* and dig for diamonds, and in exchange receive compensation in the form of money and diamonds.

49. A second theft ring is operated by the Brigade Minière or provincial mining police, who are trained to guard the mine. Previously sacked for theft, Brigade Minière Commander Mushitu has returned to the force. In exchange for protection, the Commander receives sacks of diamond-rich gravel. However, the diamond diggers are often caught in exchanges of fire between the Brigade Minière and the Zimbabweans in their efforts to control the diamond thefts.

50. These losses are probably modest compared to the losses from a third theft ring that involves high-level MIBA managers and occurs inside the cleaning, sorting and classification operation facility. The thefts include gem and near-gem production. About 50 per cent of all company revenues are generated by the 3 to 4 per cent of gem and near-gem production. The drop in revenues resulting from theft has been estimated at about 25 per cent of total revenue, roughly 25 million dollars per annum. Under pressure from its creditors, MIBA was obliged to engage the services of a private security firm, Overseas Security Services, which determined that a criminal syndicate was operating inside the classification operation.

Using the corporate facade as a cover for criminal activities

51. Some members of the elite network running joint ventures are linked to the smuggling of precious metals and gems, arms trafficking, illegal foreign exchange trading and money-laundering. The Panel has received extensive documentation and first-hand testimony explaining the mechanics of these criminal operations.

S/2002/1146

52. Sengamines supplements its revenues by laundering diamonds smuggled from Angola and Sierra Leone. Sengamines also smuggles its own diamonds out of the Democratic Republic of the Congo and the Panel has learned of specific instances, times, places and persons involved. For example, in March 2001, Mr. Al-Shanfari instructed his security chief to smuggle diamonds from the Sengamines concession to Johannesburg, South Africa, and deliver them to Ken Roberts, the chief executive of Serengeti Diamonds.

53. Sengamines has also served as a front for illegal foreign exchange transactions using several routes into and out of the Democratic Republic of the Congo. Most of the latter involved breaking the country's foreign exchange laws and profiting from arbitrage between differential exchange rates for the United States dollar and Congolese franc in Kinshasa and the eastern Democratic Republic of the Congo, respectively. In one example, on 13 March 2000, Oryx officials in Kinshasa loaded an aircraft belonging to Mr. Bredenkamp with eight crates of Congolese francs for shipment to Harare. The Panel also has documentation substantiating information that an Oryx employee regularly transported parcels of United States dollars (\$500,000 at a time) that were withdrawn from the Oryx account at Hambros Bank, London, to Kinshasa without declaring them to the Congolese authorities; at Kinshasa the money was changed into Congolese francs and further transported to Harare and the eastern Democratic Republic of the Congo. Oryx employees said they were asked to pay Mr. Mnangagwa a commission on these transactions which contravened Zimbabwe law. Despite repeated claims by Mr. Bredenkamp's representatives that he has no business relationship with Mr. Al-Shanfari, the Panel has received a document — dated January 2001 and jointly signed by Mr. Bredenkamp and Mr. Al-Shanfari — guaranteeing a \$1.5 million loan to Oryx Natural Resources from Python Services Ltd.

Mining revenues and the military

54. The procurement of military equipment and services is a major source of revenue for the elite network. Several joint venture mining companies have strong links with the military supply companies who facilitate their operations in the Democratic Republic of the Congo. The Panel has information that diamond revenues were used to pay for arms purchases for FAC and indirectly used to finance the contribution of the

Government of the Democratic Republic of the Congo to salary payments for ZDF. It has received a document recording a transfer of MIBA funds requested by Brigadier General François Olenga for the purchase of weapons for FAC.

55. Oryx Natural Resources has a close working relationship with Avient Air, a military company which supplies services and equipment to ZDF and FAC. In April 2002, Avient Air brokered the sale of six attack helicopters to the Kinshasa Government. Bank records show several transactions between Avient and accused trafficker Leonid Minim. Under the management of Andrew Smith, a former British army captain, Gerry O'Brien and Lewis Kling, Avient was contracted to organize bombing raids into the eastern Democratic Republic of the Congo in 1999 and 2000. At the same time Avient organized logistics and transportation of mining equipment for Sengamines and enjoyed security clearance as a military company working with ZDF. The Panel has a record of a payment in September 2001 of \$35,000 from the Oryx account at Banque Belgoise to Avient Ltd., Avient Air's sister company based in the United Kingdom.

56. John Bredenkamp, who has a history of clandestine military procurement, has an investment in Aviation Consultancy Services Company (ACS). The Panel has confirmed, independently of Mr. Bredenkamp, that this company represents British Aerospace, Dornier of France and Agusta of Italy in Africa. Far from being a passive investor in ACS as Tremalt representatives claimed, Mr. Bredenkamp actively seeks business using high-level political contacts. In discussions with senior officials he has offered to mediate sales of British Aerospace military equipment to the Democratic Republic of the Congo. Mr. Bredenkamp's representatives claimed that his companies observed European Union sanctions on Zimbabwe, but British Aerospace spare parts for ZDF Hawk jets were supplied early in 2002 in breach of those sanctions. Mr. Bredenkamp also controls Raceview Enterprises, which supplies logistics to ZDF. The Panel has obtained copies of Raceview invoices to ZDF dated 6 July 2001 for deliveries worth \$3.5 million of camouflage cloth, batteries, fuels and lubricating oil, boots and rations. It also has copies of invoices for aircraft spares for the Air Force of Zimbabwe worth another \$3 million.

Case study of a commercial chain involving diamonds

57. The Democratic Republic of the Congo-Zimbabwe joint venture Minerals Business Company represents Zimbabwe's interests in the lucrative diamond trade of the Democratic Republic of the Congo. It buys and markets production from the joint venture Sengamines, which has attempted to conceal its links with ZDF. The Minerals Business Company uses Zimbabwe's military and political influence to evade the legal requirements of the Democratic Republic of the Congo and to avoid paying the costly licensing fees. The refusal of MBC to honour its obligations to the public treasury has prompted official complaints from the Ministry of Mines demanding that MBC comply with the law. MBC officials have asserted that Zimbabwean entities are not obliged to adhere to the laws of the Democratic Republic of the Congo.

58. The Minerals Business Company allows a limited number of other diamond companies to take advantage of the privileged status it enjoys in Kinshasa. Sandrian Mining, based in Kinshasa, has a contractual relationship with MBC. Thorntree Industries, a joint venture between South Africa-based Nico Shefer's Tandan group and ZDF, also has contracts with MBC, as does Mixen Trading, which has offices in Zimbabwe. MBC sells to the United States-based Flashes of Color, and the Swiss-registered Ibryn & Associates, as well as to the Belgian-registered Jewel Impex, Komal Gems and Diagem. One of the most important trading partners of MBC is the Belgian-based company Abadiam, which buys from MBC as well as directly from Sengamines. The Panel has bank records dated September 2001 showing transfers of more than \$1 million from the Belgian account of Oryx Natural Resources to Abadiam.

Collapse of the public sector; armed conflict and its humanitarian consequences

Kasai Oriental and Kasai Occidental

59. The diversion of funds from State companies and public coffers, by fraud or under the pretext of *effort de guerre*, has contributed to eliminating funds available for public services. The public sector in the two Kasai Provinces has effectively disappeared. Of the five water production plants in Kasai Oriental, four plants

no longer function and the fifth, in the city of Mbuji Mayi, is said to function at less than 20 per cent capacity. Of the six water production plants in Kasai Occidental, five no longer function; the sixth, in the city of Kananga, operates at best at 10 per cent capacity.

60. Government officials blame the precipitous decline in public spending on the war. Most soldiers are unpaid and become social predators, financing themselves through theft and pillage, living off the population they are presumed to protect, and provincial governments make little effort to discourage them. Taxes and licensing fees have nevertheless increased, as have the forced acquisition of the resources of State enterprises in the name of the war effort. The Government has therefore benefited from the state of war by using it as a pretext, not only to justify an increase in demands on the population to increase government revenues, but also to justify a decrease in expenditure. Insecurity in the Government-controlled area is only a small part of the consequences of support for the military in war. It is much more a consequence of the deliberate neglect of the military, who by virtue of this neglect turn their weapons on the population.

61. The pretext of war, increased government levies, unpaid salaries and the absence of government services have combined to precipitate a collapse in the urban economies of Mbuji Mayi, Kananga and, to a lesser extent, of Lubumbashi. Banks no longer offer credit in the Kasai Provinces. The absence of local credit and the decline of road transport have forced most local industries in Kananga to close.

Katanga

62. Lubumbashi, and southern Katanga generally, have been affected by Rwanda's presence in the north. The occupation by RPA of the northern portion of Katanga, the rich agricultural plains around Nyunzu and Kongolo, has cut the southern portion off from what was once the breadbasket of Katanga.

63. A recent study by Médecins sans Frontières in Kilwa, a representative town in southern Katanga south of the front line, with a population of 350,000, has found a death rate for children under 5 of 3.2 per 10,000 per day. Over the course of a year this means that 12 per cent of all children under 5 years old will die, and one out of every four children die over a period of two years. Notably, virtually none (0.6 per

cent) of the deaths resulted from violence. Deaths instead result from illness — malaria and dysentery: conditions closely linked to malnutrition and the absence of medical facilities.

64. Malaria and dysentery are treatable. International non-governmental organizations — World Vision and Médecins sans Frontières in this case — try to step in where government facilities no longer function. However, the soaring death rates in the Government-held areas around Ankoro, Kilwa, Dubie and Lwanza, especially where medical facilities are non-existent and where State medical professionals receive no salaries, are indications of Government negligence. The rates of malnutrition and mortality are measures of that negligence and are the consequence, in part, of diverting State resources from State companies such as Gécamines into the private accounts of Zimbabwean individuals, other private interests, and Congolese individuals.

IV. Rwanda-controlled area

65. The claims of Rwanda concerning its security have justified the continuing presence of its armed forces, whose real long-term purpose is, to use the term employed by the Congo Desk of the Rwandan Patriotic Army, to “secure property”. Rwanda’s leaders have succeeded in persuading the international community that their military presence in the eastern Democratic Republic of the Congo protects the country against hostile groups in the Democratic Republic of the Congo, who, they claim, are actively mounting an invasion against them.

66. The Panel has extensive evidence to the contrary. For example, the Panel is in possession of a letter, dated 26 May 2000, from Jean-Pierre Ondekane, First Vice-President and Chief of the Military High Command for RCD-Goma, urging all army units to maintain good relations “with our Interahamwe and Mayi-Mayi brothers”, and further, “if necessary to let them exploit the sub-soil for their survival”.

67. Prominent members of a Congolese Hutu group, Benemugabohumwe, recently began to encourage Hutus living in the Democratic Republic of the Congo, some of them opposition groups, to work instead for the cause of Rwanda in the country. Eugene Serufuli, RCD-Goma Governor of North Kivu Province and reportedly himself a Hutu, has promoted a non-

governmental organization, Tous pour la paix et la démocratie, aiming to conscript Hutus of all political persuasions to throw in their lot with the Rwandans. Their purpose, as described by the *Nord Kivu Reveil* in a circular dated 16 April 2002, has been to “express allegiance to Rwanda by joining its efforts to control the eastern Democratic Republic of the Congo”.

68. A 30-year-old Interahamwe combatant living in the area of Bukavu described the situation in a taped interview with a United Nations officer in early 2002.

We haven’t fought much with the RPA in the last two years. We think they are tired of this war, like we are. In any case, they aren’t here in the Congo to chase us, like they pretend. I have seen the gold and coltan mining they do here, we see how they rob the population. These are the reasons for their being here. The RPA come and shoot in the air and raid the villagers’ houses but they don’t attack us any more. If you are lucky, and you have a big brother in the RPA, he might be able to get you some food and ammunition.

69. On the basis of its analysis of considerable documentation and oral testimony, the Panel holds the view that the rationale for Rwanda’s presence is to increase the numbers of Rwandans in the eastern Democratic Republic of the Congo and to encourage those settled there to act in unison to support its exercise of economic control. The recent departure of troops should not be interpreted as a sign of Rwanda’s willingness to reduce its considerable involvement in the evacuation of valuable resources, to reduce the level of armed conflict or to diminish the humanitarian crisis in the region. Economic exploitation in its various forms will continue, relying on a less conspicuous armed force and alternative strategies for carrying out the exploitative activities.

The elite network

70. The elite network’s operations in the eastern Democratic Republic of the Congo are managed centrally from the RPA Congo Desk, which serves to link the commercial and military activities of RPA. The Panel has described this function in some detail in previous reports. The Panel continues to receive documentation on ways in which the proceeds of the RPA commercial wing finance an armed presence. As an illustration, the Panel has recently acquired

documents showing coltan sales being negotiated by ranking Congo Desk officials. The Panel has copies of faxes sent from the office of RPA Major Dan Munyuza on behalf of Maniema Mining Company and another fax sent from the office of RPA Chief of Staff General James Kaberebe.

71. While revenues and expenditure in the Congo Desk are considerable, they are kept strictly separate from Rwanda's national budget. A reliable source associated with the Congo Desk has calculated that income to the Desk provided 80 per cent of all RPA expenditure in 1999. The official Rwandan budget for 1999 allocated \$80 million to the military. If this official budget allocation of \$80 million represents the 20 per cent referred to by the Panel's source as the portion of military expenditure not covered by the Congo Desk, then the total military budget from all sources would approximate \$400 million. This comes to 20 per cent of GNP for 1999 and approximately 150 per cent of recurring budget expenditure for that year. The Congo Desk's contribution to Rwanda's military expenses would therefore have been in the order of \$320 million. The activities funded by revenues generated by the Congo Desk strongly shape Rwanda's foreign policy and directly influence national decision-making in a number of domains. These transactions are, however, hidden from the scrutiny of international organizations.

72. The elite network maintains close commercial ties with transnational criminal networks, including those of Victor Bout, Sanjivan Ruprah and Richard Muamba Nozi. Victor Bout's aircraft are utilized for a number of purposes including transport of coltan and cassiterite, the transport of supplies into mining sites, and the transport of military troops and equipment. During the last major military campaign in Pweto, Democratic Republic of the Congo, Victor Bout's aircraft were used to transport RPA personnel to the area.

73. While Sanjivan Ruprah has frequently worked within Victor Bout's criminal organization, he maintains an independent affiliation with the Congo Desk in Kigali. On 7 February 2002, Mr. Ruprah was arrested in Belgium on suspicion of planning to provide 6 million new zaire banknotes — still valid in the eastern Democratic Republic of the Congo — to RCD-Goma with financing by diamond dealers based in Belgium. The President of RCD-Goma, Adolphe Onusumba, who has kinship and business ties with

Mr. Ruprah, played a key role in this counterfeit operation. Another group, the Muamba Nozi counterfeiting operation, also provides counterfeit Congolese francs to RCD-Goma. Its regional base of operations is located at Nairobi, where they print and distribute to the eastern Democratic Republic of the Congo large quantities of counterfeit Congolese francs. Officials in the Central Bank of Kinshasa have informed the Panel that Mr. Muamba Nozi's counterfeit activities are politically motivated and designed to deliberately destabilize the present regime by weakening the currency.

Strategies and sources of revenue

Coltan

74. The end of the SOMIGL coltan monopoly in April 2001 was less a consequence of the falling price of coltan and more a consequence of Rwanda's determination to capture more of the revenue that was being taken in taxes by the RCD-Goma rebel administration. The termination of the agreement with SOMIGL made it possible for RPA to frustrate the efforts of RCD-Goma to raise revenue for its own purposes.

75. The bulk of coltan exported from the eastern Democratic Republic of the Congo, as much as 60 to 70 per cent, has been mined under the direct surveillance of RPA mining *détachés* and evacuated by aircraft from airstrips near mining sites directly to Kigali or Cyangugu. No taxes are paid. Rwandan military aircraft, Victor Bout's aircraft and small airline companies are used in the evacuation of the coltan. RPA has maintained control over most of the coltan sites where rich deposits are found, where the percentage of tantalum is high, and where local airstrips are accessible. A variety of forced labour regimes are found at sites that have been managed by RPA mining *détachés*, some for coltan collection, some for transport, others for domestic services. Many accounts report the widespread use of prisoners imported from Rwanda who work as indentured labour.

76. A smaller portion, perhaps 15 to 25 per cent of the total coltan exported, is purchased by *comptoirs* owned by Rwandans who buy from local *négotiants* at remote coltan sites or from the agents of local defence groups. More typically these *comptoirs*, owned by Rwandan army officers or those closely linked to the

S/2002/1146

Government of Rwanda, such as MHI *comptoir*, Eagle Wings or Rwanda Metals, have obtained their own mining sites and conscript their own workers to exploit the sites under severe conditions.

77. The smallest portion of coltan is purchased by the few remaining Congolese-owned *comptoirs* at one of the large number of coltan sites in remote areas. Most of the Congolese *comptoirs* have found it impossible to compete with the RPA or Rwanda-owned *comptoirs*.

78. As mining profits to the Congo Desk have increased, the share of RCD-Goma has declined. The Congo Desk has perennially deprived its junior partner, RCD-Goma, of any significant share in resources and prerogatives, and RCD-Goma has perennially complained. RCD-Goma administrators have frequently pointed out that they were unable to manage their army without sufficient revenue. Lacking financial support, the ANC brigades have turned to pillaging villagers throughout the eastern Democratic Republic of the Congo. The third Brigade has stolen a large number of cattle around Kalemie, and the first Brigade has taken diamonds from Opala. The Panel possesses extensive documentation on these activities. Most of these rebel forces are under the command of RPA officers. They have little hesitation, when so directed, in attacking local self-defence groups who obstruct their commercial operations, to eliminate specific enemies, to provide security around gold, coltan and diamond rich areas, to provide police services in urban areas and occasionally to keep a force present along the front lines. Since ANC troops are neither paid nor disciplined, they use their weapons to prey on the population, frequently burning whole villages to acquire property and food.

Case study of a commercial chain involving coltan

79. Eagle Wings Resources International, a coltan *comptoir* in Bukavu, is a subsidiary of Trinitech International Inc., based in Ohio, United States. Eagle Wings has offices in Rwanda, Burundi and the Democratic Republic of the Congo. The manager of Eagle Wings in Kigali has close ties to the Rwandan regime. Consequently, Eagle Wings operates in the Democratic Republic of the Congo as a Rwanda-controlled *comptoir* with all the privileges derived from this connection. Eagle Wings is not obliged to fulfil its full responsibilities to the public treasury managed by the RCD-Goma administration. Like other

Rwanda-controlled coltan *comptoirs*, Eagle Wings collaborates with RPA to receive privileged access to coltan sites and captive labour.

80. Approximately 25 per cent of Eagle Wings coltan is shipped from Kigali to the Ulba Metallurgical Plant of NAC Kazatomprom, in Kazakhstan. Another 25 per cent is sold to the parent company of Eagle Wings, Trinitech International Inc. in the United States, which arranges for sales to both Ulba and to the Chinese processing facility at Ningxia Non-Ferrous Metals Smelter (NNMS). H. C. Starck, based in Germany and a subsidiary of the transnational corporation Bayer AG, purchases about 15 per cent of Eagle Wings coltan. H. C. Starck has denied on numerous occasions obtaining coltan originating from Central Africa. In a press statement issued on 24 May 2002, H. C. Starck reiterated that the company had purchased no material originating in Central Africa since August 2001. The Panel possesses documents showing the contrary. In the same press release, H. C. Starck claimed that its coltan originates from "peasant suppliers" and not from rebel groups. In fact, no coltan exits from the eastern Democratic Republic of the Congo without benefiting either the rebel group or foreign armies.

81. In one instance on which the Panel has documentation, Mozambique Gemstone Company provided false documents establishing Mozambique as the origin of a shipment of coltan originating in Rwanda and transiting through South Africa. Mozambique Gemstone Company then sold the consignment to AMC African Trading and Consulting Company Ltd., based in South Africa, which subsequently sold the consignment to H. C. Starck Ltd. in Rayong, Thailand, on 21 September 2001. H. C. Starck sent a letter of credit for this consignment on 9 May 2002 to Chemie Pharmacie Holland, which oversaw the transaction, and which is a commercial partner of Eagle Wings providing logistical and financial services. Eagle Wings is the only coltan source for Chemie Pharmacie. Eagle Wings has no operations in Mozambique.

82. The Panel has also had direct contacts with the Chinese processing facility, NNMS, to determine whether they use coltan originating in the eastern Democratic Republic of the Congo. NNMS categorically denied doing business with "any individual or any entity that represents somebody or some entity in the Democratic Republic of the Congo." In fact, a number of brokers trading in coltan

originating from the eastern Democratic Republic of the Congo have informed the Panel of their sales to NNMS. A publicity presentation prepared by NNMS itself has stated that the reason that they are able to provide low prices for their output is that NNMS buys significant amounts of cheap raw material from Central Africa. One NNMS report notes that 50 per cent of all coltan purchased for processing originates in Central Africa. Frequent follow-up Panel enquiries with NNMS were ignored.

Diamonds

83. The diamond market was the prize Rwanda fought Uganda to have for its own. After the last clash in Kisangani in June 2000, RPA worked through the RCD-Goma administration to funnel all the diamonds in Kisangani through the Congo Desk control. The technique was to oblige all local diamond traders to sell to one principal *comptoir* holding exclusive export rights.

84. The Congo Desk gave Aziz Nassour the first monopoly. Aziz Nassour fell out of favour with the Congo Desk and was replaced by an Israeli diamond dealer, Philippe Surowicz. Diamond traders in Kisangani remember the Surowicz period as a "reign of terror". Diamond sellers frequently reported entering "Monsieur Philippe's" *comptoir* only to be confronted with RPA military who named a derisory price and took the diamonds. The Congo Desk replaced Mr. Surowicz in October 2001 with a Lebanese, Hamad Khalil, who worked through the Bakayoko *comptoir* in Kisangani.

85. In mid-November 2001, the Department of Lands, Mines and Energy of RCD-Goma conducted a study of Hamad Khalil's performance in the first month of his tenure. His quota had been set at a minimum of \$500,000 per month. Mr. Khalil met his quota exporting diamonds valued at \$576,380 over a period of 27 days. The performance was adequate, but it was far below the Kisangani sales potential of up to \$2 million per month. His poor performance raised the suspicion that the Congo Desk was using Mr. Khalil to divert revenues that might otherwise accrue to the RCD-Goma administration. A similar inspection of diamond production in the Sankuru and Lodja areas of Northern Kasai the week before had also revealed that RPA officers were clandestinely taking large quantities of diamonds out of Northern Kasai directly to the Congo Desk in Kigali. RCD-Goma determined that Mr.

Khalil was undervaluing the diamonds, and the consequence was a reduction in taxes payable to RCD-Goma's public treasury as well as a greater margin of profit for Mr. Khalil and the Congo Desk. The study concludes that "The public treasury would have four times the present revenue from diamonds were it not for fraudulent practices and the under-valuation of diamonds".

Imports, taxation and requisition by the public sector

86. The controversial "conflict" diamonds from Kisangani are marketed by criminal networks. Proceeds from these criminal sales are laundered by the purchase of large quantities of household goods in Dubai — sugar, soap, cloth and medicines — which are then imported to the Democratic Republic of the Congo and offered to local sellers at attractive prices. The Rwandan wholesalers use the profits in Congolese francs to buy dollars and, to close the trade circuit, to purchase diamonds.

87. The interest of the RPA commercial wing in selling consumables at attractive prices is not only to launder money from criminal diamond sales, but also to place the once-thriving Kisangani economy under Rwanda's control. The cloths that were once manufactured at the Kisangani Sotexki factory and renowned for their quality no longer compete with the cheaper imports, and the result is that the Sotexki labour force, once 2,000, now stands at 100. The palm oil once produced locally at the Unilever-owned plant can no longer compete with the imported oil that is sold in Kisangani at a third of the price of locally produced oil. The Unilever-owned palm oil plants in Kisangani are practically at a standstill. Weakening local production not only undermines the local manufacturing economy and makes the Kisangani population captive consumers, it also shifts Kisangani's manufacturing economy to Kigali.

88. Another strategy for raising revenue is to use RCD-Goma's public sector facade to requisition funds from public enterprises. On 21 November 2001, the Secretary General of RCD-Goma requisitioned by decree all revenues generated by public utilities and parastatals. On the following day the Secretary General annulled all existing collective agreements for workers in those enterprises. The decrees were applicable to all public enterprises, including the water utility, the airport authorities, the electricity utility, the road and

transport authority among others. RCD-Goma declared the requisitions to be in the public interest. Within a month, the water utility lacked sufficient funds to purchase water purification chemicals in Kisangani and Bukavu and power stations stopped functioning for lack of necessary repairs. The International Committee of the Red Cross has stepped in to provide 60 tons of chemicals for water purification and has financed costly repairs at Tshopo power station to avert a discontinuation of water supply in Kisangani and avert a cholera outbreak. The parastatal transport company ceased to function, and the airport authorities appealed to RCD-Goma to restore a portion of the requisitioned funds since no salaries had been paid for six months.

89. Following a decree on 15 March 2002, new taxes were introduced and all existing tax rates have been increased. Over an 18-month period, since the previous tax decree of September 2000, taxes on electrical consumption have increased by 200 per cent. Licences for trading in agricultural products increased fourfold. Most licensing fees for operating a business were doubled or tripled. The number of different taxes collected in the area under RCD-Goma administration has increased four times since 1998. None of the tax revenue is used to provide public services.

Armed conflict and its consequences

90. Medical practitioners, church workers, and non-governmental organizations in northern Katanga all attest to rapidly escalating disorder in Kalemie and an increased use of arms by a wide range of groups, some affiliated with RCD-Goma and others not. Fighting between RPA and FAC has been limited to Rwanda's seizure of northern Katanga in November 1998 and a government counter-offensive in October 2000. These confrontations resulted in considerable displacement of populations in the path of troop movements. However, it was the aftermath of those confrontations that resulted in the most severe armed conflict. Rwandan troops seized material for their campaigns. The RCD-Goma third ANC Brigade, following Rwanda's example in their own random fashion, seized food and other property. Armed movements arose among local populations for self-defence, and occasionally these local militias banded together with other local militias to create larger armed groups. The Panel has received extensive documentation from local lawyers, Catholic and Protestant churches, the Fédération des Entreprises

au Congo and others detailing thefts of cattle valued at more than \$15 million, thefts of over \$1 million worth of retail goods and the destruction or fraudulent sale of equipment from the Société nationale de chemin de fer du Congo.

91. The Catholic Church in the eastern Democratic Republic of the Congo has spoken out boldly about the thefts, killings, torture, extortions, rapes and piracy on Lake Tanganyika perpetrated originally by RPA and continued by ANC, the RCD-Goma police and the Banyamulenge militia. The Church, and most notably the Bishop of Kalemie-Kirungu, recently headed a campaign to expose these abuses. Directors of RCD-Goma's Department of Security and Information responded by threatening to kill prominent church leaders. The Catholic Diocese published a list of those threats on 15 May 2002.

92. The multiplication of armed forces and fighting in the interior have all but destroyed farm production on the rich plateau in the interior of northern Katanga. Excesses by RPA in requisitioning resources for the "war effort" set a standard for behaviour by the far less disciplined ANC rebel forces, who have ravaged the countryside. Growers are reluctant to invest in crops when they are so likely to be stolen. Large numbers of persons have been displaced from their homes and have abandoned their lands out of fear. The Office for the Coordination of Humanitarian Affairs has estimated that, in the northern Katanga area alone, 350,000 displaced persons are living away from their homes, with neighbours, in the cities or in the bush.

93. Armed conflict along the Masisi-Walikale-Goma axis arises from tensions between the large numbers of RPA in place to manage mining operations and Hutus who may be resident, but who are also imported or conscripted by Rwandan forces to carry out mining under forced labour conditions. Separate Rwanda-owned *comptoirs* have quarrelled among themselves for access to sites. RPA forces have attacked and burned villages to seize coltan mined by some Hutu groups or local villagers. The Panel has taken testimony from villagers who have been forced to leave their villages following attacks. With minor exceptions, the objective of military activity is to secure access to mining sites or ensure a supply of captive labour.

94. Population displacement is the outcome of frequent armed conflict, with the predictable consequences of food insecurity, malnutrition and high

mortality rates for both the displaced and host populations. The Office for the Coordination of Humanitarian Affairs estimated that 1.5 million persons were displaced in March 2001 in the areas occupied by Rwanda in North and South Kivu, Maniema and Katanga, nearly 14 per cent of the population. More than three quarters of families living in the rural areas have probably been forced to move at least once in the last five years. This degree of armed conflict undermines local authority and encourages an abusive social environment. Public infrastructure is destroyed. School enrolment in Shabunda has dropped 56 per cent since 1998. Men are led to abuse women on a surprising scale throughout the eastern Democratic Republic of the Congo. International non-governmental organizations have provided comprehensive reports about groups of women being taken hostage and submitted to long periods of sexual abuse. Children become instruments of war, forced to work in the mines and conscripted into armed forces. United Nations officials have suggested that the number of child soldiers in the rebel armies is much higher than reported by the rebel administrations, and that 50 per cent of local defence and Mayi-Mayi groups are children.

Malnutrition and mortality

95. Malnutrition studies carried out by non-governmental organizations in both northern Katanga and the Kivus have shown that, in some places, as many as 25 to 30 per cent of all children under 5 years are malnourished. In most cases, this is due to the large numbers of displaced persons who have been forced to leave their own agricultural production and have taken refuge in nearby host villages. A number of studies have shown the close link between elevated malnutrition levels and mortality rates in this region.

96. The most commonly quoted conclusion from the International Rescue Committee's surveys is that 2.5 million more people died since the beginning of the war than would have died had the war not occurred. While the study is directly relevant to the sample population of 1.3 million, the International Rescue Committee has assumed that conditions are sufficiently similar throughout all five provinces of the eastern Democratic Republic of the Congo to justify applying the mortality rates found in the sampled population to the larger population in all five provinces. The study

covered the period from August 1998 to April 2001. If one assumes mortality to have continued at the same rate, this would mean that more than 3.5 million excess deaths would have occurred from the beginning of the war up to September 2002. These deaths are a direct result of the occupation by Rwanda and Uganda. Extensive mortality, especially mortality among children, is the consequence of a cycle of aggression, the multiplication of armed forces, a high frequency of conflict and its consequences, especially displacement. One should not be surprised to find, in areas most affected by the conflict, a mortality rate for children under 5 years of 35 per cent.

V. Uganda-controlled area

97. The objective of the elite network in the areas controlled by Uganda has been to exercise monopolistic control over the area's principal natural resources, cross-border trade, and tax revenues for the purpose of enriching members of the network. Notwithstanding the current political rapprochement and the apparent momentum towards normalizing relations between Uganda and the Democratic Republic of the Congo, the elite network continues to increase its economic hold over the area.

The elite network

98. The elite network operating out of Uganda is decentralized and loosely hierarchical, unlike the network operating out of Rwanda. The Uganda network consists of a core group of members including certain high-ranking UPDF officers, private businessmen and selected rebel leaders/administrators. UPDF Lieutenant General (Ret.) Salim Saleh and Major General James Kazini are the key figures. Other members include the Chief of Military Intelligence, Colonel Noble Mayombo, UPDF Colonel Kahinda Otafiire and Colonel Peter Karim. Private entrepreneurs include Sam Engola, Jacob Manu Soba and Mannase Savo and other Savo family members. Rebel politicians and administrators include Professor Wamba dia Wamba, Roger Lumbala, John Tibasima, Mbusa Nyamwisi and Toma Lubanga.

99. The network continues to conduct activities through front companies such as the Victoria Group, Trinity Investment, LA CONMET and Sagricof. Each

S/2002/1146

of these companies may concentrate on one or two commercial niches, though these may change. The role of the companies is to manage their respective niche activities by assembling the personnel, logistics and occasionally the financing for the operations.

100. The network generates revenue from the export of primary materials, from controlling the import of consumables, from theft and tax fraud. The success of the network's activities in the Democratic Republic of the Congo relies on three interconnected features, namely, military intimidation; maintenance of a public sector facade, in the form of a rebel movement administration; and manipulation of the money supply and the banking sector, using counterfeit currency and other related mechanisms.

101. The Uganda People's Defence Forces and their associated rebel militias have been used as the de facto enforcement arm of the network, ensuring the network's pre-eminent commercial position through intimidation, and the threat and use of force. UPDF or militias associated with individual UPDF officers have established physical control over areas containing commercially viable natural resources — coltan, diamonds, timber and gold. They establish authority in major urban and financial centres, such as Bunia, Beni and Butembo, where they use the rebel administration as a public sector facade to generate revenue, specifically to collect taxes under various pretexts, including licensing fees for commercial operators, import and export duties and taxes on specific products.

102. Uganda has recently agreed to withdraw all UPDF troops except for a reinforced battalion in Bunia and a small number of units on the slopes of the Ruwenzori Mountains. In anticipation of this withdrawal, a paramilitary force is being trained under the personal authority of Lt. General Saleh which, according to the Panel's sources, is expected to continue to facilitate the commercial activities of UPDF officers after UPDF have departed. This military group draws on dissidents from Jean-Pierre Bemba's MLC, members of the Uganda-supported RCD-Congo including its leaders Professor Kin-kiey Mulumba and Kabanga Babadi, and others in the north-eastern Democratic Republic of the Congo who have supported UPDF in the past. It has been reported that Lt. General Saleh discreetly provides financial support for this new rebel group. The Panel's sources have indicated that Heckie Horn, Managing Director of Saracen Uganda

Ltd., is a key partner with Lt. General Saleh in supporting this paramilitary group and that Lt. General Saleh himself is a 25 per cent owner in Saracen. Saracen's managing director also provides military training and arms to members of this group. In an interview with Panel members, the Managing Director of Saracen Ltd. categorically denied any involvement with Lt. General Saleh's activities in the north-eastern Democratic Republic of the Congo.

103. Panel sources report that Lt. General Saleh and Mr. Horn consulted President Joseph Kabila to obtain support for this covert operation. Its primary objective has been to replace Mbusa Nyamwisi with Roger Lumbala as head of RCD-K/ML in order to ensure access to the diamond-rich areas around Buta and Isiro controlled by Mr. Lumbala's rebel group, RCD-National. This objective has largely been achieved. Their more long-term objective is to bring about the downfall of Jean-Pierre Bemba, adding the growing number of dissidents in Mr. Bemba's ranks to the new rebel movement RCD-Congo. With increased numbers and training, they will then be in a position to confront RCD-Goma and Rwanda.

104. Members of the Ugandan network are typically tax exempt. The Panel is in possession of documents showing that the network uses its control over the RCD-K/ML rebel administration to request tax exonerations for imports of high-value commodities. The granting of numerous tax exonerations to UPDF Colonel Otafiire between late 2001 and early 2002 is one of numerous cases. Not only did Colonel Otafiire benefit financially but, eventually, those exonerations forced local competitors out of markets in Bunia and Beni, leaving the petrol trade largely under the control of the network.

105. Local commercial operators are, however, required to pay substantial import and export duties. These operators may be favoured with discounted tax payment deals, in the form of prefinancing arrangements, but tax payment for local operators is mandatory. Prefinancing arrangements involve the payment by an importer of discounted tax payments in exchange for a financial payment to an authorizing rebel politician or administrator. None of these payments to the rebel administration is used to finance public services.

106. The network uses its economic influence to control the banking sector, which in turn allows the

network to further control access to operating capital for commercial operators in the area. Economically speaking, this region has become a captive region, where the types of commercial ventures are manipulated and the viability of local businesses is controlled. Furthermore, the flow of money is regulated by the network through currency trading and the widespread introduction of counterfeit Congolese francs.

107. As in the past, the network continues to involve the transnational criminal group of Victor Bout. Mr. Bout recently purchased the Uganda-based non-operational airline company Okapi Air. The purchase of the company allowed Victor Bout to use Okapi's licences. The company was subsequently renamed Odessa. The Panel is in possession of a list of outbound flights from 1998 to the beginning of 2002 from Entebbe International Airport, which confirms the operational activities of Mr. Bout's aircraft from Ugandan territory. Currently, Mr. Bout's aircraft share the flight times and destinations (slots) with Planet Air, which is owned by the wife of Lt. General Salim Saleh and which facilitates the activities of Mr. Bout by filing flight plans for his aircraft.

Strategies and sources of revenue

Coltan

108. Coltan has been exploited extensively in Orientale Province by various armed groups under the protection of UPDF. A number of coltan operations, especially under the supervision of UPDF Colonels Muzora and Burundi, have been coordinated under the front company Trinity Investment, where UPDF Major General Kazini is the principal figure. Armed groups frequently identified with militias under the command of UPDF officers manage sites in remote locations where diggers pay a daily fee to exploit an area.

Case study of a commercial chain involving coltan

109. During March 2002, Panel members met with Valentina Piskunova who, together with her husband Anatoly Piskunov, represents and operates the company LA CONMET from its base in Kampala. During discussions with the Panel, Ms. Piskunova explained that, because of the collapsed international coltan market, prices for the mineral in the eastern Democratic Republic of the Congo had dropped

dramatically. However, Ms. Piskunova told the Panel that the continuing international interest in coltan from the Democratic Republic of the Congo is due to the "very low" labour costs for extracting the mineral. Therefore, the company continued to buy coltan from its office at Butembo in the Democratic Republic of the Congo. She said that their purchase price for coltan with a 30 per cent tantalum content was \$10 per kilogram. The same coltan was then sold for \$17 per kilogram.

110. Ms. Piskunova went on to tell the Panel that the company's coltan was transported by road across the border between the Democratic Republic of the Congo and Uganda at Kasindi to Entebbe International Airport, where it was then transported by Boeing 707, via Sharjah, United Arab Emirates, at a cost of \$140,000 per flight, to Ulba, Kazakhstan, for processing.

111. In addition to the profit made on the sales of coltan, LA CONMET also experienced savings by being granted "full exoneration" for "all activities involving exploitation for the territory of Beni-Lubero" (Democratic Republic of the Congo), including freedom from paying fiscal and customs duties. The document granting the exonerations is in the possession of the Panel. It was signed at Kampala by Mbusa Myamwisi, then Commissioner General for RCD-Kisangani, on 5 January 2000, identifying Salim Saleh as the owner of LA CONMET and designating his representatives as "the Russian group LA CONMET".

Diamonds

112. The network coordinates all elements of the diamond trade, local buying houses, Lebanese exporters, army protection from UPDF and individual militias, tax exonerations from the public sector, and Lebanese connections in Antwerp, under the aegis of the front company, the Victoria Group. Considerable evidence available to the Panel has named the Lebanese-born, Khalil Nazeem Ibrahim, and another known as Mr. Abbas, as the present focal points in Kampala for Victoria's diamond operations. The Panel has credible evidence that Khalil Nazeem Ibrahim used the capital and marketing services of Hemang Nananal Shah, proprietor of Nami Gems in Antwerp. Lt. General Saleh is recognized by the Panel's sources in Bunia, Kisangani and Kampala as the founder and director of the Victoria Group and as the mastermind of its operations.

113. The Lebanese individuals, together with their families, who are commonly named in connection with the Victoria Group, are also regarded as closely associated with the Lebanese families Khanafer and Ahmad. Khanafer Nahim, in particular, has been named as a key figure in Victoria Group operations. He is well known by a number of national intelligence and police organizations for the production of counterfeit currency, money-laundering and diamond smuggling on behalf of generals who were prominent in President Mobutu's time and are still interested in returning to power. The Victoria Group's use of counterfeit United States currency in Bunia to purchase gold from local *comptoirs* is widely known.

Tax fraud and the requisition of assets

114. Control over imports is as lucrative as the monopolization of exports. Exoneration from import duties gives the network an advantage in the north-eastern Democratic Republic of the Congo over local importers who pay duties and taxes. An across-the-board exoneration was recently proclaimed in the Protocole d'Accord issued by RCD-K/ML on 22 February 2002, which ensured Ugandan commercial operators complete exoneration from all taxes in the area under their control.

115. But increased profit margins from tax-free imports provide only a fraction of the benefits. Equally lucrative is access to the taxes themselves, monopolized by the network that uses the rebel administration's facade of a public treasury and its collection agents to raise revenue from local businessmen and the population at large. Hundreds of containers are imported each month into the Butembo, Beni and Bunia areas, and importers are obliged to pay an average of \$8,000 per container. Revenue from these import duties can be considerable. Some revenue is also diverted through prefinancing arrangements, which provide discounted import duties in exchange for kickbacks to rebel politicians. The Panel's sources insist that the revenues generated from import duties and prefinancing payments are diverted to UPDF officers. None is utilized for public services.

116. Trinity Investment's local transporters in Bunia, the Savo family group among others, carry agricultural products, wood and cattle from Bunia to Kampala exempt from UPDF toll barriers and export taxes. Trinity investment also works with another front company under the name of Sagricof to fraudulently

evacuate wood from North Kivu and the Ituri area. Tree plantations have been raided in the areas of Mahagi and Djugu along the north-eastern border with Uganda. Concerned citizens and research by local non-governmental organizations have identified Colonel Peter Karim and Colonel Otafiire, in addition to the Ugandan parliamentarian Sam Ngola, as key figures in the illegal logging and fraudulent evacuation of wood.

117. Many of the cattle removed have been forcibly taken from villages that have been the objects of attack by Hema militia supported by UPDF troops. The Panel has received reports from ranchers in areas to the south of Bunia as well as to the north in Mahagi detailing the removal of large numbers of cattle by UPDF troops. The representative of the Food and Agriculture Organization of the United Nations in Bunia has reported the more recent UPDF practice of offering protection to ranchers against attacks that they themselves have orchestrated, in exchange for regular payment in animals. UPDF have also required local butchers to hand over hides from animals butchered locally, and these hides are then transported to Kampala where they are reputedly sold to Bata Shoe Manufacturing.

Economic exploitation and ethnic conflict

118. The ongoing armed conflict between members of the Hema and Lendu clans stems, in part, from attempts by powerful Hema businessmen and politicians to increase the benefits they derive from the commercial activities of the elite network through their front companies, the Victoria Group and Trinity Investment, in the Ituri area.

119. Hema clan members, particularly members of the sub-clan Gegere, have justified the purchase of arms and the training of their own militia by the need to defend themselves against their traditional enemies, the Lendu. It is true that a long-festering dispute over land has resulted in discord between the two groups. Recently, however, the traditional enmity over land and the ongoing feud between the two groups is used as a rationale by the Hema, and especially by the extremist sub-clan Gegere, for importing arms and training their own militia with the ultimate unspoken objective of consolidating their economic strength in the region.

120. The Gegere sub-clan plays an important role in the operation of the elite network. The majority of transporters and local traders in Bunia come from this

group. Jacob Manu Soba, Manasse Savo and other members of the Savo family are among those who have provisioned UPDF in the area and who provide transport, logistical services and local commercial links. They have established close links with a succession of UPDF commanders and troops in the area and work closely with them in conducting cross-border trade.

121. The Hema fill an important niche in the operation of the criminal enterprises as truck owners and businessmen. They transport shipments of primary products from Ituri across the border to Uganda under the protection of UPDF troops and return with gasoline, cigarettes and arms, all exempt from taxation. They benefit from the trade and the generous profit margins, and from their association with the Trinity Group's Ugandan patrons. But their niche has remained marginal. They control none of the primary product exports themselves. They remain peripheral to the alliance between RCD-K/ML leaders, the Ugandan patrons and UPDF. The plot to replace Mr. Nyamwisi with Mr. Lubanga, which appears now to be a fait accompli in Bunia, is part of an attempt by these Hema traders to secure greater control over the spoils available to inside members of RCD-K/ML.

122. UPDF have created the conditions that require the presence of troops and their continued involvement in commercial operations. This has entailed providing arms to both sides in the ethnic conflict, the Lendu and the Hema. The consequent increase in ethnic fighting has resulted in UPDF being urged to assist in furthering the peace process in Bunia. This function was formalized in an official Protocole d'Accord signed on 22 February 2002 by Mbusa Nyamwisi and John Tibasima as President and Vice-President of RCD-K/ML and by Colonel Noble Mayombo as an official representative of the Government of Uganda. The Protocole d'Accord gave UPDF official responsibility for reducing the *conflits armés inter-ethnique en Ituri* and for assisting in bringing about a *retour de la paix* by keeping a contingent in place for observation and for negotiating an eventual long-term solution. In exchange, UPDF were promised a monthly stipend of \$25,000 from the RCD-K/ML public treasury, and all Ugandan enterprises that were approved by UPDF were accorded exoneration from all duties and taxes due to the rebel administration. This has given UPDF a legitimate cover for continuing military support for the elite network's activities in the area.

123. The Protocole d'Accord was signed a week after UPDF had been involved in a succession of attacks, from 11 to 16 February 2002, on villagers at Geti. The Panel's sources on the matter stated that the attack had been financed by Hema businessmen in Bunia. The UPDF motive was clarified even further in the course of a meeting with RCD-K/ML department chiefs on 12 July 2002, when a Panel member was informed that the Hema businessmen in question sought to have control over gold deposits in the Geti area, and that in fact the ethnic conflict was a minor issue.

Armed conflict and its consequences

124. UPDF military operations have contributed to the arming of large numbers. UPDF have trained the militia of their Ituri commercial allies, the Hema, and provoked the need for the victims of Hema attacks to defend themselves. Lendu villages have mounted their own local forces, and they in turn have frequently attacked Hema villages. The creation of local self-defence groups is a familiar pattern: local ethnic groups frequently assemble armed groups to defend their villages or collectivities.

125. Armed conflict has spread throughout society, as economic and personal insecurity reach extreme levels. Large numbers of young men join one or another armed group because they have no other means of finding food or medicine or because they have no one to care for them. The young men in the Armée Patriotique Congolaise are unpaid but are provided with weapons and a uniform giving them the tools for menacing others. Widespread armed activity is characterized by opportunistic and chaotic encounters. Children are killed, adult victims are eviscerated, women are raped, property stolen, houses burned, churches demolished and whatever infrastructure exists is laid waste.

126. In the cities, young men dressed in military uniform and equipped with guns target businesses, households and churches. In the countryside, armed groups target whole villages. The attack on the village of Mpingi on 24 December 2001 is illustrative. A small Mayi-Mayi group had teamed up with a group claiming to be members of a Hutu opposition to set up a roadblock on the road from Butembo to Kanyabayonga. When the roadblock drew the attention of APC, the Mayi-Mayi group withdrew to the west into the village of Mpingi where they sought refuge. APC followed

them in force and attacked the entire village of Mpingi, destroyed and burned houses, vandalized the church, razed the school and clinic and forced the residents to flee. Targeting whole villages with violence, brutally raping and murdering residents, removing livestock, food and other property and dispersing residents has been the trademark of armed aggression. A portion of those who flee seek protection in nearby villages, abandoning their own productive activities in their home village while becoming dependent on the resources of host populations.

127. A portion of the displaced population take refuge in urban areas where they benefit from somewhat better security but have little, if any, means for survival. Unemployment rates in cities and towns often reach 90 per cent. An income survey by civil society groups in Butembo found that 90 per cent lived on a few cents a day and ate one meal a day. Urban families break up to seek survival in separate ways. The women engage in prostitution, the older men may return to what remains of their villages or mining sites and the young men enter the rebel army, swelling both the ranks of its forces and the numbers of young boys without subsistence possessing weapons.

128. In March 2001, the Office for the Coordination of Humanitarian Affairs estimated that there were 620,000 displaced persons in North Kivu, which amounted to 16 per cent of the total population. The area covered by the Office's survey includes both Uganda-controlled and Rwanda-controlled areas, but the conditions surveyed are representative of the Uganda-controlled area. Given the frequency of displacement in the area, this would mean that four out of five rural residents have been forcibly displaced at one time or another since 1998. This is the highest number ever registered for Africa. These aggregates have been confirmed for specific localities surveyed by international non-governmental organizations.

129. The spread of HIV/AIDS, the large numbers of child soldiers and the rape of women are other consequences of the pervasive armed conflict. Many soldiers are young boys who hardly seem capable of wielding the weapons they carry. The issue of child soldiers surfaced when 700 young recruits from the Bunia area were discovered at a UPDF training camp in Tchakwanzi, Uganda, of whom 165 were between 14 and 16 years of age. The programme to demobilize those 165 children, two of whom were girls, has attracted considerable attention. The issue also

received attention recently when the Governor of Bunea, Jean-Pierre Molondo, revealed that, of the recruits being trained for the extremist Hema militia, 60 per cent were under the age of 18.

Malnutrition and mortality

130. Population displacement has a direct impact on agricultural production, food security and levels of malnutrition. The threat of attack and displacement is so prevalent in this area that farm families adopt farming strategies that minimize losses under conditions of extreme insecurity. They cease raising animals, since animals can be easily stolen. Fewer families raise protein-rich legumes, since these crops require attention through the growing cycle, and this attention can rarely be given. Malnutrition, in turn, substantially increases the exposure of the population to life-threatening illnesses.

131. The International Rescue Committee surveys provide the most comprehensive research into mortality in the eastern Democratic Republic of the Congo. None of the health zones sampled in its two major surveys was in the areas now controlled by Uganda. However, the pattern of armed conflict, population displacement, food insecurity and malnutrition in Uganda-controlled areas resembles the pattern that explains the very high mortality rates in the seven health zones where the research was conducted. The Committee's team judged the similarities to be sufficient to warrant extrapolating the results of areas sampled in the Kivus to the entire eastern Democratic Republic of the Congo, including areas under Ugandan control. The Panel concurs. One can expect the same range of mortality for children under 5, from nearly 30 per cent per year in areas of extreme insecurity without health facilities to 7 per cent in areas where there is less insecurity and some services. For the more than 20 million people living in the five eastern provinces, the number of excess deaths directly attributable to Rwandan and Ugandan occupation can be estimated at between 3 million and 3.5 million.

VI. Collaboration of the Panel with the Porter Commission in Uganda

132. During its previous mandate, the Panel's relations with the Judicial Commission of Inquiry headed by

Justice David Porter (Porter Commission) were occasionally strained. However, with the encouragement of Member States, notably the members of the Security Council, the Panel established an amiable working relationship with the Commission. This relationship is unique in the history of panels of experts mandated by the Council, given the degree and the nature of the cooperation developed between the two bodies.

133. Panel members held frequent discussions with the Porter Commission. From the outset, Justice Porter was critical of the quality of the Panel's reports and the credibility of its sources. At the same time, he claimed that the Commission's investigations, ongoing now for more than a year, were stymied primarily because of a "conspiracy of silence" within UPDF. Under the Commission of Inquiry Act, the Commission has the power to conduct searches and compel the production of documents and testimony.

134. The Panel made evidence available to the Commission, including copies of 12 letters and a statement from a witness, together with five original audiotapes containing testimony given by a primary source. These materials represent only a small sample of the documentation gathered by the Panel on the involvement of leading Ugandan military and senior Ugandan Government personnel. They provide evidence of criminal activity by such ranking Ugandan authorities. They show officials demanding extortionist payments and tax exonerations from Congolese rebel movements, including the UPDF Chief of Staff demanding that his vehicles transporting coltan be allowed to cross the border without paying export duties. The Panel also arranged for one of its sources to testify before the Commission at a special hearing in spite of the risk of exposure to the source. In exchange, the Porter Commission provided the Panel with copies of the testimony of certain high-ranking military officers, Government officials, private businessmen and other individuals who had appeared before it.

135. The Panel's many efforts to establish a constructive relationship with the Commission have mostly been met with attempts to dismiss its credibility. The Commission has challenged the authenticity of letters provided by the Panel that show significant payments to UPDF officers from rebel movement budgets, even when reliable witnesses have testified to their validity. It has submitted other documents signed by ranking officials to handwriting

analysis and used this analysis to imply that they may be forgeries. The analysis of those documents, however, suggested that the signatures were probably genuine. During a specially arranged hearing aimed at corroborating the authenticity of certain documents transmitted by the Panel, the Porter Commission submitted one of the Panel's informants to an unusually aggressive questioning designed to frighten the individual and discredit his testimony.

136. When the Commission recalled Major General James Kazini in May 2002 to question him on the basis of documents supplied by the Panel, the UPDF military commander finally admitted that the signatures on the documents were indeed his and accepted that the documents related to his actions as the former commander of UPDF operations in the Democratic Republic of the Congo. Justice Porter commented during the questioning that General Kazini, who had consistently denied under oath any involvement in such illicit economic exploits, had perjured himself repeatedly during both that hearing and his original testimony before the Commission the previous year. The head of the Commission also conceded, according to transcripts of the hearing, that the Panel's "allegations" about General Kazini's involvement in exploitation activities, including those related to the diamond trade and tax revenues, "were actually true". Justice Porter reconfirmed these observations in meetings with the Panel, again conceding that the conclusions of the Panel's earlier reports about this officer and the involvement of UPDF in the illicit exploitation were "right". In an electronic message dated 25 May 2002, Justice Porter wrote to the Chairman of the Panel regarding the documentary evidence provided and General Kazini's second appearance before the Commission. He expressed his appreciation to the Panel, saying, "We feel, and hope you agree, that with your assistance we have at last been able to break what we have described as a conspiracy of silence within UPDF, at least in relation to diamonds and 'security payments', and we are extremely grateful to you for enabling us to do so."

137. During the Panel's last meeting with the Commission in September 2002 in Kampala, Justice Porter explained that any recommendation by the Commission to refer an individual for criminal prosecution as the result of its enquiries must first be approved by the Minister for Foreign Affairs and President Museveni. A criminal investigation would

then be necessary before the authorities could determine if grounds for prosecution existed. The Panel also understood that, in spite of the Commission's extensive investigative powers, its terms of reference restrict the scope of its enquiries into the activities of military personnel. It is not empowered to obtain military records and documents from the Defence Ministry. Nor can it conduct audits of individual officers' finances.

138. The Porter Commission's mandate has now been extended beyond that of the Panel, to 15 November 2002, allowing it the opportunity to comment on the Panel's report. In the event that the Porter Commission ignores or rejects the validity and evidentiary value of the documents provided or attempts to further discredit the Panel's work, the Chairman of the Panel requests that the Security Council authorize the Panel to respond to the Commission's report in a letter addressed to the Security Council, which would be circulated as a United Nations document.

VII. Transit and end-user trade issues

Transit countries

139. The Panel identified 11 African States through whose territory goods originating in the Democratic Republic of the Congo are likely to pass. Some are directly involved in the conflict, namely, Burundi, Rwanda, Uganda and Zimbabwe. The remaining seven are the Central African Republic, Kenya, Mozambique, the Republic of the Congo, South Africa, the United Republic of Tanzania and Zambia. The Panel submitted questions to all 11 countries and held substantive discussions with government representatives from five. The Panel enquired about relevant legislation, investigations into the flow of the commodities, measures taken to curb those flows, other possible action to be taken and those Governments' needs for assistance. Four of the 11 countries — the Republic of the Congo, Mozambique, the United Republic of Tanzania and Zimbabwe — declined to respond. The Panel later identified yet another transit point for Congolese coltan, Nigeria, and requested information about this trade. No response was received. Virtually none of the countries that responded to the Panel's questions had conducted any investigations or adopted any specific procedures for the identification or inspection of the transiting of commodities from the Democratic Republic of the Congo. The Ugandan

authorities mentioned the impounding of a cargo of smuggled ivory. South African officials confirmed the seizure of a sizeable clandestine shipment of diamonds from the Democratic Republic of the Congo, but provided no details. None of the authorities in these countries gave any indication that Congolese resources traded through their territories should or could be regarded as conflict goods. Almost none of the countries proposed any meaningful measures to help curb trade in Congolese commodities that are tainted by criminality and militarization. Kenya, however, proposed the reopening of the Northern Corridor route, under the Transit Transport Coordination Authority, with the assistance of the international community.

140. Reliable sources have told the Panel that gem diamonds from Mbuji Mayi in the Democratic Republic of the Congo account for much of the phenomenal increase in diamonds transiting through Dubai in recent years. Exports from the United Arab Emirates to Antwerp increased to \$149.5 million in 2001 from \$4.2 million in 1998 according to the Diamond High Council's statistics. The Panel has been told of chartered flights direct from Mbuji Mayi to Dubai, and other routes via Dar es Salaam, on which illicit diamond exports have been carried. Likewise, Dubai has become a transit point for coltan from the Uganda-controlled area and a portion of the diamonds originating from Kisangani in the Rwanda-controlled area. The arms and diamond smuggler Victor Bout uses the United Arab Emirates as his permanent base, with nine of his aircraft stationed at Ra's al Khaimah International Airport.

End-user countries

141. In an effort to determine what measures might be taken at the end of the commercial chain to control the trade in resources of the Democratic Republic of the Congo and sever its links to the armed conflict, the Panel surveyed 17 end-user countries in Asia, Europe, the Middle East and North America. Many of these countries serve as secondary transit points and processing centres as well as major consumer markets. They included Belgium, China, France, Germany, India, Israel, Japan, Kazakhstan, Lebanon, Malaysia, the Netherlands, the Russian Federation, Switzerland, Thailand, the United Arab Emirates, the United Kingdom and the United States. In its requests, the Panel stressed that its aim was not to obstruct trade, but to identify mechanisms or practices that would

eliminate the costs in war and human lives that occur in the course of extracting and commercializing resources from the Democratic Republic of the Congo. In seeking these countries' views, the Panel made reference to a range of possible initiatives, while leaving open the possibility for innovation based on lessons learned from other conflict situations. Four countries did not respond: India, Kazakhstan, Malaysia and the United Arab Emirates. Few respondents commented explicitly on the role that the trade in these commodities plays in fuelling the conflict in the Democratic Republic of the Congo.

142. The responses nevertheless indicated that efforts are being stepped up to tackle the illicit trade in natural resources and that awareness is growing of the ethical responsibilities posed by conflict-driven trade in commodities. France, Japan, Israel, Thailand and the United States emphasized the adequacy of existing certificates of origin or product certification regimes in stemming the illegal trade, including the certification scheme now in the process of being implemented under the Kimberley Process. Like China, the Russian Federation stressed that its participation in the Kimberley Process is aimed at helping to sever the links between the illegal trade in rough diamonds and armed conflict, particularly in Africa. Germany stated that companies in transit and end-user countries should cease all commercial and transport activities related to the trade in resources from the region, "unless their counterparts are able to provide clearly documented certificates of origin". Most responses did not evaluate the comparative successes and failures of certification regimes in the face of highly criminalized or opaque commercial chains. Switzerland expressed the view that until the Kimberley Process certification scheme had entered into force and more experience had been gained from its implementation, it would be premature to comment on the use of such regimes in regulating the trade in commodities from certain regions. End-user countries did not specifically call for countries bordering the Democratic Republic of the Congo such as Burundi, the Republic of the Congo, Rwanda and Uganda, which also trade in rough diamonds, to join the Kimberley Process. Lebanon suggested that standardized, mandatory certificates of origin could be developed for certain precious commodities through the relevant United Nations body or bodies.

143. The Russian Federation cautioned that any proposed measures on curbing conflict-linked trade

should not hinder legitimate trade in primary commodities or "impose an excessive burden on the countries participating in such trade". Several European Union members, including France and the Netherlands, observed that any measures affecting trade flows would have to be taken within the framework of the European Union and its trade regulations. Belgium and the United Kingdom stressed that the burden of ensuring transparency in commercial and financial flows or supply chains should be borne primarily by private companies and should be based on either voluntary measures or the OECD Guidelines for Multinational Enterprises. Germany echoed this, saying that it had appealed to German companies to adhere to those guidelines as well as the principles of the European Union Commission's Green Paper on Social Responsibility and the United Nations Global Compact in their business activities in the region. Germany also encouraged the Panel to continue its efforts to increase the transparency of the commercial chains for the natural resources of the Democratic Republic of the Congo, especially by intensifying its dialogue with private companies. Only Belgium suggested the possibility of imposing targeted sanctions against businesses or individuals profiting from the trade in conflict goods. The Netherlands expressed the view that the verification of commodities would be less difficult and costly if carried out at the beginning of the commercial chain.

144. Belgium, Germany and the United States also highlighted the re-establishment of the State's authority throughout the territory of the Democratic Republic of the Congo as essential to combating the illicit exploitation, and the need for capacity-building to help achieve this. Similarly, Lebanon said that the customs administration of the Democratic Republic of the Congo should be reinforced so that it could more effectively control borders, monitor trade flows and prevent smuggling.

International and regional organizations

145. The Southern African Development Community shared the view of some end-user States that existing certificates of origin were adequate for demonstrating that products had been legally produced and acquired. Customs intelligence and investigative capability for combating smuggling are still being developed within SADC. Issues of capacity-building and information-

sharing within the region will have to be addressed as this process advances.

146. The World Customs Organization informed the Panel that it had established a network of Regional Intelligence Liaison Offices, each assigned to a number of countries, to facilitate the exchange of information and cooperation within a region. The Democratic Republic of the Congo and many francophone countries in the surrounding region are attached to the Liaison Office at Douala, Cameroon. WCO observed that the use of the Liaison Office and the WCO Internet-based Customs Enforcement Network by the Douala region's members was quite low. It stressed that curbing fraudulent trade in commodities transiting through a region depends on effective communication between the countries concerned.

147. With regard to trade flows, the World Trade Organization explained in its reply to the Panel that two provisions of the 1994 GATT, a component of the WTO treaty, authorize members to take measures that otherwise would be inconsistent with GATT/WTO rules. These rules generally prohibit trade restrictions and discrimination. Articles XXI (c) and XX describe situations and policy aims permitting exceptional measures. The former, the security exception provision, refers to exceptions related to a State fulfilling its obligations under the Charter of the United Nations. This might serve as justification for Members taking action in compliance with a Security Council resolution on maintaining peace and security, commented WTO. Article XX, the provision on general exceptions, may be evoked if the measure is adopted pursuant to one or more policies listed in the article's subparagraphs. For example, subparagraph (b) refers to measures necessary to protect human life.

148. The Economic Commission for Africa concurred with Belgium that "smart sanctions" should be part of the solution to ending the illegal trade. It added that the Governments of the countries involved should also be "held accountable for the illegal activities of individuals and/or companies as well as banks that are operating in their country since they have the power to regulate them".

VIII. Observations

149. The illegal exploitation of natural resources, gross violations of human rights and a dire

humanitarian situation are some of the consequences of four years of war and the lack of a central government in the Democratic Republic of the Congo with the authority and capacity to protect its citizens and resources.

150. The withdrawal of foreign forces is an important step towards ending the illegal exploitation of natural resources. Yet the necessary networks have already become deeply embedded to ensure that the illegal exploitation continues, independent of the physical presence of the foreign armies.

151. Another step towards halting the exploitation of natural resources will be the early establishment of an all-inclusive transitional government in the Democratic Republic of the Congo, which would ensure that central government control is reinstated and that viable local administrations are empowered to protect and regulate the exploitation activities to the benefit of the populace. However, it is clear that, even with the establishment of an all-inclusive government, exercising effective control over territory and natural resources would require time and would be possible only within the context of a broader framework of sound institution-building. In the interim, it is the view of the Panel that continued monitoring and reporting on the illegal exploitation of resources will at least serve to deter these activities.

152. The most important element in effectively halting the illegal exploitation of resources in the Democratic Republic of the Congo relates to the political will of those who support, protect and benefit from the networks. This may pose a great challenge, given the intricate relationships they have forged and the dependency they have developed on the profits from these activities. The war economy controlled by the three elite networks operating in the Democratic Republic of the Congo dominates the economic activities of much of the Great Lakes region. Yet the Lusaka, Pretoria and Luanda Agreements do not address this all-important economic component of the conflict.

153. Armed groups, whether foreign or Congolese, who are benefiting from these exploitation activities, should also be taken into account in efforts to halt the exploitation. Years of lawlessness and a Government incapable of protecting its citizens have allowed the armed groups to loot and plunder the country's resources with impunity. While some hide behind a

political agenda, all are pursuing illegal economic activities as a matter of survival. It is hoped that progress in the peace process, together with an effective and responsive programme of disarmament, demobilization, rehabilitation, reintegration and resettlement, would provide better alternatives to the armed groups. This would require the necessary funding for reintegration programmes and security assurances for those who are not wanted for war crimes or acts of genocide. The international community must, therefore, provide the assistance to these programmes, invest in publicizing them and encourage the armed groups to participate.

154. The Panel is hoping that this report will contribute to a shift in policies — in the light of the recent encouraging political and military developments on the ground — that will bring the exploitation of resources back to a legally acceptable level.

IX. Conclusions

155. An embargo or a moratorium banning the export of raw materials originating in the Democratic Republic of the Congo does not seem to be a viable means of helping to improve the situation of the country's Government, citizens or natural environment. Massive technical and financial assistance for the population would be required to offset the humanitarian impact of such restrictive measures. At the same time, if the Panel in its report does not recommend any punitive measures to curb the illegal exploitation and trade originating in the Democratic Republic of the Congo, this will only encourage a continuation of the exploitation by different criminal organizations. This could easily lead to an increase in these activities. There must be sustained efforts to deter illicit and illegal exploitation.

156. Restrictive measures nevertheless need to be taken vis-à-vis the role of companies and individuals involved in arms supply and resource plundering. The international and multinational dimension of these illegal activities is very important. Ethical and transparent business practices are needed to combat these illegal activities.

157. The establishment of a transitional government in Kinshasa should be accompanied by four elements, namely, the disarmament of all rebel groups in the Democratic Republic of the Congo; phased withdrawal

of foreign troops; measures to drastically curb the illegal exploitation and encourage legal exploitation; and the application of serious leverage through multilateral pressures and incentives. To these elements must be added a dynamic monitoring process. All must be phased, interlinked and ongoing. This dynamic package would not only advance the peace process in the Democratic Republic of the Congo, but would also lead to a peaceful and final settlement of the exploitation issue, ensuring that legal modes of resource exploitation prevail. The first two elements seem to be finding their way to an interlinked and phased implementation as a result of the recent agreements signed in Pretoria and Luanda. The third element is intrinsically linked with the fourth, namely applying leverage through incentives and disincentives.

158. In order to readjust the present process of illegal exploitation and encourage legal exploitation, which could contribute to the economic stability of all parties, there is a need to apply forceful disincentives and incentives. These should be monitored through a proactive monitoring body. Until now, all the parties involved in the illegal exploitation have had no strong incentive to alter the economic status quo. It is necessary, therefore, to find measures that address their fears of losing revenues. Such measures will however be effective only if a political process is undertaken simultaneously.

159. Reconstructing and reorienting the region's economies are essential to peacemaking and peace-building. The Panel believes that a peace dividend in the form of economic incentives should be emphasized by the international community in order to promote the parties' adherence to the peace agreements and encourage confidence-building. The Panel also proposes in its recommendations that a set of disincentives be enacted to apply pressure in the case of non-compliance with the agreements.

160. Many of the Panel's conclusions about the economic roots and consequences of the conflict have been echoed in ideas associated with the proposals for an international conference on peace, security, democracy and sustainable development in the Great Lakes region. Recently signed agreements may signal that the time for organizing this conference is approaching. Such a conference would be an ideal forum to address the need to reorient the regional trading system to post-conflict imperatives and for negotiating the framework of a multilateral agreement

to carry this out. This reorientation will require providing the incentives and means to promote regional economic integration, which would marginalize criminal and military-driven trade in favour of legitimate commercial development that is transparent and growth-oriented. Supporting regional economic integration could help to gradually draw the countries involved in the conflict closer and act as a barrier to future outbreaks of armed conflict.

X. Recommendations

Peace dividend

161. In the light of the new dynamic and progress created by the signing of the political and military agreements in Sun City, Pretoria and Luanda, the Panel believes that a set of agreements or initiatives on reconstruction and sustainable development are needed to address the economic dimension of the Lusaka peace process and provide incentives for continuing progress. The first set of initiatives could be for quick-disbursing aid for the Democratic Republic of the Congo and the other Great Lakes countries involved in the conflict, for reconstruction and rehabilitation programmes, aimed at creating jobs, rebuilding infrastructure and improving conditions for local populations, notably in the areas of education, health, water and sanitation.

162. Regional economic integration and trade could be the focus of an agreement or set of agreements that could emerge from discussions regionally, including at the international conference on peace, security and sustainable development. The international community, in particular the United Nations and the developed countries that have actively supported the signing of the recent agreements, can take a leading role in convening this conference.

Institutional reforms

Capacity-building for the State institutions

163. Reconstructing and reforming the State institutions of the Democratic Republic of the Congo, particularly the State's capacity to secure its territory and borders, is the counterpoint to the withdrawal of the foreign troops. The main purpose should be to enable the legitimate transitional government to control

the country's natural resources and borders without foreign intervention.

164. A fast-track programme is needed to retrain and professionalize the entire national security apparatus, including military and intelligence, law enforcement and regulatory bodies, such as customs, revenue authority, immigration and natural resources agencies. This process will require extensive international aid and careful monitoring of progress over a sustained period. There is a need for multilateral and bilateral donors, together with international organizations, to coordinate their efforts, draw on best practices developed during other post-conflict transitions and encourage the participation of all sectors of Congolese society.

165. The priority areas for reform and the strengthening of national or central institutions would include:

- Combating the widespread criminalization in the Democratic Republic of the Congo
- Enhancing scrutiny and transparency
- Increasing accountability and ending the impunity enjoyed by high-ranking officials and various levels of civil servants
- Building regulatory capacity and controls
- Professionalizing institutions and their personnel, including ensuring their independence and neutrality
- Reforming customs and revenue administrations, such as the Office des douanes et accises and the Direction générale des recettes administratives, judiciaires, domaniales et de participations
- Building the capacity of ministries and specialized agencies related to natural resources such as the Centre d'évaluation, d'expertise et de certification des matières précieuses and the Institut congolais pour la conservation de la nature.

Promoting legitimate and accountable civil administrations in the eastern Democratic Republic of the Congo

166. The Panel recommends that a comprehensive economic and social development programme in the eastern Democratic Republic of the Congo be set up to

assist a transition to a legitimate civilian administration with a capable security and law-enforcement apparatus. Such a programme may be partially financed from the substantial assistance commitments pledged by the European Union, the World Bank and the International Monetary Fund for post-conflict reconstruction in the Democratic Republic of the Congo.

Good governance in the Democratic Republic of the Congo and its compliance with peace agreements

167. The Panel regards the quick disbursement of development assistance as essential to addressing the pressing social and economic needs of the Democratic Republic of the Congo. However, it also recommends that disbursement should be contingent on the adherence of the Government to the peace agreements it has signed with Rwanda and Uganda, its commitment to democratization and its progress in curbing the illegal exploitation of its natural resources.

Reform of natural resource sectors

168. Reforms of the mining and the forestry sectors should include the review of all concessions and contracts signed during both wars. The resolution adopted during the inter-Congolese dialogue, establishing a special commission to examine the validity of economic and financial agreements, could serve as the framework for this process. On the basis of the Panel's findings, this could also target all informal agreements on the awarding of concessions and the implementation of contracts. The international community, including the World Bank, the International Finance Corporation and UNDP, could collaborate closely with this commission and provide the support necessary for it to carry out its work in a thorough and objective manner. This could include expert advice and technical assistance, part of which could be focused on raising long-term international investment for the rehabilitation of the mining and forestry sectors and sustainable revenue generation.

Financial and technical measures

169. In the event of non-compliance with the recently signed agreements, and the continuing illicit and illegal exploitation of the natural resources of the Democratic Republic of the Congo, the Panel recommends that a

series of measures be taken against the concerned parties.

Role of Governments

170. The Governments of the countries where the individuals, companies and financial institutions that are systematically and actively involved in these activities are based should assume their share of the responsibility. The Governments have the power to regulate and sanction those individuals and entities. They could adapt their national legislation as needed to effectively investigate and prosecute the illegal traffickers. In addition, the OECD Guidelines offer a mechanism for bringing violations of them by business enterprises to the attention of home Governments, that is, Governments of the countries where the enterprises are registered. Governments with jurisdiction over these enterprises are complicit themselves when they do not take remedial measures.

Reducing official development assistance

171. The Panel's exchange of views with bilateral and multilateral organizations, as well as a review of applicable agreements such as the Cotonou Convention, indicates that there is ample justification for donors to respond to a Security Council resolution — which might be necessary — which would propose certain reductions in official aid to promote peace and good governance.

172. Measures should also be aimed at making aid disbursements to Burundi, Rwanda, Uganda and Zimbabwe conditional on their compliance with the relevant agreements in the Lusaka peace process and on verifiable measures taken to halt the illegal and illicit exploitation of the resources of the Democratic Republic of the Congo which can help to achieve multiple objectives. Non-compliance would automatically trigger a review and reduction of assistance programmes for those countries. It should be stipulated that reductions of aid disbursements are to be applied to institutional budget support, stabilization lending or project lending and not sector-specific allocations.

173. Implementation would proceed in three stages:

(a) A brief grace period to permit the verification of the compliance of all the parties to the conflict;

S/2002/1146

(b) An initial period when aid disbursements are reduced by a modest percentage if the countries involved have not met withdrawal targets;

(c) A subsequent period during which the aid is proportionately reduced at regular intervals unless troop withdrawals and compliance with the peace agreements meet the required standards.

Restrictions on business enterprises and individuals

174. The Panel has compiled an extensive list of business enterprises and individuals whose involvement in the commercial activities of the three elite networks active in the Democratic Republic of the Congo is well documented. At this time it is however, focusing its recommendations regarding restrictive measures on only a small number of enterprises (annex I) and individuals (annex II) — many of them cited in this report — as a result of the wealth of information and documentary evidence gathered on them by the Panel.

175. By contributing to the revenues of the elite networks, directly or indirectly, those companies and individuals contribute to the ongoing conflict and to human rights abuses. More specifically, those business enterprises are in violation of the OECD Guidelines for Multinational Enterprises. Therefore, the Panel recommends that the Security Council consider imposing certain restrictions on a selected number of business enterprises and individuals involved in criminal and illicit exploitation that are identified in this report. The list emphasizes the implication of foreign enterprises as well as nationals of the Democratic Republic of the Congo in the economic exploitation.

176. There could be a short grace period of four to five months before the restrictions set out below are applied, during which the targeted entities and individuals would have the opportunity to prove that they have ceased all involvement in the exploitation activities. The restrictive measures could include:

(a) Travel bans on selected individuals identified by the Panel;

(b) Freezing of the personal assets of persons involved in illegal exploitation;

(c) Barring selected companies and individuals from accessing banking facilities and other financial

institutions and from receiving funding or establishing a partnership or other commercial relations with international financial institutions.

Adherence of business enterprises to the OECD Guidelines

177. The Panel has drafted another list of business enterprises (annex III) which, in the view of the Panel, are in violation of the OECD Guidelines for Multinational Enterprises. Countries which are signatories to those Guidelines and other countries are morally obliged to ensure that their business enterprises adhere to and act on the Guidelines.

178. The OECD Guidelines outline a procedure for bringing violations of the Guidelines to the attention of the Governments of the States where the business enterprises are registered. Home Governments have the obligation to ensure that enterprises in their jurisdiction do not abuse principles of conduct that they have adopted as a matter of law. They are complicit when they do not take remedial measures. The monitoring body, as described below, will contribute to implementing these procedures by verifying and updating its list of business enterprises in violation of the OECD Guidelines and transmitting evidence of those violations to the OECD National Contact Points in the home Governments of the enterprises.

Transit trade and regional organizations

179. To promote post-conflict peace-building programmes, the Panel recommends that the international community support the following confidence-building measures:

(a) Encouraging the East African Community, composed of Kenya, Uganda and the United Republic of Tanzania, to include Rwanda and Burundi in its membership;

(b) Helping to re-establish historical and legal trading patterns, for example by reopening the Northern Corridor transit route to legal trade among the Democratic Republic of the Congo, Burundi, Rwanda, Uganda and Kenya;

(c) Assisting the relevant African regional trade organizations to improve their customs and trade monitoring mechanisms. These might include juxtaposed border control facilities, harmonization of controls to promote the system and use of certificates

of origin and destination, and assistance in developing national legislation for monitoring financial flows related to trade;

(d) Improving air traffic control services in the Great Lakes region. The Technical Cooperation Programme of ICAO can provide assistance to States in the region that need to improve their air traffic control service.

Regulating commodity trade from conflict areas

180. Specialized industry organizations such as the Tantalum Niobium International Study Centre, the International Gold Council and the International Coffee Federation could be requested, in cooperation with the United Nations Conference on Trade and Development, to monitor trade in commodities from conflict areas. This would result in a reliable body of data that includes information relating to the evacuation of commodities, transit routes through neighbouring countries and information on end-users and their operations. The data produced could be the basis of industry policing of those individuals, companies and financial institutions that trade in commodities from conflict areas. The data could also serve in the event that a moratorium is called for on the illegal trade in commodities originating in the Democratic Republic of the Congo, such as coltan.

Kimberley Process

181. All Member States where trade in rough diamonds is being carried out should join the Kimberley Process. Universal participation will make the Kimberley Process a more effective instrument.

182. Diamond-producing countries should apply internal controls from extraction to exportation. Consideration should be given to establishing a set of internationally agreed upon standards for this process. A specialized enforcement organization within each member country needs to be formed that has the authority, knowledge and specialized training necessary to ensure the effectiveness of the Kimberley Process.

183. A permanently staffed secretariat should be created with the responsibility of coordinating the implementation of the Kimberley Process.

Protecting timber and forestry products

184. The Panel recommends that Member States actively support the efforts by intergovernmental and non-governmental organizations at both the international and regional levels to halt illegal logging and to develop an international definition of "conflict timber".

Trade in endangered species

185. Trade involving endangered species of wild fauna and flora taken from protected areas of the eastern Democratic Republic of the Congo is another activity in which elements of the criminal networks are engaged. Member States are asked to support the Task Force established under the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora by (a) strengthening their national legislation to reinforce the powers of investigation and prosecution of the Task Force's personnel and (b) ensuring that their National Bureaus, established under that Agreement, intensify their investigations into the criminal traffic in endangered species of wild animals and plants as outlined by CITES.

Monitoring process

186. There is a need for a monitoring process that continues to scrutinize the situation in the Great Lakes region to ensure that exploitation activities are significantly curbed. A monitoring body, which the Security Council may consider establishing, could report to the Security Council on a regular basis on its findings, including recommendations about further action to halt activities that violate the Council's decisions. The Panel's expertise could be helpful in this regard.

187. The monitoring body could report to the Security Council on any State or company that might be involved in the illegal exploitation of natural resources. The monitoring body could recommend to the Council that major multilateral institutions and bilateral donors review and reduce the financial assistance programmes of any State found to be involved in these illegal activities. It could recommend to the Council that any company found to be implicated in the illegal economic exploitation be added to or kept on the list of those enterprises subject to financial and travel restrictions.

S/2002/1146

In addition, the monitoring body could collaborate closely with national officials, including from the Central Bank of the Democratic Republic of the Congo, the Office des douanes et accises (customs administration) and the Direction générale des recettes administratives, judiciaires, domaniales et de participations (revenue administration), the Ministry of Mines and Hydrocarbons, the State mining enterprises and private mining and mineral companies, in order to update information on how capacity-building and reforms are affecting the exploitation activities. In carrying out these tasks, the monitoring body could coordinate with the international financial institutions, the African Union, and the Economic Commission for Africa.

188. The Panel would also recommend that the monitoring body, with the adequate expertise and resources, track the following:

(a) Possible reductions in the level of illegal exploitation;

(b) The implementation of possible travel bans and the freezing of assets;

(c) Ongoing investigations into the illicit commerce in minerals, timber and endangered species of fauna and flora. The monitoring body could also collaborate further on some of these investigations;

(d) The sectors of the economy that have been affected by the exploitation activities;

(e) The impact on the humanitarian situation in the Democratic Republic of the Congo and the region;

(f) The reduction in violent conflict and the maintenance of civil order in the eastern Democratic Republic of the Congo, as well as the viability of local administrations and institutions related to the mandate of the monitoring body which might be adopted by the Council.

(Signed) Mahmoud **Kassem**
Chairman

(Signed) Jim **Freedman**

(Signed) Mel **Holt**

(Signed) Bruno **Schiemsky**

(Signed) Moustapha **Tall**

(Signed) Patrick **Smith**

Annex I

Companies on which the Panel recommends the placing of financial restrictions

	<i>Name</i>	<i>Address</i>	<i>Business</i>	<i>Principal officers</i>	<i>Comment</i>
1	AHMAD DIAMOND CORPORATION	ANTWERP BELGIUM	Diamond trading	Mr. AHMAD Imad	
2	ASA DIAM	ANTWERP BELGIUM	Diamond trading	Mr. AHMAD Ali Said	
3	BUKAVU AVIATION TRANSPORT	DRC	Airline company	Mr. BOUT Victor	
4	BUSINESS AIR SERVICE	DRC	Airline company	Mr. BOUT Victor	
5	COMIEX-CONGO	KINSHASA DRC		Mr. KABASELE TSHINEU Frederic	
6	CONGO HOLDING DEVELOPMENT COMPANY	DRC	Trading and exploitation of natural resources DRC	Mr. Félicien RUCHACHA BIKUMU Mrs. Gertrude KITEMBO	
7	CONMET	UGANDA and DRC	Coltan trading	Mr. Salim Saleh Mr. and Mrs. PISKUNOV	
8	COSLEG	ZIM and DRC	Joint-venture COMIEX and OSLEG	Mr. KABASELE TSHINEU Frédéric ZVINAVASHE Gava MUSUNGWA Vitalis	
9	EAGLE WINGS RESOURCES INTERNATIONAL	PO BOX 6355 Kigali, Rwanda	Exploitation coltan from the DRC	Mr. Alfred RWIGEMA Mr. Anthony MARINUS Mr. Ronald S. SMIERCIAK	Tel: +250.51.17.25
10	ENTERPRISE GENERAL MALTA FORREST		Exploitation Cobalt, Copper in DRC	Mr. George FORREST	

S/2002/1146

	<i>Name</i>	<i>Address</i>	<i>Business</i>	<i>Principal officers</i>	<i>Comment</i>
11	EXACO		Exploitation Cobalt, Copper in the DRC		
12	GREAT LAKES GENERAL TRADE	BP 3737 KIGALI, RWANDA	Mineral trading	Maj Dan MUNYUZA Mr. E. GATETE Mr. Steven K. AKHIMANZI	Tel/Fax: +250.78.792
13	GREAT LAKES METALS	Kigali, Rwanda	Mineral trading		
14	GROUP GEORGE FORREST		Exploitation Cobalt and Copper	Mr. George FORREST	
15	MINERALS BUSINESS COMPANY	Boulevard Du 30 Juin, Immeuble ex- SCIBE, Kinshasa, DRC	Mineral trading	Mr. KABASELE TSHINEU Frederic Lt General ZVINAVASHE Gava Musungwa Vitalis Mr. Charles DAURAMANZI	
16	OKAPI AIR ODESSA AIR	Uganda	Airline company	Mr. BOUT Victor	
17	OPERATION SOVEREIGN LEGITIMACY (OSLEG) Pvt Ltd	Harare, Zimbabwe	Commercial interests ZIM in DRC	Lt General ZVINAVASHE Gava Musungwa Vitalis	
18	ORYX NATURAL RESOURCES	DRC	Diamond exploitation in the DRC	Mr. AL-SHANFARI Thamer Said Ahmed	
19	RWANDA ALLIED PARTNERS	Kigali, Rwanda	Mineral trading	Mr. Hadji OMARI Mr. Simba MANASE	
20	RWANDA METALS	Kigali, Rwanda	Mineral trading		
21	SARACEN UGANDA Ltd	Uganda	Security Company	Lt General (Rtd) Salim Saleh Mr. Heckie HORN	

	<i>Name</i>	<i>Address</i>	<i>Business</i>	<i>Principal officers</i>	<i>Comment</i>
22	SIERRA GEM DIAMONDS	ANTWERP BELGIUM	Diamond trading	Mr. AHMAD Said Ali Mr. AHMAD Hassan Mr. AHMAD Nazem	
23	TANDAN GROUP	SOUTH AFRICA	Holding	Mr. Niko SHEFER	
24	THORNTREE INDUSTRIES (Pvt) Ltd		Provides capital to MBC	Mr. Niko SHEFER	
25	TREMALT Ltd		Exploitation cobalt and copper	Mr. John Arnold BREDENKAMP	
26	TRINITY INVESTMENT GROUP	DRC and UGANDA	Exploitation resources and tax fraud	Mr. NGOLA Sam General KAZINI	
27	TRIPLE A DIAMONDS	ANTWERP BELGIUM	Diamond trading	Mr. AHMAD Moussa Ahmad Mr. AHMAD Ahmad Ali	
28	TRISTAR	Kigali, Rwanda	Holding FPR		
29	VICTORIA GROUP	DRC and UGANDA	Exploitation resources and tax fraud	Lt General (Rtd) Salim Saleh Mr. KHANAFER Nahim	

S/2002/1146

Annex II

Persons for whom the Panel recommends a travel ban and financial restrictions

	<i>Last name</i>	<i>First name</i>	<i>Alias</i>	<i>Date of birth</i>	<i>Passport number</i>	<i>Designation</i>
1	AHMAD	Ali Said		01.03.1959		Businessman
2	AHMAD	Ahmad Ali		01.01.1929		
3	AHMAD	Imad				Businessman
4	AHMAD	Said Ali		09.04.1935		Businessman
5	AHMAD	Hassan		21.05.1957		Businessman
6	AHMAD	Moussa Ahmad				
7	AHMAD	Nazem		05.01.1965		Businessman
8	AKHIMANZA	Steven K.				Businessman
9	AL-SHANFARI	Thamer Said Ahmed		03.01.1968	00000999 (Oman)	Chairman & Managing Director ORYX Group and ORYX Natural Resources
10	BOUT	Victor Anatoljevitch	BUTT, BONT, or BUTTE, BOUTOV, SERGITOV Vitali	13.01.1967	21N0532664 29N0006765 21N0532664 21N0557148 44N3570350	Dealer and transporter of weapons and minerals
11	BREDENKAMP	John Arnold		11.08.1940		Businessman
12	BURUNDI					Colonel UPDF
13	DAURAMANZI	Charles				Shareholder MBC
14	ENGOLA	Sam				Businessman
15	FORREST	George A.				Businessman
16	GATETE	Edward				Officer RPA; Operation Congo Desk
17	HORN	Heckie				Manager Saracen Uganda Ltd
18	KABANDA	Emmanuel				Officer RPA; Operation Congo Desk
19	KABAREBE	James				Chief of Staff RPA; Former Chief of Staff DRC; in charge of Congo Desk
20	KABASELE TSHINEU	Frédéric				Manager COMIEX, representative of COSLEG
21	KALUME NUMBI	Denis				General, shareholder SENG SENGA
22	KARIM	Peter				Officer UPDF
23	KATUMBA MWANKE	Augustin				Minister of Presidency, DRC

	<i>Last name</i>	<i>First name</i>	<i>Alias</i>	<i>Date of birth</i>	<i>Passport number</i>	<i>Designation</i>
24	KAZADI NYEMBWE	Didier				Director Agence National de Renseignements DRC
25	KAZINI	James				Chief of Staff, Maj. General UPDF
26	KHANAFER	Nahim				Businessman
27	KIBASSA MALIBA					Politician, former Minister of Mines, shareholder SENG SENG
28	KITEMBO	Gertrude				Businesswoman
29	KONGOLO	Mwenze				Minister DRC, shareholder SENG SENG
30	MANASE SIMBA					Businessman
31	MAWAPANGA	Mwana Nanga				Ambassador DRC in Harare
32	MAYOMBO	Nobel				Chief Military Intelligence (CMI) in Uganda
33	MNANGAGWA DAMBUDZO	Emmerson				Speaker of Parliament ZIMBABWE
34	MOYO	Mike				Wing Commander ZDF
35	MOYO	Sibusio				Bd-Gen (Rtd) ZDF
36	MUAMBA NOZI	Richard	MWAMBA NOZY			Congolese diamond trader; Counterfeiter
37	MUNYUZA	Dan				Colonel RPA; In charge of security DRC (96-98)
38	MWENZE KONGOLO					Minister National Security, DRC
39	NUMBI KALUME	Denis				Minister of Planning and Reconstruction DRC
40	NZIZA	Jack				Officer RPA
41	OKOTO LOLAKOMBE	Jean-Charles				PDG MIBA
42	OMARI HADJI					Businessman
43	OTAFIRE KAHINDA					Colonel UPDF
44	MARINUS	Anthony				Manager Eagle Wings
45	PISKUNOV	Anatol				Businessman
46	PISKUNOVA	Valentina				Businesswoman
47	RUCHACHA BIKUMU	Felicien				Businessman
48	RUPRAH	Sanjivan	Samir Nasr Medhi Khan	09.08.1966	D-001829-00	Businessman
49	RWIGEMA	Alfred				Manager Eagle Wings
50	SALIM SALEH		AKANDWA NAHO Caleb			Lt General (Ret.) UPDF

S/2002/1146

	<i>Last name</i>	<i>First name</i>	<i>Alias</i>	<i>Date of birth</i>	<i>Passport number</i>	<i>Designation</i>
51	SHEFER	Niko	Nico	25.12.1950	7616225 (Israel) 6651101 (Israel)	Businessman
52	SMIERCIAK	Ronald S.				Manager Eagle Wings
53	YUMBA MONGA					Manager GECAMINES
54	ZVINAVASHE GAVA MUSUNGWA	Vitalis				Lt General ZDF, Rep. of COSLEG, shareholder MBC

Annex III

Business enterprises considered by the Panel to be in violation of the OECD Guidelines for Multinational Enterprises

	<i>Name of company</i>	<i>Business</i>	<i>Country</i>	<i>Country signatory of OECD Guidelines</i>
1	AFRICAN TRADING CORPORATION Sarl	Trading of natural resources from DRC	SOUTH AFRICA	NO
2	AFRIMEX	Coltan trading	UK	YES
3	AHMAD DIAMOND CORPORATION	Diamond trading	BELGIUM	YES
4	A.H. PONG & Sons	Import-Export	SOUTH AFRICA	NO
5	A. KNIGHT INTERNATIONAL Ltd	Assaying	UK	YES
6	A & M MINERALS and METALS Ltd	Trading minerals	UK	YES
7	ALEX STEWART (Assayers) Ltd	Assaying	UK	YES
8	AMALGAMATED METAL CORPORATION Plc	Trading coltan	UK	YES
9	AMERICA MINERAL FIELDS (AMFI)	Mining	USA	YES
10	ANGLO AMERICAN Plc	Mining	UK	YES
11	ANGLOVAAL MINING Ltd	Mining	SOUTH AFRICA	NO
12	ARCTIC INVESTMENT	Investment	UK	YES
13	ASA DIAM	Diamond trading	BELGIUM	YES
14	ASA INTERNATIONAL		BELGIUM	YES
15	ASHANTI GOLDFIELDS	Mining	GHANA	NO
16	AVIENT AIR	Private military company	ZIMBABWE	NO
17	BANRO CORPORATION	Mining	SOUTH AFRICA	NO
18	BARCLAYS BANK	Banking	UK	YES
19	BAYER A.G.	Chemical industry	GERMANY	YES
20	B.B.L.	Banking	BELGIUM	YES
21	BELGOLAISE	Banking	BELGIUM	YES

S/2002/1146

	<i>Name of company</i>	<i>Business</i>	<i>Country</i>	<i>Country signatory of OECD Guidelines</i>
22	CABOT CORPORATION	Tantalum processing	USA	YES
23	CARSON PRODUCTS	Commercialization of resources of the DRC	SOUTH AFRICA	NO
24	CHEMIE PHARMACIE HOLLAND	Financial and logistical support to EWRI	NETHERLANDS	YES
25	COGECOM	Coltan trading	BELGIUM	YES
26	C. STEINWEG NV	Freight Forwarders	BELGIUM	YES
27	DARA FOREST	Timber exploitation	THAILAND	NO
28	DAS AIR	Airline company	UK	YES
29	DE BEERS	Diamond mining and trading	UK	YES
30	DIAGEM BVBA	Diamond trading	BELGIUM	YES
31	EAGLE WINGS RESOURCES INTERNATIONAL	Exploitation coltan from the DRC	USA	YES
32	ECHO GEM	Diamond trading	BELGIUM	YES
33	EGIMEX		BELGIUM	YES
34	ENTREPRISE GENERALE MALTA FORREST	Construction, Mining, Trading	DRC	NO
35	EUROMET	Coltan trading	UK	YES
36	FINCONCORD SA	Coltan trading from DRC	SWITZERLAND	YES
37	FINMINING	Coltan trading from DRC	SAINT KITTS	NO
38	FIRST QUANTUM MINERALS	Mining	CANADA	YES
39	FLASHES OF COLOR	Diamond trading	USA	YES
40	FORTIS	Banking	BELGIUM	YES
41	GEORGE FORREST INTERNATIONAL AFRIQUE	Management	DRC	NO
42	HARAMBEE MINING CORPORATION	Mining	CANADA	YES
43	H.C. STARCK GmbH & Co KG	Processing coltan	GERMANY	YES
44	IBRYV AND ASSOCIATES LLC	Diamond trading	SWITZERLAND	YES

	<i>Name of company</i>	<i>Business</i>	<i>Country</i>	<i>Country signatory of OECD Guidelines</i>
45	INTERNATIONAL PANORAMA RESOURCES Corp	Mining	CANADA	YES
46	ISCOR	Mining	SOUTH AFRICA	NO
47	JEWEL IMPEX Bvba	Diamond trading	BELGIUM	YES
48	KABABANKOLA MINING COMPANY	Mining	ZIMBABWE	NO
49	KEMET ELECTRONICS CORPORATION	Capacitor manufacture	USA	YES
50	KHA International AG	Minerals trading and exploitation	GERMANY	YES
51	KINROSS GOLD CORPORATION	Mining	USA	YES
52	K & N	Project development	BELGIUM	YES
53	KOMAL GEMS NV	Diamond trading	BELGIUM	YES
54	LUNDIN GROUP	Mining	BERMUDA	NO
55	MALAYSIAN SMELTING CORPORATION	Coltan processing	MALAYSIA	NO
56	MASINGIRO GmbH	Minerals trading	GERMANY	YES
57	MELKIOR RESOURCES Inc	Mining	CANADA	YES
58	MERCANTILLE CC	Trading in natural resources from DRC	SOUTH AFRICA	NO
59	MINERAL AFRIKA Limited	Trading in natural resources from DRC	UK	YES
60	NAC KAZATOMPROM	Tantalum processing	KAZAKHSTAN	NO
61	NAMI GEMS	Diamond trader	BELGIUM	YES
62	NINGXIA NON-FERROUS METALS SMELTER	Tantalum processing	CHINA	NO
63	OM GROUP Inc	Mining	USA	YES (USA)
			FINLAND	YES (FINLAND)
64	OPERATION SOVEREIGN LEGITIMACY (OSLEG) Pvt Ltd	Commercial interests ZIMBABWE in the DRC	ZIMBABWE	NO

S/2002/1146

	<i>Name of company</i>	<i>Business</i>	<i>Country</i>	<i>Country signatory of OECD Guidelines</i>
65	ORION MINING Inc	Mining	SOUTH AFRICA	NO
66	PACIFIC ORES METALS AND CHEMICALS Ltd	Coltan trading	HONG KONG	NO
67	RAREMET Ltd	Coltan trading from DRC	SAINT KITTS	NO
68	SARACEN	Security company	SOUTH AFRICA	NO
69	SDV TRANSINTRA	Transport	FRANCE	YES
70	SIERRA GEM DIAMONDS	Diamond trading	BELGIUM	YES
71	SLC GERMANY GmbH	Coltan transport	GERMANY	YES
72	SOGEM	Coltan trading	BELGIUM	YES
73	SPECIALITY METALS COMPANY SA	Coltan trading	BELGIUM	YES
74	STANDARD CHARTERED BANK	Banking	U.A.E.	NO
75	SWANEPOEL	Construction	SOUTH AFRICA	NO
76	TENKE MINING CORPORATION	Mining	CANADA	YES
77	THORNTREE INDUSTRIES (Pvt) Ltd	Provides capital to MBC	ZIMBABWE	NO
78	TRACK STAR TRADING 151 (Pty) Ltd	Exploitation and trading minerals DRC	SOUTH AFRICA	NO
79	TRADEMET SA	Coltan trading	BELGIUM	YES
80	TREMALT Ltd	Mining	British Virgin Islands	NO
81	TRINITECH INTERNATIONAL Inc	Coltan trading and exploitation	USA	YES
82	TRIPLE A DIAMONDS	Diamond trading	BELGIUM	YES
83	UMICORE	International Metals and Materials Group	BELGIUM	YES
84	VISHAY SPRAGUE	Capacitor manufacture	USA and ISRAEL	YES (USA) NO (ISRAEL)
85	ZINCOR	Mining	SOUTH AFRICA	NO

Annex IV

Countries visited and representatives of Governments and organizations interviewed

The Panel wishes to express its deep appreciation to the Government officials, diplomats, United Nations agencies, donor institutions, non-governmental organizations, civil society groups, journalists, commercial operators and others with whom it met and who have assisted in making possible the present report.

The Panel also wishes to extend special thanks to the United Nations Organization Mission in the Democratic Republic of the Congo. In addition, the Panel would like to thank the United Nations Office in Burundi and the UNDP offices in Bangui, Brazzaville, Bujumbura, Kampala, Kigali, Kinshasa, Pretoria and Yaounde for their assistance and support.

Austria

International organizations

United Nations Office for Drug Control and Crime Prevention

Belgium

Government officials

Inter-Ministerial Ad Hoc Working Group on the Illegal Exploitation of the Natural Resources of the Democratic Republic of the Congo

Parliamentary Inquiry Commission on the Illegal Exploitation of the Natural Resources of the Democratic Republic of the Congo

State representatives

European Union Commission

Others

Arslanian Frères

International Peace Information Service

Sibeca

Sogem mineral trading company (division of Umicore)

Tantalum Niobium International Study Center

Vrije Universiteit Brussel

Burundi

Government officials

Minister of Defence

Minister of Energy and Mines

Minister of Finance

Minister of Foreign Affairs

Department of Customs (Ministry of Finance)

State representatives

Embassy of Belgium

Embassy of France

International organizations

Acting Special Representative of the Secretary-General in Burundi

Office for the Coordination of Humanitarian Affairs

UNDP

UNHCR

UNICEF

Office of the United Nations High Commissioner for Human Rights in Burundi

Others

Affimet

ASYST mineral trading company

Comptoir minier des exploitations du Burundi (COMEBU)

HAMZA mineral trading company

Central African Republic

Government officials

Ministry of Economy

Ministry of Equipment, Transport and Settlement

Ministry of Finance and Budget

Minister of Mines, Energy and Hydraulics

Minister of Trade and Industry

Department of Customs

State representatives

Embassy of the Democratic Republic of the Congo

Embassy of France

European Union

International organizations

Representative of the Secretary-General in the Central African Republic

ASECNA

UNHCR

UNDP

Democratic Republic of the Congo

Government officials

Minister of Defence

Minister of Foreign Affairs

Minister of Land Affairs, Environment and Tourism

Minister of Planning and Reconstruction

Vice-Minister of Foreign Affairs

Vice-Minister of Mines

Deputy Chief of Staff of the FAC

Governor of the Central Bank

Governor of Equateur Province

Governor of Katanga

Governor of Mbuji Mayi

Vice-Governor, in charge of the Economy, Finance and Development, Equateur Province

Centre d'évaluation, d'expertise et de certification

Comité interministériel de "Small Scale Mining"

Générale des carrières et des mines (Gécamines)

Office national des transports

Régie des voies aériennes

Société minière de Bakwanga (MIBA)

State representatives

Ambassador of Angola

Ambassador of Belgium

Ambassador of Canada

Ambassador of Germany

Ambassador of the United Kingdom of Great Britain and Northern Ireland

Ambassador of the United States of America

Belgian Consul
Embassy of Denmark
Embassy of France
European Union

International organizations

Special Representative of the Secretary-General in the Democratic Republic of the Congo
European Commission's Humanitarian Aid Office (ECHO)
FAO
GTZ
MONUC
Office for the Coordination of Humanitarian Affairs
UNDP
UNHCR
UNICEF
World Bank
World Food Programme
World Health Organization

MLC

President
Secretary-General

RCD-Goma

Vice President
Commissioner of the Interior
Governor of Kalemie
Department of Mines and Energy
Vice-Governor of Kisangani
Customs officials

RCD-K/ML

Second Vice-President
Minister of Interior
Acting Chief of Staff for the APC
Governor of Bunia

Governor of Ituri Province

Mayor of Butembo

Others

Action contre la faim

ADETE

Agro Action Allemand

Associazione per la Cooperazione Internazionale e l'Ainto Umanitario

Anglican Church

Ashanti Goldfield

Association africaine des droits de l'homme (ASADHO)

Banque internationale de commerce

BEP Productique (BEPROD)

Conseil africain et malgache pour l'enseignement supérieur (CAMES)

Caritas

Centre d'information et d'animation missionnaire (CIAM)

Centre d'études national sur le développement populaire (CENADEP)

Centre de formation, recherches en conservation forestière

Centre national d'appui au développement et à la participation populaire (CENADEP)

Church of Christ of the Congo

Comité provincial des diamantaires (CPD)

Commissions diocésaines Justice et Paix (CDPJ)

Conseil apostolique des laïques catholiques au Congo (CALCC)

Conference on Central Africa Moist Forest Ecosystems participants

Confédération de petites et moyennes entreprises du Congo (COPEMECO)

COSLEG (joint venture of COMIEX Congo and OSLEG)

Dara Forêt

Exploitation forestière, sciérie raffinage de la papaine (ENRA)

Fédération des entreprises du Congo (FEC — Kinshasa, Kisangani, Mbandaka, Beni, Goma, Gémena, Bukavu)

Fédération nationale des parents d'élèves du Congo (FNPEC)

Fédération des ONG laïques à vocation économique au Congo (FOLECO)

Forces novatrices pour l'union et la solidarité (FONUS)

Groupe de recherches et d'échanges technologiques (in Kabinda)

Groupe Lotus
Groupe musulman des droits de l'homme
GST (Gécamines labour union)
Héritiers de la justice
International Human Rights Law Group
International Rescue Committee
Inter Press Service (IPS)
JAMS
Journalistes en danger
Justice et Paix
Ligue des avocats pour les droits de l'homme
Kababankola Mining Company
Kotinne Plantation
Jardin botanique d'Eala
Maintenance, Assistance, Technique and Design
Mayi-Mayi representatives
Médecins sans Frontières (of Belgium and France)
Mennonite Church
Mouvement nationale congolais Lumumba (MNCL)
Mouvement des pionniers de l'indépendance
Mouvement populaire de la révolution (MPR)
National Commission of Experts on the illegal exploitation of the natural resources and other forms of wealth of the Democratic Republic of the Congo
National Congolese Railway Society (SNCC)
National Council of Development NGOs (CNONGD)
Nganga Plantation
Norwegian Refugee Council (NRC)
Organisation concertée des ecologistes et amis de la nature (OCEAN)
OKIMO
Oxfam
Parti démocrate et social chrétien (PDSC)
Parti lumumbiste unifié (PALU)
Pharmakina
Pole Institute

Promotion de la femme rural (PROFER)
Programme d'appui aux femmes victimes des conflits et des catastrophes
Radio Okapi
Regional Committee of Development NGOs (CRONGD)
Religious community representatives
Radio Télé Debout Kasai (RTDK)
Save the Children
Sengamines
Shenimed Coltan Comptoir
Syndicat des exploitants alluvionnaires du diamant (APLOKA)
SOCEBO
Société civile du Congo (SOCICO)
Société de renforcement de communauté de base (SERACOB)
Solidarités
TOFEN-CONGO
TRAFCO Freight Company
UDPS representatives
UPDF Sector Commander in Bunia
UPDF Battalion Commander in Butembo
UPDF Colonel Peter Karim
Union des banques congolaises
Voix du handicapé pour les droits de l'homme (VHDH)
Wildlife Conservation Society

France

Government officials

Ministry of Economy and Finance
Ministry of Foreign Affairs

Others

Air France Cargo

Germany

Government officials

Ministry of Foreign Affairs

Others

H. C. Starck

Karl-Heinz Albers Mining and Minerals Processing

Kenya

Government officials

Minister of Foreign Affairs and International Cooperation

Ministry of Defence

Ministry of Finance

Ministry of Trade and Industry

Ministry of Transport and Communications

Kenya Revenue Authority

State representatives

Ambassador of Belgium

High Commissioner of the Republic of South Africa

Ambassador of Rwanda

High Commissioner of Uganda

Belgian Ministry of Defence

German Embassy

Belgian Parliamentary Inquiry Commission

Embassy of the Democratic Republic of the Congo

Democratic Republic of the Congo National Parks representatives

Institut congolais de conservation de la nature (Ministry of Environment,
Democratic Republic of the Congo)

International organizations

Special Representative of the Secretary-General for the Great Lakes Region

Special Adviser to the Special Representative of the Secretary-General for the
Democratic Republic of the Congo

World Customs Organization

World Wildlife Fund

Others

Association of Cargo Airlines

Congolese Commission of National Experts

Dian Fossey Gorilla Fund

International Crisis Group
Kababankola Mining Company/Tremalt Ltd.
Kencargo
Lusaka Agreement Task Force
Martin Air
Oryx Natural Resources
Oxfam
World Vision

Republic of the Congo

Government officials

Minister of Environment
Ministry of Transport
Department of Customs (Ministry of Finance)

State representatives

Embassy of Belgium
Embassy of the Democratic Republic of the Congo
European Union

International organizations

UNDP

Rwanda

Government officials

Special Envoy of the President for the Democratic Republic of the Congo and Burundi
Office of the President of Rwanda
Minister of Foreign Affairs
Ministry of Commerce, Industry and Tourism
Customs Commission

State representatives

Ambassador of Belgium
Ambassador of France
Ambassador of the United Kingdom of Great Britain and Northern Ireland
Ambassador of the United States of America
European Union

International organizations

MONUC

UNICEF

World Bank

Others

President of RCD-Goma

Eagle Wings Resources

SDV Transintra

SOGERMI mineral trading company

South Africa

Government officials

Acting Director-General for Foreign Affairs

Department of Foreign Affairs

Department of Defence

Department of Home Affairs

Department of Minerals and Energy

Financial Intelligence Centre

National Intelligence Agency

National Intelligence Coordinating Committee

National Prosecuting Authority

National Treasury

Secretariat for Safety and Security

South African Diamond Board

South African Police

South African Revenue Service

State representatives

Ambassador of Belgium

Ambassador of France

Ambassador of the United States

High Commission of the United Kingdom of Great Britain and Northern Ireland

Others

Banro

Bateman Minerals and Metals

Centre for the Study of Economic Crime

Cobalt Metals Company

Compliance Institute

De Beers Group

DiamondWorks

Executive Outcomes

Fluxmans Attorneys

Grove Family Trust

International Institute of Security Studies

Kimberley Process Secretariat

Money Laundering Forum

Overseas Security Services

PricewaterhouseCoopers Forensic Services Division

Rand Afrikaans University

Rand Merchant Bank

SaferAfrica

STK Consulting

Tandan Holdings

Trans Hex

Ware Associates

University of South Africa at Pretoria

University of Witwatersrand/South African Institute for International Affairs

Uganda

Government officials

First Deputy Prime Minister

Acting Minister of Foreign Affairs

Minister of Defence

Chief of Staff of UPDF

Ministry of Tourism, Trade and Industry

Bank of Uganda

Department of Geological Survey and Mines

Uganda Bureau of Statistics

Uganda Civil Aviation Authority

Uganda Coffee Development Authority

Uganda Revenue Authority

State representatives

Ambassador of Belgium

Ambassador of Denmark

Ambassador of France

High Commissioner of the United Kingdom of Great Britain and Northern Ireland

Ambassador of the United States of America

Head of the Delegation of the European Union

International organizations

UNDP

UNICEF

World Bank

Others

Amnesty International

Judicial Commission of Inquiry

Saracen Uganda Ltd.

Uganda Debt Network

United Kingdom of Great Britain and Northern Ireland

Government officials

Ministry of Foreign Affairs

United States of America

Government officials

Department of Justice

State representatives

Belgian Deputy Minister of Foreign Affairs

Permanent Representatives to the United Nations, Security Council members and other Member States

International organizations

International Monetary Fund

Office of the Special Representative of the Secretary-General for Children and Armed Conflict

UNDP

Forum on Forests

Office for the Coordination of Humanitarian Affairs

World Bank

Others

Human Rights Watch

Oxfam

Winston Strawn and Partners

Zambia

Others

Non-governmental organizations

Zimbabwe

Government officials

Ministry of Mines

State representatives

British High Commission

Others

Renaissance Bank

Dozer Parts

Annex V

Abbreviations

ADB	African Development Bank
ANC	Armée nationale congolaise (army of RCD-G movement)
APC	Armée patriotique congolaise (army of the RCD-ML rebel group)
ASECNA	Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar
CIDA	Canadian International Development Agency
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
coltan	columbo-tantalite
COMIEX	Compagnie mixte d'import-export
COSLEG	COMIEX-OSLEG joint venture
FAC	Forces armées congolaises
ex-FAR	former Forces armées rwandaises
GATT	General Agreement on Tariffs and Trade
Gécamines	Générale des carrières et des mines
GTZ	Deutsche Gesellschaften für Technische Zusammenarbeit (German Government agency for technical cooperation)
ICAO	International Civil Aviation Organization
IMF	International Monetary Fund
KMC	Kababankola Mining Company
MIBA	Société minière de Bakwanga
MLC	Mouvement de libération congolais
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
OECD	Organization for Economic Cooperation and Development
OKIMO	Office des Mines de Kilo-Moto
OSLEG	Operation Sovereign Legitimacy
RCD	Rassemblement congolais pour la démocratie (Rally for Congolese Democracy)
RCD-Congo	Rassemblement congolais pour la démocratie (newly formed rebel group made up of MLC and RCD-Goma dissidents)
RCD-Goma	Rassemblement congolais pour la démocratie, based in Goma
RCD-K/ML	Rassemblement congolais pour la démocratie — Mouvement de libération, initially based in Kisangani, now headquartered in Bunia

RCD-N	Rassemblement congolais pour la démocratie-National
RPA	Rwandan Patriotic Army
SADC	Southern African Development Community
SIDA	Swedish International Development Agency
SOMIGL	Société minière des Grands Lacs
SOCEBO	Société congolaise d'exploitation du bois
UDPS	Union pour la démocratie et le progrès social
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPDF	Uganda People's Defence Forces
USAID	United States Agency for International Development
WCO	World Customs Organization
ZDF	Zimbabwe Defence Forces

ANNEX 1.11

Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo 2001 (“Porter Commission”), *Final Report*, November 2002



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

10

(May 2001– November, 2002)

Legal Notice No. 5/2001, as amended

FINAL R E P O R T

November, 2002

TABLE OF CONTENTS

1.	ESTABLISHMENT OF THE COMMISSION .	1
1.	INTRODUCTION	1
2.	MEMBERS:.....	2
3.	TERMS OF REFERENCE	2
4.	TIME FRAME OF THE INQUIRY	3
5.	CONSTRAINTS/LIMITATIONS	3
6.	METHODOLOGY	4
6.1.	<i>Documentation:</i>	5
6.2.	<i>Evidence</i>	5
7.	RULES OF PROCEDURE	9
8.	WORKING HOURS.....	9
9.	PLACE OF WORK	9
10.	SECTIONS OF EVIDENCE	9
2.	DEFINING KEY CONCEPTS	10
11.	ILLEGALITY.....	10
11.1.	<i>Violation Of Sovereignty</i>	10
11.1.1.	<i>Whether the UPDF should have gone into the Democratic Republic of Congo.</i>	10
11.1.2.	<i>Whether Businessmen and International Companies may trade in a war zone without compromising the Sovereignty of the country</i>	11

11.2.	<i>Respect By Actors Of The Existing Regulatory Framework</i>	11
11.3.	<i>Use And Abuse Of Power.....</i>	12
11.3.1.	<i>Forced monopoly in trading</i>	12
11.3.2.	<i>Unilateral fixing of prices of products by the buyer</i>	13
11.3.3.	<i>Confiscation and looting of products from farmers</i>	13
11.3.4.	<i>Use of military forces in various zones to protect some interest or to create a situation of monopoly.</i>	13
11.3.5.	<i>Violation of international law including “soft” law.</i>	13
12.	EXPLOITATION	15
3.	ILLEGAL EXPLOITATION OF NATURAL RESOURCES	16
13.	THE KAZINI REVELATIONS.	16
13.1.	<i>UPDF Officers conducting business</i>	16
13.2.	<i>Gold Mining.....</i>	19
13.3.	<i>Intelligence/Security Funding</i>	20
13.4.	<i>Looting.....</i>	21
13.5.	<i>Smuggling</i>	21
14.	PRE-EXISTING STRUCTURES THAT FACILITATED EXPLOITATION	23
14.1.	<i>Allegations against the Government of Uganda</i>	25
14.2.	<i>Allegations against General Salim Saleh</i>	27
14.3.	<i>Allegations against Kainerugaba Muhoozi</i>	28
14.4.	<i>Allegations against top UPDF Officers</i>	28
14.5.	<i>Allegations against General Kazini.</i>	28
14.6.	<i>Transportation Networks.....</i>	29

14.6.1.	<i>Military Air Base</i>	29
14.6.2.	<i>Allegations against the Government of Uganda</i>	37
14.6.3.	<i>Implied Allegations against The Civil Aviation Authority</i>	38
15.	MASS SCALE LOOTING	48
15.1.	<i>Amex Bois</i>	48
15.2.	<i>La Forestiere</i>	48
15.3.	<i>Confiscation of Coffee Beans.</i>	49
15.4.	<i>Cars.....</i>	49
15.5.	<i>Theft from Banks.....</i>	50
15.6.	<i>Murder of Civilians.....</i>	50
15.7.	<i>Organised Looting.....</i>	50
15.8.	<i>Allegations against Uganda...</i>	51
15.8.1.	<i>Appointment of Adele Lotsove</i>	51
15.8.2.	<i>Knowledge of Key Ugandan Officials</i>	53
16.	SYSTEMATIC AND SYSTEMIC EXPLOITATION	53
16.1.	<i>Timber : Dara Forêt and Dara Great Lakes International.</i>	53
16.1.1.	<i>Allegations against His Excellency the President and his family</i>	62
16.2.	<i>Mining Sector.....</i>	63
16.2.1.	<i>Mining Disasters and Soldiers imposing “Gold Tax”</i>	64
16.2.2.	<i>Harrassment of Civilians</i>	70
16.2.3.	<i>Trainees used as Convincible Labour to Mine</i>	71
16.2.4.	<i>Foreign Labour</i>	71

16.3.	<i>Wildlife.....</i>	72
16.3.1.	<i>Poaching in Garambwa National Park</i>	72
16.3.2.	<i>Tusks seized in Isiro</i>	72
16.3.3.	<i>Tusks seized from Col Mugenyi near Garambwa National Park</i>	72
16.3.4.	<i>Allegations against the Government of Uganda</i>	73
17.	MONOPOLIES AND PRICE FIXING	74
17.1.	<i>Coffee Harvesting by J P Bemba</i>	74
17.2.	<i>Control of the Economy</i>	74
17.3.	<i>Allegations against Uganda...</i>	75
17.4.	<i>Individual Colonels collecting or demanding taxes</i>	77
18.	CURRENT STRUCTURES OF ILLEGAL EXPLOITATION	78
18.1.	<i>Administrative Structures.</i>	78
18.1.1.	<i>Appointment or confirmation of Congolese Administrators</i>	78
18.2.	<i>Modes of transportation.....</i>	79
18.2.1.	<i>Allegations against Uganda</i>	79
18.3.	<i>Air Alexander International Ltd</i>	80
18.4.	<i>Take Air Ltd</i>	81
18.5.	<i>Other Private Companies</i>	81
18.5.1.	<i>Victoria Group</i>	81
18.5.2.	<i>Trinity</i>	83
19.	SYSTEMATIC EXPLOITATION	85
19.1.	<i>Allegations against Uganda...</i>	85

19.2.	<i>Allegations against Top Army Commanders</i>	86
20.	INDIVIDUAL ACTORS	86
20.1.	<i>Major General Salim Saleh ...</i>	86
20.2.	<i>Jovial Akandanawaho.....</i>	88
20.3.	<i>General James Kazini.....</i>	88
20.3.1.	<i>General Kazini's Coltan.</i>	89
20.3.2.	<i>General Kazini's demand for \$5000.</i>	91
20.3.3.	<i>General Kazini's assets.</i>	92
20.4.	<i>Colonel Tinkamanyire.....</i>	92
20.5.	<i>Col Otafiire.....</i>	92
20.5.1.	<i>Documents obtained at the request of the Nairobi witness when giving evidence.....</i>	93
20.5.2.	<i>Letter dated 3rd August 2000 from Professor Wamba, instructing payment of \$13,000 to Col Otafiire.</i>	94
20.6.	<i>Col Otafiire, Col Mayombo and Hon. Wapakhabulo</i>	94
20.6.1.	<i>Payment of US\$380,000.</i>	94
20.6.2.	<i>Letter from Professor Wamba dia Wamba authorising payment. (2).....</i>	96
20.7.	<i>Colonel Mayombo's advice to Professor Wamba dia Wamba.</i>	105
20.8.	<i>Ateenyi Tibasiima and Roger Lumbala</i>	106
20.9.	<i>Other Individual Actors</i>	106
20.10.	<i>The Uganda Peoples' Defence Force (UPDF)</i>	106
21.	ECONOMIC DATA : CONFIRMATION OF THE ILLEGAL EXPLOITATION OF THE NATURAL RESOURCES OF THE Democratic Republic of Congo	108
21.1.	<i>Gold</i>	108

21.2.	<i>Diamonds.....</i>	112
21.3.	<i>The Diamond Link</i>	114
21.3.1.	<i>Victoria.....</i>	115
21.3.2.	<i>Khalil.....</i>	116
21.3.3.	<i>Picadilly Import and Export</i>	118
21.3.4.	<i>General Kazini</i>	119
21.3.5.	<i>Jovial Akandwanaho</i>	122
21.4.	<i>Niobium.....</i>	123
21.5.	<i>Mineral Transit figures.....</i>	124
21.6.	<i>Cobalt:</i>	126
4.	LINKS BETWEEN THE ALLEGED ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND THE CONTINUATION OF THE CONFLICT.	127
22.	NATURE OF THE LINKS.....	127
22.1.	<i>Budgets compared to military expenditure.</i>	127
22.2.	<i>Financing the War</i>	129
22.2.1.	<i>Primary Means of Financing The War</i>	129
22.2.2.	<i>The Re-Exportation Economy</i>	130
22.2.3.	<i>Purchase Of Supplies On Credit</i>	132
22.2.4.	<i>Racketeering By Soldiers</i>	132
22.2.5.	<i>Handing over of Arms</i>	132
22.2.6.	<i>MLC, RCD Goma and RCD-ML</i>	135
22.3.	<i>Allegations against Uganda.</i>	137
22.4.	<i>Special Features of the Links</i>	137

22.4.1.	<i>Lendus And Hema Conflict:</i>	137
22.4.2.	<i>Nia Nia Confrontation:</i>	139
22.4.3.	<i>The Kisangani Clashes</i>	140
22.5.	<i>Facilitators or passive accomplices</i>	142
22.5.1.	<i>Bilateral Donors...</i>	142
22.5.2.	<i>Mulilateral Donors</i>	142
22.5.3.	<i>Transit Countries..</i>	143
22.6.	<i>The pivotal role of leaders...</i>	143
22.6.1.	<i>President Museveni</i>	143
5.	PANEL’S CONCLUSIONS AND FINDINGS	146
23.	MINERAL RESOURCES	146
24.	SYSTEMIC AND SYSTEMATIC EXPLOITATION	146
25.	ROLE OF PRIVATE SECTORS.....	147
26.	BILATERAL AND MULTILATERAL DONORS	147
27.	TOP MILITARY COMMANDERS.	148
6.	UGANDAN ADMINISTRATIVE ORGANISATIONS	148
28.	Registrar of Companies	148
28.1.	<i>Recommendations – Companies.</i>	152
29.	Uganda Revenue Authority	153
29.1.	<i>Recommendations: –URA....</i>	154
7.	CONSIDERATION OF THE ADDENDUM	155
30.	INTRODUCTION	155
30.1.	<i>Methodology</i>	155

31.	EXPLOITATION OF THE NATURAL RESOURCES	157
31.1.	<i>“Illicit” and “Illegal”</i>	157
31.2.	<i>Coltan</i>	160
31.3.	<i>Gold</i>	160
31.4.	<i>Copper and Cobalt</i>	162
31.5.	<i>Diamonds</i>	162
31.6.	<i>Timber</i>	163
32.	ALLEGATIONS AGAINST UGANDA IN THE ADDENDUM	163
33.	THE LINK BETWEEN EXPLOITATION OF RESOURCES AND THE CONTINUATION OF THE CONFLICT.....	167
33.1.	<i>Recent Developments</i>	167
33.1.1.	<i>Uganda</i>	167
33.1.2.	<i>Democratic Republic of Congo - Dara Forêt</i>	167
34.	CONCLUSIONS OF THE PANEL IN THE ADDENDUM	168
35.	RECOMMENDATIONS OF THE PANELS	169
35.1.	<i>Institutional</i>	169
35.2.	<i>Financial and Technical</i>	170
35.3.	<i>Sanctions</i>	171
8.	CONSIDERATION OF THE FINAL REPORT OF THE PANEL	172
36.	<i>Methodology</i>	172
37.	<i>Elite Networks</i>	173
37.1.	<i>Key Figures</i>	173
37.1.1.	<i>Lt General Salim Saleh</i>	173

37.1.2.	<i>General Kazini</i>	173
37.2.	<i>Members of Networks</i>	173
37.2.1.	<i>Col Mayombo</i>	173
37.2.2.	<i>Col Otafire.....</i>	174
37.2.3.	<i>Sam Engola.....</i>	174
37.3.	<i>Front Companies</i>	176
37.3.1.	<i>Victoria.....</i>	176
37.3.2.	<i>Trinity</i>	176
37.3.3.	<i>La Conmet and Sagricof</i>	176
37.4.	<i>Methods used by Networks ..</i>	177
37.5.	<i>Intimidation and use of force by UPDF</i>	177
38.	<i>Training of Paramilitary Force</i>	177
39.	<i>Tax Exemptions</i>	180
39.1.	<i>Local Operators.....</i>	181
39.2.	<i>Victor Bout.....</i>	181
40.	<i>Strategies and Sources of Revenue ...</i>	181
40.1.	<i>Coltan:</i>	181
40.2.	<i>La Conmet.....</i>	182
40.3.	<i>Diamonds - Victoria</i>	183
40.4.	<i>Tax Fraud and the requisition of assets</i>	184
40.5.	<i>Economic exploitation and ethnic conflict.</i>	184
40.6.	<i>Armed Conflict and its consequences: Malnutrition and mortality</i>	185

40.7.	<i>Cooperation</i>	186
40.7.1.	<i>“Concessions”</i>	188
40.7.2.	<i>Questionable documents</i>	191
40.7.3.	<i>Credibility</i>	192
40.7.4.	<i>Comparative Procedures</i>	192
40.7.5.	<i>Powers of the Commission</i>	193
40.8.	<i>Agreement in General</i>	194
41.	Recommendations in the Final Report	194
42.	ADDITIONAL EVIDENCE.....	195
43.	CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION	196
43.1.	<i>Inquiry into allegations of illegal exploitation of natural resources</i>	196
43.1.1.	<i>Exploitation</i>	196
43.1.2.	<i>Illegality</i>	196
43.2.	<i>Inquiry into allegations of Mass Scale Looting and Systematic Exploitation</i>	197
43.2.1.	<i>Mass scale Looting</i>	197
43.2.2.	<i>Systematic and Systemic Exploitation</i>	197
43.3.	<i>Inquiry into Allegations of Complicity by His Excellency the President and his family</i>	198
43.4.	<i>Inquiry into Allegations of Involvement of Top Ranking Army Officers and other Ugandans</i>	199
44.	RECOMMENDATIONS of the Commission	200
44.1.	<i>Indiscipline of UPDF Officers</i>	200
44.2.	<i>General Kazini</i>	200

44.3.	<i>UPDF Officers conspiring to allow illegal flights</i>	200
44.4.	<i>UPDF and the Ongoing Defence Review</i>	200
44.4.1.	<i>Assessment</i>	200
44.4.2.	<i>Professional ability</i>	201
44.4.3.	<i>Constitutional Requirements</i>	201
44.5.	<i>Senior Officials of CAA</i>	201
44.6.	<i>Military Air Base</i>	201
44.7.	<i>Mining Sector</i>	201
44.8.	<i>Lt. General Salim Saleh</i>	202
44.8.1.	<i>Disobedience to the orders of the President</i>	202
44.8.2.	<i>Take Air Ltd</i>	202
44.8.3.	<i>Offences against the Companies Act</i>	202
44.9.	<i>Diamond smuggling</i>	202
44.10.	<i>Registration of Companies</i>	202
44.10.1.	<i>Updating of Register</i>	202
44.10.2.	<i>Proactive management of Registration</i>	203
44.10.3.	<i>Revision of penalties</i>	203
44.10.4.	<i>Air Alexander</i>	203
44.11.	<i>URA</i>	203
44.12.	<i>Addendum to the original Panel Report</i>	203
44.13.	<i>Panel's Final Report</i>	203
44.13.1.	<i>General</i>	203
44.13.2.	<i>Colonel Burundi and LA CONMET</i>	204

44.13.3.	<i>Sam Engola.....</i>	205
44.13.4.	<i>Colonel Peter Karim.....</i>	205
44.13.5.	<i>Major General James Kazini.....</i>	205
44.13.6.	<i>Colonel Noble Mayombo.....</i>	205
44.13.7.	<i>Colonel Otafiire.....</i>	205
44.13.8.	<i>Lt. General (ret'd) Salim Saleh.....</i>	206
9.	ANNEX 1: EXHIBITS	208
10.	ANNEX 2: WITNESSES	223
11.	ANNEX 3: PAPER ON ILLEGALITY	230
45.	Introduction.....	230
46.	The Concept of 'Illegality' and the Democratic Republic of Congo Expert Panel's Interpretation.....	231
47.	Theoretical and Doctrinal Postulations on Illegality – Concept	236
48.	Concept and Parameters of 'Illegality' Revisited	239
49.	Concluding Remarks.....	241

1. ESTABLISHMENT OF THE COMMISSION

1. INTRODUCTION

This report is 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 through its President's Statement S/PRST/2000/20. It produced a report which was submitted to the Security Council on 16th April, 2001. In that report, the Expert Panel alleges that there has been illegal exploitation of Congolese natural
 10 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 original Panel 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 original 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.

20 The reconstituted Panel of Experts under the new Chairmanship of Ambassador Kassem has produced an Addendum to the original Panel Report which this Commission will also consider.

This Commission produced an Interim Report which was sent to the Minister of Foreign Affairs on 15/10/01 and immediately published on the World Wide Web. That Interim Report was directed at Legality, involvement in illegal activities by the Ugandan Government, His Excellency the President and Members of his family only, although other issues have had to be addressed to deal with these matters.

This Commission has used the basis of its Interim Report to answer both the issues left outstanding by the Interim Report, and additional matters arising from the Addendum to the

original Panel Report in this Final Report. The Report attempts, so far as possible, to follow the headings and the order of Paragraphs in the original Panel Report and the Addendum.

On 23rd May 2001, the Minister of Foreign Affairs issued Legal Notice No.5 which was published as Supplement No.23 in the Uganda Gazette of 25th 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.

2. MEMBERS:

The Commission consisted of the following persons:

Hon. Justice David Porter	:	Chairman
10 Hon. Justice J.P. Berko	:	Member
Mr. John Rwambuya retired Senior UN official	:	Member
Mr. Bisereko Kyomuhendo Principal State Attorney	:	Secretary
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 as Assistant Lead Counsel.

3. TERMS OF REFERENCE

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

- 20
- 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.

4. TIME FRAME OF THE INQUIRY

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. This time period has been increased from time to time by Legal Notice, and includes a 6 week Christmas break

The Commissioners were sworn in on 4th June 2001, but because of logistical set backs, they
 10 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 original Panel Report) and interviewing, selecting and summoning witnesses.

5. CONSTRAINTS/LIMITATIONS

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

The Commission had hoped for the original Panel's assistance in providing some of the
 20 sources it had not included in its report, but disappointingly from the outset, this was not the case. In initially refusing to share with this Commission their sources of information, the original Panel made it clear that it was the policy of UN not to disclose such sources in its reports. However, later on during further visits by members of the reconstituted Panel to this Commission, some documents were availed which have assisted enquiries to a certain extent. Further documents were provided from time to time, although some of them turned out to be impossible to rely upon, while others were translations from French into English. The reconstituted Panel availed one witness, together with facilities to hear him in Nairobi, which was of great assistance. All in all, however, this Commission has been left with the impression that the reconstituted Panel could have done a great deal more to assist, and could
 30 have done it earlier in the investigations.

In that regard it is important to be aware of the difference in emphasis between the original Panel and this Commission. Broadly put, it is for the original Panel to gather intelligence,

evaluate it, and base allegations on the result. It is for this Commission to look at the allegations raised, search for evidence to support or deny such allegations, and to make recommendations to the calling Minister, and ultimately to the Uganda Government upon those allegations. This Commission's writ runs only in Uganda. In the nature of things, therefore, the original Panel is in the position of accuser, whilst this Commission has to try to obtain prima facie evidence of the accusations for action by the Government of Uganda. Normally then, the original Panel would be in the position of complainant, providing the basis and evidence, or at least lines of inquiry, to convince this Commission of the truth of specific allegations. The provision of a few documents, even including the undoubted assistance given
 10 in respect of the interview of one witness in Nairobi (to whom this Commission will refer as "the Nairobi witness") has not amounted to sufficient to assist to any great extent.

This has been a problem, since one of the things this Commission has had to bear in mind is not blindly to accept the original Panel's evaluation of the intelligence it has gathered, but to look at the evidence available on specific matters, and to make its own evaluation. In doing so there are important occasions upon which the evaluation of intelligence by the original Panel has been found to be unreliable- for example, the Case Study of Dara Forêt, and the various documents supplied by the reconstituted Panel to this Commission upon which the reconstituted Panel clearly relied which have been found probably to have been forged. This theme is further examined in Paragraph 6.2 below

20 Other constraints included unwillingness from fear 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 and bureaucracy in releasing approved funds had an adverse effect on the work of the Commission.

6. METHODOLOGY

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. With few exceptions, 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
 30 so wished. Members of the Public were repeatedly encouraged to give information to this Commission, and any interested party was free to engage counsel to question witnesses. The Commission utilized two types of information for its inquiry: documentation and evidence.

6.1. Documentation:

Abundant documents were available to the Commission. They included;

- Report of the original Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth in the Democratic Republic of the Congo, dated 16th April 2001.
- Addendum to the above Report
- Response by the Government of the Republic of Uganda to the above report dated 23 April 2001.
- Response to the Addendum
- 10 ■ Statement by H.E President Museveni about the original 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:

20 6.2. Evidence

His Excellency President Museveni gave evidence. Also all Ugandans and some non-Ugandans mentioned in the original Panel Report provided evidence on oath. They included, the Defence Minister, Mr. Amama Mbabazi, the former Army Commander, then Major General . J. J. Odongo, the former Secretary of Defence, Dr. Ben Mbonye, the Current Secretary of Defence, David G Musoke, the former Chief of staff, Brig. James Kazini, Major General . 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

30 given in the original Panel Report.

Only one witness appeared in response to the Commission's appeal to the public to come forward and give evidence. Unlike the original 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

On the question of consideration of evidence, there is an obvious difference between the proceedings of the original Panel and of this Commission. The original Panel said on this subject :

10 ***"Methodology. Owing to the nature of the work and the complexities of the issues, a methodology that allows flexible data collection was essential in order to complete this project. The Panel has therefore utilized:***

(a) Primary data collection. Official documentation from ministries and other institutions as well as recorded minutes of meetings involving various relevant actors;

(b) Secondary sources. Reports, workshop proceedings, published and unpublished literature;

(c) Interviews. Structured, semi-structured and open interviews as well as interviews resulting from various network referrals.

10. A vast amount of data was obtained from three essential sources:

20 ***(a) Countries and other entities involved in the conflict in the Democratic Republic of the Congo, namely: Angola, Burundi, the Democratic Republic of the Congo, Namibia, Rwanda, Uganda, Zimbabwe, RCD-Goma and RCD-ML;***

30 ***(b) "Third-party" sources such as Belgium, Cameroon, China, Denmark, France, Germany, Kenya, the Netherlands, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America, Switzerland, various United Nations agencies, the International Monetary Fund, the World Bank, the World Trade Organization, OECD, the International Coffee Organization, De Beers, the Diamond High Council, the International Diamond Manufacturers Association, the University of Maryland, the World Resource Institute and CIFOR;***

(c) Various individual actors and stakeholders who expressed an interest for various reasons in sharing their knowledge and understanding with the Panel.

40 ***The production and export data series available for the analysis cover the period 1995-2000. Data were systematically analysed separately and then compared with one another. Comparative analysis thus contributed to the Panel's ability to develop a good understanding of the issues. In addition, the Panel sought to cross-check every item of information received. In relation to this and to the extent possible, Panel members attempted to speak to individuals against whom serious allegations were made. When access to those key witnesses or primary actors was denied, Panel members***

10

often relied on their closest collaborators for insight. The Panel however faced a problem of imbalance in the acquisition of data. Indeed data was abundant for Rwanda, Uganda, RCD-Goma, RCD-ML and MLC. This is partly due to the high number of insiders living in the Democratic Republic of the Congo and in Europe who were directly involved with those entities and who offered to share almost everything they knew or had experienced or gathered as documentation while they were involved with them. The same quantity and quality of data were not available for Angola, Namibia or Zimbabwe, although the Panel visited those countries. This constraint can be felt in the report. Overall the report was written using the empirical method combined with the economic analysis of data collected, supported by elements of evidence.”

The Addendum to the Report does not address this subject, and must be assumed to have adopted the same approach. Often the reconstituted Panel refers to only one source, whether reliable or credible.

This is a pity, because the Government of Uganda in its response took exception to the original Panel’s methodology, and accused the original Panel of not following its own expressed methods of work.

20

For this Commission, bound as it is to hear sworn evidence in public, it would seem that the majority of evidence likely to be obtained by such a methodology would be either hearsay, biased, or pure gossip, all untested.

An example of the sort of problem which this methodology, as practiced by the original Panel, would create all by itself is the swingeing criticism of the Uganda Government, His Excellency the President, and of various companies by the original Panel in their so-called Case Study of Dara Forêt.

As this Commission has already shown in its Interim Report and repeats here in Paragraph 16.1 below, that investigation was in many areas one sided, biased, and completely wrong, because the original Panel did not do what it said it was going to do, that is to interview those accused, or ask to do so.

30

The original Panel Report directly caused the misconceived and wrongful kidnapping and detention by the Mayi Mayi of 24 of Dara Forêt’s expatriate employees for a considerable period of time.

The Addendum to the Report hides an admission that the original Panel was wrong, shyly tucked away in a passage on payment of tax, under the heading of “The Democratic Republic of Congo” within the heading of “The Link between exploitation of resources and the continuation of the conflict”. and fails to

acknowledge the obvious fact that the original Panel's accusation, levelled against the President and the Government of Uganda as conspirators with Dara Great Lakes Industries Ltd to facilitate fraud against the Timber Certification system, is totally unsupported, and even worse, untrue.

So far as this Commission can see, the very minimum standard of proof or methodology would be to hear both sides of every story, which the original Panel failed to do. The reconstituted Panel heard both sides of the Dara Forêt saga, as they interviewed Mr. Kotiram, as they did many other accusees, but failed to record their conclusions having done so.

10 For this sort of inquiry, acknowledging that open hearings on oath are likely to give a very limited picture, one could well adopt the methodology of the original Panel of Experts on Sierra Leone, who said on this subject::

“C. Standards of Verification

20 *The Panel agreed at the outset of its work to use high evidentiary standards in its investigations. This required at least two credible and independent sources of information to substantiate a finding. Wherever possible, the Panel also agreed to put allegations to those concerned in order to allow them the right of reply. In the past, allegations against various parties to the conflict in Sierra Leone have been denied with the question, ‘Where is the evidence?’ An example of this is the standard response to charges that weapons have been channelled to Liberia through Burkina Faso. In the report that follows, we have dealt in detail with this particular allegation. It might still be asked, ‘Where is the evidence?’ On this charge and others, full details of the sources will not be revealed, but the evidence is incontrovertible. The Panel examined the flight records maintained at the offices of Roberts Flight Information Region (FIR) in Conakry for all aircraft movement in West Africa during the period in question. It saw photographs of the aircraft being loaded in Burkina Faso. It examined flight plans. It spoke to eyewitnesses of aircraft movement in Burkina Faso and Liberia, and it spoke to individuals who were on board the aircraft in question. In addition to its own detailed verification, the Panel received corroborating information from international intelligence agencies and police sources operating at international as well as national levels. The assistance of Interpol specialists was also taken as and when required. This is an example of one of the more difficult issues examined by the Panel. All issues have been judged and reported using the same standard. “*

30

Unfortunately the traps warned against by the Sierra Leone Panel are exactly the traps into which the original Panel fell: it is not very clear that the Addendum has helped to free them.

7. RULES OF PROCEDURE

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

8. WORKING HOURS

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.

9. PLACE OF WORK

The Commission's office was located in suites 102-104 Nile Hotel. The Commission had
10 open hearings at the International Conference Centre.

10. SECTIONS OF EVIDENCE

The evidence gathered was divided in the following briefs;

1. Background to Uganda involvement in the Congo.
2. Exploitation allegations pertaining to timber – Dara Forêt Case Study and other timber related allegations.

2A Aviation and Airport

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
20 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.

The Briefs 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.

2. DEFINING KEY CONCEPTS

11. ILLEGALITY.

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, particularly with regard to Uganda's intervention in the Democratic Republic of Congo. As to violation of sovereignty, it would be wrong for this Commission to come to any conclusion. However, as to illegality of alleged exploitation of natural resources, this matter may be considered.

The original Panel Report defined four concepts of illegality:-

11.1. 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:-

11.1.1. Whether the UPDF should have gone into the Democratic Republic of Congo.

This Commission's 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, it 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.

Whether or not the movement across the Democratic Republic of Congo was legal or illegal under International Law is irrelevant to the consideration of illegal exploitation of the resources of the Democratic Republic of Congo, 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). Further, this Commission has great difficulty in differentiating in principle between the events in the Democratic Republic of Congo and recent events on the International Stage.

11.1.2. Whether 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. The alleged exploitation found by this Commission after hearing ample evidence appears to have been mainly in the nature of trade, rather than deliberate policy of the Uganda Government as consistently alleged in the original Panel Report. The reconstituted Panel have come to the same conclusion as this Commission in the Addendum to the Report (see Paragraph 98 of the Addendum)

11.2. Respect By Actors Of The Existing Regulatory Framework

There is no doubt that since 2nd August 1998, the Kinshasa Regime has never had effective control in 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 Northern, Eastern and North Eastern the Democratic Republic of Congo after August 1998 were the various rebel groups, as recognised in the Lusaka Agreement.

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

10 The original 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 in the Democratic Republic of Congo, 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, however, for those traders or businessmen to look into the application of taxes, merely to comply with the regulations.

Throughout the Addendum the reconstituted Panel does not use the word “illegal” once as an active criticism, merely in titles. Only at the end is the word “illicit” allowed to creep in, and then only on one occasion in relation to Uganda.

20 The Addendum to the original Panel Report appears to accept that rebel leaders have in the main adopted the regulatory framework which previously existed, sometimes with variations: and that accords with this Commission’s observation of import, export and transit documents.

11.3. Use And Abuse Of Power

The original Panel gives five examples of abuse of power :

11.3.1. Forced monopoly in trading

30 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 if there are fewer buyers, the

situation will appear more and more like a monopoly: 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, and recovered from the farmer through tobacco prices.

But where the circumstances amount to a use of military force as considered under Paragraph 11.3.4 below, this should obviously be considered as illegal.

11.3.2. Unilateral fixing of prices of products by the buyer

10 In view of the practices in the coffee and tobacco trade, this Commission cannot agree that the examples given in the original Panel Report involve illegality in the examples quoted. (See 11.3.1 above)

11.3.3. Confiscation and looting of products from farmers

These would obviously be rightly considered as illegal where there is evidence. However the examples quoted throughout the original Panel Report do not have sufficient evidentiary support to ground this complaint. (See e.g. Paragraph 15.3 below)

11.3.4. Use of military forces in various zones to protect some interest or to create a situation of monopoly.

20 Once again one has to distinguish circumstances. There is a great deal of difference between provision of security in the general sense, which enables businessmen to trade safely, 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, which evidence in the main is not available. The evidence of Adele Lotsove and General Kazini clearly shows that, after initial occupation, what was expected of the UPDF was to provide security.

11.3.5. Violation of international law including "soft" law.

In Paragraph 15 (d), the original 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 original Panel Report. This Commission was told that the only certified Forest in Africa is in Gabon: researches on the Internet show that Smartwood, one of the certifying bodies, do not even have a category for Africa. Other certifying bodies mention forests in South Africa only

10 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 original Panel of experts was correct in including "soft" law in their definition of illegality.

20 This Commission does not think that the definition of illegality is quite as simple as the original 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 original Panel did not include, some of which are implicitly recognised in documents such as the Lusaka Agreement to which the original Panel does not refer throughout the Report, although the reconstituted Panel have the Agreement well in mind. The omission of the original Panel was unfortunate, because there is no doubt that the Lusaka Agreement recognizes and legitimises the various rebel groups, and their administrations and indeed Uganda's role as a peacekeeper. The Agreement itself is witnessed by major
30 nations and representatives of the UN and is recognized and being implemented by the United Nations Security Council.

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 30 years for politicians to settle their differences. A market must be found for it before it goes off. If that market is
 10 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. For instance, the original Panel Report cites concessions granted to Zimbabwean companies during Laurent Kabila's rebellion against Mobutu.

20 **12. EXPLOITATION**

This Commission has also read the original Panel's definition of exploitation in Paragraph 16 of the original 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. The original Panel was somewhat confused about this, while the reconstituted
 30 Panel has abandoned the use of the word "illegality" almost entirely.

3. ILLEGAL EXPLOITATION OF NATURAL RESOURCES

Originally this Commission received no assistance from the reconstituted Panel. However when the Commission was about to wind up, some documents were received from the reconstituted Panel, which prompted this Commission to recall General Kazini for the third time. After some difficulty in securing his attendance, the General attended, and after giving evidence about the documents obtained from the new Panel, produced a number of radio messages which affected this Commission's understanding of what was going on in the the Democratic Republic of Congo. so far as the UPDF was concerned, and confirmed certain suspicions which this Commission had entertained throughout. That evidence is considered here first, as it affects the consideration of the subsequent Headings, taken from the original Panel Report. The relevant allegations in the original Panel Report involve confiscation, extraction, forced monopoly and price fixing. Some of the revelations made by General Kazini in the radio messages which he produced go to confirm some of the allegations made by the original Panel.

13. THE KAZINI REVELATIONS.

The radio messages concerned the undermentioned subjects:

13.1. UPDF Officers conducting business

In answer to the President's radio message (set out in a quotation of the message at Paragraph 14.6 below), General Kazini wrote the following message (dated the 20th December 1998) within hours: --

"It is true that some officers were getting excited about doing business in Congo from the beginning but it was discouraged. What is happening is that some Ugandans could be in business partnership with some commanders but no officers or men are directly involved in trade in Congo. There is a big influx of Congolese businessman into Entebbe using our Aircraft on their return journeys they are still facing difficulties to take items bought. We have been squeezing to assist them but we cannot handle all their cargo. So I suggest that the Ministry of Commerce or a trade delegation from UMA to meet the RCD leadership on your recommendation to agree on modalities of doing business with their

counterparts in Congo. By a copy of this message 2 i/c 1 DIV should not allow any officer to trade using our aircraft. Meanwhile 2DIV CO, 4DIV CO to make sure boarders are thoroughly monitored."

The speed at which General Kazini replied shows that he was aware of all these problems, would take no real action until the matter became public, and had not previously himself made His Excellency the President aware of them.

From this message, General Kazini was admitting the following: --

1. That the allegation by the original Panel that some top officers in the UPDF were planning from the beginning to do business in Congo was generally true, although the specific examples given were incorrect. On the first occasion when General Kazini came before this Commission to give evidence, he denied the allegations in paragraphs 27 and 28 of the original Panel Report, and was extremely evasive while doing so. In view of his radio message in reply to the President's radio message, he was clearly lying to this Commission.
2. That Commanders in business partnership with Ugandans were trading in the Congo, about which General Kazini took no action.
3. That Military aircraft were carrying Congolese businessman into Entebbe, and carrying items which they had bought in Kampala back to the Congo, but the military were unable to handle all the cargo. On the first occasion that General Kazini gave evidence before this Commission, he said that it was not allowed for Congolese businessman or Ugandan businessman to bring items from the Congo on military airplanes. In this he has been revealed to have lied to this Commission. The whole question of the use of military transport is considered at Paragraph 14.6 below, and a graphic representation can be found below.

As a result of the President's message, General Kazini took the following steps: --

- He directed that officers should not be allowed to trade using military aircraft
- He directed that passengers on military aircraft be thoroughly monitored.
- He took no action in relation to Ugandans in partnership with UPDF officers or Congolese

The third paragraph of the President's radio message directed that Ugandan businessmen should be given security assistance to do business in Congo in order to alleviate the acute needs of the population and to establish links for the future. The radio message itself is clear, and when this Commission interviewed His Excellency the President, he confirmed that he had no intention to assist Congolese businessmen, save as to security, and pointed out that in his message he had specifically mentioned Ugandan businessman.

However when General Kazini gave evidence to this Commission on the third occasion, he said that he had given directions to assist Congolese businessman to travel back and forth from Congo, and had even allowed them to carry goods from Uganda for sale in the
 10 Democratic Republic of Congo. His counsel also interrupted his evidence to argue that the Presidential Radio message included assistance to Congolese businessmen, which it clearly did not, save of course in relation to the provision of security.

This Commission's researches in comparing the data from the Uganda Revenue Authority which related to collection of customs duty on flights landing at the Military Air Base since 1999, data from Liaison Officers at the Military Air Base and from the Ministry of Defence relating to flights for the UPDF, and data from the Civil Aviation Authority showing all flights recorded by them to the Democratic Republic of Congo, both Civil and Military, showed quite clearly that on many occasions, military flights paid for by Ministry of Defence, or flown on Uganda Air Cargo (flying for Ministry of Defence) were carrying large quantities
 20 of coffee in particular back from the Democratic Republic of Congo.

Not only was this originally denied by General Kazini, but also by all of the liaison officers who served at the Military Air Base. There was only one admission concerning coffee flown in from the Democratic Republic of Congo for Mr. Bemba.

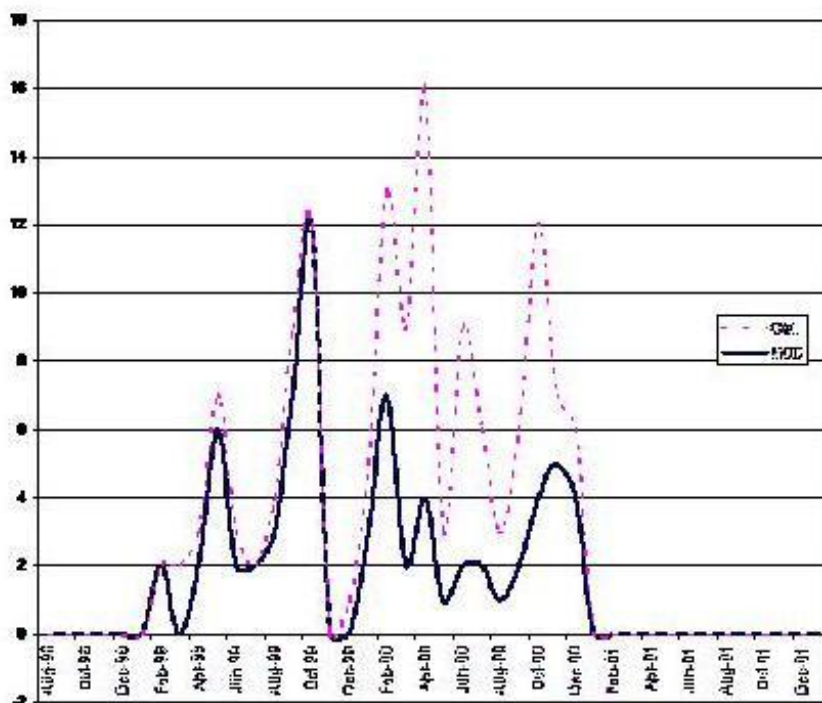


Figure 1: Data from URA Customs at Old Airport Entebbe

However, as Figure 1 shows, the comparison between Military and Civilian dutiable flights arriving at the Military Air Base shows, for flights during 1999 and 2000 which were recorded by URA, military flights and civilian flights were almost equally disposed during 1999, with a wide difference during 2000. There was no data available before 1999 and after December 2001, which is the reason for the dips at each end. General kazini, and the liaison Officers at the Military Air Base have been lying to this Commission.

On the 11th of February 1999 in a radio message General Kazini said that reports had started coming to him that officers in the Colonel Peter Kerim sector, Bunia and based at Kisangani airport were engaging in business contrary to the presidential radio message, and he pointed out that the cover being used was "Uganda businessmen / Congolese".

This corroborates many of the Original Panel's allegations in respect of officers of the UPDF.

13.2. Gold Mining

On the 31st of December 1998 General Kazini messaged Major Kagezi, saying that his soldiers and detach commanders were writing chits for gold mining and smuggling and instructing him to stop this immediately. Major Kagezi replied that his investigations revealed that Lieutenant Okumu had been giving chits, and recommended changing his platoon because they had stayed for a long time, but he had been unable to do so because the Commander had refused (an interesting comment on co-operation and discipline within the UPDF). On the 1st of January 1999, General Kazini ordered that the platoons be changed and Lieutenant Okumu arrested. This does not agree with the evidence of Lt Okumu who said that he had

already been arrested from Durba on 27th December 1999. On the 11th of February 1999 General Kazini sent a message to say that he was sending intelligence officers on a fact-finding mission on the gold trade involving UPDF officers and men. This was the first time that this Commission had heard of this investigation, and is surprised not to have heard about this from Colonel Mayombo, who said that he did not conduct any investigations until after the original Panel Report.

As late as the 15th of February 2000 General Kazini was receiving reports from Professor Wamba that UPDF soldiers in Watsa were in conflict with civilians in relation to mining, and on 23rd February 2000, he sent a message in which he said that he had seen three messages concerning uncoordinated deployments. He pointed out that no soldier of the UPDF was supposed to guard mines, although Major Kagezi had deployed soldiers to Durba. He directed that all soldiers must be withdrawn to Isiro. This message backs up some of the allegations in the original Panel Report relating to mining. It is extremely difficult to reconcile with General Kazini's evidence that he did not know that the soldiers at Durba had been detached to guard the bridge there, and that Lt Okumu's direct mission written instructions in September 1999 were to guard the bridge and the airfield.

Further on the 3rd of October 1999, General Kazini was asking Lieutenant Colonel Sula, Major Kagezi (who had already posted soldiers to Durba against orders) and Captain Kyakabale to let him know if there was any UPDF deployed in either gold or diamond mines, directing them to withdraw them immediately and send their names. General Kazini's actions, radio messages, and evidence to this Commission have been inconsistent throughout.

13.3. Intelligence/Security Funding

On the 21st of January 1999 General Kazini complained in a radio message that some commanders were getting money from Congolese rebel leadership under the pretext of intelligence gathering. This is an extremely interesting complaint, given that he himself later, in July 2000, instructed Commanders in that area to refer any payment of security funding to himself at TAC HQ, and is an example of what this Commission is beginning to suspect, that General Kazini was writing all these radio messages, and copying many of them to His Excellency the President, to cover himself, without any intention that they should be followed.

13.4. Looting

On the 29th of January 1999 General Kazini was complaining that soldiers of the 19th Battalion were involved in looting civilians. He directed that soldiers should not man roadblocks anywhere, and asked for an explanation and details of a specific occurrence. This was another matter raised by the original panel, and denied by General Kazini initially, but confirmed by these radio messages.

13.5. Smuggling

On the 5th of July 1999 General Kazini directed that an investigative team be stationed in Arua and Nebbi at the customs stations to monitor goods in transit. He explained that a dangerous habit was developing where goods supposedly in transit to Congo were returned to Ugandan markets tax-free. He said that the suspects were army officers aided by “Kampala and Arua Boys”. He directed Captain Kyakabale to take the appropriate measures. On 23rd August 1999 General Kazini accused the 19th Battalion of being involved in smuggling in Bunia and Beni sector. On the 25th of December 1999, General Kazini sent a message to, among others Lieutenant Colonel Arocha, Lieutenant Colonel Mugenyi, Lieutenant Colonel Nyakaitana, and Lieutenant Colonel Burundi. He accused of all of them of being suspected of indulging in smuggling goods re-entering Uganda territory from the Democratic Republic of Congo. On the same date he was asking for liaison with the Inspector General of Government to send experts to monitor various customs those on the Uganda border. He said that these were border points where goods were smuggled into the country aided by the UPDF without paying taxes. This Commission was able to check this information with the Inspector General of Government, who said that he had never been approached by the UPDF for this purpose. These were the kind of events, together with others referred to below, to which this Commission was referring when asking Col, Mayombo why he had not investigated such matters. His reply after some questioning, and after the witness indicated that he did not know of these matters, although General Kazini clearly did, was:-

“Lt. Col. Mayombo: I am saying My Lord that: At that time I did not investigate it. It was a failure in judgement, I accept.”

What General Kazini has done by producing these radio messages is to confirm that his information in respect of many of the allegations of misconduct of the UPDF was the same as that which reached the original Panel. There is no doubt that his purpose in producing these messages was to try to show that he was taking action in respect of

these problems. For it is to be noted that many of these messages were copied to His Excellency the President, who had made his position clear in his radio message in December 1998.

General Kazini's position then was that, while problems did exist, they were being dealt with. However little was being done, although there were complaints as late as February 1999, and continual trade often, according to evidence, with General Kazini's personal clearance contrary to the orders of His Excellency the President, on Military Aircraft throughout 1999, 2000 and 2001. There appears to have been little or no action taken as a result of these messages, and the allegation that the Inspector General of Government was to be involved has been specifically denied by him, going to confirm that all this correspondence was intended by General Kazini to cover himself, rather than to prompt action. There also appears to be little or no follow up to the orders given.

General Kazini also had access to the Chieftaincy of Military Intelligence on all these subjects, but on checking Col Mayombo's evidence the following appears:-

“Lead Counsel: Did you ever receive reports of soldiers involved in mining of gold or diamonds?”

Lt. Col. Mayombo: The only report we received My Lord, I received, as Chief of Military Intelligence, was the UN Report.

Lead Counsel: I am in particular referring to an incident mentioned in paragraph 57 where some people actually even died in Yoruba mines on the 9th September – Gorumbwa Gold Mines, that's September – the UPDF Local Commander – if you can look at that paragraph – you have never received a report to that effect?

Lt. Col. Mayombo: We did investigate this to....

Justice Porter: But not until you received the UN Report?

Lt. Col. Mayombo: I received this UN Report My Lord

Justice Porter: So you didn't investigate until you saw the UN Report

Lt. Col. Mayombo: Yes. Until we did see the UN Report we did not have information – I did not have information. My office My Lord, did not have any information that there was mining in that area, being done by UPDF soldiers.”

The picture that emerges is that of a deliberate and persistent indiscipline by commanders in the field, tolerated, even encouraged and covered by General Kazini, as shown by the incompetence or total lack of inquiry and failure to deal effectively with breaches of discipline at senior levels. The best example of such tolerance

appears from this Commission's questioning of General Kazini, when it became clear from the documents supplied by the reconstituted Panel that he was expecting intelligence/security funding to be offered to his commanders, and directed them to refer such matters to himself at TAC HQ, presumably so that he could administer the funds. At the very least, it has become clear that the UPDF as at present established is not capable of dealing with the sort of infractions exemplified by these radio messages.

10 It follows from the production of these radio messages that many of the allegations made in the original Panel Report were true, and conducted by senior officers in the UPDF. It does not follow that the Uganda Government or His Excellency the President were involved. Rather what is revealed is a deep-seated indiscipline throughout the UPDF which requires further investigation and a full review of the capability, discipline and honesty of senior officers. That is what this Commission recommends as an urgent matter.

14. PRE-EXISTING STRUCTURES THAT FACILITATED EXPLOITATION

With the above general consideration of evidence in mind, this Commission now turns to specific allegations in the original Panel Report. This Commission has done its best to follow the headings in the the original Panel Report, which has involved a certain amount of repetition and cross referencing.

20 In Paragraph 23 and 26 of the original Panel of Experts Report, the original Panel recites the outbreak of war between Zairean forces and the AFDL, a rebel movement led by the late Laurent Kabila. The original Panel recites that the AFDL was supported by the Angolan, Rwandan and Ugandan forces.

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

30

“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”:

10 *“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 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.*

20 *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 original 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.*

30 *28. 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. “*

40

14.1. Allegations against the Government of Uganda

As this Commission understands the original Panel's argument in Paragraphs 23 and 26-28, leaving aside for the moment alleged personal involvements, and endeavouring to separate alleged Ugandan and Rwandan involvement, which unfortunately the original Panel failed to do, the original 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
- 10 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 original Panel acknowledges that political leaders might have been motivated to move into the Congo for security and political reasons
- 4) However top army leaders had a hidden agenda : economic and financial motives
- 5) General Kazini organised local commanders to achieve economic and financial objectives

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
 20 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 north-western 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 former Ambassador to Kinshasa told this Commission that, although
 30 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. 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 original 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 Democratic Republic of the Congo” due to their earlier experiences, because the earlier experiences were brief and in north eastern Zaire and the Sudan, rather than eastern Zaire. It would not however have been necessary to have had such experience: the richness of the resources of the DRC are widely known.

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 WNBK 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 26th 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”.

10 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 or legal 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 to which this Commission has referred above. The circumstances, leaving aside the documentation, 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.

20 There was a problem of security, to which the original Panel does not refer, although the Addendum in Paragraph 95 acknowledges that there was a problem.: there clearly were discussions and agreements of the most open kind: all these documents were available to the original 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 as to the involvement of army leaders, these allegations should not be dealt with here, as this Commission has in mind the overall policy and the actions of Government. The evidence on the point is at Paragraph 13.1 above, and consideration is at Paragraph 14.4 below

30 **14.2. Allegations against General Salim Saleh**

General Salim Saleh in Paragraph 27 of the original Panel Report was criticised for visiting the Eastern the Democratic Republic of Congo before the 1998 war broke out. General 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.

14.3. Allegations against Kainerugaba Muhoozi

Apart from a later general allegation, this is the only time Lt Muhoozi's name is mentioned (in Paragraph 28) in the whole original Panel Report.

10 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 Laurent Kabila, 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 interests there. This was early in the regime of Laurent Kabila, when friendly relations were thought to exist between the Kinshasa Government and Uganda.

20 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 original Panel Report.

14.4. Allegations against top UPDF Officers

As to Point 4 above, see Paragraph 13.1 above: General Kazini's radio message in reply to that of His Excellency the President shows that, although there was no effect on the policies of the Uganda Government, some officers were excited about the possibility of self-enrichment in the Democratic Republic of Congo. To that extent the allegations in the original Panel Report are true.

14.5. Allegations against General Kazini.

30 As to Point 5 above, this Commission has received some evidence in support of the allegation against General Kazini in relation to his conduct at the inception of the campaign in the Democratic Republic of Congo, From August to December of 1998, he was clearly aware of a problem as his radio message shows, but took little action:

he only appears to have acquainted His Excellency the President of the problem as late as December 1998.

14.6. Transportation Networks

14.6.1. Military Air Base

The original Panel said that the Military Air Base was used during Operation Safe Haven for transport of goods to and from the Democratic Republic of Congo. The Commission therefore investigated the operations at the Military Air Base. What the Commission found left a lot to be desired.

10 The first question to be asked was how a supposedly secure Military Air Base came to be used for transport of civilians and goods.

This Commission asked His Excellency the President about this because it had been intimated to this Commission that this was on reliance on his radio message dated 10/12/98. Set out below is part of the transcript of his evidence:

20when my army went into Congo, I had to give them terms of reference on all major matters; there is no major matter which we did not regulate by a document. For instance, on the 15th of December 1998, no, on the 10th of December, 1998 at 1500hrs, I sent a message myself to all army units in Congo, which I could read for their Lordships: “From President for Chief of Staff, Inform Army Commander, Minister-of-State for Defence, and All Stations.

(All stations means all units).

Ensure that there is no officer or man of our forces in Congo who engages in business. Also report to me any other public servant, whether currently based in Congo or not, who tries to engage in business in the Congo. However, other Ugandan businessmen (who are not soldiers or public servants, including all politicians or their families)”

This is in brackets: (businessmen who are not soldiers or public servants, including all politicians or their families), end of brackets.

30 “ ... should, given the fluid security situation in Congo, be assisted, if necessary, to do business there in order to alleviate the acute needs of the population”

(Of the population in Congo).

“... and also to establish links for the future. The purpose of this directive is to erase the feeling that I ordered our forces into Congo because we wanted to loot minerals from Congo, and not to defend our security interests.”

Your Lordships, if they have not given you this copy of this message, then I will give it to you. This is the

Justice Porter: We have it.

H. E. The President: You have it?

Justice Berko: We have it.

H. E. The President: Very good. Give it to the rumourmongers. Give a copy to those rumourmongers.

Justice Porter: Your Excellency, would you mind if I asked you?

H. E. The President: Yes?

Justice Porter: In that radio message, sorry. In the bit in brackets, did you mean to stop politicians or their families, or did you mean to allow politicians and their families to trade?

H. E. The President: To stop them.

Justice Porter: To stop them?

H. E. The President: Yes.

Justice Porter: I thought that was probably it.

H. E. The President: [Affirmative response].

Justice Porter: And the

H. E. The President: Because I did not want leaders to be involved in ... they were not part of the businessmen I was talking about.

Justice Porter: I thought that must be it. It is oddly drafted, though, so I was not quite clear.

And the other thing was, in that third paragraph you were encouraging Ugandan businessmen?

H. E. The President: [Affirmative response].

Justice Porter: Were you also prepared to encourage Congolese businessmen?

H. E. The President: Of course, why not?

Justice Porter: You were?

H. E. The President: [Affirmative response].

Justice Porter: Yes. Because UPDF took it that way, but it does not say so in your radio message, so

H. E. The President: No. I was more concerned Of course, the assumption was that the Congolese businessmen are always there. They are always there, so this was not my

Justice Porter: Yes. What was worrying us is that nearly four thousand businessmen travelled back from the Congo, over the three years that we are talking about, on military aeroplanes; and we did not think that your radio message authorized that.

H. E. The President: No, no. No, that is a separate matter; I was not talking about that.

Justice Porter: Right. Because those who authorize actually rely on this radio message

H. E. The President: Oh! No.

Justice Porter: ... to say that they could do that.

H. E. The President: Oh, no.

Justice Porter: All right. Sorry, I interrupted you, please

H. E. The President: No problem, no problem.

But what I was saying was that: soldiers, politicians or their families should not do any business in Congo, because if they do, first, they would be diverted. (This one, of course, I did not have to say all this in the message). They would be diverted from their work and they may be involved – you know, because businesses always involve conflicts and so on and rivalries, and they would be involved in all that. But business people – Ugandan business people – should, if necessary, be assisted to do business; with security because of the insecurity there because, I mean, there was also insecurity there. With security, not transport; transport is not my ... nobody asked me about that. Because here, we had ... I was bearing in mind that a town like Kisangani is a town of half-a-million people. If they go on without supplies for two weeks, three weeks, you can have a humanitarian disaster. So you had to provide ... to enable them to get supplies, so that they ... we do not get a humanitarian problem.

It is very clear from the radio message, particularly the underlined part of it, and the evidence set out above that His Excellency the President was quite startled to hear that Immigration Authorities had recorded so many civilians to have travelled on Military transport. His intention was quite clear, that businessmen, whether Ugandan or Congolese should be assisted with security, but not with free transport for them and their goods. This Commission was fully satisfied that his reaction was impromptu and quite genuine, and that operations at the military airport have been kept from him.

And indeed Salim Saleh said:

Maj. General . Salim Saleh: The nature of the talks – we were looking at the socio-economic situation in the areas which UPDF had taken over. Which needed services of that nature – of essential commodities, of medicine – those services. So, we were discussing it from the perspective of assisting, delivery of these supplies into the areas which were already controlled by UPDF. Because nobody was willing to do it, so we were discussing it from that angle.

Lead Counsel: And did you ever come out with any documentation? Did you sign any documents to that effect?

Maj. General . Salim Saleh: No.

Ruhinda Magulu(representing Salim Saleh): Before that please, you were discussing this with who? You have not told us.

Maj. General . Salim Saleh: With the different interest groups

Justice Berko: In which place – Congo or where.?

Maj. General . Salim Saleh: No in Kampala

Lead Counsel: So, did you ever execute anything after these talks, or sign any document?

Maj. General . Salim Saleh: We presented the ideas – the proposals to the Commander-in-Chief. Because this would have been a civil military operation and he rejected it. And issued a specific order that the military or people associated with the military should not engage in delivery of those services. That it should be left to the business community – to see how they can deliver those services to the areas under UPDF. This was in a specific directive.

Justice Porter: Are you talking about the radio message?

Maj. General . Salim Saleh: Yes My Lord

This evidence confirms His Excellency the President's evidence, There never was any intention to allow civilians to use military transport. The matter had been brought up by Salim Saleh, apparently discussed by the High Command, and specifically rejected by President Museveni. All that was intended was that UPDF should assist traders by providing security in the Democratic Republic of Congo.

Somehow or another, it is clear from the evidence of the Liaison Officers at the Military Air Base, and of General Kazini, that it became to be understood that civilian traders, Ugandan, Congolese and indeed Lebanese were entitled to, and did, travel on military flights when there was space, contrary to the Commander in Chief's instructions. Goods were stored at the Air Base to await the availability of planes. Authority was given by various officers, but the most senior was General Kazini according to the evidence: there were also occasions when the Permanent Secretary of the Ministry of Defence, by then Dr Mbonye, gave authority. It should also be remembered that one or more of the airline operators was owned and/or controlled by Lt General . Salim Saleh who would have been closely involved in interpretation of the Presidential directive, with knowledge of its purpose and intent.

These were direct recipients of the radio message: how then did they come to authorise such trips? In numbers, the evidence revealed that Immigration checked in nearly 4000 travellers from the Congo on Military airplanes over a period of just under 3 years. No doubt those travellers had either come from Uganda and were returning, or were coming from the Congo and planning to return. Only

sometimes were these travellers recorded on outgoing military flights. There is no UPDF record of incoming flights.

The whole subject of the use of military airplanes for civilian travel and trade is full of questions which have not been satisfactorily answered: what this Commission can conclude, however, is that the UPDF appears to do whatever it likes, even when specifically told not to by its Commander in Chief, and this raises the whole question of transparency and accountability within the UPDF.

10 As set out below, His Excellency the President did later allow civilian planes to use the military airbase, on the grounds that ENHAAS charges were too expensive for traders to be able to assist in any humanitarian effort.

The Commission heard evidence on oath from the liaison officers at the Entebbe Military Airport, Major Jones Musinguzi Katafire and his colleagues at the airport during Operation Safe Haven. These included Lt. David Livingstone Komurubuga, Lt. Badogo and Lt. Col. John Kasaija Araali. When Operation Safe Haven started the first Liaison Officers were Lts. Ahimbisibwe and Kiwanuka. These two officers never kept records of goods going to and coming from the Democratic Republic of Congo. This Commission finds this unbelievable, in terms of accountability within UPDF.

20 Lt. Col. Kasaija was deployed at the Military Air Base in September 1998 as Co-ordinator and Liaison Officer. He introduced for the first time Loading Schedules for goods going to the Democratic Republic of Congo from The Military Air Base and Acknowledgement Forms which were to be signed by the Local Commanders in Congo who received the goods. However, there were no similar Loading Schedules kept in the Congo for goods that came from Congo. That, in the view of this Commission, was contrary to the Military System.

30 Lt. Col. Kasaija told the Commission that he recorded whatever came to the Military Air Base from Congo. He said that this was limited to purely military matters, namely wounded soldiers, body bags and military hardware, as according to Lt. Col. Kasaija he had no interest in non-military terms that came from Congo and so he kept no records of them. The implication here, which later evidence has proved beyond doubt is that there were in fact civilian goods being transported by military transport, but that the Liaison Officers were not recording them. Lt Col Kasaija lied to the Commission.

From August 1998 to May 1999 URA did not have a presence at the Military Air Base. This Commission has evidence that URA insisted on inspecting goods imported, for transit, or re-export as from May 1999. This implies first that URA realised that customable goods were being flown in from the Congo without their being able to check them (and the most likely customable goods were the natural resources of the Democratic Republic of Congo), and second that neither the military nor URA were recording such goods for a period of 8 months.

10 Lt. Col. Kasaija left the Military Air Base in June 2000 and was succeeded by Major Katafire in July 2000. Records of military return goods began to be kept when Major Katafire took over from Lt. Col. Kasaija.

The evidence given to the Commission shows that there was no clear policy regarding who could travel and what could be carried on military charter planes. That was largely left to the discretion of the Liaison Officers on the ground and sometimes senior military officers such as Lt. General. Kazini according to the evidence. There was obviously a lack of accountability and a lack of security both in regard to civilians and goods.

20 What the Commission found remarkable was that the Liaison Officers were prepared to take responsibility for whatever was wrong rather than betray their commanders who at times clearly directed them to do what they did. This is clear from the evidence of Major Katafire and Lt. Col. Kasaija. As so often this Commission was faced with a conspiracy of silence, which forced middle ranking officers to be first embarrassed into silence under cross examination followed by evasion, and then outright lies. For instance Captain Richard Badogo told the Commission on oath that the military charter planes never carried non-military goods and also that Uganda businessmen and women were not allowed on military flights. Capt. Badogo obviously lied, as there is clear evidence on record that non-military goods were carried on the military charter planes. There is also evidence before the Commission that many civilian businessmen and women used the military planes and charter planes to take their goods to Congo. A notable example
30 was Sam Engola, a Ugandan businessman, whose salt and other goods were carried to the Democratic Republic of Congo on military flights free of charge.

A motor-cycle was also flown from Congo for one Humphrey who was said to be a Congolese businessman. That was obviously contrary to the humanitarian assistance the President of Uganda talked about as the basis for his radio message.

URA did not establish its presence at the Military Air Base until 1st May 1999, nearly a year after the start of the war. Since the army was not interested in recording non-military goods, it meant that until then neither the UPDF nor URA would have records of the goods. It also meant that military transport could be used for carrying goods from the Democratic Republic of Congo with no record being made, with no possibility of checking. If the goods were dutiable, the customs duty on them would not be collected by URA, thereby causing a loss to the State.

10 Evidence received by the Commission shows that even after URA started operating at the Military Air Base, it did not maintain a 24 hour presence as it operated from 8a.m. to 5p.m. There is evidence that some flights from Congo came at night when URA had closed. URA informed the Commission that there was an understanding between them and the UPDF that aircraft that arrive at night from Congo should not be off-loaded. This Commission has serious doubt as to how this gentleman's agreement could have been enforced if the goods on the night flights belonged to a high-ranking army officer, who would have no problem in clearing the so called security at the rear gate to the Air Base. This Commission's observation on the flight to Gbadolite was that security was almost non-existent overnight and early in the morning until officers started turning up at
20 8.30a.m. to 9.30p.m.

The Commission was informed that at times civilian porters from nearby Kitoro Trading Centre were allowed onto the Air Base to load and off-load planes at the Military Air Base. This Commission thinks that the practice is highly improper as loading and off-loading of planes is a specialist job and the Military Air Base was supposed to be a secure place.

According to the evidence of His Excellency The President, the need for use of the Military Airport by civilian planes was presented to him as necessary because of the high cost of ENHAAS charges.

30 *H. E. The President: Now on the question of transport, Your Lordship, the only thing I know about transport, which people asked me about – the officers, I do not know which officers, was whether Or was it Bemba? I think it was Bemba who was asking me whether we should allow them to use the old airport for cargo going to Congo, because at the new airport there is a company – a handling company there called ENHAS, which was forcing them to pay more – to pay money for handling; so this was raising their costs, raising their costs. Instead of just paying what, they were paying*

more because they had also to pay ENHAS. And I remember I talked to some people, I do not know which ones, I said: why do you ...? These Congolese are in a lot of problems. If they are taking merchandise to Congo for Congolese people, since it is a war area ...; because, you see, people in a war area, people fear to go there (they fear to go, they fear to take their planes there, there is some risk), so if you put on other impediments then you are discouraging them even more. That is the only thing that I remember some people consulting me about, but I do not remember how it was concluded. But I do not remember whether it was Bemba or who on that particular issue, but that is the only legitimate case I remember about this transport: to use the old airport or the new one. For me, I was for using the new one if it would help them not to pay the ...

Justice Berko: The old one.

Justice Porter: The old one.

.....

H. E. The President: Then the Customs people were saying, but how shall we charge customs if they are using the old airport? And I remember I told them, I said: that is no problem, you come and base yourselves at the new airport, charge the customs, if necessary, but not this ENHAS charges. I was looking at it as an exemption for cargo going to Congo in order to help those people get supplies a bit cheaply. That is the only thing I remember about transport, but I do not know how it was concluded; because sometimes the ... when you are discussing, they say: President has directed. So it seems President is not supposed to think, or any opinion of the President is a directive – for those who want to steal: President directed. But I remember I gave some opinion like that. I think it was Bemba or somebody, I do not remember how it started, but somebody brought it to me; and my opinion was: do not overburden the Congolese with these ENHAS charged because they have enough problems already. That is the only thing I remember about transport.

It clearly made sense in view of the President's humanitarian approach, to allow Ugandan traders to get to the Democratic Republic of Congo as easily and cheaply as possible. The theory could not be criticised. However, to advise His Excellency to allow use of what was supposed to be a secure Air Base (as Senior Army Officers interpreted the matter) was totally unnecessary. If porters from Kitoro could be allowed to go onto a supposedly secure Air Base, then there would be less problem involved in allowing them onto the civilian side of the Airport to load and unload planes operating in the Congo, in order to save ENHAAS charges.

The Commission found, during a visit to the Military Air Base, that there is a back road which links the Military Air Base to the Kampala/Entebbe Airport road. It is therefore possible for one to enter or leave the Military Air Base without passing through the International Air Port where URA has a 24 hour presence. It is possible to avoid URA Customs by using that road which is secured by very junior

UPDF officers. That would make the country lose revenue. The Commission therefore recommends that the road should be closed with immediate effect if businessmen are to continue to use the Military Air Base. However, this Commission's recommendation is that they should not and that they should use the civilian side with Airworthy Air Craft cleared by Civil Aviation Authority, subject to clearance from the proper military authority in respect of security issues only.

10 The Databases constructed by this Commission from Data provided by URA, Civil Aviation Authority and MOD provide clear evidence that in fact military airplanes flying for Ministry of Defence were carrying private goods from the the Democratic Republic of Congo to the Military Air Base in Entebbe (See Figure 1). Clearly the evidence of the Liaison Officers at the Military Air Base that this was not happening was untrue. The Liaison Officers have been lying to this Commission.

The Commission was not permitted to inspect the hangars at the Military Air Base on the pretext that the hangars could not be opened without the permission of the Officer-in-Charge who was said not to be there even though he had advance notice of the visit. The Commission thinks that the UPDF had some things in the hangars that they did not want the Commission to see.

20 Disciplinary action is recommended against those officers named in this section of the Report.

14.6.2. Allegations against the Government of Uganda

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

30 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. In fact some of the planes were chartered by both the UPDF and by civil organisations. Figure 2 shows the relationship between civil and military flights as recorded by CAA.

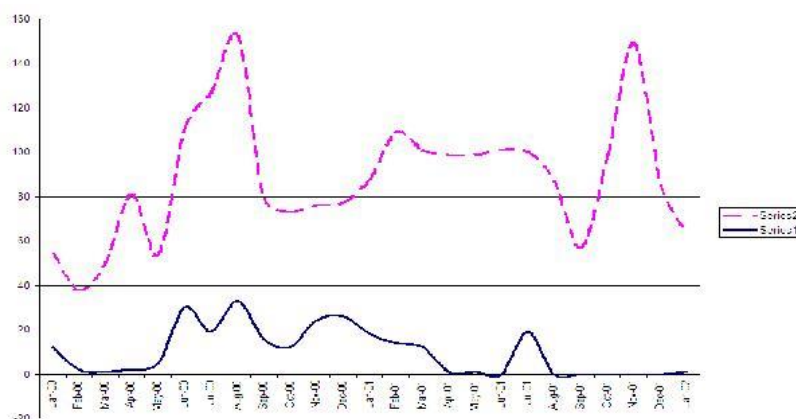


Figure 2: Flights out of Military Airbase

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, whilst military transport of goods from the Congo, which cannot have been anything else than natural resources, has been proved to have been taking place, by far the largest number of flights were private, carrying merchandise to and from the Congo.

10 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.

Evidence before this Commission clearly shows that trade through the Military Air Base was being hidden, and that those involved were perfectly prepared to lie to this Commission to cover it up. It has only been after a protracted effort in gathering data and collating it into databases that this Commission has been able to show what was going on. In those circumstances, it is difficult to lay blame at the door of the Uganda Government.

20

14.6.3. Implied Allegations against The Civil Aviation Authority

The Civil Aviation Authority was established by the Civil Aviation Authority Statute of 1994 (Statute No. 3).

The provisions of the Statute apply to all aircraft operating in Uganda airspace, be it of Foreign or Ugandan registry and to Ugandan aircraft operating outside of

Ugandan territory. The Statute does not apply to State aircraft, which are defined to include military aircraft and any aircraft commandeered by the army and military aircraft belonging to a foreign country.

The authority was established for the purpose of promoting safe, regular, secure and efficient use and development of Civil Aviation inside and outside Uganda. Its functions include:

advising the Government on policy matters concerning Civil Aviation locally and internationally,

- the licensing of air transport,
- 10 • the designation of domestic and international air carriers;
- the provision of air navigation services;
- the registration of aircraft;
- the control of air traffic;
- the certification of operators of aircraft; and
- the licensing of Civil Aviation personnel.

Uganda has one International Airport, which is the Entebbe International Airport, part of which is called the New Airport; the other part is the Old Airport or the Military Air Base, which is for the military.

20 The Civil Aviation Authority has no presence on the ground at the Military Air Base and therefore cannot supervise what goes on there, in matters such as airworthiness, crew qualifications etc. In the air one would expect Civil Aviation Authority to control flight paths and Air Safety, and there are records to show that Civil Aviation Authority did authorise and supervise at least some flights, although the records of landings and take-offs are not complete.

The data from the Civil Aviation authority shows that private flights outnumber the military flights by a large number (See graph above). These private flights were operating independently of the military. The justification for the private flights operating from a military airport was that they were flying to the Democratic Republic of Congo, which is a war zone and therefore needed to be

under military control, and further to avoid ENHAAS charges. These private flights carry merchandise and civilian passengers to and from the Democratic Republic of Congo.

10 The Civil Aviation Authority does not issue an Air Service Licence for aircraft that operate from the military airport. The reason being that Civil Air Services operate under ICAO recommended standards and practices which are different from military aircraft or, allegedly, civilian aircraft for military operations. They were however private flights as defined, and therefore should have come under Civil Aviation Authority control. Hardly any of the planes using the Military Air Base could have been licensed as airworthy by Civil Aviation Authority .

Authorisation for aircraft operators to operate from the Military airport was given by Liaison Officers of UPDF at the Military Air Base, senior UPDF officers including General Kazini, and Ministry of Defence personnel who may have little or no knowledge of air-worthiness standards. A typical example is Knight Aviation, which was refused an Air Service Operation Licence by Civil Aviation Authority. Nevertheless it operated from the Military Air Base under the Ministry of Defence Charter arrangement and flew civilians to and from Democratic Republic of Congo. What is remarkable is that the very same Civil Aviation Authority, that refused Knight Aviation Air Services Operation Licence because it
20 did not meet the Uganda Flying Air Worthiness Standard, allowed Knight Aviation to take off and land on the New Airport Runway, which also accommodates International and Civilian services, regardless of Aviation Safety.

These aircraft, which are not airworthy, are also allowed by Civil Aviation Authority to fly over Ugandan Air space. This is an example of submission to military pressure which should not be tolerated. This is contrary to Civil Aviation Authority 's Motto which is "to maintain the highest standards of safety and service in civil aviation."

30 The Commission also observed that civilian planes using the Old Airport and going to and from Congo and doing non-military operation are not under the supervision of the army because they are not doing military operations. They are also not under the supervision of Civil Aviation Authority since they operate from the military base. The Civil Aviation Authority is therefore unable to enforce compliance of safety standards relating to personnel, airworthiness of aircraft,

conditions under which persons, or personal belongings, baggage and cargo may be transported by air.

10 The use of the Entebbe military airbase was a big problem. As considered in Paragraph 14.6.1 above, before May 1999, URA did not have a presence at the old airport. Non-military goods could be brought in or taken out without paying taxes. Even after URA established its presence this was only from 8:00 a.m. to 5:00 p.m. It is said that an arrangement was made with the military not to offload planes arriving at night. There is also an access road from the Entebbe/Kampala airport road leading to or from the old airport. This could be used to bring goods to or from military planes.

As a result of the questions raised above, the Civil Aviation Authority was asked to assist this Commission to understand how private aircraft were allowed to operate from the Military Airbase in Entebbe for flights to the Democratic Republic of Congo.

In a written submission the Civil Aviation Authority refer to the Chicago Convention, the Rules of the Air and Air Traffic Services and the Civil Aviation Authority Statute, which is the Ugandan legislation establishing the Civil Aviation Authority . The Statute in Section 2 states:

20

“(1) This Statute shall extend to all aircraft operating in Ugandan airspace, be it of foreign or Ugandan registry and to Ugandan aircraft operating outside of Ugandan territory

This Statute shall not apply to state aircraft except where it is expressly stated”

The expression “state aircraft” is defined in S 3 of the Act to include:

“aircraft of any part of the Defence Force (including any aircraft that is commanded by a member of that force in the course of duties); and aircraft used in the military, customs, or police services of a foreign country”

30

The Civil Aviation Authority written submission refers to the Chicago Convention for a full definition of the expression “state aircraft”, on the basis that S 33(1) of the Civil Aviation Authority Statute requires the Authority to carry out its functions in a manner consistent with the Convention, annexes to it and

recommended practices, with amendments. The basis of the submission is that the way in which the expression is defined in the Ugandan Act must be read with the intention expressed in the Convention.

The Convention in Article 3 deems “state aircraft” to be :

“Aircraft used in military, customs and police services”

and states that the Convention shall not apply to such aircraft. The Civil Aviation Authority Act makes similar provisions.

10 Thus, on any view, the expression “state aircraft” certainly includes aircraft of any part of the Defence Force, and aircraft used in military, customs and police services. Neither the express definitions or inclusions, nor the intent of either the Civil Aviation Authority Statute or the Chicago Convention could possibly be read to include aircraft chartered from privately owned and run airlines, carrying goods for sale to the Democratic Republic of Congo, and returning with goods therefrom.

20 On any reading therefore, the rules and requirements of the Civil Aviation Authority Statute are required to be enforced by the Authority in respect of such aircraft. The Authority’s witnesses have told us that the aircraft flying from the Military Airbase could not have been licenced for various reasons. This Commission has seen for itself an aircraft in dangerous condition. The question this Commission has to ask is, why then did the Authority relinquish authority over these private flights?

In the submission of the Civil Aviation Authority, it is stated that pursuant to the provision that the Authority is required follow the Convention, and given existing practices referred to in the Convention, Civil Aviation Authority has regarded civilian aircraft **hired/leased by the military** in the course of duty to be state aircraft. With that statement this Commission has no quarrel.

However, the subject to be addressed is the question of private aircraft used for trade by private entrepreneurs to the Democratic Republic of Congo: the statement therefore is of no assistance.

30 It is clear from correspondence that in July 1999 that this question was raised by the Managing Director of the Civil Aviation Authority by his letter of 7th July

1999 to Dr Mbonye, then Secretary for Defence. In that letter the Managing Director said:

“In the recent past we have received some aircraft at Entebbe whose operators claim to be exporting consignments or supplies for Ministry of Defence. On Verification, it has been found that the Aircraft are carrying general cargo and some passengers to or from the Democratic Republic of Congo. Some of the aircraft park at the Old Airport which is not under the direct operational control of the Civil Aviation Authority .”

10

Pausing there for a moment, this is the exact problem with which this Commission has asked the Civil Aviation Authority to assist.

The letter quotes an example aircraft, and continues:

“I would request you to clarify whether this aircraft is on contract from the Ministry of Defence.”

The Managing Director then proposes that the then Major Katafiire be given the mandate to guide Civil Aviation Authority about aircraft that are on military business, when the remainder would be appropriately handled (which no doubt meant that if they could not comply with safety regulations, they would not be allowed to fly).

20

The Managing Director was reassured by the then Permanent Secretary, Ministry of Defence, Dr Mbonye, who said in a letter of 13th July 1999:

“At the moment the Ministry of Defence is operating aircraft from Uganda Air Cargo Corporation, VR Promotions and Knight Aviation. The aircraft you have mentioned in your letter has never been engaged in any official business with the Ministry of Defence.

Concerning clearance of Aircraft on Ministry of Defence business, the UPDF Liaison Officer, currently Major Musinguzi Katafiire remains the officer to give your staff such clearance.

I am available any time for consultation should you at any stage need further clarification with regard to aircraft claiming to be handling Ministry of Defence business.”

30

Pausing there for a moment, a number of conclusions can be drawn from this correspondence:

- There was a problem of aircraft falsely claiming to be operating for the Ministry of Defence, raised by Civil Aviation Authority and acknowledged by Ministry of Defence
- A method of dealing with the problem was set out, with responsibility given to the Liaison Officer to confirm when asked on behalf of MOD that any particular flight was a military flight.

On 20th July 1999, Col Otafiire, who was then the Special Presidential Advisor for Security, wrote to the Managing Director of the Civil Aviation Authority requesting Civil Aviation Authority to allow an aircraft Reg No LZ-FK to use the airbase. He said in his letter:

“Whatever cargo, non-military subject to tax, shall be taxed according to your financial regulations.”

By this paragraph, Col Otafiire revealed such an astonishing misunderstanding of his duties, and of the Civil Aviation Authority requirements and those of the fiscal system that he either was not the man to fill his important position, or he had a financial interest in enabling the flights.

On 23rd July 1999 the Managing Director of Civil Aviation Authority replied to Col Otafiire, with reference to the landing of that Aircraft LZ-FK Antonov 12F. He quite rightly said:

“We wish to advise you that Civil Aviation Authority has difficulty in authorising civil air operations in/out of DR Congo for the following reasons:

The ICAO rules and regulations that govern international air operations do not permit such operations given the current situation prevailing in the eastern part of the Congo

The aircraft LZ-FK Antonov 12 F you intend to use does not meet our flight safety standards”

However, he continued, wrongly in the view of this Commission:

“However, if the flights have to be operated, then they should be operated as purely military flights which are not subject to Civil Aviation Authority’s strict regulations and safety requirements..... ”

Pausing again for a moment, there are some further conclusions which can be drawn, and comments which can be made:

- Civil Aviation Authority agree with this Commission that private flights should be under Civil Aviation Authority supervision
- There were flight safety issues.
- Civil Aviation Authority was proposing that a fiction be adopted, whereby any such private aircraft going to the Democratic Republic of Congo should be called military flights. This fiction was contrary to the rules in the Chicago Convention and also the provisions of the Civil Aviation Authority Statute.

10

On 6th August 1999, General Kazini got into the act on behalf of Planet Air, (which, it will be remembered was connected to Salim Saleh). He wrote from TAC HQ in Kisangani to the Chairman of the Civil Aviation Authority as follows:

“1. This is to bring to your attention that Aircraft Planet Air has been authorised to continue with its normal duties of Humanitarianism.

2. Owing to the current situation where we have been stopping aircraft over flying our areas of control, you are therefore informed to allow Aircraft Planet Air resume their Humanitarian work in the Democratic Republic of Congo ”

20

This appears to be a similar approach to that of Col Otafiire, and constitutes a complete disregard of all the earlier correspondence, which could only be justified by a personal and financial interest.

The Managing Director of Civil Aviation Authority attached this letter to a letter of 13th August 1999 to his Chairman, copying to the relevant officers in his Ministry. In his letter he said:

“It is recommended that the Government comes out with clear guidelines on how Civil Aviation Authority should handle Air Operators who apply for clearance to operate into the the Democratic Republic of Congo while having regard to Articles 1,2 and 3 of the Chicago Convention (copy attached).”

30

Pausing there for the moment, it did not need Government to issue guidelines. As this Commission has considered above, if the operator was private and not military, and the aircraft was not chartered to MOD, then it should not be allowed to fly, as it came under Civil Aviation Authority rules. And indeed that is exactly

the correct action taken in respect of Planet Air, which clearly was not flying as a military aircraft, for the letter continued:

“In this particular case, Planet Air is not licenced in Uganda, Civil Aviation Authority therefore does not have jurisdiction over the operator. I have informed the representative of Planet Air accordingly.”

10

Civil Aviation Authority had also received a request for a permit to allow aircraft LZ-FK, referred to above, on the basis that it would be conducting military flights between Entebbe Airport and the the Democratic Republic of Congo “under the command of Col K Otafiire”. This of course was a direct lie, told to try to bring the aircraft under the definition of state aircraft in the Civil Aviation Authority Statute.

There were a number of requests for clearance signed apparently by military officers at the air base. But everything seems to have gone quiet until 24th March 2000, when in an internal memo from the Managing Director to the Director Air Transport, the following instructions were given:

“At a meeting held in Bombo on 17th February 2000 with the Military Leadership, it was clarified that Government has stated clearly that Uganda has military personnel in the East the Democratic Republic of Congo. This fact was also recognised under the Lusaka Peace accord.”

20

No surprises so far.

“It was further clarified that, as long as the soldiers are still in the Democratic Republic of Congo, the Government is obliged to send supplies and provisions to them.”

There is no argument with that, These were clearly military missions.

“It is under this situation that some flights have to be cleared to the Eastern the Democratic Republic of Congo. ”

The argument so far complies with aircraft on true military missions, but the Memo continues:

“It was agreed with the Military, however, that the flights shall be facilitated under Military Clearance and Operational Supervision”

Now if the flights were military flights, or aircraft chartered by MOD, nothing in this memo was anything but self evident. It apparently took the matter no further forward, and recorded that the meeting of 17th February was a complete waste of the time of the military and Civil Aviation Authority personnel involved. However the last paragraph shows the purpose of the memo and the meeting which preceded it. It reads:

“You should therefore handle flight clearances to the Eastern the Democratic Republic of Congo accordingly. Where you are in doubt, you may refer the matter to this office. It should be made clear, however, that Civil Aviation Authority charges must be paid up front by the operators.”

It is unlikely that the instructions in this memo were to refer only to military flights, but if they did, then Civil Aviation Authority charges would be invoiced to MOD, as one clearance letter records. These instructions were to give an apparently legal gloss to the private trading flights to the Democratic Republic of Congo from the airbase. Nor did they account for or deal with flights to Western Congo, Gbadolite for instance.

In fact UPDF Military authorities and Civil Aviation Authority had conspired to see that flights illegal by both Ugandan Law and International Convention were falsely recorded as the flights of State Aircraft, which they were not, thereby endangering Ugandan participation in International Air Transport.

This Commission sees a weakness in the top administration of the Civil Aviation Authority in conspiring to break the international air safety rules at the behest of the UPDF, whom Civil Aviation Authority ought to have refused, instead of apparently capitulating, when throughout they had been in the right, at the meeting at Bombo of 17th February 2000.

This commission also sees an unseemly wielding of military power and contempt of civil rules and regulations which appears throughout its investigations of the conduct of the UPDF.

What should have happened is that private flights to the Democratic Republic of Congo should have been conducted, whether from the military airbase or from the

International Airport, under Civil Aviation Authority rules and regulations. Senior officers in Civil Aviation Authority and UPDF are responsible for this situation, and should be investigated and the necessary disciplinary action taken, for the protection of Uganda's participation in International Air Travel.

15. MASS SCALE LOOTING

The original Panel Report states as a general proposition in Paragraph 32 that between September 1998 and August 1999, occupied zones of the Democratic Republic of Congo were drained of existing stockpiles. Specific examples were given, as below:

10 15.1. Amex Bois

Ugandan soldiers under General Kazini were accused in Paragraph 33 of having, in late August 1998 absconded with stockpiles of Timber belonging to Amex Bois. The Report does not state whether General 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 transiting 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
20 oath is that some UPDF soldiers had used a little of the timber for firewood, falling far short of draining the stocks. This allegation cannot be confirmed, and is unlikely to be true in view of the above.

15.2. La Forestiere

In Paragraph 33, General Kazini was also alleged to have ordered the confiscation of stockpiles of timber of La Forestiere in December of that year. The original Panel rely on an allegation that General Kazini was seen in the area at the time of the alleged incident, and it is true that General Kazini set up his HQ at La Forestiere. In fact when General Kazini left La Forestiere, he obtained a withdrawal document signed by the relevant authorities which stated that La Forestiere had no such complaint.
30 This allegation is unlikely to be true.

15.3. Confiscation of Coffee Beans

Paragraph 35 of the original Panel Report states that in January 1999 Jean Pierre Bemba with General Kazini was alleged to have organized a large operation for the confiscation of coffee beans. Although there is an allegation against General Kazini, the recital of information upon which the original Panel relied, deals with acts of Jean Pierre Bemba, but does not implicate General Kazini. In any case both General Kazini and Jean Pierre Bemba have denied the allegation.

10 Jean Pierre Bemba told the Commission that on hearing the story he wrote to the companies mentioned and requested them to confirm the allegation and inform him the quality and quantity of the coffee his men had taken. He told them that he was prepared to reimburse the cost. He said that he did this although he was aware that his men had not taken any coffee.

In response the Company is said to have stated that the coffee he was talking about was taken by Chadians and not his men. He showed the exchange of correspondence to the Commission (Exh. JPB/7/116.) He also said that he had given copies of those documents to the reconstituted Panel. The Commission was impressed by the orderly manner in which Jean Pierre Bemba kept his records, and conclude that this allegation is unlikely to be true.

15.4. Cars

20 It is further alleged by the original Panel 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.

30 Besides, the information this Commission has received from the 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 has observed, that this is not the case and cannot confirm this allegation.

The evidence of Adele Lotsove also shows that cars in the Democratic Republic of Congo are junk, as there are no good roads in the Democratic Republic of Congo, and therefore would not be worth stealing and transporting.

15.5. Theft from Banks

Paragraph 40 of the original Panel Report alleges that Jean Pierre Bemba had instructed his soldiers to empty banks once a town was captured and that the soldiers had taken the equivalent of \$400,000 from Banque Commerciale du Congo branch at Bumba, \$500,000 in Lisala and about \$600,000 in Gemena. Jean Pierre Bemba denied the allegation. As in the case of coffee referred to in paragraph 15.3 above, he told the Commission that he heard of the allegation and wrote to the banks concerned requesting them to confirm that money was taken from them by his men during the liberation of their towns. The banks replied saying that they had never been looted by his soldiers. He gave copies of the correspondence to the Commission (Exh. JPB/7/116) and said that he had also given copies of those documents to the second original Panel. He also pointed out that when a town was about to be captured, the occupying troops would be ill advised to leave cash in the banks, knowing that it would be lost to them, and converted to funding for the victorious rebels. This allegation is unlikely to be true.

15.6. Murder of Civilians

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. This Commission does however have a record of a General Court Martial in which a soldier was accused and convicted for murdering civilians who were in custody in Gemena. This was much later in April 2001, but indicates that Uganda appears to have taken at least one such allegation seriously.

15.7. Organised Looting

In Paragraph 43 and 44, the highest army commanders of Uganda are alleged to have encouraged, organized and coordinated looting, and in particular General Kazini is

said to have appointed loyal commanders and reliable civilian Congolese to secure his network in areas rich in mineral resources. 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 15.8 below of this report. In particular, it should be born in mind that General Kazini was aware of looting, as his radio message of 29/1/99 shows, and was inappropriately involved in promoting Victoria Diamonds, indicating actions consistent with the allegations of the original Panel, which cannot be totally ruled out.

15.8. Allegations against Uganda

10 15.8.1. Appointment of Adele Lotsove

In paragraph 71 of original Panel Report it was stated that the illegal exploitation of natural resources of Democratic Republic of Congo was facilitated by the administrative structures established by both Uganda and Rwanda. The original Panel cited as an example the appointment as Governor of Ituri Province of Adele Lotsove on 18th June, 1999 by Major General Kazini.

20 This Commission has seen the letter of appointment among the exhibits. The Commission has also heard evidence on oath from Madam Adele Lotsove and General Kazini on the issue. Madam Adele Lotsove told the Commission that she was a native of Ituri. She was once the 1st Deputy Governor of Kisangani in-Charge of Upper Zaire Province or Haut Zaire. She said that Ituri Province was one of the Provinces of Zaire in 1962, but was abolished by Mobutu. During a National Conference in 1991 it was proposed that the whole of Zaire should be divided into 28 Provinces. Ituri was supposed to be one of the Provinces, but the proposal was never carried out. So when she was appointed the 1st Vice Governor of Kisangani, she considered that as an opportunity to implement the 1991 proposal by proclaiming Ituri a Province as that was the aspiration of her people. Her aim was to adopt the Ugandan model of administration and political system, which she had seen during her stay in Nebbi in Uganda.

30 When she discussed with General Kazini her aspirations and ambition, she found him very receptive. Since General Kazini was the one in charge of Security she asked him to take charge of her security whilst she fought for the creation of Ituri Province. The letter written by General Kazini dated 18/6/99 allegedly appointing her a Provisional Governor in-Charge of the Districts of Ituri and HAUT-UELE

was for the purpose of enabling his Commanders on the ground to understand that she had the support of UPDF so as to give her maximum security.

Armed with Major General Kazini's letter, she left Kisangani on 22/6/99 and went to Bunia and proclaimed Ituri Province on 5/7/99. She was positive that, apart from the provision of security, General Kazini had no hand in both the proclamation of Ituri as a Province and the declaration of herself as Governor of the Province.

10 This has been confirmed by General Kazini during his last testimony before this Commission. He said he did not appoint her as a Governor as she was already a Deputy Governor. He said that his role was to provide security and its enforcement. The additional matters he mentioned in his letter were only intended to enable her execute her duties properly in an area where there was total confusion. This is clearly different from his earlier testimony in which he admitted appointing her as Governor. Once again General Kazini lied to this Commission.

In the opinion of this Commission neither General Kazini nor Adele Lotsove told the Commission the whole truth about the circumstances regarding the creation of Ituri Province and the appointment of Adele Lotsove as Governor of that Province.

20 Considering the evidence of His Excellency the President, the original evidence of General Kazini, in which he admitted appointing Adele Lotsove, for which he was said to have been reprimanded, and the terms of the appointment letter itself, there is no doubt that in fact he did make this appointment, and the later evidence of General Kazini and Adele Lotsove cannot be true. The possibility that General Kazini had a personal interest in appointing Adele Lotsove is further examined at Paragraph 21.3.4 below

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.

30 It would have helped this Commission in its work had the original 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 original Panel could clearly indicate that such payments were made, and this Commission therefore doubts this conclusion. There is one additional consideration which does not seem to have been borne in mind by the original Panel, which is that Adele Lotsove was only in office for some 3 months before she was dismissed by Professor Wamba, and would therefore have had little time to get involved in such matters.

15.8.2. Knowledge of Key Ugandan Officials

10 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.

It has proved impossible to trace or investigate the allegation in Paragraph 45, because the key officials and the sources of information upon which the original Panel relies are not given. In evidence on oath before this Commission, this allegation has been denied in toto. As to the allegation relating to the levels of production of mineral resources, in particular gold, this Commission has dealt with this at Paragraph 21.1 below

16. SYSTEMATIC AND SYSTEMIC EXPLOITATION

In Paragraphs 46-54 of the original Panel Report, the original Panel allege that a company
 20 (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 original 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.

16.1. Timber : Dara Forêt and Dara Great Lakes International.

This Commission reproduces here the example according to the original 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 and Shareholders, it has no Ugandan Directors shareholders, or any other Ugandan Interest apart from a Ugandan Company named Royal Star Holdings, whose Directors and Shareholders are exclusively Thai Nationals. Royal Star Holdings has 55% of Dara Forêt.

10

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 Kotiram, 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. Kotiram 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.

30

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
 10 harvests timber in the Democratic Republic of Congo. This Commission doubts that the allegation in the Report is correct. Timber does come across the border as an import, and there is no doubt that timber is also smuggled through the porous borders. Congo timber is cheaper in the market because it is usually cut by chain saws, which are not allowed in Uganda. Such documentation as this Commission has seen indicates that timber cut in the Democratic Republic of Congo is dutiable there on export, and that such duties are levied by the rebel authorities and paid.

This Commission toured the Kampala Timber Market at the Ndeeba area. The Commission found that timber from Congo is available in the market. The timber from Congo is mainly hardwood.

20 The Commission found that timber from Congo is cheaper than those from Uganda. The reason for the difference in price depends on the method of cutting the timber. In Uganda timber is processed either by handsaw or pit saw or by sawmills or what is commonly known as machine cut. Timber from Congo is processed by chain saw. Timber processed with handsaws has a smooth surface while those cut with chain saw have rough or uneven surface. Chain saws are illegal in Uganda.

Transit timber is always accompanied by Forest Products Movement Permit issued by the District Forest Offices. One needs to get a concession from the Forestry Department to cut timber from Forest Reserves. The application is made through the District Officer of the area where the Forest Reserve is situated. It is then forwarded to the headquarters in Kampala
 30 where it is processed and issued.

This Commission was informed that there is a ban on raw timber export. Only finished or semi-finished wood products are permitted to be exported.

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.

10

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 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 has 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 original Panel raise the whole question of de facto control of administration which this Commission has dealt with under the heading of “Illegality” at Paragraph 11 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

10

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.

20

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 11 above that international 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 11.3.5 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”. Researches on the Internet show that Smartwood, one of the certifying bodies, do not even have a category for Africa. Other certifying bodies mention forests in South Africa only

30

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, which this Commission has investigated intensively, and called sworn evidence from the Companies Registrar, who confirms what Mr Kotiram said.

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 direct 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 original Panel is right, would have been essential to the alleged conspiracy, was
10 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 reconstituted Panel. UNIQUE were advising Dara on the way to go about certification of their concessions in Democratic Republic of Congo and in Uganda.

20

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 grasp of French and English is not that good, it is certainly advisable.

30 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
 10 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
 20 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 saw milling 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 original 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 11th 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.

- 10 In a letter of 5th 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 Kotiram 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
20 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. This Commission's investigations with the Companies Registry reveal nothing whatever of that nature, and the allegation is denied by Mr. Kotiram and Prossy Balaba, and for himself by His Excellency the President.

30

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 original Panel has received reports from the custom posts of Mpondwe, Kasindi and Bundibujyo of the export from the

Democratic Republic of the Congo of minerals such as cassiterite and coltan in trucks. During the original 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 original 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
 10 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. There is no evidence whatever that any of the Dara Companies have been dealing with diamonds or gold.

The original 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

20

***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
 30 September 1998, overall DARA-Forest has been exporting approximately 48, 000 m³ 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 long standing practice outlined to this Commission by another witness.

This Commission is extremely concerned at the approach of the original 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 original 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 original Panel, was quite clearly wrong. A short interview with Mr. Kotiram and his associates would have established the truth, but he was never approached, according to his evidence. This problem casts doubt on the original Panel's
 10 collection and reliance upon information given to it, not only in respect of Dara Forêt, but throughout the Report, given the emphasis placed upon this so-called Case Study.

From the evidence, this Commission has come to the conclusion that the investigation by the original Panel of Dara Forêt was fundamentally flawed and is unable to find support for any single allegation made in this so-called Case Study.

16.1.1. Allegations against His Excellency the President and his family

The original Panel say :

Some unconfirmed information indicates that members of President Museveni's family are shareholders of DGLI, although more investigation is needed.

20 As above, this Commission agrees that a great deal more investigation is needed before such an allegation appears in a report to a United Nations body. This Commission's own investigations with the Companies Registry reveal nothing whatever of that nature. All the relevant witnesses were called, and all the Companies Registry files were obtained. The allegations are specifically denied by Mr. Kotiram, Prossy Balaba, Salim Saleh, Jovial Akandwanaho, and, for himself, by His Excellency the President

During a consideration of the link between exploitation of resources by the Democratic Republic of Congo and the continuation of the conflict, the reconstituted Panel point out that Dara Forêt registered as a Congolese registered
 30 Company in Kinshasa in March 1998: it will be remembered that that was at a time when relationships between Kinshasa and Kampala were good, and trade opportunities were being investigated (see Paragraph 14.2 above). Then in June

1998 Dara Forêt was granted a logging concession from North Kivu Provincial Authority, and an exploitation licence. The reconstituted Panel found that Dara Forêt had complied with all the regulations in effect, and paid taxes as before. It is checked by local authorities in North Kivu to see that it is complying with the terms of its licence. It was also granted a certificate of registration by the Ministry of Justice in Kinshasa. The reconstituted Panel then concludes that:

10

73. DARA Forest, which the Panel has found to have complied with all the regulations in effect, currently pays its taxes at the same bank as it did before the area came under rebel control. It also deals with the same customs officials as it did before the rebels took control of the area when it exports its products and imports production equipment. The Panel has also learned that a bimonthly check is conducted by the local Congolese authorities in North Kivu to ensure that DARA Forest is complying with the terms of licences granted to it. Furthermore, DARA Forest was granted on 12 September 2001 a certificate of registration from the Ministry of Justice in Kinshasa. This would appear to be a clear sign of recognition of the company and acceptance of its work in the rebel-held areas by the Government of the Democratic Republic of the Congo.

20

This is a completely different story from that of the original Panel, whose criticisms of Dara Forêt were attributed by the Mayi Mayi for their formation, and for the kidnapping of 24 Thai Nationals working there. There is no acknowledgement of any mistake by the original Panel: this Commission has examined the whole of the so-called Case Study of Dara Forêt and DGLI, and the allegations against the Uganda Government, and His Excellency the President, and found that far from there merely being no evidence of the original Panel's allegations, those allegations were false to fact: and the reconstituted Panel have independently agreed, on the basis of additional evidence.

30

This Commission was expecting to see a specific withdrawal of and even perhaps an apology to Uganda and His Excellency the President for the disgraceful and unsupported allegations made in the original Panel Report: it is absent.

16.2. Mining Sector

Under the heading of systematic and systemic exploitation, the original Panel states in Paragraph 56 that direct extraction of minerals was carried out in three ways, namely:

- 1) by individual soldiers for their own benefit;
 - 2) by local people organised by Rwandan and Ugandan commanders;
- and

3) by foreign nationals for the army or commanders' benefit.

The original Panel specified a number of specific examples as under:-

16.2.1. Mining Disasters and Soldiers imposing "Gold Tax"

The original Panel states, in Paragraph 57, that it came across a number of cases in which soldiers were directly involved in mining in Watsa. It cites an incident that happened in September, 1999 where:

UPDF local commanders demanded the extraction of gold on the pillars of the Gorumbwa mine in which dynamite was used and which caused the galleries to collapse, leading to the death of a number of Congolese miners.

10 In Paragraph 59 the original Panel further states that in Kilo-Moto mineral district, Ugandan local Commanders and some of the soldiers who guarded the different entry points of the mining area allowed and encouraged the local population to mine on an arrangement that each miner would leave at the entry/exit point one gram of gold every day. The original Panel states that about 2,000 miners were involved and on the average 2 kg of gold were delivered to the person heading the network. The reconstituted Panel came up with a figure of 10,000 miners, but did not quote a source: Dr Mido gave evidence that Professor Wamba had appointed a Commission of soldiers who were to guard the Kilo Moto mine and collect gold worth 15\$ a day from artisanal miners, and that this was yielding some two
20 hundred to three hundred grams a month. This might have raised the possibility of a confusion between RCD and UPDF soldiers.

This Commission did its best to investigate these incidents, and in the evidence of Col Mayombo and of General Kazini, including the radio messages produced by him, found references to similar incidents in which one Lt Okumu was alleged to be involved. Also Lt Col Mugenyi told this Commission that he received a direct report regarding an incident of an explosion in a mine on 10/10/98. This incident could not have been the same as the one referred to by the original Panel, as Lt Okumu only reached the area of his responsibility in Watsa and Durba on 9/9/98, He left on 27/12/98 as a result of investigations into his conduct, and therefore
30 could not have been involved in the incident to which the original Panel refer. The other possibility might be that the original Panel was incorrectly informed as to the year of the occurrence, or perpetrated a typing error.

However, when the original Panel Report was published, the Chieftaincy of Military Intelligence was asked to investigate a number of incidents. It was already known that there had been problems in the Watsa area before Lt Okumu went there, which had reached Senior Levels. These problems no doubt prompted the phraseology of the orders he received. Lt Okumu's orders on arrival from Lt Col Mugenyi (409 B/ Co) who was based in Isiro Exhibit FM/07/102 (inter alia) read :

No soldier should interfere with the authorities of the gold mining area without consulting (B/Co) into.

No Loitering of Soldiers in the centres and on the area of gold mining (must be halted)

These orders were signed by Lt Col Mugenyi, and countersigned by Lt Okumu. This Commission took Lt Col Mugenyi to task at length about these orders: it suggested that the way in which they were phrased clearly indicated that soldiers had been interfering with the authorities of the gold mining area, and that soldiers had been loitering in the centres and in the area of gold mining : the orders specifically said that this behaviour must be halted. Such allegations went a long way to support the allegations in the original Panel Report. Lt Col Mugenyi was not prepared to accept that this was the case.

This Commission on a consideration of the evidence found that the Lt Col was not telling the truth, and that these specific orders arose from events such as the original Panel described, Otherwise for example, the written orders would not have said that such behaviour **must be halted**.

Apart from that specific finding, this Commission was not at all impressed by the evidence of this senior officer who was evasive on many points throughout his evidence. It also interested this Commission that this officer was prepared to put in writing that, although in the general sense soldiers were prohibited from interfering with the gold mining authorities, they nevertheless might do so after consulting with himself, the Battalion Commander.

Only a month later after the date of the above document, Lt Col Mugenyi was writing to one Maj. Sonko who was an Intelligence Officer temporarily in Durba.

In that communication, Lt Col Mugenyi was saying that he had received information that the Detach Command (Lt Okumu) had been reported to have been:

- 1) Mining with his soldiers
- 2) Selling diesel, empty drums, fridge and cookers
- 3) Using 275 detonators from the gold mine, and primers from UPDF mortars to mine.
- 4) Breaking the store where there were Walkie Talkies belonging to the factory

10 He also said that he had information that Maj. Sonko and Lt Okumu were harassing civilians, causing workers to have started running away from the place.

Lt Col Mugenyi then stated that he wanted Maj. Sonko to Countercheck those allegations stating :

Otherwise I am going to arrest all of you

This Commission was astonished by the suggestion that Maj. Sonko should be the officer to investigate his own alleged misconduct, and to be expected to report usefully. And indeed Lt Col Mugenyi was quite unable to deal with questioning on this subject. One thing that is clear is that Lt Col Mugenyi took his information very seriously.

20 In fact Maj. Sonko did report on Lt Okumu: the numbering above is used as follows:

- 1) **Mining with his soldiers** : Maj. Sonko was asked to crosscheck and report later. He did not do so in writing, although he claimed to have done so verbally. In evidence he said that he found nothing in the allegation against Lt Okumu, having spoken to local people, the mine director, and the local Intelligence Sergeant. He said that he had cleared Lt Okumu as a result of his investigation, but then was unable to report in writing, he said, in order to keep the matter secret from Lt Okumu. But in evidence he also said that another team came to investigate from Makindye Barracks, and it was that team which cleared Lt Okumu.

- 10 2) **Selling diesel, empty drums, fridge and cookers:** the Report catalogued the full and empty drums of diesel and aviation fuel, coming to a total of 323 full drums, and recording that 100 drums had been issued to Kilo Moto. This Commission tried to get out of Maj. Sonko how these figures related to the stock which ought to have been present, so as to establish whether there was a shortage, but he was not able, or prepared, to go into that. On the subject of fridges and cookers, there was nothing in the report, and Maj. Sonko was not prepared to go into the matter, because, he said, there was no electricity in the area. His conclusion, according to his evidence, was that Lt Okumu should be transferred because of selling National logistics. This was later investigated by a team from Makindye: this Commission does not know the results, apart from Lt Okumu's word that he was cleared, and some other unclear evidence, including an allegation by General Kazini that the matter was dealt with by court martial, in respect of which General Kazini appears to have done little to obtain the record, despite repeated requests from this Commission, and ample time to do so.
- 20 3) **Using 275 detonators from the gold mine, and primers from UPDF mortars to mine.** Maj. Sonko said that he "arrested" 115 Cordex Wires, which, after some questioning turned out to be detonators and which he said was stolen from the stock of Kilo Moto. He said he "arrested" them from among the 20,000 artisanal miners who were digging on the site. He set out the munitions found with the Unit. His investigation was inconclusive, to say the least. On this subject, although Lt Okumu denied knowing anything about this allegation, Lt Col Mugenyi said that he had been informed during October 1998 of the incident. It is inconceivable therefore that Lt Okumu knew nothing of it.
- 30 4) **Breaking the store where there were Walkie Talkies belonging to the factory.** Maj. Sonko said that the Walkie Talkies were removed from Kilo Moto "to assist communication of our detach. For every 3 kms we deployed 1 Walkie Talkie". He also reported that a ManPack Radio had been removed from Kilo Moto because "they were communicating to Bunia". A further one was recovered from Colombo Mission by the Police of Watsa, in what circumstances was

not recorded. (In the original orders above referred to, it was set out that five Walkie Talkies were given to the Platoon at Durba by the Director of Gold Mining to ease co-ordination with his office. There was one ManPack Radio with “all its gadgets” for the platoon). Once again Maj. Sonko’s investigation was inconclusive.

On questioning by the Commission, Maj. Sonko finally admitted, on the question of fuel, that he did not investigate properly. He said that in fact he did not belong to the detach, but was an Intelligence Officer on another duty, and had just been pulled in by Lt Col Mugenyi to assist in what he called “a little investigation”. This Officer was almost incapable of expressing himself in any intelligible fashion. Time and again this Commission had to abandon questioning of this officer because he had contradicted himself so many times that it was almost impossible to understand what he was trying to say. For instance, when he was trying to say that the manager of the Mine had asked Lt Okumu for assistance because he had been attacked by miners who wanted to steal detonators and fuses, instead he said, and it is clearly on record, that the mine manager attacked Lt Okumu. As a result, in any event, according to this witness, Lt Okumu provided soldiers, and went himself with them to reinforce the mine police, something Lt Okumu specifically denied doing.

Lt Okumu said that he knew nothing about the mine except what he had been told by Congolese Police who guarded it, and that he had never been there. At first he said that he was not investigated for anything to do with the mine, neither for being involved in blowing it up, nor for arranging for his soldiers to charge miners 1 gram of gold a day to allow them to mine in an artisanal fashion. In the end he admitted that he was investigated by a team from Makindye (which accounts for General Kazini’s knowledge of this matter) and cleared, but he thought that that was only in respect of fuel. This Commission cannot imagine that a serious investigation could have been conducted without interview of the suspect, and once again is of the view that Lt Okumu was not telling the truth about this. Nor does the evidence available confirm General Kazini’s evidence that a Court Martial was conducted, of which for some reason difficult to understand, General Kazini has been unable to obtain a copy: one would have expected Lt Okumu to have said something about that, but he did not.

Lt Col Mayombo said:

Lt. Col. Mayombo: I am aware that a Lt. Okumu, who was in charge of a platoon, got involved with civilians by issuing chits that they could mine and he was arrested by the overall operational commander and his case was investigated by the Special Investigations Branch of the Military Police.

He promised to let this Commission have details of the investigation, but has never returned with that information. This would have assisted this Commission's investigations enormously.

10 General Kazini at first said that the officer was reprimanded for his offences: later he said that there was a court martial which acquitted him. The entry of reprimand on this officer's record has never been produced. Lt Okumu said that he was never even investigated in respect of any offences relating to mines, but that he was cleared of any charges in respect of selling fuel.

20 This has been a cover up: and it is in respect of the conduct of Lt Col Mugenyi, a senior officer whom this Commission has caught out in lies and contradictions of a serious nature, Maj. Sonko, who is not fit to fill the rank which he has attained, and Lt Okumu, who also lied to this Commission, and whose misconduct has been badly investigated. Particularly this Commission is unable to reject the allegation by the original Panel (for this is the purpose of the cover-up) that UPDF soldiers were posted at mines to take contributions of gold from miners to allow them to mine.

The evidence of Major General Kazini, General Jeje Odong and Lt. Col. Noble Mayombo clearly shows that the incident did happen and that the culprits were Lt. David Okumu and the soldiers under his command. Lt. Col. Mugenyi claimed that Lt. David Okumu was investigated and found innocent. This Commission has found that no proper investigation was conducted because Lt. Col. Sonko who was instructed by Lt. Col. Mugenyi to investigate the matter was also implicated in the matter. His conclusion therefore did not come as a matter of surprise to the Commission.

30 The evidence about the final investigation of this matter was extremely unclear. General Kazini promised to let this Commission have a copy of it: he took no action for many months, and on his last appearance stated that the matter had come before a General Court Martial. He said that he had tried to get a copy of the proceedings, and had been told that they could not be released to him for reasons

which were unclear. This was far too late for this Commission to take any further action. The whole situation was most unsatisfactory.

In December 1998 General Kazini sent a message to one Major Kagezi, then C/O of 409 BDE in which he said:

Your soldiers and Detach Commanders are writing chits for Gold Mining and smuggling. You should stop this immediately and inform me of the steps taken. You will be held responsible for Breach of Standing Orders

In reply Major Kagezi said:

.... an information received reveals that Lt Okumu have been giving chits to those people but I am still going on with investigations

This Commission has no doubt that the original complaint, and the original Panel's report of it, in this matter was true.

But the investigations have been so poorly conducted, either purposely or through incompetence, that no court properly directed could convict on the evidence available. It is this Commission's recommendation that the whole question of inquiry into complaints against officers of the UPDF be looked into extremely carefully.

For the purposes of this Commission, the important matter is that the allegations that individual soldiers, to a quite senior level are probably true, but that allegations that Government was involved cannot be supported.

16.2.2. Harrassment of Civilians

There was another allegation which involved both Maj. Sonko and Lt Okumu, of harassing civilians, which appears to have resolved down to the fact that 400 civilians had been recruited as an LDU Unit, and were required for training. The evidence was not at all clear, but apparently the case for Maj. Sonko and Lt Okumu was that they did recruit, but were unable to feed these people, and they seemed to think that it followed that therefore they could not train them. In evidence Maj. Sonko said that these 400 were going home for food. Nothing of all this made any sense, still less the fact that if they were unable to train these people, then why they should have kept them coming back and forth. In his report,

however, Maj. Sonko referred to a quite different incident in which two soldiers from Bunia were said to have connived with three FAC soldiers from Watsa Barracks who harassed and robbed civilians. According to his report the detach managed to get the stolen money back and to restore it to its rightful owner. The whole matter was indecipherable, and amounts to just another example of the frustrations one encounters when one tries to investigate what was going on within the UPDF. However, in the Kazini Revelations at Paragraph 13.2 above, it is obvious that there is confirmation of some of the original Panel's allegations.

16.2.3. Trainees used as Convincible Labour to Mine

10 In Paragraph 58 the original Panel states that local Congolese were used in what the original Panel termed as "Convincible labour" to mine gold, diamonds or coltan. The original Panel gives, as an example, Bondo locality in Equator Province where young men from 12 to 18 years recruited by Jean- Pierre Bemba were given one-hour morning physical training in the morning, and then sent to gold mines to dig for gold on behalf of the Ugandans and Bemba. Jean Pierre Bemba denied the allegation concerning the recruitment of young men from the ages of 12 to 18 years. He stated that the minimum age of recruits was originally 17 years, but that it was later put at 18 years. Even when he was told that the Commission had had evidence from a journalist who showed some video of some
20 young people being trained, Jean Pierre Bemba insisted on saying that the minimum age was 17 years. He could not see the purpose of recruiting 12-year-old young men.

The UPDF officers and men this Commission interviewed have admitted that Jean-Pierre Bemba was an ally and that they trained the rebels under his command, but denied that they trained young men recruited by him to mine gold diamonds or coltan. Jean-Pierre Bemba has also denied the allegation. Since the names of the alleged eyewitnesses who gave information to the original Panel were not disclosed, this Commission is unable to investigate the matter further, concludes that there it is unable to find evidence to support this allegation

30 16.2.4. Foreign Labour

The allegation in Paragraph 60 of the original Panel Report is that occupying forces brought manpower from their home countries to mine in Congo. UPDF was one of the occupying forces, but Uganda, unlike Rwanda, was not mentioned in

connection with that pattern of organised extraction of minerals from Congo. This Commission has not received evidence that tends to prove the allegation. The probability is that the original Panel did not find that Uganda was involved and that was the reason why Uganda was not specifically mentioned by the original Panel. Accordingly this Commission rejects it as a mere allegation so far as Uganda is concerned.

16.3. Wildlife.

16.3.1. Poaching in Garambwa National Park

10 Paragraph 61 of the original Panel Report states that between 1995 and 1999, 30% of elephants were killed in Garambwa National Park in areas controlled by Ugandan troops and Sudanese rebels, and that there are similar problems in other parks. There is no evidence available as to who was responsible for this. There is however evidence that although there was a detach at Durba, near the Park, its duties did not cover the Park. Congolese Security Reports produced complained of poaching by SPLA in Garambwa Park and there were other reports of trouble caused by the SPLA there. (Exh. FM/07/102). It should also be noted that the original Panel's allegation covers the period from 1995 to 1999. Ugandan troops did not reach the area until late 1998, and therefore could only have been involved in this allegation, if at all, for a very short time.

20 16.3.2. Tusks seized in Isiro

It is also said in Paragraph 61 of the original Panel Report 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.

16.3.3. Tusks seized from Col Mugenyi near Garambwa National Park

Paragraph 62 of the original Panel Report alleges that Lt. Col. Mugenyi of the UPDF and a crew of his soldiers were found with 800 kgs of elephant tusks in their car near Garambwa Park. The Uganda Government is alleged to have received notification of the incident.

30 The original Panel Report does not state the date on which he was found nor by whom he was found, nor to which department or officer of the Uganda Government Report was made. The Uganda Government denies in its response that it received notification of this incident as alleged in the original Panel Report.

The Ministry of Defence, Finance, Army, Uganda Revenue Authority and Uganda Wildlife Authority Officials were questioned by the Commission on this issue and confirmed this position.

Lt. Col. Mugenyi denied the incident though he stated further that the area of Garambwa National Park was under his jurisdiction during Operation Safe Haven and the District Administrator of the area did inform him of various problems, with SPLA, poaching and other problems in the Park. Lt. Col. Mugenyi said during investigations which were started after the original Panel Report:

10

“I told them (Chieftaincy of Military Intelligence) that I do not know anything as regards those 800 kilograms of elephant tusks because I have never operated in those areas not even passed through those areas.”

Lt. Col. Sonko Lutaya testified that Lt. Col. Mugenyi passed through the Garambwa National Park regularly on his way to Isiro. Although this Commission has problems with Lt Col Sonko’s evidence in other respects, the route he describes makes sense, and his evidence is probably true.

20

This shows that Lt. Col. Mugenyi was not being truthful and one wonders what he was hiding. This Commission was unable to visit the area or find out which crew Lt Col Mugenyi may have been with. However, since the army was in the area they should have been able to carry out an exhaustive investigation. The matter should be investigated more thoroughly by the responsible organs. Too long has passed now for meaningful further investigations to be made.

16.3.4. Allegations against the Government of Uganda

In Paragraph 61, the implication is that RCD-ML seized about 3 tons of tusks from Ugandans, or possibly Congolese 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.

30

With the evidence at hand, it is impossible to investigate this incident, and certainly not 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.

10 This Commission is again in problems due to the lack of available information. 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. This Commission is however unable to exclude the possibility of the involvement of this senior UPDF Officer.

17. MONOPOLIES AND PRICE FIXING

17.1. Coffee Harvesting by J P Bemba

In Paragraph 63 of the UN Report it is alleged that Jean Pierre Bemba, leader of MLC with General Kazini, had been harvesting coffee directly from plantations that did not belong to him.

20 This allegation has been denied by both General Kazini and Jean Pierre Bemba. The latter stated that distance alone would make the alleged coffee harvesting virtually impossible since General Kazini was based in Kisangani, which was 1,000km away. On hearing the allegation Jean Pierre Bemba wrote to the Company from which he had allegedly taken the coffee. The Company responded denying the allegation. He showed the relevant correspondence to the Commission. (Exh. **JPB/7/116**). There is no evidence to support this allegation.

17.2. Control of the Economy

30 In Paragraph 64 of the original 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 original 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 original 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.

17.3. Allegations against Uganda

10 Uganda is only involved in the allegations in Paragraph 64 by implication. However, this Commission has visited the border posts at Kasindi and Ariwari in the Congo, and was 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
10 agree with the original 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. This Commission has affidavits from reputable companies such as BAT who have continued trade with the Democratic Republic of Congo throughout. This Commission saw an Antonov loaded
20 with cocoa for Unilever on a visit to the military airport.

All that this Commission's investigations show is that on each side of the border there are similar or the same tribes, with common languages and culture. On each side of the border are close family relationships, and cross border trade is only to be expected, and historically has existed. 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 is not now 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
30 for Eastern Democratic Republic of Congo dwellers have 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 on its visit to the border posts, and the opposite is also true, although at Kasindi in the Democratic Republic of Congo, the most

noticeable trade item was salt from Kenya, who do not feature in this regard in the original Panel Report.

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 that 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 11.1.2 above and has required manifests and import documents from most of the airlines and companies involved. 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. Mr Bemba in his sworn evidence to this Commission showed accounts which clearly recorded payment of taxes in the areas under his control. There is the possibility which traders such as Sam Engola, Grace Majoro and Idi Taban have raised on oath 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. In the case of MLC, a document procured from the reconstituted Panel specifically accepts \$100,000 from Victoria Diamonds as prepayment of taxes, which is attached to

correspondence endeavouring to ensure that no further taxes were to be paid. Sometimes this system 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.

After talking to rebel leaders, it was made clear that taxation was at the root of funding for the movements, and one would expect every effort to be made to collect as much as possible, whether for personal gain, or to finance the movements. The evidence of the Nairobi witness was that Trinity was established for just this purpose, to collect pre-financing of taxes from intending importers and exporters, but had to be ended because the money was not ending up where it was supposed to, and less tax than would otherwise have been collected was obtained by this method, according to Professor Wamba.

In Paragraph 68 of the original 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, which this Commission has dealt with in Paragraph 15.8 above. All the rebel leaders who gave evidence before this Commission have dismissed the suggestion as ridiculous. As to the allegation in relation to individual colonels see 17.4 below

20 **17.4. Individual Colonels collecting or demanding taxes**

At first there was no evidence or complaint before this Commission from any of the rebel leaders who have provided evidence that individual colonels were demanding a cut of taxes collected. However, on the last occasion that General Kazini gave evidence before this Commission, he introduced the possibility that individual colonels under his command, were collecting sums of money from Congolese Rebel Leaders under the pretext of Intelligence Gathering (See Paragraph 13.3 above). Indeed he produced a Radio Message which was copied to, among others, His Excellency the President, which complained of this behaviour. Further, in the correspondence General Kazini sent to the Governor of Kisangani in July 1999, there is the clearest statement that General Kazini was instructing the Commanders under his control, if they were approached with payments for security funding, to forward the matter to him at TAC HQ. What that meant in relationship to General Kazini's conduct will be examined in due course. The Nairobi witness gave evidence that a monthly tribute of \$25,000 was sent to UPDF Officers in Rwampala, an enormous

sum for soap and pocket money as he described the purpose: whether this evidence is reliable or not, it is clear that the original Panel's allegation against individual colonels who were in command is supported.

There is a need for further investigation and disciplinary action against the officers involved in this section.

18. CURRENT STRUCTURES OF ILLEGAL EXPLOITATION

18.1. Administrative Structures.

Paragraphs 43 and 71 of the original Panel Report state that the illegal exploitation of natural resources of the Democratic Republic of Congo was facilitated by the administrative structures established by Uganda and Rwanda.

18.1.1. Appointment or confirmation of Congolese Administrators

It is alleged in Paragraph 71 that the leaders of Uganda and Rwanda directly and indirectly appointed regional governors or local authorities or, more commonly, appointed or confirmed Congolese already in those positions. It cites the appointment of Madame Adele Lotsove, a Congolese who had already been employed by the Mobutu and Kabila administrations, and by then had been appointed as First Vice Governor of Kisangani by RCD-Goma. General Kazini at first stated that he appointed her in June 1999 as Governor of Ituri Province. The original Panel Report alleges that this woman was instrumental in the collection and transfer of funds from her assigned administrative region to the Ugandan authorities. She was also alleged to have contributed to the reallocation of land from Lendus to Hemas. The matter of Adele Lotsove has been dealt with exhaustively in Paragraph 15.8 above, and does not bear the connotations put to it by the original Panel, particularly where she was only in place for a very short period of time.

So far as confirmation of Congolese already in position is concerned, if such confirmation took place, this Commission fails to see what complaint could be made. On the evidence, the UPDF tended to accept whoever was the local authority in place, so as to be able to concentrate on providing security in the relevant area. Had new appointments been made, as in the case of Adele Lotsove, the original Panel would have criticised that as well. Perhaps a less biased word than "confirmation" would have been the word "recognition".

18.2. Modes of transportation

In Paragraph 72 and 73 with 74 of the original Panel Report, the original Panel reverts to criticism of 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.

18.2.1. Allegations against Uganda

10 What is criticised by the original Panel Report here is the conducting of illegal activities. While this Commission would deal with the question of the UPDF being involved in such activities elsewhere, under “Illegality” at Paragraph 11 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 for instance, this Commission cannot see any basis for the criticism of Sabena contained in Paragraph 76, particularly as the evidence is that Air France appears to have taken over the market Sabena has voluntarily left.

20 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 misperception which this involves at Paragraph 14.6 above. There clearly were two operations at the military airport, military and civilian, and the major operation was civilian, as can be seen from the graph above. UPDF officers were acting secretly, hiding what was going on from the Ministry, as they have tried unsuccessfully to do before this Commission, and therefore allegations against Uganda as a state cannot be supported. It is odd that the original Panel starts Paragraph 72 by saying that prior to the second war the major forms of transport were only by road and by smuggling across the lakes, not by air: 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 Air Operators 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

30

people. Leaving aside Air Alexander and Take Air for the moment, but bearing in mind Paragraphs 18.3 and 18.4 below, there is nothing in this allegation. Air Navette which is specifically mentioned is owned and firmly controlled by Shiraz Hudani, a Canadian, and the other directors and shareholders are Mrs. Hamida Hudani, and one Abu Mukasa, a Ugandan, not so far as can be traced a relative or friend of generals, colonels and presidents, 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.

10 Mr. Hudani of Air Navette specifically denied having any connection with Salim Saleh or any of his companies. In fact he is a competitor. He admits however dealing with Jean Pierre Bemba commercially, and that is confirmed by Jean Pierre Bemba who said that he used Air Navette to carry coffee for MLC and showed to this Commission relevant documents and accounts to support the legality of MLC's coffee exports.

18.3. Air Alexander International Ltd

Salim Saleh clearly committed offences under Section 396 of the Companies Act when he falsely stated that Alexander Mahuta was an adult businessman in the returns he filed with the Registrar of Companies, when he knew he was a minor, and further offences with which this Commission has dealt with at Paragraph 28 below.

20 There is one further matter upon which this Commission wishes to comment. The coincidence of the date of transfer of shares, and the date of the President's Radio message to the UPDF, forbidding the conduct of business by politicians and Army Officers in the Congo is too close to ignore. Having heard Salim Saleh giving evidence, in particular the manner in which he tried to wriggle out of being covered by the Radio Message, and bearing in mind that although he disposed of his shares, he did so amidst a welter of backdated paperwork, to his wife, in a Company where the only other shareholder was his infant son, this Commission has no doubt that he wished to give the appearance of disposing of his interest while in fact keeping control of the Company: and indeed, Jovial in her evidence, admitted that Salim Saleh
30 kept an active interest. Whether as a soldier or as a Public Servant Salim Saleh was clearly covered by the President's Radio Message.

This Commission is satisfied that what Salim Saleh did was to find a way to cover his disobedience of the order of his brother, his Commander in Chief and President by lying to him, while continuing to do business. This has resulted in a perception, which

has harmed Uganda, and allowed investigators to conclude that His Excellency the President must have been involved in illegal exploitation of the natural resources of the Congo. This Commission takes the matter very seriously indeed, and recommends that the matter be further investigated by the relevant authorities for further action.

18.4. Take Air Ltd

In 1998 Take Air, in which General Salim Saleh was a shareholder and director, submitted invoices to UPDF and was paid Shs. 111 million for flights to the Congo that could not be identified. Lt. General . Saleh could not explain the reason for the payment. He promised to check with his staff and report back to the Commission. This was not done. Months later the General appeared before the Commission again. When asked about the documents he had promised including manifests, he said that he had so far failed to get them. Take Air had closed in late 1998 and he (Saleh) had difficulties in tracing its Managing Director who left Uganda in March 1999. To-date the payment is still not accounted for. Further investigations are necessary and recommended.

18.5. Other Private Companies

In Paragraph 79 of the UN Report it is alleged that a number of Companies were created to facilitate the illegal activities in Democratic Republic of Congo. On the Ugandan side, it is alleged that military officials created new companies and businesses using prête-noms. It is said that most of the companies are owned by private individuals or groups of individuals. Trinity and Victoria Group are specifically named in Paragraph 80 as some of the said companies.

18.5.1. Victoria Group

Victoria Group is said to be chaired by one Mr. Khalil and has its headquarters in Kampala and is owned jointly by Muhoozi Kainerugaba, son of President Museveni, Jovial Akandwanaho and her husband. It is said the Group deals in diamonds, gold and coffee. These products are purchased from Isiro, Bunia, Bumba, Bondo, Buta and Kisangani. The Group is also suspected in the making of counterfeit currency.

The evidence the Commission has on oath from Mrs. Ketra Tukuratiire, the Acting Registrar – General, is that Victoria Group is not known in Uganda. It is neither registered as local Company nor as a foreign Company. Apart from Khalil whom this Commission has not been able to interview, as he is a non-resident in the

Country, all the alleged owners of the Groups have denied any connection with the Group.

Further evidence this Commission has received however, shows that there is a Company known as La Societe Victoria which is owned by two people who have not been mentioned throughout the evidence. The Company is registered in Goma and deals in diamonds, gold and Coffee which it purchases from Isiro, Bunia, Bumba, Bondo, Buta and Kisangani. The Company pays taxes to MLC to back up what the Army Commander, Major General Kazini, terms 'the effort in the armed struggle'.

10 For that reason, General Kazini gave specific instructions to UPDF Commanders in Isiro, Bunia, Beni, Bumba, Bondo and Buta to allow the Company to do business uninterrupted in the areas under their command.

Though General Kazini has denied on numerous occasions that he has any connection with Khalil and that he only knew him casually, from the special favours he gave to La Societe Victoria and the lies he told about his dealings with the Company, one cannot resist the conclusion that he has some interest in the Company, though this Commission has no conclusive evidence to prove it.

20 It is clear, however that the steps he took to facilitate the interests of the Company were above and beyond the call of duty, and further, inappropriate to the UPDF's role of providing security.

As regards the alleged dealings of Mr. Khalil with Jovial Akandwanaho in diamonds, this Commission originally had only the evidence of Jovial on the issue. She admitted that she knew Khalil and that herself and Khalil at one time established a Lebanese Restaurant known as Leban (U) Ltd on Bombo Road in Kampala, in the middle of 1999. They are no longer operating the restaurant. Jovial has denied that, apart from restaurant business, she had had any other dealings with Khalil and in particular, diamonds. However under the heading "The Diamond Link" at Paragraph 21.3 below, and particularly at Paragraph 21.3.5 below, this Commission has come to the conclusion that Jovial's participation in Khalil's operations, and Victoria in particular, cannot be excluded.

30

18.5.2. Trinity

According to Paragraph 81 of the UN Report, Trinity is a fictitious Company and a conglomerate of various businesses owned by Salem Saleh and his wife. Mr. Ateenyi Tibasiima, second Vice-President of RCD – ML is said to be the “Manager”. It is said that the primary purpose of the Company was to facilitate the business activities of Salim Saleh and his wife in the Orientale Province. It is said that Tibasiima granted a tax holiday to all Trinity activities in the area controlled by Uganda and administered by RCD – ML in Nov. 1999. Trinity imported various goods and merchandise and took from Orientale Province gold, coffee and timber without paying taxes.

10

The evidence before the Commission shows that Trinity is neither registered as a local or foreign Company in Uganda. Both Salim Saleh and his wife have denied any connection or association with the Company. Witnesses who appeared before this Commission have given different accounts of the nature and ownership of the Organisation.

20

According to Tibasiima Ateenyi, Trinity is not a fictitious company as alleged, but that it is owned by well known Congolese business people. He cited Iddi Taban and Manu Soba as the owners. According to him, these two businessmen, in the name of Trinity assisted the rebel movements with money for their activities. The money so advanced would be recouped by exoneration from taxes on goods imported by Trinity into the areas held by the rebels.

30

One of the alleged owners, Iddi Taban, on the other hand, said that Trinity was set up by RCD through Tibasiima Ateenyi to raise funds from business community by way of custom dues paid in advance. On payment of a stipulated amount, the businessman would be issued with a letter, which he would present at the customs entry points to enable his goods to enter the rebel held areas within a specified period without paying custom dues. He and his partner Manu Soba paid money to Trinity in order to be able to conduct their businesses in the rebel held areas. Iddi Taban denied ownership of Trinity.

The account of Iddi Taban agrees in material particular with the evidence of Sam Engola, a Ugandan businessman with business interests in the rebel control areas of Congo and alleged to be engaged in pre-financing activities before Trinity was established.

The only evidence which appears to link Salim Saleh with Trinity came from the Nairobi witness, a civil servant who was one time Inspector of Taxes and later became Inspector General of Finance of RCD under Tibasiima Ateenyi and a member of Wamba dia Wamba's cabinet.

10 According to him, the owners of Trinity were Tibasiima, Manu Soba and Salim Saleh. He said he saw documents during the period he was in Wamba's cabinet, which showed that Salim Saleh had interest in Trinity. Unfortunately he was unable to produce any of the alleged documents or any concrete proof of the ownership of Trinity. He admitted he was not in a position to produce any of the alleged documents establishing Salim Saleh's connection with Trinity. He said that the only person who was in a position to tell the Commission who were his partners in Trinity is Tibasiima Ateenyi. This Commission obtained an affidavit from Mr. Tibasiima Ateenyi. In that affidavit he never said that Salim Saleh or his wife had interest in Trinity.

20 It is clear from the evidence of Hon. Wapakhabulo that Trinity was the organisation set up by Tibasiima Ateenyi who was the Deputy Commissar General, Deputy Prime Minister, Minister in charge of Finance and Budget, as well as Mines and Energy. The organisation was handling all imports and exports more or less on monopoly basis particularly in the Ituri Province. How he was accounting for the revenue generated from Trinity's operations became a source of conflicts between him and Professor Wamba dia Wamba. Uganda, under the chairmanship of Hon. Wapakhabulo, made several attempts to set-up transparent regulatory methods of collecting and accounting for revenue from the Ituri and North Kivu provinces. Those attempts failed mainly due to disagreement between Professor Wamba dia Wamba and Mbusa Nyamwisi on one side and Tibasiima on the other side. When Professor Wamba dia Wamba moved to Bunia in September 1999 as head of RCD, he set up a new administration headed by Mbusa Nyamwisi as the Commissar General and removed Tibasiima Ateenyi from Finance.

30 From the evidence of the Nairobi witness and Professor Wamba dia Wamba the removal of Tibasiima from Finance should have marked the demise of Trinity. But the Addendum to the report of the original Panel of Experts of UN gives the impression that the activities of Trinity are still continuing in the Oriental Province of Congo.

While the Commission agrees that Trinity is a dubious company, it does not agree that it was set by Salim Saleh and his wife to facilitate their business activities in the Oriental Province. The preponderance of the evidence the Commission has received shows that it was set up by Tibasiima when he was the Minister in charge of Finance in RCD – ML to collect funds purportedly to finance their campaign against the Kinshasa Government. How he accounted for the revenue so collected became a source of conflict between him and Professor Wamba dia Wamba. In the result the Commission does not agree with the allegations in Paragraphs 79, 80, and 81 of the UN Report.

10 **19. SYSTEMATIC EXPLOITATION**

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 was, however, said to be known by the political establishment in Kampala.

19.1. Allegations against Uganda

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, there is a specific allegation that the political establishment knew.

20 There are only very few examples given in the original 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. However, looking at the Civil Aviation Authority 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

30 transited 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

19.2. Allegations against Top Army Commanders

As to whether top army commanders are the main illegal exploiters of the Democratic Republic of Congo, this Commission deals with this matter at Paragraph 20.10 below

20. INDIVIDUAL ACTORS

Paragraphs 87 – 89 of the original Panel Report deal with individual actors on the Uganda side. Sixteen persons were chosen based on the crucial roles they played and their direct alleged involvement in the exploitation of natural resources within the Democratic Republic of the Congo in one way or the other. Six out of the sixteen individuals are Ugandans. These
 10 are Major General Salim Saleh, Brigadier James Kazini, Jovial Akandwanaho, Col. Otafiire, Col. Mugenyi and Col. Mayombo, one, Col. Tinkamanyire, is not known among UPDF soldiers and the remaining nine are Mr. Khalil, Ateenyi Tibasiima, Mbusa Nyamwisi, Nahim Khanaffer, Roger Lumbala, Jean Yves Ollivier, Jean-Pierre Bemba, Adele Lotsove and Abdu Rhoman are either Congolese or Congo residents.

Out of these sixteen the original Panel selected three to focus on as the key actors. The three “key actors” appeared before the Commission and were thoroughly examined. They denied the allegations made against them in the original Panel Report.

They are :-

20.1. Major General Salim Saleh

20 Lt. General Salim Saleh and his wife Jovial were said to be at the core of the illegal exploitation of natural resources in the areas controlled by Uganda. It is alleged that Salim Saleh pulls the strings of illegal activities and that James Kazini is his executive arm and right hand; and that he protects and controls Mbusa Nyamwisi and Ateenyi Tibasima. In return these two protect his commercial and business interests in the regions controlled by the former RCD – ML. It is further alleged that he uses both Victoria Group and Trinity for the purchase and the commercialisation of diamonds, timber, coffee and gold.

30 Lt. General Salim Saleh’s business interests include aircraft services. When he was interviewed by the reconstituted Panel in August, 2001, he admitted that although he had never been in eastern Congo, one of his companies had been engaged in exporting merchandise to that part of the country; and that the aircraft transporting the

merchandise was initially confiscated by General Kazini. This Commission has considered this question in Paragraph 32, and found that this allegation is based on a misunderstanding.

Furthermore, two of General Saleh's Airlines – Take Air and Air Alexander International Ltd - were among companies whose planes were chartered by UPDF to fly to Congo. Another case which has come to the attention of this Commission relates to the unsatisfactory registration and irregular handling of Air Alexander International Ltd. The case is dealt with at length in Paragraph 28 below.

10 The Commission recommends that these cases should be pursued for appropriate action.

In paragraph 99 of the addendum to the original Panel Report, it is alleged that Mbusa Nyamwisi "skims" up to \$400,000 off the tax revenue collected from Beni customs post of the Uganda border and shared the money with General Kazini and Lt. General Saleh. All, including Nyamwisi, have denied this allegation. In the absence of supporting evidence and considering the fact that the amount seems to be too large for the Beni customs post, the Commission does not accept the allegation.

In his sworn evidence Salim Saleh said that he visited Kinshasa only during peacetime, that is before 1998, at the invitation of the late Laurent Kabila; and that he has never been in any part of Eastern Congo.

20 There is evidence from the Nairobi witness that Salim Saleh was part of the Trinity organisation. The nature of Trinity appears to have been largely involved in the collection of taxes by pre-financing, and evidence from the Nairobi witness and Professor Wamba was that money collected was not reaching the movement's coffers. There is clear evidence that Trinity was run by Mr Tibasiima, and if there was a relationship in relation to Trinity then it would have been between Salim Saleh and Mr Tibasiima. However when giving evidence, the Nairobi witness was very hesitant in naming Salim Saleh, and since he is the only witness on this point, this Commission cannot come to the conclusion that a recommendation should be made for further investigation of Salim Saleh. However the evidence should be borne in
30 mind in case other evidence later appears, as there is cause for suspicion. Trinity, however, is not a conglomerate of various businesses owned by Salim Saleh and his wife as stated in Para 81 of the original Panel Report.

This Commission has asked the Inspector General of Government to provide copies of the declaration of assets of Salim Saleh unfortunately he has not made one for any of the past years, nor yet for 2002.

20.2. Jovial Akandanawaho

Jovial told the Commission that she has never been in any part of the Democratic Republic of the Congo. Salim Saleh denied business dealings with any of the persons mentioned. Jovial stated that she co-owned a restaurant with Khalil in Kampala for a limited period in 1999, but denied having any other commercial dealings with him. She further denied the allegation that she wanted control of Kisangani diamond market. She and her husband refuted the allegation that she was at the root of the Kisangani wars. However, this Commission has evidence connecting Jovial with Khalil and Victoria in Diamond smuggling, which is considered at Paragraph 21.3.5 below where this Commission has found that it is unable to rule out the participation of Jovial Akandwanaho in the diamond smuggling operations of Victoria, revealing that there is some truth in the allegations made against her by the original Panel.

20.3. General James Kazini

In Para 89, General James Kazini is said to be the third key actor. It is alleged that he is the master in the field, the orchestrator, organizer and manager of most illegal activities related to the UPDF presence in the Democratic Republic of the Congo. He is said to rely on the established military network and former comrades and collaborators such as Colonels Tinkamanyire and Mugenyi and to be close to Messrs. Nyamwisi, Tibasiima, Lumbala, Jean-Pierre Bemba all of whom have facilitated his illegal dealings in diamond, coltan, timber, counterfeit currency and imports of goods and merchandise in Equator and Oriental Provinces.

General Kazini is accused of many wrong doings in the original Panel Report, and this Commission has tried to deal with the allegations in the same order as did the original Panel. He was examined by the Commission at length, but he denied any involvement in business activities. One of the witnesses, Ateenyi Tibasiima, confirmed what Kazini had said. He stated in an affidavit that he had not helped or seen Kazini in business activities. However, consideration of General Kazini's involvement with Khalil and Victoria can be found at Paragraph 21.3.4 below. Throughout this report, General Kazini's name surfaces in respect of many allegations which relate to the misbehaviour of senior officers of the UPDF in the DRC, in respect of which he has taken little action: he has lied to this Commission on many occasions. Whilst this Commission bears in mind that he was the man on the ground, and that

many allegations have been freely made from the DRC which have not stood up to close examination, nevertheless this Commission has found that many of those made against General Kazini are supportable.

General Kazini's alleged dealings with Jean-Pierre Bemba in respect of coffee beans is covered by Paragraph 17.1 above. He and a number of other witnesses have stated that they were never asked to meet with the original Panel. Aside from his meddling in local administration when he appointed Mme Adele Lotsove a Provisional Governor and created a new Ituri Province for which he was reprimanded (see Para 15.8), the Commission has not found any evidence to implicate him as accused in the original Panel Report.

- 10 However, the Commission has received documentary evidence implicating General Kazini in other local administrative matters. In one case he instructed UPDF Commanders in Isiro, Bunia, Beni, Bumba, Bondo and Buta to allow one company, La Societe Victoria, to do business in coffee, diamonds, gold uninterrupted in areas under their control as it had been cleared of taxation by the President of MLC, Jean Pierre Bemba. He concluded by saying that: "Anything to do with payment to you in form of security funding, it will be done through OSH-Tac HQS", i.e. his office.

In another letter addressed to the Governor of Kisangani, the Major General attached a copy of communication from the chairman of MLC and his own comments and stated that VICTORIA had officially cleared taxes with MLC authorities and asked the Governor "to
20 leave VICTORIA do his business and he will continue to pay taxes to MLC to back up the effort in the armed struggle".

While General Kazini and other UPDF officer denied collecting or receiving any money from Congolese for their services, the General's first letter above leaves little doubt that some of the UPDF Senior Officers expected money from Congolese for security purposes. His evidence makes clear that he also expected it, and that the Commanders would keep the money for themselves, rather than accounting to him for it.

20.3.1. General Kazini's Coltan.

Letter from General Kazini requesting one Thomas Mathe as minister of finance of RCD-ML to allow his Coltan through customs.(Document 5)

- 30 On the face of it this appears to be a proper copy letter from General Kazini (who then was a Brigadier). However it is apparent that there are a number of strange things about it. In the first place Captain Balikudembe's name is spelt wrong. He

is described as “Commander Sector” which is not the manner in which General Kazini would have put it: he says so, and throughout his evidence he uses the English method of “Sector Commander” rather than “Commander Sector”, which is the order a Frenchman, for instance, would naturally put the words. It might be thought that this was a translation from French, which would account for the order of the words, but then the question arises as to why General Kazini would draft a letter in French (which he does not speak), and then have it translated into English obviously by a Frenchman. If it was so drafted, and then the translation prepared for General Kazini’s benefit, then why would he sign the translation? Even if that

10 happened, it would be the French version which would be sent, and therefore available to the reconstituted Panel: the English version would remain on General Kazini’s file.

Further, to General Kazini’s knowledge, Captain Balikudembe was not the Sector Commander of UPDF/Butembo. He was an Intelligence Officer according to both himself and General Kazini: General Kazini said that he would have described him as “Sector Intelligence Officer – Beni” as the sector name was Beni, to include Butembo, and he would not have referred to the UPDF in that description. Someone from outside, of course, might well make that mistake.

General Kazini also said that he would not have signed as “Brig. Gen.” because he

20 was a Brigadier, not a Brigadier General, which rank does not exist in the UPDF, he said: he produced a file in which most of the letters are signed in that way. However there is one letter which he signed as “Brig Gen” and another where the typist has described him as “Brig”, and he has written, after his signature, “Brig Gen”. That file was also produced to show that he always signs below the typed description, although it shows the exact opposite.

However, whatever this Commission’s reservations about General Kazini’s evidence on this and other occasions, its observation of the conduct and manner of giving evidence by Captain Balikudembe was that he was an honest witness doing his best to tell the truth despite strong questioning, and that his evidence was

30 credible. That may be that this letter is a forgery, or that the proposed convoy was never communicated to him: there is no way of telling, without seeing the original of the document.

Professor Wamba said that Thomas Mathe was “Mbusa’s Finance Officer”, and that Mbusa, not Mathe, was Minister of Finance of RCD-ML.

There are many factors in the evidence which go to show that the possibility that this letter is forged cannot be excluded.

The letter is produced to show that General Kazini was shipping Coltan: in that object it fails.

20.3.2. General Kazini's demand for \$5000.

Unheaded copy letter with no address signed by one D.X.Lubwimi.(6)

General Kazini denies knowledge of this letter. It makes no pretence at originality: it is an unsigned copy, with no heading : the addressee is not known and none of the witnesses before this Commission said that they knew anything about anyone named D.X. Lubwimi.

10

There is nothing this commission can do to counter General Kazini's denial in default of further information.

On the bottom of the translation there is a note, probably added by the Panel, stating "Note: This letter is clearly about extortion and threat". No doubt this letter is produced as proof of such allegations: however it fails in that object.

20.3.3. General Kazini's assets.

General Kazini in evidence, said that he was a poor man and invited this Commission to look under his bed. Unfortunately the sort of asset which the Commission would have in mind would not fit there. It is very obvious that the building pictured in Figure 3 has required a great deal of capital investment, which is being presented publicly as coming from General Kazini. This material, which this Commission has been unable to confirm or exclude, is included in this report



Figure 3: Photograph of Hotel being built at Kasese attributed to General Kazini's ownership: Acknowledgement New Vision

for the assistance of any body which wishes to undertake further investigations, for example the Inspector General of Government. This Commission strongly recommends such further investigations.

20.4. Colonel Tinkamanyire

Colonel Tinkamanyire who is reported to be one of Kazini's comrades and

collaborators does not exist. There is no soldier in UPDF known by that name and rank.

20 In addition this Commission has found other names upon which to focus:

20.5. Col Otafiire.

The name of Col Otafiire has featured in respect of two cars alleged to have been imported from the DRC.

Proper ownership of two vehicles had been raised in the newspapers: a Mercedes Benz saloon car and a Jeep Cherokee.

Col. Otafiire has told the Commission that he bought for ESO the Mercedes Benz in Uganda from a Rwandese called Paul Nyangabyaki. This was when he was the Head of ESO. The vehicle was deployed in Congo for under cover operational work for ESO. He did not get the logbook for that car.

30 The car was returned from Congo to Uganda in 1997 and he drove it for some time. He stated that it is now in a garage in Kampala.

The ownership of the car was raised when Col. Otafiire was seen driving it.

According to Col. Otafiire, the Jeep Cherokee belongs to a Mr. Joseph Maditi a Sudanese national working for UNHCR in Yumbe. He occasionally leaves the car with Otafiire. It is registered in Sudan, although Otafiire has sometimes used it in the Democratic Republic of Congo.

This Commission would conclude that the explanation given by Col. Otafiire of an allegation contained only in a newspaper report is consistent with his duties at the time, and this Commission would not recommend taking the matter further.

20.5.1. Documents obtained at the request of the Nairobi witness when giving evidence

10 A letter dated 4th October 2001 from Col Otafiire to the President RCD introducing John Kalimasi

This letter was not originally sent to this Commission by the Panel, but arose in the evidence of the Nairobi witness. In his evidence the Nairobi witness stated that “A lot of things were sorted out between RCD and UPDF by compensation and exports”. This was a subject this Commission was very interested in, and asked for examples with names. And surprisingly, at first the Nairobi witness refused to do so. In the end, after an evasive interlude, the Nairobi witness agreed to give an example, and said “I have been interested in a file, somehow related to Col Otafiire, for exoneration of imports of petroleum products about 15 trucks under the name for a certain economic operator, Mr John Kalimasi”. the Nairobi witness said that the Panel had the document, and asked for it to be produced.

20

A copy was produced later in the day, with another letter attached from Mr Kulu, the Commissaire of RCD-Kis’s Commissariat of Finances and Budget. This letter, copied to all and sundry, attaches Col Otafiire’s letter, and asks by reference to Col Otafiire’s letter, that the petrol be imported with exoneration of tax.

The letter from Col Otafiire does not amount to an example of things being sorted out between RCD and UPDF by compensation and exports. Col Otafiire, who accepts writing the letter told the Commission that it was within his portfolio as Minister in charge of Regional Cooperation, to introduce businessmen to Congolese authorities, and pointed out that he made no request in the letter for any exoneration from taxes. Col Otafiire also pointed out that, although he dictated the letter in his office in Kampala in the morning of the 4th of October 2001, and

30

signed it and gave it to Mr Kalimasi in the afternoon, he could not understand, as this Commission could not understand, how Mr Kulu's letter could have been dated on the same day, since it was signed, as was to be expected, in Beni.

There is indeed a mystery here: but there is no purpose in further investigation, as any arrangements were clearly made between Mr Kalimasi and the rebel authorities: all Col Otafiire did was to introduce him. There may be other examples which have not been shown to us by the reconstituted Panel, but this is not an example of "things being sorted out between RCD and UPDF by compensation and exports".

- 10 20.5.2. Letter dated 3rd August 2000 from Professor Wamba, instructing payment of \$13,000 to Col Otafiire.

Col Otafiire denies knowing anything about this letter which he says must be a forgery. Consequently this Commission sent the letter to the handwriting expert. His opinion was that there were two parts to the letter, the top, and the signature, and that they were out of line and made in two operations, that is, probably forged.

20.6. Col Otafiire, Col Mayombo and Hon. Wapakhabulo

- 20 With regard to the other individual actors mentioned in Para 87, no specific allegations were made against Colonels Otafiire and Mayombo in the original Panel Report. Nevertheless both were summoned and examined by the Commission because their names appear as generally mentioned in the original Panel Report and they had been in the Democratic Republic of the Congo in the course of their official duties. No evidence was originally found to implicate them in the exploitation of the natural resources of the Democratic Republic of the Congo, but as a result of some documents received from the reconstituted Panel, this Commission has heard evidence from the Nairobi witness that Col Mayombo was involved in obtaining a payment of \$380,000 from RCD for himself, Col. Otafiire and the Hon Wapakhabulo.

20.6.1. Payment of US\$380,000.

Letter from Colonel Mayombo requesting payment (1).

- 30 In this letter, Colonel Mayombo is purported to have written to Professor Wamba on the 5th of June 2000, reminding him to pay US\$380,000 which he says is owed to him following "the operation which you know very well". In his last paragraph

Colonel Mayombo is purported to have said that if there was a financial problem they could be sorted out by compensation through the means of customs.

Colonel Mayombo in his evidence stated that the signature on the letter appeared to be his, but that he was not aware of the contents of the letter and had not written it. He therefore declared that the letter was a forgery and alleged that his signature had been copied from elsewhere and put on the bottom of the letter.

Whether such copy is achieved by photocopying the signature from another document and sticking it on the forged document, or by scanning the signature into a computer and constructing the whole document with the signature so obtained attached, it is well known that it is extremely difficult, if not impossible, to line up the typing which appears below the signature. An example of this appears below as Document (4).

In the case of this document, the typing below the signature appears to be in line with the typing of the body of the letter. It is most probable, therefore, that it was typed at the same time, and it appears in the font which this commission knows that Colonel Mayombo is accustomed to use. This is the opinion of the handwriting expert who has been assisting this Commission.

It follows then that if this letter is a forgery, only the signature was stuck on to the letter for photocopying, either physically, or in a computer program after scanning of the signature. The handwriting expert is unable to tell whether this happened as alleged or not, because he has not had a sight of the original document, only of photocopies.

Colonel Mayombo in his evidence pointed out that the word "sort" in the second paragraph was misspelt as "soot", something which he would have edited when signing the letter, and that in the typing identifying himself below the signature, he was described as "COL.", whereas at the time he was a Lieutenant Colonel, and was accustomed to describe himself as such in correspondence. Neither of these matters are particularly convincing or decisive in trying to decide whether the letter is a forgery.

Professor Wamba said that he had never seen this letter, apart from having been shown it on his way through Nairobi by the reconstituted Panel. He said he had no financial dealings with Mayombo.

In view of the fact that Col. Mayombo admitted that the signature on this letter appeared to be his, although taken from elsewhere, this commission did not take handwriting samples from him.

Nonetheless, this letter has been submitted to a handwriting expert, but beyond the matters pointed out by Colonel Mayombo there is little that can be done to establish whether this letter is a forgery or not without being able to look at the original letter which has not been afforded to this commission, or, apparently, to the reconstituted UN Panel.

10 Without the original, and in view of Col Mayombo's evidence, on its own it would be dangerous to conclude that this letter is either genuine or forged. This letter however would need further consideration in the light of document(2) with which it should be taken together.

20.6.2. Letter from Professor Wamba dia Wamba authorising payment. (2)

This letter purports to have been written by Professor Wamba on the 25th June 2000 on RCD notepaper, bearing a reference 0172/BP/PR/RCD -- KIS./2000. It is addressed to the Nairobi witness, who is said to be the senior finance Inspector for RCD Kisangani in Bunia.

20 The letter purports to authorise one the Nairobi witness to pay for RCD-Kis the sum of \$380,000 to Hon James Wapakhabulo, Hon Kahinda Otafiire and Col Mayombo. The reasons for payment given are two-fold: first as a refund for exoneration on commodities, mainly the exportation of mineral products (Coltan) and second, because these personalities had taken care of some RCD-Kis unpaid bills in Kampala, which remained unpaid.

When taking evidence from those concerned, this Commission invited each witness to indicate anything on the face of the document which might indicate that it was a forgery, because all of them stated that it was.

30 Col Mayombo said that it must be a forgery, although he had never seen it before, on the basis that he could not envisage a situation where Professor Wamba would write such a letter to him. He said that the signature on the document was that of Professor Wamba, with which he was familiar, and that the document appeared to be stamped with the RCD-Kis stamp, over the top of the signature. He said that he

was not a Colonel at that time, but a Lt Colonel, and would not have signed as “Col” or have been addressed by Professor Wamba as “Col”.

Hon Otafiire was no better witness than on previous occasions. He appeared to treat this very serious allegation as a huge joke. He denied assisting RCD-Kis in his personal capacity. He did not know the Nairobi witness, to whom the document was addressed and alleged that he did not exist (although Professor Wamba said that he did, and this Commission interviewed him in Nairobi). He said that he did not know of RCD-Kis having an Inspector General of Finance, although this office clearly did exist. He was not aware of a liaison office of RCD-Kis in Kampala, but he agreed that Professor Wamba stayed in a house provided by Uganda Government, and the rest stayed at Silver Springs Hotel.

He stated that the signature on the document was not that of Professor Wamba, drawing attention to a difference in the “E” of the signature, and the end of the signature: he also pointed out that the stamp on the document was not that of RCD-Kis which he said was smaller. He is not borne out in this by the report of the document examiner, or by this Commission’s observation of the samples provided.

He said that the headed notepaper was not that of RCD-Kis, because in the third line of the heading, he thought that it should say “RCD Kisangani-ML”. The Chieftaincy of Military Intelligence supplied samples from their files of headed notepaper received from RCD-Kis: one sample was like document 4 without “-ML”, and another included “-ML”, and so this difference does not assist. In that regard, the handwriting expert concluded that the headed notepaper was from a different source of printing than the samples provided: it can be seen however that although there are printing differences between the samples and this document, it is probable that these differences arise from different print runs of the notepaper, rather than from forgery.

Hon Otafiire pointed out that his name was wrongly spelt, which this Commission had also noticed, and that Mayombo by then was not a Colonel. He said that RCD-Kis never had so much money as \$380,000.

Hon. Wapakhabulo also said that he knew nothing about this letter, or the payment of \$380,000 in which he was alleged to be involved.

Professor Wamba denied writing this letter: he said that the signature at the bottom looked like his, although the first part looked shorter, and there was something about the end which did not look right. He said that such a subject fell under Finance, and he would not have been writing to an Inspector: and even if the matter was out of the ordinary course, he would not use someone he did not trust. He also pointed out that Mayombo was not by then a Colonel, and that Hon Otafiire's name was misspelt. Nor could he understand how Hon Wapakhabulo could have been thought to be involved in such matters.

10 As to the Nairobi witness, Professor Wamba said that he was at first a Finance Inspector, and then involved with a Commission for General Inspection, and was sent to Beni to investigate there. He failed to make a report, and made arrangements to leave the country, but was stopped, in possession of \$5,000 under suspicious circumstances. Later he became an assistant to one Onore Kadiima who was working with Mbusa in FLC. However this person was never in charge of making payments.

20 The handwriting expert stated that the signature appeared to be fluently written, with four distinct parts matching closely with the specimens in letter construction, letter slope and shape. The typescript has lines which are parallel to each other, signifying that the document was done in a single typing operation from top to bottom, unlike document No 4. He confirmed the point taken by both Professor Wamba and Hon Otafiire, pointing out the extent of the final flourish underline to the left, thereby giving detail to their misgivings about the signature. The variation can clearly be seen.

It is also apparent that the highest strokes of the signature run into the typed name, something which would be extremely difficult to achieve by copying means, although a forger writing the signature could achieve it.

30 However, there is no doubt that, if this signature is a forgery, the forger is extremely good, as the handwriting expert concludes that it is possible that Professor Wamba signed this document: he is unable finally to conclude only because he was asked to work with photostats, where he would need originals for a final conclusion. It cannot be imagined that such an accomplished forger would make such an obvious mistake as to get the final flourish on Professor Wamba's signature wrong: it is more likely that this is a variation rather than a forgery.

This Commission interviewed the Nairobi witness in Nairobi, and also Dr Mido, who was mentioned by the Nairobi witness in evidence, in London.

the Nairobi witness said that he was Inspector of taxes, in charge of taxes since 1997 before the rebellion, and when the rebellion started he was taken by RCD as Inspector of Finances at a time when Tibasima was deputy commissioner in the Ministry of Finance until May 2000, when he moved to Wamba's Cabinet as general Inspector of Finance in Bunia with Wamba as Minister of Finance. He remained there until September 2000. From June 2000 RCD was divided into two: Mbusa was in charge in Beni Butembo, while Wamba was in charge in Bunia.

10 When working with Tibasima as Inspector of Finance, he was in charge of overseeing everything concerning Finance, taking account of receipts, controlling money received, and control of keeping the money of the state.

When working with Tibasima, the Nairobi witness, would get his instructions direct from Mr Tibasima, usually verbally. And the Nairobi witness said that when he was working with Mr Tibasima, Mr Tibasima was at the origin of a lot of things, and that when he was working with Professor Wamba, this was no longer true and "effectively the Inspector himself was in the field." Probably this means that he was left a lot to his own devices. He was reporting to Dr Mido, whom he described as Wamba's major collaborator, although Dr Mido was not a financial person and would discuss financial matters with the Professor .

20

He said he was responsible for making payments (contrary to the evidence of Professor Wamba), and in particular he told this commission about a payment which Professor Wamba was calling the debt of the RCD to Uganda. RCD had been taken to court in Kampala by hotel managers, landlords and airline companies. The way the Nairobi witness described it, due to the split in the RCD, and the differences between Mbusa and Wamba, Wamba had reached an agreement with the Ugandan authorities that he would find a way to pay the debt, and in return the Ugandan authorities would support him in his ongoing dispute with Tibasiima. The debt amounted to some \$380,000, and Professor Wamba was

30 unable to obtain the amount from Mr Tibasima, who was initially Minister of Finance.

After discussions between the Nairobi witness and Dr Mido, the Nairobi witness advised Dr Mido that he would be able to go to the field and collect receipts of the proceeds and bring them back to Bunia. It was also discussed whether it would be

possible to obtain some refinancing in respect of coltan to be exported from the Beni Butembo area, once the Ugandan authorities had helped Professor Wamba to regain control in that area.

The precondition would be payment of the outstanding \$380,000. The Nairobi witness in his evidence was not at all clear as to how all this happened, but according to the Nairobi witness the result of all the negotiations was the drafting by Professor Wamba of a payment order addressed to him, and that payment order was document No 2 in a bundle of documents which this commission received from the UN panel. It was brought to him by Dr Mido.

10 This commission was initially extremely suspicious of this document, arising from the fact that the translation of it supplied by the UN panel stated first that the sum of \$380,000 was to be paid "as a refund for exoneration on commodities, mainly the exportation of mineral products (Coltan)" and secondly that the payment was due to some unpaid bills in Kampala. Initially it appeared that there were two conflicting reasons for the payment, but it was made clear at the hearing in Nairobi that the translation provided was wrong, and should have read not "as a refund", but "by a refund", which made more sense and was consistent with the evidence of the Nairobi witness.

20 the Nairobi witness said that he was given a mission order to go to the field and collect money: it is not clear whether the mission order he received was document No 2 or another document. In any event he went to Mahagi and Aru border points where he obtained \$45,000 from taxes collected and at Bunia he negotiated with companies and managed to collect a further \$30,000 by way of refinancing, a total of \$75,000. By one means or another the money was paid into the bank. The Nairobi witness said that later he was approached by Dr Mido who told him that Col Mayombo was in the country and that they had to go with the money which they had to pay it to him. Mayombo was staying in a flat which was rented by RCD from one Mr Lubenga of Solenki. The Nairobi witness and Dr Mido went together to the Bank and Dr Mido withdrew the money in cash.

30 the Nairobi witness was cross-examined at great length by all parties as to why Professor Wamba would communicate directly with him in Document 2, rather than through the hierarchy. His answer, after great confusion, was that it was he who had the experience of negotiating with Economic Operators for prefinancing deals, and that he and Dr Mido had discussed and recommended to Professor

Wamba that the authority to collect and to pay should be made out to him.

The manner of his evidence, and the importance attached to the hierarchical system by the other witnesses, particularly Dr Mido, makes this Commission think that this transaction was at the least conducted out of the ordinary, and probably that the Nairobi witness's explanation was a little thin.

10 There was also confusion about the manner of withdrawal of the \$75,000. The Nairobi witness said that the withdrawal was made, specifically not by a cheque, but by a payment order signed by Professor Wamba the sole signatory, which was then signed by Dr Mido in acknowledgement of receipt of the money. Dr Mido, who was In Charge of General Inspection, and the Nairobi witness's boss, however said that to get money out of the bank a cheque had to be signed by Professor Wamba for large amounts, and by the Minister of Finance, countersigned by himself for smaller amounts. Dr Mido's account is the more familiar and acceptable, and this Commission might be forgiven for thinking that perhaps the Nairobi witness was not as au fait with the proper procedure as he said in evidence.

20 According to the Nairobi witness, he and Dr Mido went then to see Col Mayombo at the flat in Bunia where he was staying, and Dr Mido handed over the money, and then started talking to Col Mayombo first about finance and Trinity, and then the dispute between Tibasiima and Professor Wamba, which he said had been planned by Col Arocha with others. He said that Tibasiima had soldiers in the bush, and there was no UPDF intervention to support Professor Wamba. He put this down to the fact that the \$380,000 had not been paid. After the \$75,000 was paid, he said that Professor Wamba received the support he needed. In his statement (supplied to this Commission by the reconstituted Panel) he said that "the only issue was to tame the Hema militia of Tibasiima". In later questioning, the Nairobi witness inclined to the view that there was probably no debt in Kampala, but that the money was paid for UPDF support. There was also the issue of Mbusa's control of Beni Butembo, and this somehow came in to the Nairobi witness's evidence, but not in a clear manner: this however was an important matter, because part of the way the \$380,000 was to be collected, according to the Nairobi witness, was by the expectation that the UPDF would assist Professor Wamba in regaining control of those areas, so that prefinancing of coltan from the Beni Butembo area (referred to in Document 2) could proceed once control had been re-established. This portion of his evidence did not make sense.

30

10 This Commission was not impressed by the Nairobi witness's way of dealing with these subjects. In his statement he attributed the payment to persuading Col Mayombo "to inquire about the crisis within RCD-KIS between Wamba and Tibasiima whose militia retired in Bogoro to strike and dislodge Wamba in Bunia". Then initially in his evidence the whole issue according to him was to do with the debt in Kampala: then he reverted to the reasons given in his statement: later he was shown Document 1, which purported to be a letter to Professor Wamba written by Col Mayombo asking for the payment of \$380,000 "for the operation which you know", and his opinion then became quite firm, that the money was for UPDF support.

20 The Commission and those cross-examining the Nairobi witness took him to task as to why no receipt was signed by Col Mayombo. The reason he gave was that accounting in RCD was not satisfactory. He said that the law of the jungle applied and senior people would never identify themselves by signature. It was pointed out that he himself had been an inspector in finance with RCD from the start and that if he was doing his job properly, with his qualifications, as an inspector he would have something to say about that. Further it has occurred to this Commission that the case put forward is that Mayombo wrote a letter demanding the sum of money, thereby putting himself on record, which the Nairobi witness says that the senior people would never do. The whole matter of the lack of a receipt is most unsatisfactory and inconsistent, bearing in mind the Nairobi witness's qualifications, and the circumstances.

Every allegation made by the Nairobi witness has been denied by Dr Mido. He at the moment, as he told this Commission on oath, is in London, working as a doctor, and awaiting the coming of peace in the DRC. This Commission sees no reason for him to lie, while the Nairobi witness clearly has a grudge, whether justified or not, arising from his arrest by the UPDF

30 Lastly, evidence from Mr Khan of Silver Springs Hotel, and from Col. Otafiire, supported by correspondence from Col Otafiire and Col Mayombo, is quite clear that the Uganda Government accepted responsibility for hotel bills of RCD members in Kampala: it may be that the amounts have not been paid yet, but the responsibility for payment appears to be clear. The evidence was that, as at June 2000, there were outstanding amounts, which Col Otafiire accepted were for the Uganda Government to pay. This was the understanding of Silver Springs as well, for they have issues a plaint against the Uganda Government for outstanding

amounts. Whilst Professor Wamba's payment order is not specific as to the nature of the outstanding debts, and he denies that he ever wrote the order, the Nairobi witness appears to have some, at least, details of how the debt arose. These details are not consistent with evidence that the government of Uganda was responsible for these bills. The comparison of the evidence shows that the Nairobi witness, if not lying about this transaction, is at least wrong about its purpose, and since his is the only evidence that this did occur, on a balance of the evidence this Commission is bound to reject his claim, or at the least to conclude that there is not sufficient evidence for the Commission to advise Government of Uganda to take any action against the parties involved.

The Nairobi witness also alleged that a 10 kg gold bar worth \$100,000 which he said was the result of a "gold tax" imposed, not by the UPDF, but by RCD on artisanal miners allowed to work at Kilo Moto, had also been paid to someone he did not know by Madame Colette against the \$380,000 debt. He started by saying the gold bar had "disappeared" (meaning to imply "stolen") from the Kilo Moto Office, and that the manager had fled the country because he did not want to be blamed for it. However the Nairobi witness was soon acknowledging that the gold bar went to the Presidency, no doubt in the ordinary course as funding. It was this allegation relating to a gold bar which brought this whole matter within our terms of reference, amounting to an allegation of exploitation of the natural resources of the DRC. Once again the Nairobi witness in his evidence started out on one tack, and as that was shown in questioning to be a bit thin, changed course to another tack. His source of information about this, he said, was Dr Mido, who in his evidence to this Commission said that it would have been impossible at Kilo Moto to smelt gold into a bar, as they did not have the facilities to do so. This would normally be done at the Central Bank, he said.

Again the Nairobi witness said that Dr Mido had paid \$50,000 at the end of July : Dr Mido denied it and said that there was never enough money in the bank to make this or other payments. According to the Nairobi witness, he managed to collect this from one Angina Tombe, and gave it to Dr Mido in Beni. Dr Mido said that pre-finance arrangements were paid direct into the Central Bank by the economic operator, and that cash was not handled.

Lastly, the Nairobi witness said that he and one Polly Siwako had paid to Col Burundi \$20,000, about which there is no other evidence.

There is a clear difference between the evidence of the Nairobi witness and the Ugandan witnesses, which might be expected whether this transaction took place or not, although it is extremely difficult to believe that the Hon. Wapakhabulo has been telling this Commission barefaced lies. Professor Wamba also differs from the Nairobi witness on major matters, and the Nairobi witness put that down to the fact that he thought he was arrested for treason on the Professor's instructions: but that would not account for the fact that, on the face of it as presented, this transaction was a straight reimbursement for money paid, occasioning no reason to lie on the part of Professor Wamba. The Nairobi witness also said that he had a close relationship with Dr Mido, who failed to confirm any detail of evidence which he might have been expected to confirm where such a relationship existed.

There was also one other matter which has caused this Commission concern. It relates to the letter purported to have been written by Col Mayombo, making demand for this \$380,000. It is apparent that this letter is a photocopy of the original. Dr Mido told us that all such correspondence would end up with Madame Colette who was Chief of Cabinet: and it ought to have comments on it for action: comments by Professor Wamba, or by Mme Colette: this is quite normal in the ordinary course: but there are no such comments. To set against these problems is the opinion of the handwriting expert on both letters: he can find nothing in particular to show that either of them is a forgery, but he points out that he is working with a photostat, and could have given a better opinion if he had been working with an original.

The Nairobi witness was introduced to this Commission by the reconstituted UN Panel as a witness who could support the documentation which the UN Panel also forwarded to this Commission to show that specific senior government officials were involved in illegal exploitation of the natural resources of the DRC. It is also noted that the reconstituted Panel have not set out this alleged event in their Final report.

On the balance of the totality of the evidence, this Commission is not satisfied that the UN Panel has achieved its object to a satisfactory standard, so that action can be taken by the Ugandan Government.

20.7. Colonel Mayombo's advice to Professor Wamba dia Wamba.

Letter from Colonel Mayombo advising Professor Wamba dia Wamba to monitor one the Nairobi witness.(4)

On this letter there are a number of features which clearly indicate a forgery. First, the typing of the identification line at the bottom (NOBLE MAYOMBO (MP) COL DCMI) is not in line with the rest of the typing on the letter, which indicates that it, and the signature above it, have been carefully (but not carefully enough) been stuck on or added from a scanned signature.

10 Then it has to be remembered that Col Mayombo is an intelligent, educated man, Deputy Chief of Military Intelligence, able to speak perfect English, although he says he does not know French. He is purported to be writing to Professor Wamba, who, although his main language is French, is also able to speak perfect English, and does not hesitate to do so, as he has done before this Commission. It has been suggested that this is a translation from the French original. After checking the language of the letter, which is clearly a translation from the French by a Frenchman, the question arises as to why Col Mayombo would have had a letter written for him in French, and then translated, and then signed the translation. There seems to be no logical answer to these questions, and Col Mayombo says that it did not happen.

20 The first sentence of the letter makes no sense at all, being devoid of a verb. Since a verb is required in both languages, this is not decisive, although it would indicate a less careful writer than Col Mayombo. However no member of this Commission can imagine that Col Mayombo would for one minute consider calling the National Political Commissar the "National Politics Commissioner", nor of spelling his name wrongly, or of failing to edit such a mistake.

The hand writing expert found that the last three lines of the document, describing Col Mayombo were not parallel to the lines of the rest of the typescript, suggesting that these last lines were added on to the document after the upper lines had been type and removed from the typewriter/printer.

30 All the evidence available in respect of this letter is that it is a forgery, and nothing short of production of the original would convince the members of this Commission otherwise.

20.8. Ateenyi Tibasiima and Roger Lumbala

Ateenyi Tibasiima and Roger Lumbala gave evidence in affidavits. They did not accuse Ugandan troops, Kazini or anyone else of any exploitation of natural resources of the Democratic Republic of the Congo, but Lumbala said that he had received complaints from civilians in artisanal mining areas that some individual soldiers of the UPDF demanded money from Congolese citizens who were engaged in artisanal mining. He said that he had no record of those who complained or the names of the soldiers involved, but they wore UPDF uniforms. In the Commission's view this does not amount to the allegations made. Jean Pierre Bemba on oath gave much the same evidence.

20.9. Other Individual Actors

A number of allegations have been difficult to investigate because they are purportedly based on what the original Panel described as "very reliable sources". The Commission has not had the opportunity to cross check the evidence received from such sources, or at least received some documentation to assist. The work of the Commission would have been easier had the original Panel agreed to name those sources, or provide documentation. Unfortunately this was not the case. Nonetheless on the basis of the evidence received, the Commission's finding is that there is no ground for sustaining the allegations made against the individual actors concerned, except as earlier set out.

20.10. The Uganda Peoples' Defence Force (UPDF)

The original Panel Report contains serious allegations against UPDF and Top Military Officers, and many of those allegations were repeated and enlarged in the Addendum. Some of those affected have appeared before this Commission and on oath asserted that the allegations were untrue. Many of these were poor and unreliable witnesses. However, no soldier is prepared to come forward and say to the contrary. There appears to this Commission to be a conspiracy of silence, which it is not easy to breach.

One way in which it could have been breached would have been for the reconstituted Panel to reveal sources, who could have given evidence before this Commission, or to provide reliable documentary evidence to support the allegations.

To get to the root of the matter this Commission thought a proper and thorough investigation of UPDF would be the best option. This Commission's inquiries have established that the

only organisation that can investigate UPDF is the Military Intelligence, which is part of the military.

Lt. Col. Noble Mayombo, the Acting Chief of Military Intelligence and Security appeared before this Commission. The conclusion, after listening to him, is that the Military Intelligence's investigations are not good enough, nor concentrated on misbehaviour of officers and soldiers in the field. In some cases investigations were made long after the incident. This Commission refers, in particular, to the allegation in Paragraph 62 of UN Report that in August, 2000 UPDF Col. Mugenyi and a crew of his soldiers were discovered with 800kg of elephant tusks in their car near Garambwa Park.

- 10 From the evidence of Lt. Col. Mayombo the allegation was not investigated until nine months after the incident, and then only on receipt of the original Panel Report. Naturally nothing turned out. That was to be expected. For after nine months potential witnesses might not be around and vital evidence might have been destroyed or disappeared for one reason or the other.

Lt. Col. Mayombo admitted before this Commission that some cases were not reported to the Military Intelligence Headquarters by the Intelligence Officers in the field. This is a clear admission of weakness in the Intelligence establishment.

- 20 There is also an incident where an allegation was made against a Senior Army Officer and a Junior Army officer. The Local UPDF Commander asked the Senior Army Officer to investigate himself and the Junior Officer and report to him. The case in point relates to the instructions given by Col. Mugenyi to Major Sonko to investigate the allegation made against himself and Lt. Okumu in respect of mining.

Further it appears that all an officer has to do is to deny an incident for the investigation to be dropped.

From the above it is clear that this Commission's hands are therefore tied as far as UPDF is concerned and there is nothing further this Commission can do than to express dissatisfaction with the conduct of many of the UPDF officers who gave evidence, not the least because when they started to be asked awkward questions they resorted to a conspiracy of silence, or in the case of one very Senior Officer, levity and disrespect of the civil process.

- 30 The credibility of evidence given to the Commission by some army officers has been questionable in many cases especially with regard to cargo transportation at the old airport

and the mining incidents referred to in Paragraphs 57 and 59 of the original Panel Report, with which this Commission has dealt at Paragraph 16.2.1 above.

A serious consideration of those holding Senior Posts in the UPDF is called for, and recommended by this Commission .

**21. ECONOMIC DATA : CONFIRMATION OF THE ILLEGAL EXPLOITATION
OF THE NATURAL RESOURCES OF THE DEMOCRATIC REPUBLIC OF
CONGO**

In Paragraphs 94 to 108 economic data is set out in the report.

21.1. Gold

10 The conclusion of the original Panel Report in relation to the economic data was that the official data provided by Uganda authorities, contained substantial discrepancies. The original Panel pointed out that the export figures for gold were consistently greater than production values. The original Panel attributed the gap to the exploitation of the natural resources of the Democratic Republic of Congo. They point out that the Bank of Uganda has acknowledged to IMF officials that the volume of Ugandan gold exports does not reflect Uganda's production levels, but rather that some exports might be leaking over the borders from the Democratic Republic of Congo. According to the Bank of Uganda exports in 1996 6.4 million dollars, and in 1995 \$23 million, and in 1997 were \$105 million.

20 This Commission has heard evidence from Bank of Uganda officials that their data is collected from forms provided by the Bank of Uganda which express an intention to export only. This Commission therefore looked at the URA figures for gold exports and transit. It was not possible to separate the figures for exports originating from the Congo, although it was possible to separate the transit figures, but only for 1999 and 2000.

30 This Commission thought to confirm figures from the UN COMTRADE database said to have been provided by the Uganda Bureau of Statistics, which revealed totally different Ugandan export figures to those quoted by the UN panel, sourced from the Ministry of Energy and Mineral Development. When comparing those figures with the figures provided by Uganda's trading partners in terms of imports from Uganda an even more disparate picture emerged.

There are problems in comparing figures, since some are in millions of shillings and others in thousands of dollars, and some others are in tones/tonnes. But a general picture can be obtained of a steady rise until 1997, with a dip in 1998 and an increase in 1999. In 2000 there is a small dip.

10 There is also one other thing which appears from the figures, and that is that the figures from the COMTRADE database as provided by Uganda Bureau of Statistics as to Uganda's export figures, and the figures provided by Uganda's partners as imports differ wildly, and bear no relation at all to the figures provided by URA. It is quite clear therefore that there is massive smuggling of gold, and that the figures from any source cannot be relied upon. One wonders how it can be suggested that Uganda must have realised what was going on with respect to Gold, or how Uganda can be blamed for anything but an inefficient Customs Service and a porous border. It is not the only country in Africa with these problems. The Commission will have recommendations to make on this subject in due course.

20 It is also clear that there is no mine in Uganda which is fully operative; the same is also true for the eastern Democratic Republic of Congo. The only source of gold available is artisanal mining in open areas and abandoned mines (such as Kilo Moto). The original Panel themselves indicate that a great deal of artisanal mining is going on: they quote a figure of 2000 people mining in Kilo Moto mines per day, paying soldiers a total of 2 kg per day; no doubt the workers also take an appreciable amount of gold out of the gate. The Addendum to the original Panel Report increases that figure to 10,000 people per day, generating £10,000 a day, 6 days a week, or \$3,120,000 a year. Whether or not soldiers are involved, this is an appreciable amount of gold. Maj. Ssonko put the figure at 20,000 artisanal miners. Dr Mido gave evidence that Professor Wamba appointed a Commission of soldiers to charge artisanal miners at Kilo Moto about \$15 worth of gold to go into the mine, and that the proceeds from that were about two to three hundred grams a month, which raises the possibility that RCD soldiers were mistaken for UPDF soldiers.

30 According to the Uganda Government, the figures for production in Uganda do not reflect true production, because artisanal miners do not declare production, whereas exporters do. Nevertheless there is widespread artisanal production in Uganda, since this would be the only source of gold production in Uganda, apart from the production from one mine in development.

What concerns this Commission is that the COMTRADE figures declared by Uganda Bureau of Statistics are 16,35, and 43 million dollars for 1998,1999, and 2000 respectively. These figures are far too high to be matched by likely artisanal production in the Democratic Republic of Congo even taken together with Uganda, and they are not matched by COMTRADE Partner Import figures which are 2,4, and 14 million dollars only, (which are much more acceptable in relation to artisanal production.

10 The original Panel has relied upon figures provided by the Ugandan Bureau of Statistics. These figures do not match URA figures, or figures from Import partners who, with respect, might be expected to be more reliable. This Commission thinks that perhaps if a little comparative research had been done, the original Panel would have realised that the figures upon which they relied were, to say the least, questionable, even though provided by Uganda, and that artisanal mining was the only realistic source of gold production in this part of the world. The original Panel might have been able to look with sympathy on the parlous state of the Uganda Customs Service, and to make constructive recommendations in that regard. This Commission cannot support their conclusion in Paragraph 45 that :

20

"The Panel has strong indications after talking to numerous witnesses (key and others) that key officials in the Governments of Rwanda and Uganda were aware of the situation on the ground, including the looting of stocks from a number of factories. In some cases, the level of production of mineral resources would have alerted any government, such as those of gold for Uganda and coltan for Rwanda (from 99 tons in 1996 to 250 tons in 1997)."

In passing this Commission would point out that in view of this Paragraph, and similar comments in the Addendum, this Commission will not be considering coltan under this heading, although there undoubtedly was coltan from the Congo transiting through Uganda.

30

With relation to the acquisition of proper statistics, the problem appears to be the recording of production. This Commission visited a gold exporter, and saw one transaction through from the visit of the client with unprocessed gold dust to the melting of the gold, and payment for it. The client was a businessman in Arua, and he brought one large packet which was split up into many smaller packets, each of which belonged to an artisanal miner. Each one was painstakingly labelled with the name of

the artisan, and they were all melted and assessed individually, and the payment for each man calculated.

In such circumstances it is impractical to expect the artisans to notify gold production and source, even where the law requires it. It is only the exporter who is required to fill in statistical forms for export. Production and, more importantly, source figures ought also to be required of whoever is the first person in Uganda to melt the gold down, because the gold dust brought contains many impurities. In that regard, it was quite clear from the visit that URA has no hope of charging import duties, because the individual packets were so small (smaller than a matchbox, though heavy, and quite valuable) that they were easy to hide. For the same reason, it might be impractical to require source figures, because gold smuggled through the border would be unlikely to be declared as sourced from outside Uganda, so that it was not dutiable. This Commission was told that the sources were all within Uganda: but looking at some of the names involved, and bearing in mind the fact that the client was from Arua, this was unlikely.

This Commission's observation of the practice and procedure of, at least, artisanal gold production was that it would be very difficult, if not impossible to control gold imports from across the border, or to produce production statistics of any kind. Therefore, even if the Uganda Government ought to have noticed that production figures did not match export figures, there was very little that could be done about it. Practically speaking this Commission is unable to suggest an approach to solve the problem, but would recommend further study of the problem.

Table 1: Comparative figures for Gold from various sources

GOLD							
INFORMATION FROM	1995	1996	1997	1998	1999	2000	2001
URA EXPORTS Mshs	24,296	22,233	18,972	12,988	22,497		
URA TRANSIT from Congo Value Mshs	0	0	0	0		13	53
BOU Mshs	2,539	6,409	8,059	1,860	3,836	3,184	

COMTRADE UGANDA - EXPORTS (\$000)	27,375	24,506	18,737	16,015	35,812	43,284	0
COMTRADE PARTNERS- IMPORTS (\$000)	4,286	28,161	20,744	2,234	4,235	14,405	
COMTRADE UGANDA - EXPORTS Tonnes	2	2	1	3	21	43	0
COMTRADE PARTNERS- IMPORTS Tonnes	2	3	8	0	0	0	0
URA TRANSIT from Congo Grams ??	0	0	0	0		1,780	7,030
PANEL (Tons)	3	5	7	5	11	11	

21.2. Diamonds.

The original Panel in their report say

"98. Second, the data from the Ugandan authorities are silent with regard to diamond production and export. Several third party sources (WTO, World Federation of Diamond Bourses, Diamond High Council) indicate diamond exports from Uganda during the last three years. These diamond exports are suspicious for many reasons:

(a) Uganda has no known diamond production;

(b) Diamond exports from Uganda are observed only in the last few years, coinciding surprisingly with the occupation of the eastern Democratic Republic of the Congo as shown in table 2 and figure 2;

(c) Finally, these facts corroborate the Panel's findings from field investigation, discussions and external observers on the need to control the rich diamond zone near Kisangani and Banalia.

99. These figures are understated and there are indications that Uganda exported more diamonds. However, this is not well captured in the statistics because of the loose regulations governing the free zone areas. These regulations permit diamonds originating in any country to be repackaged, and then to be sold from any country as diamonds from a country of origin that is not necessarily the one mentioned in the statistics.

100. Data collected from any third party consistently show that Uganda has become a diamond exporting country; they also show that diamond exports

from Uganda coincide with the years of the wars in the Democratic Republic of the Congo, that is from 1997 onward."

So far as this Commission is concerned, the data from Ugandan Authorities is not silent. It is quite clear from URA, BOU and Uganda Bureau of Statistics data to COMTRADE that there is no record whatever of diamond production in Uganda. There is a slight possibility of some artisanal surface diamond collection, but nothing has been officially declared.

10 On the other side, the original Panel's information, which is said to have come from WTO, the World Federation of Diamond Bourses and the Diamond High Council, agrees quite closely with the COMTRADE Partner Import figures on diamonds, except for the figures for 2000. This Commission has checked the original Panel's information with the Diamond High Council. It is revealed that, although much more care is now exercised by the Belgian Authorities, at the time in question, the source of diamonds was accepted upon the information of the importer, and Diamond High Council statistics (which the original Panel quoted as their source) relate to import to Belgium.

Therefore, although the original Panel treat as suspicious the fact that, according to external statistics, Uganda was a diamond exporter, in fact that information was based upon the most unreliable figures.

20 For example this Commission has traced a Police case in Uganda where one Khalil, who is mentioned in the original Panel Report, admitted to obtaining diamonds in the Democratic Republic of Congo in April 2000, flying them in to the Military Air Base, and ultimately sending a packet of them through associates to the International Airport, where the diamonds were exchanged (in the Gents toilet at the airport) for \$550,000 in cash with a courier from Belgium who caught the next flight back. This was hardly an honest exchange, particularly as there is no record of import, export or transit through Uganda. The reason the matter was reported to the Police in Uganda was because on the way back to Kampala, the car was stopped by armed men and the money stolen. The case is dealt with more particularly at Paragraph 21.3 below. The point is that the source of information in Belgium that the diamonds originally came from Uganda (which they did not) was the courier who had been involved in this shady deal. Had the original Panel known all this, perhaps they would not have been so hasty as to lay the blame at Uganda's door: and to establish the source of the information upon which they relied was only a telephone call away, for that is how

30

this Commission established this information. There is no doubt that diamonds are being smuggled, and falsely declared as sourced in Uganda. Bearing in mind that a fortune can be carried in a pocket, it is difficult to see what Uganda as a State can do about this. Partner Countries must be aware that Uganda is not a diamond producing country, and yet are prepared to publish figures which deny that fact. The original Panel acknowledge the difficulty, and make recommendations in respect of it, which the Uganda Government, in its response, accepts.

10 Although the original Panel refers to diamond exports from Uganda as commencing "with the occupation of the eastern Democratic Republic of the Congo" the figures they produce clearly show considerable trading in 1997, a year before the UPDF went in. This however would coincide with the start of the Laurent Kabila regime, and the coming of relative peace and security to the eastern Democratic Republic of Congo, followed by security provided by UPDF even in troubled times, both of which enabled overseas trading. There is no surprise in this.

This Commission cannot therefore understand why the original Panel referred to these figures as suspicious, or as supporting their conclusions from field trips.

Table 2: Comparative figures for Diamonds from various sources

DIAMONDS	1995	1996	1997	1998	1999	2000	2001
URA	0	0	0	0	0	0	0
BOU	0	0	0	0	0	0	0
COMTRADE UGANDA-EXPORTS (\$000)	0	0	0	0	0	0	0
COMTRADE PARTNERS-IMPORTS (\$000)	0	0	203	1,364	1,232	13	0
PANEL (\$000)			198	1,440	1,813	1,263	

21.3. The Diamond Link

20 An opportunity presented itself to investigate the way in which diamonds were exported to Europe from the Democratic Republic of Congo, arising from a document

provided by the reconstituted Panel, combined with information that this Commission had obtained about the smuggling of diamonds. The evidence and conclusions to be drawn from it are set out below.

21.3.1. Victoria

Throughout this Commission's investigations the name of Victoria Diamonds or Victoria Group has surfaced on many occasions. The allegations in the original Panel Report were that Salim Saleh was a key shareholder in the group, which was said to have been involved in the making of counterfeit Congolese Francs (Paragraph 67). Later in paragraph 80 the original Panel described Victoria Group as being chaired by one Mr. Khalil with its headquarters in Kampala. The original Panel said that Mr. Khalil deals directly with Salim Saleh's wife on Diamond issues, and had two collaborators in the Democratic Republic of Congo, Mohammed Gassan and Mr. Talal. The original Panel were also told that Victoria Group belongs jointly to the son of President Museveni and Salim Saleh and his wife, and was involved in trading diamonds, gold and coffee.

In Paragraph 88, when focusing on Salim Saleh and his wife, and accusing Salim Saleh of controlling Mbusa Nyamwisi and Ateenyi Tibasima through General Kazini, who were protecting his commercial and business interests, the original Panel stated that Salim Saleh used the Victoria Group (and also Trinity) for the purchase and commercialisation of diamonds, timber, coffee and gold. The original Panel also reported that Salim Saleh's wife wanted to control the Kisangani diamond markets on the recommendation of Mr. Khalil.

In the Addendum, Victoria comptoir in Kampala is mentioned in Paragraph 26 as continuing to sell gold mined from Malaka, and in Paragraph 97 as still exploiting diamonds, gold coffee and timber, enabling the UPDF to "pull out their troops, while leaving behind structures that permit military officers and associates, including rebel leaders, to continue profiting". In Paragraph 99 of the Addendum, Roger Lumbala is alleged to be a front for Victoria in respect of Bafwasende diamonds.

This Commission's original researches were centred on a Ugandan Company of that name because of the insistence of the original Panel that the Company was connected with Kampala, and it took very little time to establish that there was no such company registered in Uganda, either local or foreign. All that was

discovered relevant to the allegations in the original Panel report was that at one time Jovial Akandwanaho and Khalil were associated in a Lebanese restaurant. They were directors in a company named Leban (U) Ltd which was registered on 5th August 1999, and opened a Lebanese Restaurant in Kampala Road in mid-1999. Later, Jovial said, she had sold her shares to Khalil.

10 Later on in this Commission's researches, a registration document of a company called Victoria Diamonds, registered in Goma in February 1999 was obtained. The Directors of that Company were Ahmed Ibrahim (a Lebanese living in Goma) and Kay Nduhuukire (a Ugandan living in Goma), who were mentioned nowhere else in the reports or evidence. This Commission therefore thought that this Company was not the Company referred to by the Original Panel, and reported as such.

However, an event in Uganda came to the attention of this Commission. On 14th July 2000 a robbery took place on the Entebbe Road. The robbery was from a vehicle which was travelling from Entebbe Airport to Kampala: and a sum of \$550,000 was reported to have been robbed from the occupants. The matter was reported to the Police, and it turned out that the loser was the same Khalil, who made a statement to the Police.

21.3.2. Khalil

20 In that statement Khalil identified himself as Khalil Nazem Ibrahim, of British Nationality. He said that he came to Uganda in January 1999 and that he had a Lebanese restaurant on Kampala Road and did business of buying diamonds from the Congo especially in Kisangani, Buta and Bunia. He did not name the company under which he worked. He said that he used to send money for buying diamonds through one Hussein, and sometimes would go himself. He was receiving diamonds through the Entebbe airport and also sending them to Europe especially to Belgium, and received the money in dollars for buying the diamonds from one Nasser Murtada at Entebbe Airport. His base was in Bugolobi in Kampala. Due to problems in the Congo he said that he stopped the business and in June 2000 brought a man named Ismail from Buta to start buying diamonds from the Congo.

30 Khalil said that he then went back to Belgium to arrange finance after showing Ismail what to do. The procedure was that Nasser Murtada delivered money in dollars from Belgium at Entebbe airport and took the diamonds already purchased back to Belgium.

The man Ismail identified himself as Ismail Kamil Dakhlallah, a diamond dealer aged about 22 years. He said he was based in the the Democratic Republic of Congo and used to buy diamonds from Buta and Kisangani. He said that after the wars in Kisangani and shortly before the robbery in July 2000 he moved to Kampala to join a company named Beccadilly Ltd which was based in Bugolobi. He said that his partner in Uganda was Abas Khazal, and they were financially supported by Nami Gems who were based in Belgium. On the particular occasion of the robbery, he was telephoned by a Mr. Hemang Shah (of Nami Gems) who said he would be sending money to him with Nasser Murtada on the Sabena flight arriving on Friday the 14th of July 2000.

10

He went to the airport, met Nasser, picked up the money which was \$550,000, and started back to Kampala but on the way the money was robbed at gunpoint. After the robbery he was assisted by Mohammed Jawad (who according to his statement runs a Lebanese restaurant in Kampala Road, the one in which Jovial and Khalil were originally associated) and Abas Kazal. It is interesting to notice that in his statement, Ismail did not mention that he had handed over diamonds to Nasser at the airport, although Khalil said that the procedure was to deliver money and pick up the diamonds already purchased.

20

These people were quite clearly engaged in smuggling diamonds through Uganda, since URA statistics show no import or transit of diamonds from the Democratic Republic of Congo. At the very least the law would require them to declare the diamonds for transit through Uganda from the Congo to Belgium. As this Commission has pointed out elsewhere, there would be no income to Uganda from such a declaration, but Uganda would be entitled to check the transit and ensure that there was no import to Uganda of some or all of any particular consignment, upon which duty would be payable. In fact, since parcels of diamonds from the Democratic Republic of Congo were collected in Bugolobi before being sent to Belgium, this was an import/re-export situation, which all the more should have been reported to Customs.

30

There is also interesting material in the statements made to the police by various Congolese and Ugandan businessmen who were coming and going from the Congo using military air transport through the military air base.

21.3.3. Piccadilly Import and Export

Part of the Police enquiries were based upon a report made by insurance investigators who were looking into the loss on behalf of the insurance company involved. The report was produced in evidence before this Commission. The investigators met Khalil, who described himself as a rough diamond buyer trading under the named Piccadilly Import and Export from premises in Bugolobi. This was clearly the same company for which Ismail said he was working, although in his statement it is spelt “Beccadilly”. The Company was incorporated on 28th October 1983: the present directors are Hussein Ali Hamad and Nazih Ali Hamad, both of PO Box 2533 Kampala according to the latest return filed 17th April 2002. Hussein Ali Hamad is referred to in Paragraph 91 of the original Panel Report as being an individual actor with Rwandan contacts in the diamond and gold trades.

The report gives the history of Khalil's operations in the diamond trade in the then Zaire, Brazzaville, Kisangani, and in January 1999 Bugolobi in Kampala. A clear link was established in the report between Khalil and Abbas Khazal of Beldiam Ltd, who runs his diamond business from a room in the Sheraton hotel in Kampala: this link is confirmed by information this commission has received from the investigators working in the diamond trade in Belgium.

When interviewing witnesses, this Commission has done what it can to find out about Victoria: Salim Saleh said that he had only heard of it from the original Panel Report: Jovial Akandwanaho said she knew nothing about it, although she did know Khalil, and was involved with him in a Company which ran a Lebanese restaurant: Sam Engola said that he did not know of the company although he had business dealings with Khalil and transported him in his plane: Mr. Bemba at first said that he did not know of Victoria, but when asked if he knew Khalil, agreed that he did, and that he was working under the company name Victoria in Kisangani: Adele Lotsove knew of Victoria in Kisangani, and of Khalil, although she did not connect them: General Kazini on the third time he came before the Commission was emphatic that Khalil whom he knew was trading as Victoria in Kisangani, although on the first occasion he was very unclear about it, and descended into broken sentences and inaudibility as he was accustomed to do when faced with an embarrassing question.

The preponderance of the evidence is that Khalil's operations in Kisangani were under the name Victoria, and in Bugolobi under the name Piccadilly, and that the Military Air Base was being used to smuggle diamonds across Uganda, sometimes

with Military Transport. It is the name Khalil which connects these operations and the allegations in the original Panel Report. It seems to matter little whether the Goma registered Company La Société Victoria is the same Victoria Group or Comptoir referred to in the original Panel Report or not. Khalil's operations are therefore referred to in this report simply as "Victoria".

21.3.4. General Kazini

10 In considering these operations, this Commission wonders how they could have been set up, obviously with UPDF assistance, so far at least as transport is concerned. Those concerned in smuggling of diamonds from the Congo to the Military Air Base in many cases were admittedly Lebanese, who were plainly and visibly neither Ugandan nor Congolese, and again it is fair to ask, in view of the President's radio message, how these Lebanese were allowed to travel to and from the Military Airport. This Commission had no evidence as to how these operations were set up, until the reconstituted Panel provided a set of documents which had to be put to General Kazini.

The first document was a receipt for payment of ad valorem tax in advance to MLC of \$100,000 each from Siporia Diamonds and Victoria Diamonds. The payer on behalf of Victoria Diamonds was Abbas Kazal, a connection which helps to confirm this Commission's above finding.

20 The receipt was attached to a note on MLC notepaper signed by Mr. Bemba addressed to all civil and military authorities, dated 26th June 1999 which states that La Societe Victoria was authorised to proceed with purchases of gold, coffee and diamonds in Isiro Bunia Bondo Buta Kisangani and Beni, and that all the local taxes would be paid to MLC.

The note was an interesting document in itself, confirming that Mr. Bemba initially lied to this Commission, and confirming what appears to have been a universal practice of pre-payment of taxes.

30 But also endorsed on the note were the comments of General Kazini addressed to the Commanders in all of the mentioned towns, except Kisangani, also dated 26th June 1999. From other writings of General Kazini this commission had no doubt that it was in his handwriting: and there is quite a large sample in this case. It was therefore astonishing to hear General Kazini deny flatly that he wrote it. It was not until it was pointed out that in another document with which this Commission will

deal below, the comments were referred to, and that it would be a simple matter to call handwriting expert evidence that he admitted that he was indeed the author. This was not a mistake: having watched General Kazini giving evidence, this Commission is fully satisfied that it was a deliberate lie by Uganda's Acting Army Commander, displaying an arrogance and contempt of civil authority similar to that which has been displayed by other witnesses in the UPDF.

General Kazini's comments were actually instructions to his Commanders, pointing out that La Societe Victoria had been granted permission to do business in coffee, gold and diamonds in their areas, that taxes were to be paid to MLC, and that the Commanders should "let Victoria to do its business uninterrupted by anybody". This makes one wonder what the Commanders would have done if they had not received this instruction.

In his last paragraph General Kazini instructed the commanders that anything to do with payment to them in the form of security funding, it should be done through OSH TAC HQS, that is, through himself. Throughout these proceedings, every UPDF witness, including General Kazini, has denied that any such funding was taking place, but it clearly was. Senior Officers have again been lying to this Commission.

All of the above documents were copied in a letter from General Kazini on UPDF notepaper addressed to the Governor Kisangani, datelined July 1999. The letter referred to Mr. Bemba's letter and General Kazini's comments endorsed on the same document. He informed the Governor that Victoria had officially cleared taxes with MLC authorities and MLC was a recognised organisation by all Congolese and allies. He asked the Governor to "leave Victoria to his business and he will continue to pay taxes to MLC to back up the effort in the armed struggle."

Pausing there for a minute, it is worth considering the position in Kisangani at the time. Contrary to what this Commission understood at the start of this investigation, the UPDF never took control of Kisangani town, but established headquarters at La Forestiere some 17 km outside Kisangani. According to the evidence of General Kazini and Adele Lotsove, Kisangani itself was under the control of RCD Goma, and indeed the letter is copied to them. General Kazini was questioned on his authority to give instructions to the Governor of Kisangani. His explanations were confused and unconvincing.

Whilst the Governor of Kisangani would also be responsible for territories north of Kisangani, in areas which were under UPDF control, it has to be remembered that Adele Lotsove had been talking to General Kazini for some time with a view to establishing the province of Ituri so that she could take the governorship of the province, and indeed it was on the 18th of June 1999 that General Kazini wrote the letter of appointment, some 8 days before the date of the correspondence under consideration: General Kazini therefore knew on the date on which he wrote the letter to the Governor that the areas North of Kisangani, which were destined to become Ituri Province, which were the same areas controlled by the commanders listed in his comments, either were already, or soon would come under the administration of Adele Lotsove, not of the Governor of Kisangani.

Evidence shows that Kisangani, though not a diamond producing area in itself, was the basis of collection and distribution. It was also Victoria's base. Clearly Victoria's operations involving pre-payment of tax to MLC could not succeed without some co-operation from the Rwanda supported Kisangani Administration in the matter of tax.

Set in that light then, this Commission asked General Kazini why he, who had no control in Kisangani Town, was giving instructions to the Governor of Kisangani in administrative matters, and why, in his last paragraph he wrote what amounts to a veiled threat. His replies were not satisfactory, particularly in view of the fact that apart from the appointment of Adele Lotsove, he denied being involved in any other administrative matters.

This Commission can only come to one conclusion, that General Kazini had more interest in Victoria's operations than he has been prepared to admit: and that conclusion supports many allegations of the original Panel in respect of General Kazini.

The Governor of Kisangani was not notified in advance of the intended appointment of Adele Lotsove, or of the carving out from his Province of the new Province of Ituri. General Kazini therefore was involved in secretly appointing, or conspiring in the appointment of Adele Lotsove to take administrative control of the mineral producing areas. This can only have been because she was a sympathetic administrator. In appointing her, General Kazini was acting against the existing Governor who clearly was not sympathetic, as is revealed by the

phraseology of the last paragraph of General Kazini's letter to him: "Let me hope that I have been clearly understood". In the circumstances this letter was inflammatory, and calculated to upset the appointed administration, RCD Goma and its ally, Rwanda.

It is also revealing that, amongst others, he copied his letter to Victoria, as though reporting that he had obeyed his instructions, and done what he had been asked to do by Victoria.

10 These conclusions put General Kazini at the beginning of a chain as an active supporter in the Democratic Republic of Congo of Victoria, an organisation engaged in smuggling diamonds through Uganda: and it is difficult to believe that he was not profiting for himself from the operation.

Perhaps also an answer to the question posed above, as to how Lebanese were being allowed to fly on Military Aircraft to and from the Democratic Republic of Congo, in breach of the President's Instructions, is beginning to appear. General Kazini according to the evidence, was one of those who gave clearance instructions to the Liaison Officers at the Military Air base.

21.3.5. Jovial Akandwanaho

20 It is fairly clear how diamonds were smuggled into Uganda through the Military Air Base, and smuggled out to Belgium. The question that arises is how the courier was able on many occasions to get through Entebbe Airport Security unscathed. He had to have had assistance at the airport.

Enquiries have revealed that a Civil Aviation Authority officer in the VIP lounge was in fact assisting Nasser as he came into the country on Sabena. His evidence had to be taken in camera on the basis that he feared for his life should he give evidence in public. This fear was based upon an allegation that one of the investigators into the robbery had been killed. What this officer told this Commission on oath was that he had been introduced to Khalil by Jovial Akandwanaho with a view to assisting him through Customs when he came from Belgium, and returned to Belgium with the diamonds.

30 When he met Khalil, they came to an arrangement where the officer would assist couriers from Belgium, and the officer was rung on several occasions by Jovial

Akandwanaho, on occasions by Khalil, and also by others and asked to meet the courier, which he did, and assisted him through Customs.

On one occasion he received a call from Jovial and was asked to go to the departure lounge where the courier had been stopped because he was carrying diamonds. When he got there, he rang Jovial who spoke on his phone to the security officer, as a result of which the courier was allowed to continue onto his flight. The officer said that this was how he came to know that diamonds were involved. He showed Jovial's mobile number on his phone: it was found to be correct.

10 This Commission had the opportunity of seeing this witness give evidence, and was impressed by him as a truthful witness. He clearly thought that he was putting himself in danger by giving evidence, but nevertheless volunteered information which supported the allegations made by the original Panel. It might be thought that this Commission might have further interviewed Jovial Akandwanaho, but it had regard to her denial that she had anything to do with diamonds, and was only associated with Khalil through a Lebanese restaurant: only a renewed denial was to be expected where it was obvious that the identity of the witness would become known, contrary to this Commission's promise to the witness.

20 As a result, this Commission is unable to rule out the participation of Jovial Akandwanaho in the smuggling operations of Victoria as alleged by the original Panel : on the contrary there is every indication that there is a link between General Kazini, Victoria, Khalil and Jovial Akandwanaho, and perhaps others in the smuggling of diamonds through Uganda to Belgium.

It is clear to this Commission that the incident of the robbery opened many channels of investigation, and the recommendation would be that further investigations should be conducted on the basis of what has been revealed so far, and appropriate action taken.

21.4. Niobium

30 The original Panel say that the pattern of Niobium Export appears to be the same : no production prior to 1997, followed by an increase in exports. In respect of all these minerals, due to the original Panel's recital of data source, this Commission communicated with WTO, who said that they did not keep such statistics, and referred this Commission to the UN COMTRADE Database. So there is some

confusion there, as the figures are somewhat different. Uganda declares exports as from 1995, whilst Partner Imports start in 1998. This makes a nonsense of the original Panel's conclusion that Export started in 1997, to coincide with the start of the war. The original Panel's figures are much higher than those from the COMTRADE database, but the figures never exceed \$782,000 in a year from whatever source. This Commission does not think that the figures bear out the original Panel's conclusion, or that Niobium bears any real relation to the alleged illegal exploitation of the natural resources of the Democratic Republic of Congo.

Table 3: Comparative figures for Niobium from various sources

NIOBIUM	1995	1996	1997	1998	1999	2000	2001
URA							7
BOU							
COMTRADE UGANDA EXPORTS (\$000)	210	32		231	7		
COMTRADE PARTNERS IMPORTS (\$000)				435	713	422	
PANEL (\$000)	0	0	13	580	782		

10 21.5. Mineral Transit figures

In Paragraph 102 of the Report, the original Panel say:

102. Third, the Ugandan authorities, in their response to the Panel's questionnaire, stated that there was no record of transit of mineral products. However, the Panel received information from one Ugandan customs post at the border between the Democratic Republic of the Congo and Uganda. Records for 1998, 1999 and 2000 reveal that mineral products as well as other commodities left the Democratic Republic of the Congo and entered Uganda (presumably this would also prove true for the other dozen or so points of entry). The following three examples show an increase in the transboundary movement of natural resources between 1998 and 1999.

Coffee 1998: 144,911 bags

1999: 170,079 bags

2000: 208,000 bags

Timber 1998: 1,900 m3

1999: 3,782 m3 and 46,299 pcs

2000: 3,272 m3 and 3,722 pcs

Cassiterite*1998: None

1999: 30 kgs

2000: 151 drums

**** The sudden increase in the import of cassiterite may also mean an increase in the import of coltan. The Panel discovered that cassiterite is often listed in lieu of coltan, as coltan possesses a higher value, which implies high import taxes in Uganda.***

10 This Commission is totally confused by this Paragraph: the original Panel start by implying that the Ugandan authorities were dishonest in stating that there was no record of transit of mineral products, and then quote examples of Coffee and Timber, which are not mineral products. There is indeed one example relating to Cassiterite between 1998 and 2000, and it is of such a small quantity as to be totally ignored. In fact, URA have been able to give this Commission transit figures for all sorts of commodities: but it has taken an extended exercise to do so, as transit figures, although recorded at the customs stations, were not being recorded centrally, because there was no duty on transits, and therefore it was thought, wrongly of course, that it was not necessary to assemble this data centrally. This was the procedure, however
20 unwise. It was therefore true, at the time the original Panel was dealing with this matter, that there were no centrally available figures for mineral transits : but the figures could be, and were for this Commission, made available. This Commission agrees that coltan is declared as cassiterite, from which it (and Niobium) is extracted.

The original Panel's complaint in Paragraph 96 is that the official data on minerals contains substantial discrepancies. This Commission does not think that the three examples given in the Report bear out this conclusion, but would point out that the Commission had great difficulty using the statistics and records provided by the Uganda Revenue Authority on the one hand and Bank of Uganda, Uganda Bureau of Statistics and the Coffee Development Authority on the other hand. Most of these
30 bodies had different years, starting in different months, different yardsticks. Whereas one body would quantify export of a given product in kilograms, another would give it in US\$ (Dollars) then another in Uganda Shillings.

Hence depending on which body or authority one went to, one would receive different results for the same period. There is need to standardise or harmonise statistics in order to churn out consistent statistics by Government and other

authorities/bodies which can be used by Government itself for future planning and meaningful records.

21.6. Cobalt:

In the original Panel Report cobalt is only mentioned in passing. It was not investigated by the original Panel and is not included in the list of recommended minerals in Paragraph 221 to be subject to a temporary embargo. However, it has been dealt with in the Addendum, although Uganda is not mentioned. Nonetheless a major local company, Kasese Cobalt Company, has noted with concern that cobalt is mentioned in the report as a mineral of interest and might therefore be affected by a possible embargo.

Kasese Cobalt Company processes cobalt pyrites that were stockpiled as a by-product from the Kilembe Copper Mine in Uganda. Those stockpiles were set aside in the period from 1955-1980. Kasese Cobalt has informed this Commission that it has invested some US\$135 million since 1996 in building a plant to convert the pyrite to cobalt metal and associated amounts of cobalt and nickel and other mixed hydroxides. Kasese Cobalt exports the resultant cobalt cathodes and hydroxides via Kenya to customers worldwide.

Given the location of the the Democratic Republic of Congo cobalt plants along the Zambian border in the Democratic Republic of the Congo it is the company's opinion that if cobalt was being illegally exported from the the Democratic Republic of Congo it is highly unlikely to be exported via Uganda. In addition the Katanga cobalt mining areas are reported to be controlled by the Government of the Democratic Republic of the Congo and its allies, which does not include Uganda, making it even more unlikely that cobalt is exported via Uganda. Furthermore the figures for cobalt which are included in Table 1 (on page 20 and entitled Uganda Minerals exports and production 1994-2000) exactly match those from Kasese Cobalt Company's production and export records for 1999 and up to October in 2000. This leaves no room for imported cobalt from the Democratic Republic of Congo.

It would be unfortunate and most unfair if the Security Council were to declare a temporary embargo on the import or export of cobalt from Uganda.

4. LINKS BETWEEN THE ALLEGED ILLEGAL EXPLOITATION OF NATURAL RESOURCES AND THE CONTINUATION OF THE CONFLICT.

22. NATURE OF THE LINKS

The original Panel, between Paragraphs 109 and 218 examines the possibility that there is a link between the alleged exploitation of natural resources and the continuation of the conflict.

10 The headings under which the original Panel considered the matter were;

- Budgets compared to military expenditures
- Financing the War
- Special Features of the Links
- Facilitators or passive accomplices

22.1. Budgets compared to military expenditure.

20 In Paragraph 115 of the original Panel Report the Uganda military 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 original 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 original Panel from

Ministry of Defence. For 2000/2001 the figure for air charter was Shs 6 billion, instead of \$12.96 million as calculated by the original Panel.

Life has been made rather more simple for this Commission. This Commission has not had to make any assumptions or do any calculations, because the actual figures have been availed to this Commission on request. According to the evidence, overexpenditures during the years 1998 to 2001 were:

Table 4: Military Budgets and Overexpenditures

Financial Year	Overexpenditure	Defence Budget	Total
98/99	47	145.6	192.6
99/00	6	188.4	194.4
00/01	14	187.7	201.7

10 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.

The original Panel say in Paragraph 109 on this subject that it had demonstrated that military expenditures far outweighed the supposed money allocated for such expenses.

20 First, the use of the word "supposed" is unfortunate: the "supposed money allocated for such expenses" was approved by Parliament by budget in fact, not supposedly.

It is difficult to criticise the budget overrun in 99/00, less difficult to criticise the overrun in 00/01, and easy to criticise the overrun in 98/99, if one looks only at the figures.

If however one looks at the circumstances obtaining at the time, these criticisms fall away. In 1998, this was the move from Peace to War; and an overexpenditure is only to be expected on the initial move of troops and equipment across the border in respect of a new venture which could not have been foreseen at budget time. In 2000/01, this was the start of withdrawal and included transport of troops and equipment back to Uganda: once again an unforeseen expense. Budget overruns in such circumstances are only to be expected. There is little here to support the original Panel's finding.

22.2. Financing the War

10 In Paragraph 135 of the report, the original Panel say:

“Uganda unlike Rwanda did not set up an extra budgetary 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. “

However the original Panel continues to conclude that Uganda was only able to finance the war in the Democratic Republic of Congo in the following manners:

22.2.1. Primary Means of Financing The War

The original Panel Report in Paragraph 125 alleges that Uganda's economy benefited from the conflict through:

- 20
- 1) Purchase of arms and equipment through direct payment. There is no basis in the text to support this allegation.
 - 2) Barter of arms for mining concessions. There is no basis in the text to support this allegation.
 - 3) Creation of joint ventures. There is no basis in the text to support this allegation

With respect to these sources, the original Panel's arguments appear to relate mainly to their investigations of Rwanda. What is specifically stated against Uganda relates to:

22.2.2. The Re-Exportation Economy

In Paragraphs 136 – 142 the original 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 original 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.

In Paragraph 137, an example is given (which relates to Burundi) where it is alleged that coffee dealers mix Congolese coffee with Burundian Coffee to increase its value. A similar “trick”, as the original Panel calls it, is alleged against Ugandan Coffee dealers.

As pointed out in the Uganda Government’s response to the original Panel Report, there is no sign of a drop in the quality of Uganda’s coffee, and exports have been on the decline from 4.2 million bags in 1996/97 to 2.9 million bags in 1999/2000. The facts do not seem to support the allegations.

This Commission has no evidence leading to either conclusion.

In paragraph 138, there is an allegation that illegal exploitation of gold improved balance of payments, leading to improving donor confidence in the economy theoretically leading to higher tax collection. So far as this Commission can trace,

there is no income to Uganda arising from exploitation of gold. According to the figures, if the source of much of the gold is indeed the Democratic Republic Congo as alleged by the original Panel, there are no URA records of import, and the gold is therefore being smuggled into Uganda, thereby avoiding Ugandan taxes. Whilst a small service industry may have grown up around such dealings, it can hardly be said to have had a significant contribution to the Ugandan Treasury. Uganda does not profit from export of Gold, and it is difficult to see how the original Panel could conclude that this would be a manner in which Uganda finances the war.

10 Further in Paragraph 138, the original Panel refer to improvement on tax collection levels, particularly in the agricultural and forestry sectors. They do not refer to Ugandan efforts to improve revenue collections as a possible root cause of this.

They state that timber “destined for Uganda, Kenya or for export out of the continent pay customs duties as they enter Uganda”. Timber destined for Kenya or the continent, emanating from the Democratic Republic of Congo, for transit or re-export do not pay customs duty in Uganda. Timber imported properly to Uganda would be dutiable, but there is the example of Dara Forêt and DGLI, where only two container loads were imported, and found not to be profitable. Timber
20 smuggled into Uganda would, by definition, not fall into the net.

As to the question of collection of taxes in the Congo, also referred to in Paragraph 139, that is a matter for such Congolese authorities as are recognised under the Lusaka Agreement, and as this Commission has examined elsewhere at Paragraph 17.3 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 not be income to Uganda from transit goods. In the affidavit of Ateenyi Tibasiima, he doubts that the figure of \$5 million is realistic in any event.

30 In Paragraph 139, examples are given of road transit of all manner of goods through Uganda. This example is irrelevant, because transit goods do not pay duty or taxes in Uganda.

22.2.3. Purchase Of Supplies On Credit

In Paragraph 140 the original 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 has no doubt that if the credit extended gets too great, the petrol companies would neither extend further credit nor be able to.

22.2.4. Racketeering By Soldiers

10 In Paragraph 141, the original 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. It has been considered by this Commission elsewhere at Paragraph 22.2.5 below.

22.2.5. Handing over of Arms

20 There is also a suggestion in Paragraph 143 under the heading of the rebel movements that weapons seized from Congolese armed forces are given to MLC and RCD-ML. The point made in evidence is that such arms belong to Congolese, and should not be taken by UPDF, but rather handed over. Right or wrong, Ministry of Defence, UPDF and individual witnesses from UPDF are quite open about this, and think it the right thing to do. It is difficult to see how the Ugandan economy could be said to benefit from this.

A far greater portion of this area of consideration by the original Panel, with specific examples, relates to the actions of Rwanda in the Democratic Republic of Congo: Uganda is, as so often in the original Panel Report, tagged on behind by association.

30 Again, there is nothing here to support the findings of the original Panel in Paragraph 143.

To assist, the verbatim evidence on the re-exportation economy, is set out :-

10 *“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.*

20 *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.

30 *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

40 *“Michael Atingi-Ego: (Michael 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?

10 Michael 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 our 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

20 Michael 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

30 That statement is wrong because our current account balance has been deteriorating so much, our exports are far less than our 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 our 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?

Michael 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

40 Michael 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?

Michael 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

10

20

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 our 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”

22.2.6. MLC, RCD Goma and RCD-ML

30

There are a number of armed rebel groups operating in the eastern Democratic Republic of Congo. The first group is RCD (Rassemblement Congolais pour la democratie) (Rally for Congolese Democracy). This group was formed by Congolese politicians and intellectuals, including remnants of Mobutu regime and former Kabila associates. Professor Wamba dia Wamba was its first Chairman with Moise Nyarugabo as its Vice Chairman. Following a disagreement over who should assume control, RCD split into RCD – Goma based in Goma and RCD – Kisangani based in Kisangani. It later moved to Bunia and is often referred to as RCD-ML. RCD-ML was led by Professor Ernest Wamba dia Wamba. His two deputies were Mbusa Nyamwisi and Tibasiima Ateenyi. RCD-Goma was previously led by Dr. Emile Ilunga and is currently led by Adolphe Omusumba. A former founding member of RCD, Roger Lumbala, after disagreement with his colleagues, broke away and formed another rebel group known as RCD – Nationale (Rassemblement Congolais pour la democratie – Nationale) based in Bafwasende. Following the ousting of Professor Wamba dia Wamba RCD-ML is currently headed by Mbusa Nyamwisi.

40

Another anti-Kabila group known as MLC (Movement Liberation de Congo) was formed in 1998 by Jean Pierre Bemba. Following in-fighting within the ranks of RCD-ML, Uganda brokered the formation of a united movement. RCD-ML

merged with MLC to form FLC (Front de Liberation du Congo). That alliance appears now to have broken down.

10 If newspaper reports are anything to go by, then it appears that thereafter RCD-Nationale, with Roger Lumbala as its head, has merged with two other rebel groups, namely, RCD-Kisangani and the Movement for the Liberation of Congo, MLC. However, it is reported that Roger Lumbala backed by Jean Pierre Bemba has captured four towns of Isiro, Watsa, Poko and Bafwasende from Mbusa Nyamwisi's RCD-Kisangani. The situation in the Congo is ever changing, and reports confusing : it is therefore impossible to give an up-to-date history of the relationship of rebel groups.

The original Panel, in paragraph 143, alleges that officially, the rebel movements receive the bulk of their military equipment through UPDF and Rwanda. It says that during discussions with the Ugandan Minister of Defence and the Chief of Staff of UPDF, the original Panel was informed that weapons seized from the Congolese armed forces were given to MLC and RCD/ML. This was admitted by Major General Kazini. He said that the weapons were Congolese weapons. That was the reason why they were given to the rebels in the areas controlled by Uganda. This has been dealt with at Paragraph 22.2.5 above

20 It is further alleged in the same paragraph 143, that Mr. Bemba, at the instigation of Major General Kazini, bargained with the highest authorities of Uganda for the release of some Ukrainian pilots whose Antonov aircraft had been captured in exchange for military fatigues, boots and medical supplies for Bemba's soldiers from a third party.

The first observation of this Commission is that the alleged third party was not disclosed. That made it impossible to crosscheck the allegation.

30 General Kazini appeared not to know anything about the incident. The evidence of Jean Pierre Bemba is very clear on the incident. He said that the Antonov plane was bringing military supplies to the Kabila regime. The plane landed at Basankusu airport when his soldiers had just captured Basankusu airport (against strong opposition from Ugandan authorities). The plane was carrying brand new military hardware – SMG, LMG (machine guns) and big bombs. He seized both the plane and the weapons and flew them to Gbadolite under escort. He released the pilots without any intervention from any body after speaking with the family

of the pilots and the owners of the plane. He was positive that neither Kazini nor Ugandan authorities knew anything about the incident.

This Commission thinks that the evidence of Jean Pierre Bemba is more credible and preferable to the unsupported allegation made by the original Panel, particularly since the original Panel never interviewed Jean Pierre Bemba to afford him opportunity to explain.

Jean Pierre Bemba is very hurt by the manner in which he has been maligned by the original Panel. He has no kind words for the original Panel and its Chairperson.

10 **22.3. Allegations against Uganda**

This Commission thinks therefore that the attempt of the original Panel to show that Uganda was financing the war in the Democratic Republic of Congo through the re-exportation economy fails.

22.4. Special Features of the Links

In Paragraph 180 the original 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.

22.4.1. Lendus And Hema Conflict:

20 It is alleged in Paragraph 180 of the original Panel Report that some top UPDF Commanders trained Hemas whilst others trained the Lendus. They then manipulated the two groups to fight each other. It was alleged specifically that General Kazini and Colonels Kyakabale and Arocha assisted in training different Hema militia whilst the Colonel Peter Kerim Camp assisted in training the Lendus. It was further alleged that these UPDF elements spark off the inter-ethnic violence so as to remain in the region in an attempt to control the mineral wealth of the area.

30 This Commission heard the UPDF Officers mentioned in the report on oath. All of them denied that they trained the tribes as alleged and manipulated them to fight each other. This Commission did not find them to be credible witnesses. Col. Mayombo, who was the Acting Head of Military Intelligence and Security,

travelled to Bunia when he received a report of a flare up of the inter-ethnic fighting between the Lendus and the Hemas and remained at Bunia for two weeks. His evidence shows clearly that Cap. Kyakabale, Colonels Arocha, Angina, and the then Cap. Peter Kerim were in one way or another, highly suspected of being involved in the ethnic conflicts between the Hemas and Lendus. UPDF High Command took immediate action against the Officers involved. Cap. Peter Kerim has been on indefinite leave ever since. Col. Angina was relieved of his duties as Section Commander. Cap. Kyakabale was removed from Bunia immediately.

10 The evidence available against these officers, which this Commission accepts, does not, amount to concrete evidence that the UPDF Officers named did what the original Panel alleged they did, but because at the time the clashes flared up, UPDF, under the Lusaka Agreement, was playing the role of peacekeeping, Bunia was within UPDF area of Operation. Consequently UPDF High Command did not want the Congolese to perceive that some of the UPDF Officers were taking sides in their inter-ethnic conflict. That would have undermined their credibility as peacekeepers. UPDF, as peacekeepers, must not only be neutral, but they must demonstrably appear to be neutral.

20 The original cause of the ethnic conflict, however, has nothing to do with minerals. The evidence clearly shows that it is about the distribution of land: where to live, where to farm and where to graze their animals. The Lendus think that the Hemas have been favoured in the land distribution. The inter-ethnic clashes occur when one tribe encroaches on land belonging to another tribe.

The evidence also shows that the conflict had existed ever since the two tribes found themselves living in the area. This was long before the UPDF entered Congo and long before the on-going war started. This is confirmed by witnesses who appeared before the Commission prominent among them being Adele Lotsove.

30 The recent conflicts have been exacerbated as a result of the absence of effective authority capable of maintaining law and order in the Eastern Congo following the withdrawal of the UPDF from the area.

Having said that, this Commission is of the view that the prompt action taken to remove the officers when the complaints were made demonstrates that the Uganda Government and the approach of the High Command was not to foment trouble

between the Hemas and the Lendus for the purpose of controlling the mineral-rich areas of Nyaleki or to keep them for long-term exploitation as alleged.

22.4.2. Nia Nia Confrontation:

The Nia-Nia Confrontation in October 2000 in which it was alleged UPDF General Kazini and Roger Lumbala, President of RCD – Nationale, fought another UPDF group and RCD-ML has been cited as one of the strategies used by Uganda to sustain the vicious circle of war in Congo in order to control the rich-mining areas of Bafwasende in Congo.

10 According to the evidence of Major General Katumba Wamala, who was the Operational Commander of Operation Safe Haven in the Democratic Republic of Congo, the Confrontation arose when Roger Lumbala, who used to be with Wamba dia Wamba of RCD and had fallen out with Wamba dia Wamba and formed another rebel group known as RCD – Nationale, tried to attack Wamba dia Wamba's forces that were guarding the Nia-Nia Bridge regarded as a strategic centre for Bafwasende.

According to Roger Lumbala it was rather Wamba dia Wamba and his forces that came from Bunia to attack his men at a bridge called Abakuli with the aim of capturing Bafwasende area.

20 Whatever might have been the reason for the conflict the evidence of these witnesses clearly shows that at the time of the incident General Kazini was not in Congo and had long been replaced by Major General Katumba Wamala. The evidence also shows that the confrontation had nothing to do with the mineral wealth of the area. Rather it was a leadership struggle between Roger Lumbala and Wamba dia Wamba for the control of Bafwasende area. It was about political power over an area.

UPDF merely intervened to stop the wrangle and advised the factions to settle their differences politically. UPDF's role was peacekeeping within the Lusaka Peace Keeping Agreement and nothing else.

30 This is another example of the original Panel's lack of appreciation of the reality of the situation. The original Panel found exploitation of natural resources of the Democratic Republic of Congo and continuation of the war a convenient peg on

which to hang any conflict in Congo. By so doing they disabled themselves from an in-depth analysis of the underlying causes of the problems of Congo.

22.4.3. The Kisangani Clashes

The Commission has sought and received evidence regarding the cause of three clashes between Uganda and Rwanda, who had previously worked as allies.

The first clash took place in August 1999; a month after the Lusaka Peace Accord was signed. The second one took place in May 2000 and was followed by the third one a month later.

The original Panel report does not discuss these clashes. It simply mentions them in passing. In Paragraph 88 it states

10

“very reliable sources have told the Panel that behind Salim Saleh there is Jovial Akandwanaho, who is more aggressive on the issue of exploitation of the natural resources of the Democratic Republic of the Congo. She is particularly interested in diamonds. According to very reliable sources, she is at the root of the Kisangani wars.”

This could be interpreted to mean that minerals were the cause of the clashes. The evidence received by this Commission does not support this assumption.

20

In his evidence Col. Mayombo stated that most of the diamond areas of the Democratic Republic of Congo were in the North or in the areas of Bafwasende which were already controlled by UPDF. Kisangani had diamond shops only. In his view the areas where the fighting took place and the areas where the diamonds are, are not related. Therefore minerals could not have been a reason for the wars. This argument is a little thin, because Kisangani was the place where diamonds were expected to be collected into convenient lots: access to diamonds in Kisangani therefore would be easier than running around all over the country digging them up.

30

Witnesses interviewed by the Commission on this subject include Major General Kazini, Acting Army Commander; Col. Mayombo, Chief of Military Intelligence and Security; Mr. Amama Mbabazi, Minister of Defence who was Minister of State for Foreign Affairs in-Charge of Regional Cooperation; and Mbusa Nyamwisi, President, RCD – Kisangani.

All stated that the first clashes were due to disagreement as to who would sign the Lusaka Peace Accord for RCD which had split into two factions namely, RCD–Goma and RCD–Kisangani. Difference in strategy between Rwanda and Uganda was also mentioned as another possible reason.

According to the evidence given by Mr. Amama Mbabazi, who attended the Lusaka meetings, the negotiations had almost been completed. They were trying to identify the groups which would be signatory to the Lusaka Agreement and who would sign for RCD, which had split into two movements. Rwanda insisted that RCD must sign as one organization. Uganda's position was that RCD was de facto two movements with two different leaders. The issue reached the summit and it was decided that President Chiluba who was chairing the meetings should investigate whether Wamba dia Wamba had an organization that existed in Kisangani and whether he had the capacity to cause problems. President Chiluba sent a team of Ministers to undertake the investigation, and establish whether or not RCD – Kisangani existed.

On the Saturday morning when the delegation was supposed to undertake its investigations RCD started sabotaging the investigations by shooting in the streets. UPDF was ordered to clear them out of the street to enable the team to carry out its work.

Mr. Mbabazi stated that the reasons for the second and third clashes were essentially the same as those for the first clash. The other side tried to kill Wamba dia Wamba (leader of RCD–Kisangani) in order to resolve the question once for all but Ugandan troops protected him.

During his meeting with this Commission, His Excellency President Museveni described the clashes as “very unfortunate”. He said that he was horrified, infuriated and very unhappy. The matter remains unresolved. There are contradictory claims as to who started the fights. Rwanda claims that Ugandan troops are the one who started the fights and Ugandan troops claim that it was the Rwandese who did. Committees set up by both sides to study the matter have so far not produced any acceptable conclusions.

Unfortunately the Commission cannot reach any conclusions on this matter without hearing evidence from the Rwanda side. However this Commission would certainly hesitate, even on the limited investigations which have been possible, to

attribute responsibility for the clashes to Jovial Akandwanaho, as did the original Panel.

22.5. Facilitators or passive accomplices

The original Panel Report deals with this subject under the following headings;

22.5.1. Bilateral Donors

The gravamen of the report is that the major donors to Uganda, by contributing to poverty education and governance have enabled Uganda to free funds for the war in the Democratic Republic of Congo. The question asked, which the original Panel does not answer, is whether these savings were used to finance this war?

10 The consequences of such an allegation are so wide that it is difficult to answer the question; perhaps it would have been better not to ask it, particularly when the ramifications have not been set out and considered. For this Commission, it would be right to assume that all these matters have been considered by the donors before such projects are commenced, and that they have found that the country itself is unable to deal with these problems without assistance. Indeed there is a limit, related to GDP, for Defence expenditure which is agreed with the donor community. Is it to be that whenever a country acts against attacks of whatever nature, any bilateral assistance to such country is to be immediately withdrawn, at whatever cost to the population, in order to avoid such allegations? The
20 reconstituted Panel have come to much the same conclusion in the Addendum.

22.5.2. Mulilateral Donors

Under these Paragraphs (187 – 190), the original Panel accuse the World Bank of being aware of gold and diamond exports from Uganda based upon what the original Panel refer to as the exploitation of the resources of the Democratic Republic of Congo, and nevertheless promoting Uganda's case for the Highly Indebted Poor Countries initiative. It is interesting that in this section, as in the last, the original Panel has again dropped the word "illegal". The original Panel's criticism is based upon the fact that the World Bank was aware that Uganda was registering as a gold and diamond exporter, when she did not produce such
30 minerals, and extends to one official who "in one instance even defended it". This Commission has dealt with the theory of export of minerals at Paragraph 21 above. The World Bank is further criticised for permitting long term borrowing in

support of Uganda's budget, which is stated to have allowed both Rwanda and Uganda to continue the conflict. All one can say is that this criticism totally ignores the closely monitored and worthwhile Projects being conducted by the Uganda Government with World Bank assistance, and the relationship agreed between GDP and Defence expenditure which is also, even according to the original Panel, closely monitored by the Breton Woods Institute. Uganda's response to the original Panel Report contains a table that shows Uganda's Poverty Alleviation Expenditure (which is the main area for support) to be increasing annually, in addition to the donor PAF expenditure, which it exceeds by a great margin. The original Panel's conclusion does not stand up to close examination.

22.5.3. Transit Countries

As this Commission has said elsewhere, it is difficult to understand how the original Panel can expect a transit country to have in mind the considerations which so concerned the original Panel. Uganda is criticised for using Mombasa and Dar es Salaam to export natural resources: so far as this Commission can see, Uganda, as a state, did not export any resources whatever. It may be that firms in the Congo or Uganda used Uganda and Kenya as transit countries to export to their customers abroad, but that is an entirely different matter which is irrelevant under this heading. So far as this Commission can see, with some slight exceptions, such as the recent refusal under CITES to transit 200 kilograms of worked ivory which had been exported from the Democratic Republic of Congo as Works of Art, Uganda is bound to allow transit of goods (See *Right of Passage through Territory of India (Portugal v India)* [1960] I.C.J. Rep. Again there is little in this criticism by the original Panel.

22.6. The pivotal role of leaders

22.6.1. President Museveni

The original 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 original 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 being prepared to intervene only when major problems arise, even though he has a good knowledge of the situation on the ground.

10 This Commission thinks 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 which this Commission has been asked to conduct. However, 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 that General 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 Nyamwisi and Tibasiima for alleged embezzlements of \$10 million and \$3 million respectively. This Commission thinks the accusation is misconceived as the President of Uganda has no jurisdiction over Congolese Nationals or rebel leaders for that matter.

20 In the same Paragraph 203 President Museveni was accused for not taking action about an alleged collusion between Trinity Group and Tibasiima and its impact on collection of customs duties. It is also clear from later evidence from the Hon. Wapakhabulo, the Nairobi witness, and Dr Professor Wamba that the operations of Trinity, and transparency in Financial matters was the subject of many diplomatic meetings hosted by Uganda, and the root cause of the attempt to bring together RCD- Kis and MLC. Here again this Commission wishes to point out that the original Panel was ill advised to accuse President Museveni as he had no jurisdiction over the actors alleged in the collusion. The same might be said in relation to Paragraph 204.

30 President Museveni has again been accused in Para 205 for having allowed members of his family namely General 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.

This Commission has evidence on oath that Victoria Group does not exist in Uganda. The original Panel report quotes Victoria Group as a company with its

Headquarters in Kampala. This Commission called for every single company file registered in Uganda containing the words “Trinity” or “Victoria”. None of them bore any relationship to either of these alleged companies, and none of the shareholders of the companies found were in any way familiar. This Commission’s enquiries bear out the evidence. Therefore General Salim Saleh and his wife could not have been shareholders in a Ugandan Company as alleged. Nor could Lt Muhoozi. One Company called Victoria Diamond SPRL has been traced. It has a Lebanese and a Ugandan, whose names have not been mentioned throughout, as Shareholders and Directors, but it is registered in Goma in the Democratic Republic of Congo, not Kampala. Although this Commission has shown that General Kazini and Jovial Akandwanaho had connections with Victoria’s operations, these operations were conducted in secret, and no connection with his Excellency the President has been shown in the case of Victoria.

There is also evidence on oath that Trinity is a dubious company established by the rebels in the Eastern the Democratic Republic of Congo to generate funds by pre-financing to organise their campaign against the Kinshasa Government. The affidavit of Iddi Taban is quite clear on that, and agrees with the sworn evidence of Sam Engola. General Salim Saleh and his wife have said that they have no interest in that company. Unlike the case of Victoria, there is no reason to disbelieve them, although the evidence of the Nairobi witness is enough to raise great suspicion in respect of the secret participation Salim Saleh. Consequently it was wrong for the original Panel to accuse President Museveni for allowing the two companies to operate in the Democratic Republic of Congo undisturbed.

Therefore the original Panel’s conclusion in Para 206 is misconceived and unwarranted, and consequently there is no basis for the original Panel’s accusation in Paragraph 211 that President Museveni is on the verge of becoming the godfather of the illegal exploitation of the natural resources and the continuation of the conflict in the Democratic Republic of Congo. There is no evidence to suggest that he has given criminal cartels unique opportunity to organise and operate in the Democratic Republic of Congo.

5. PANEL'S CONCLUSIONS AND FINDINGS

23. MINERAL RESOURCES

In paragraph 213 the original Panel states that the conflict in the Democratic Republic of Congo has become mainly about access, control and trade of five key mineral resources, Coltan, Diamonds, Copper, Cobalt and Gold.

10 Whilst this Commission agrees that the Democratic Republic of Congo is endowed with immense natural resources, it does not agree that the conflict in the country is mainly about access, control and trade of the mineral resources. The main rebel groups in Congo are not fighting the Central Government with the aim of getting control of the mineral resources of the areas they seek to control. It is the view of this Commission that their main objective is, undoubtedly political power. The access and control of the natural resources of the area is secondary. This Commission has indicated earlier in the report that, contrary to the assertion of the original Panel, the Hema/ Lendu conflicts have nothing to do with access to and control of minerals. Rather they are about Land. It is an obvious fact and it is remarkable that the original Panel failed to see it.

24. SYSTEMIC AND SYSTEMATIC EXPLOITATION

20 The original Panel, in paragraph 214, states that exploitation of the natural resources of the Democratic Republic of the Congo by foreign armies has become **systematic** and **systemic**. It states that plundering, looting and racketeering and the constitution of Criminal cartels are becoming commonplace in occupied territories. These criminal cartels are said to have ramifications and connections worldwide.

The original Panel, in paragraphs 46 – 54, used Dara Forêt as a case study to demonstrate how a company used illicit business practices and complicity with occupying forces and Government as well as its international connections to exploit the natural resources of the Democratic Republic of Congo. This Commission has already shown that whatever the original Panel said about Dara Forêt was clearly wrong and that the investigation by the

original Panel of Dara Forêt was fundamentally flawed. The Addendum to the original Panel Report has also exonerated Dara Forêt of any wrongdoing. This casts a serious doubt on the conclusion and findings in paragraph 214, and indeed the capacity of the original Panel to sift evidence.

25. ROLE OF PRIVATE SECTORS

Paragraph 215 deals with the role of private sectors in the exploitation of the natural resources and the continuation of the war in Congo. It states that a number of companies are involved and have fuelled them directly, trading arms for natural resources. Others have facilitated access to financial resources, which are used to purchase arms. Companies trading in minerals
 10 have prepared the field for illegal mining activities in Congo. On Uganda side, two companies have featured prominently, namely, Trinity and Victoria Group. The evidence before this Commission shows that these two organisations have no Ugandan connections, although facilitated secretly by General Kazini and Jovial Akanwanaho, possibly Salim Saleh. Consequently the conclusion and findings in paragraph 215 do not seem to affect Uganda.

26. BILATERAL AND MULTILATERAL DONORS

The original Panel, in paragraph 216, states that bilateral and multilateral donors have sent mixed signals to Governments with armies in the Democratic Republic of Congo. The implication in this paragraph is that the major donors to Uganda, by contributing to poverty eradication, education and governance, have enabled Uganda to free funds for the war in the
 20 Democratic Republic of Congo.

The World Bank has been accused that, in spite of its awareness that Uganda is exporting gold and diamonds exploited from the Democratic Republic of Congo, nevertheless has promoted Uganda's case for the Highly Indebted Poor Countries Initiatives. The World Bank is further accused for permitting long-term borrowing in support of Uganda's budget, which is said to have allowed both Uganda and Rwanda to continue the conflict.

This Commission has said that the original Panel's conclusion does not stand up to close scrutiny as it totally ignores the closely monitored and worthwhile projects being conducted by the Uganda Government, with World Bank assistance, and the relationship agreed between GDP and Defence expenditure, and the fact that Uganda does not profit from transits or
 30 exports

27. TOP MILITARY COMMANDERS

The original Panel, in paragraph 217, states that top military commanders from various countries that are in the Democratic Republic of Congo needed the conflict because they have found it lucrative. They have therefore created criminal networks to takeover after the foreign armies have left the Democratic Republic of Congo. This Commission has interviewed and examined the top Ugandan military officers alleged to be involved, and is unable to exclude some of the allegations against top military commanders in the UPDF. However, where it has been possible to confirm the original allegations by evidence, this Commission recommends that Uganda relieve the International Community from the need to act against these officers, until Uganda has a chance to act against them: only on failure to do so would it be necessary for International action to be taken.

6. UGANDAN ADMINISTRATIVE ORGANISATIONS

There are areas of weakness which investigations have revealed and which are not specifically mentioned in the original Panel Report, but which are dealt with below.

28. REGISTRAR OF COMPANIES

The Companies Registry does not come well out of its investigations. As an example, this Commission considered the case of Air Alexander.

20 Air Alexander International Ltd was incorporated on 7th February 1994. For incorporation requirements the Registrar relied upon a Declaration of Compliance filed by Kasirye Byaruhanga & Co Advocates under S 17(2) of the Companies Act, on the same date, sworn by William Byaruhanga. The Memorandum and Articles referred to four subscribers,

Caleb K Akandwanaho (whom this Commission shall refer to by his more familiar alias as Salim Saleh) (31%),

Ramesh Sheth (32%)

Roy Ndisi (31%), and

Wolfgang Thome (6%)

According to a Statement of Nominal Capital dated and filed on 7th February 1994 the Nominal Capital was Ushs 2,000,000 divided into 100 shares of Ushs 20,000 each.

A Notice of Situation of Registered Office was filed just over 5 years later on 24th of March 1999: out of time for the current change : no notice had been filed 14 days after incorporation as required.

Annual Returns were filed as follows:-

Date of Filing	For AGM of	Out of date by (years)	Age of Alexander Mahuta at AGM
23.3.99	1995	4	4
23.3.99	1996	3	5
23.3.99	1997	2	6
23.3.99	1998	1	7

All these Returns show that all shares had been taken up, no shares had been paid for, and that
10 the shareholders were Alexander Mahuta (50 shares) and Caleb Akandwanaho (50 shares)

Alexander Mahuta was described as a Businessman in all the forms: at the time of the first AGM, according to the evidence of Salim Saleh he was aged 4, and was a Director of the Company. In the particulars of Directors he was described as an adult businessman. The forms are signed by Salim Saleh, and by someone for the secretary who is said to be Kasirye Byaruhanga & Co Advocates.

On the following day, 24.3.99, particulars of Directors and Secretaries under S 201(4) were filed. The Directors are stated to be :

Jovial Akandwanaho (Salim Saleh's wife)

Alexander Mahuta and

Alexander Mahuta was described as an Adult Businessman, although by then he was aged about 7.

The Company passed two resolutions at a meeting of the 4th January 1999, and filed resolutions dated 22.3.99 on that same date. The first appointed Atari Iddi as Managing Director, and the second recorded the transfer of Salim Saleh's shares to his wife Jovial. The Company resolved to make its first (apparently) allotment of shares as to 50 shares to Jovial, and 50 shares to Alexander Mahuta.

A return of allotment to Jovial and Alexander, said to have been made on 18th January 1999, (although in fact the allotment was made on 4th January 1999) was filed on 24th March 1999
 10 under S54(1) of the Companies Act. It described Alexander Mahuta as a Businessman. He was aged about 7 at the time. The shares were still not paid up. It was also a little difficult to see how the Companies Registry could have accepted this, since the original subscribers to the Memorandum and Articles were still on record at the time of filing.

However, on 13th May 1999, rather belatedly, a Board Resolution was filed in respect of a meeting said to have been held on 10th August 1994: in that meeting the Board accepted the resignation of Ramesh Sheth, Roy Ndisi and Wolfgang Thome as Directors (they had never been declared as such), "and to relinquish all their shares in the Company". And that the shares be offered to Salim Saleh and Alexander Mahuta so that they could hold in equal shares : and that the shares be so allotted. No return of allotment was filed.

20 This resolution of allotment to Salim Saleh and Alexander makes nonsense of the previous return of allotment to Jovial and Alexander made and filed before the filing of the resolution. If the Company had resolved to allot shares to Salim Saleh and Alexander Mahuta in 1994, then although no return of allotment was filed getting rid of the 3 original subscribers to the Memorandum and Articles, (which is only a matter of failing to file within time), the shares were nevertheless allotted, and could not be allotted again, but only transferred thereafter. One is tempted to wonder whether that Board Resolution was in fact passed in 1994, or whether it was an afterthought, passed by a Board which was not properly constituted: it would be interesting to see a copy of the minutes. However that would be going far outside this Commission's terms of reference. It may however be of interest to others to have a
 30 further look, relying on S 399 of the Companies Act.

The matter is now further confused by the Registration of a Share Transfer from Salim Saleh to Jovial of his 50 shares for Ushs 1,000,000: the shares not paid up. This Share transfer was undated, but filed on 13.5.99. There are also two other share transfers with similar effect both filed on 20th January 1999, and another return of allotment, this time not accompanied by a

Board Resolution, now allotting all the shares in the Company to Jovial and Alexander equally. And it is signed by Salim Saleh as a Director, which he continued to be despite the transfer of shares. Alexander Mahuta is described as a businessman.

And the matter is even further confused by the inclusion by the Companies Registry of two documents (which are totally irrelevant to Air Alexander) in the Air Alexander bundle. They quite clearly are misfiled, and demonstrate an inefficiency in the Companies Registry which cannot be tolerated

The first comment this Commission has to make is that the Companies Registry is not doing its job. Documents are accepted for Registration without consideration of compliance with the
 10 Companies Act, and the Register itself does not reflect the current situation of many Companies. This Commission hears that efforts are being made to update the Registry, and to take action against Companies in breach of the requirements of the Companies Act.

Officers in the Registry should realise that particulars of Shareholders and Directors are extremely important, and that to allow Annual Returns to remain outstanding for 4 years is unacceptable.

This Commission would point out that in the case of Air Alexander, the Registered Office was not notified to the Registry until nearly 5 years after incorporation : since service of documents is required to be on the Registered Office of a Limited Company, how can any company be served unless the registered office can be established by search. And this is not
 20 the only example this Commission has come across: there are companies who have never filed notification of registered office. This is just not acceptable.

The next comment this Commission has to make relates to fines and sentences in the Companies Act. For example the default fine for failing to notify the registered office, (which as far as this Commission can see is never exercised), is Ushs 100 per day. Thus a Limited Company can avoid service of proceedings for Ushs 100 per day: a good deal. The Secretaries for the Company say that on registration of a share transfer at the Registry (if that is necessary at all: the Company is required to keep its own Share Register), the Registrar requires a Return of Allotment relating to those shares. This reveals such an inadequate understanding of
 30 Authorised Share Capital and Share Transfers on the part of either the Advocates, the Registry or both that this Commission despairs of correcting the situation.

Lastly, as a general point of law, an infant has no capacity to hold shares: although they can be held by an adult in trust for the infant. There are good reasons for this: it would not be possible for the Company to enforce a call on unpaid shares against an infant, for instance,

and here was a severely undercapitalised company. In this case, on repeated occasions Salim Saleh has represented Alexander Mahuta as an Adult, and as a Businessman in official documents. Throughout Alexander Mahuta has been a child, and could not be described as a businessman. He could not hold shares.

Now the serious consequence of this arises under S 396 of the Companies Act. It is an offence :

10

“396. If any person in any return report certificate balance sheet or other document required by or for the purposes of any of the provisions of this Act specified in the Tenth Schedule to this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings”.

While this Commission is quite sure that the continual filing of Returns of Allotment throughout the life of the Company was unnecessary, there is one exception, and that is the first Return. Returns of Allotment are filed under S 54(1), and therefore are covered in the Tenth Schedule to the Companies Act. This Return is signed by Salim Saleh, and filed by Kasirye Byaruhanga Advocates: Mr Saleh in his evidence referred to his advocates for responsibility for the offence committed. In the view of this Commission further action is required. It may be thought that this is not a sufficiently serious offence for further
20 investigation. However this Commission takes the view that over a period of more than 5 years what is in fact a one man outfit has been presented as a limited company with all the protection that that implies, and takes the matter extremely seriously.

28.1. Recommendations – Companies.

This Commission recommends that the updating of the Registry referred to above be implemented speedily.

This Commission recommends that the Registrar and the staff of the Registry should seriously accept responsibility for proactive management of the Registry and of the important actions required of Registered Companies. All current files should be checked for compliance, and immediate action taken against companies which offend
30 the requirements of the Companies Act.

This Commission recommends that fines and sentences for offences under the Companies Act be revised urgently.

This Commission recommends that, as an example of the Government's determination to rationalise the Registry, and to encourage other Companies to comply with the Act, the facts revealed by this Commission's investigation of the file of Air Alexander at Paragraph 28 above be presented to the Director of Public Prosecutions for further investigation with a view to prosecution of the responsible parties.

29. UGANDA REVENUE AUTHORITY

URA is not specifically mentioned in the original Panel report, but its functions, particularly those relating to imports and exports of goods between Uganda and the Democratic Republic
 10 of Congo are of great interest to the Commission's inquiry.

In Para 72 of the original Panel Report about modes of transportation, it is stated that there has been noticeable increase in the number of aircraft utilized to transport products and arms into the Democratic Republic of Congo, while transferring out vast quantities of agricultural products and minerals, in particular to Kampala and Kigali. The increase in the use of aircraft leased by the army for commercial and non-military functions is also mentioned.

The evidence given to the Commission has shown that URA systems of controlling imports and exports are not entirely effective. In fact there are many loopholes for smuggling products to or from one country to the other.

For example one witness (Joseph Olea) from Arum told the Commission that 10 to 20 trucks
 20 a day were transporting timber from Congo to Uganda without paying taxes. The trucks use feeder roads and join the main road after the customs post. While the Commission thought that the number of daily trucks was exaggerated, there was no doubt that smuggling of timber at that point was actually taking place. The efforts of the Special Revenue Protection Service in the West of Uganda appear to have had little effect. There was clear evidence from a Congolese who lives near the border in the Democratic Republic of Congo of daily smuggling of timber over the border to Uganda. This Commission believed that evidence, and suggested that further enquiries be made. The report from Special Revenue Protection Service came up with a facile explanation of the evidence which could not have been true. Since the original evidence talked of up to 20 lorry loads a day (which, although probably an exaggeration of
 30 reality, nevertheless gives an indication of the scale of the problem), and since there was only one or two roads which needed policing to check the situation, this Commission has difficulty in taking the efforts of the Special Revenue Protection Service on the Democratic Republic of Congo border seriously.

The Commission was told that Uganda has five major and two minor customs posts on its border with the Democratic Republic of Congo. These are too few considering the length of the border and the poor condition of roads from the Democratic Republic of Congo. This alone is a ground for smuggling goods across the border. Allen Kagina stated that there are businessmen who try to smuggle timber by under declaring its weight at entry point, but that they are normally caught and that their penalty was deterrent. This was borne out by the evidence of one witness from whom the Commission heard during an up-country visit to Arua, which confirms the fact that policing smuggling is possible, and can work.

URA has no power to inspect any items said to be classified.

10 The procedure of importing goods is as follows:

Goods intended to remain in Uganda are declared at entry point, assessed for taxation and tax collected. Goods in transit are also declared at entry point. The container is sealed and a bond is deposited. The bond is refunded when the goods have exited.

The impression created by the URA officers who testified before this Commission, was that all transit goods do exit Uganda. This Commission was therefore surprised to read in the New Vision newspaper of 5 October, 2001 (page 65) a statement attributed to URA Commissioner of Customs and Excise, Allen Kagina that in most cases transit goods do not exit Uganda. She was called to explain this and said that she had been misquoted, that there had been a few incidents where transit goods from Kenya to Rwanda or to the Democratic Republic of Congo
20 did not reach their destination and that additional measures should be devised to eliminate such incidents. The big item investigated by the Commission was timber. Minerals have been considered but it was difficult to tell their sources of origin.

URA has admitted that it does not yet have experts who can identify the difference kind of minerals and timbers.

29.1. Recommendations: –URA

It is noted that the Uganda Government has appointed a Commission of Inquiry into the URA, which Commission will have a far closer focus than this Commission on the problems facing that body. It is suggested that this Commission's remarks on the URA be copied to that Commission for further consideration in the context of the
30 mandate of that Commission.

7. CONSIDERATION OF THE ADDENDUM

In November 2001 the reconstituted Panel of Experts produced an Addendum to the original Panel Report. This Commission has been able since, on 4th March 2002, to meet with the reconstituted Panel, and to obtain from them certain documents which have enabled this Commission to take its enquiries further forward.

In the Addendum, the following matters arise:

30. INTRODUCTION

30.1. Methodology

10 The reconstituted Panel's mandate is recited in the Introduction as follows:

1 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:

1 b) Relevant information on the activities of countries and other actors for which necessary quantity and quality of data were not made available later.

1 c) A response, based as far as possible on corroborated evidence to the comments and reactions of States and Actors cited in the report of the Panel

20 *1 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.*

However, In Paragraph 15, the reconstituted Panel say that their investigations focused on evaluating whether changes in trends had occurred since the release of the report, and that those investigations confirmed a pattern of continued exploitation, that is, a consideration of 1 a) above, although the reconstituted Panel also adds at the end of the Paragraph that the selection of the resources upon which they focused permitted them to examine some of the reactions presented to the Report, a reference to 1 b) above.

30 This Commission had occasion to discuss this subject with the reconstituted Panel at our meeting on 4th March 2002, particularly with regard to 1 b) above, the question of a response on the basis of corroborated evidence to the comments and reactions of

States and Actors. This was a subject which was of great interest to this Commission, as the hope was that from such a consideration would come some specific allegations which could be investigated. It did not appear that the members of the reconstituted Panel who visited us were aware of, or perhaps had in mind, the response by the Uganda Government.

It became clear that the reconstituted Panel had not addressed this subject in any depth at all. The reason, with which this commission sympathises, is the lack of time. It is true that a great deal of the time of the reconstituted Panel was taken up with investigation of other countries which had not been looked at before in very great detail. An example of the reconstituted Panel's failure can be found in Paragraph 31.5 below.

This has therefore raised problems, once again problems of perception.

In Paragraph 15 of the Addendum it is made clear that there was no emphasis placed on such a review, since the reconstituted Panel say that their investigations focused on evaluating whether changes in trends had occurred since the release of the report, thereby apparently approaching their task by accepting the original Report, which has been the subject of so much criticism, as a basis.

This was an important omission from the point of view of the accused countries, and from Uganda's point of view in particular. Uganda submitted detailed, item by item responses. His Excellency the President also submitted a particularised response to the allegations made against himself and his family. These responses appear in the main to have been ignored by the reconstituted Panel. This Commission examined those responses in tandem with the relevant paragraphs of the original Panel Report, and, to take an example, in its Interim Report found no evidence whatever to back up the criticisms by the original Panel against His Excellency the President. The reconstituted Panel has done nothing to confirm or deny those allegations, which remain in the air.

The second arises from the apparent complete acceptance of the original Panel Report in the Press, the International Community and the proceedings of the United Nations Security Council. One International Donor has already withdrawn substantial Aid from Uganda on the ground of the allegations in the original Panel Report. This demonstrates that the mandate to the reconstituted Panel recited in Paragraph 1 b) above was not an unimportant issue to which the reconstituted Panel might merely refer, but an issue at the basis of the whole perception of the situation by the

International Community as regards the allegations against Uganda made in the original Panel Report, which have caused Uganda a great deal of harm. On this Commission's evaluation, allegation by allegation, there is little evidence to support most of the allegations, and none at all in respect of those against Uganda as a State, and against His Excellency the President. The reconstituted Panel's mandate was to come up with a response, based as far as possible on corroborated evidence to the comments and reactions of States and Actors cited in the report of the original Panel. The reconstituted Panel so far has failed to do so.

31. EXPLOITATION OF THE NATURAL RESOURCES

10 31.1. "Illicit" and "Illegal"

As can be seen from the title of this section, the reconstituted Panel have abandoned the use of the word "Illegal", save in referring to their mandate. This is the case throughout the Addendum, in which only the word "illicit" is used on nine occasions instead, and only once in relation to Uganda.

It is important to understand the difference between these two words. "Illegal" is defined as "not allowed by law". "Illicit" as either "not allowed by laws or rules, or strongly disapproved of by society". (Longman – Dictionary of Contemporary English).

20 In usage, "Illegal" appears to be the more uncompromising and restricted meaning of "breach of the law": the example given is "they were caught selling illegal drugs" whereas "illicit" has a wider use and more often is used in the sense of moral disapproval: the examples given are "an illicit love affair" (which would normally involve no breach of the law, but more probably would attract society's disapproval) and "illicit diamond trading", which expression arose from the days when there were no controls, and now remains in the language.

Thus an illegal action will also be illicit: but an illicit action is not necessarily illegal.

30 One wonders then why the reconstituted Panel have moved to the word "illicit", when their mandate, as the mandate of this Commission uncompromisingly relates to alleged "illegal" acts. In this Commission's view, this constitutes a movement, not only of the goalposts, but of the whole playing field, and this Commission is unable to accept the view expressed by the Chairman of the reconstituted Panel in an interview with this commission that, in view of differing interpretations, the word

illicit may be used instead of the word “illegal” in respect of the allegations against Uganda and Ugandans in the original Panel Report.

Indeed in a Press briefing by the President of the Security Council on 19th November 2001, the Chairman is reported in the following manner:

But during the second phase of the fact finding mission, the Panel discovered that whether it was legal or illegal, most of the exploitation was illicit. ‘There may be differences in style and forms of exploitation, but in the end it was illegal’ he said.

10 If correctly reported, (and this was a specific quotation in a Press briefing by the President of the Security Council), a finer example of circular logic could not be imagined.

Further in answer to a question specifically on the point of the definition of illegality, the Chairman is reported to have said:

During the first phase of the Panel, the issue was whether the exploitation was legal or illegal. In the second phase, the Panel found that the words legal or illegal became irrelevant. In the end it discovered that those who claimed to be operating legally were actually engaged in illicit activities with regard to exploitation. Also between those activities classified as legal and those classified as illegal there was a wide grey area

20 The grey area to which the Chairman refers is the area described by the word “illicit”, in the sense of strong to mere disapproval by the International Community, by whom the reconstituted Panel is mandated.

The report continued:

For example, those whom the Panel thought were illegal were not denounced by the Democratic Republic of Congo Government – in fact the Democratic Republic of Congo dealt with them to allow the continuation of the activity

30 Just such a case was the operation of Dara Forêt as found by the reconstituted Panel. In Paragraphs 72 to 73 of the Addendum, the reconstituted Panel found that Dara Forêt had complied with all the regulations in effect and was recognised by the Kinshasa Government. As an entity therefore, the reconstituted Panel was forced to recognise that Dara Forêt had to be accepted as legal. Nevertheless, in interviews with

this Commission, representatives of the reconstituted Panel continued to be critical of Dara Forêt, on the basis that chopping down trees was not a good thing, that is, it is frowned on by the International Community. This was why the original Panel continued to think that the operation was illegal. However, it was not illegal: it was illicit in the eyes of the International Community: perhaps not even illicit, however, in the eyes of the schoolchildren who sit at the desks the timber might be made into. Therefore, Dara's operation, while clearly exploitation of the natural resources of the Democratic Republic of Congo, was not illegal exploitation, because Dara was not forbidden by the law administered by the Kinshasa Government or the controlling rebel administration, nor by International Law, and therefore should not have been criticised in the original Panel Report, or used as a basis for criticism of the Uganda Government or His Excellency the President. This Commission has in mind such questions under its specific Terms of Reference, which are based on the findings of the original Panel.

The matter becomes even more complicated when the reconstituted Panel approaches Governments with requests to assist on curbing the transit of "illegal goods", as it has done. This phraseology raises all sorts of impossible questions. It is not the item itself which is illegal, but the manner of dealing with it. A diamond, for instance is not innately illegal, but to smuggle it out of a country without paying duty where applicable is an illegal transaction with it. So the first question Governments are likely to ask is "what goods do you mean?" According to its own definitions, this is a question the reconstituted Panel will be unable to answer.

This Commission has the temerity to suggest what is in fact going on. It is not hard to define what is illegal: there will be some law somewhere, whether national or international which forbids the doing of the act, and Panels of Experts or Commissions such as this will be able to quote it.

In the reconstituted Panel's grey area, the area of the "illicit", what is being considered is the quite proper international disapproval of areas of excess: for instance, pollution leading, we are told, to holes in the ozone layer: or stripping of the tropical rain forest: such matters, hopefully, become the subject of international agreements, such as CITES, which control excesses on an International level, and these agreements become part of the International Law. But until such agreements are concluded, actions properly described as "illicit" are not yet "illegal" by any standard.

The problem has arisen from the mandate of the original Panel of Experts, which was in part:

To follow up on reports and collect information on all activities of illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo

10 What the reconstituted Panel appears to have come to realise is that the International Community is surely most interested in trying to find a way to control excesses, particularly in conflict situations, and that in that task, the question of whether actions are legal or illegal is irrelevant: the function of the United Nations and the Security Council is to identify excesses (the original Panel's grey area) and then to find ways of controlling them by negotiating the necessary agreements to establish legality or illegality, as has been done in relation to Sierra Leone's diamonds.

In International Terms, the question of, and inquiries into, whether actions were legal or illegal are for the ICJ: in National Terms for the National Courts. To establish a Panel of Experts to look into "illegal exploitation" was to place that Panel into an inappropriate prosecutorial stance, a stance that the original Panel adopted with a will, and that the reconstituted Panel is quite rightly in the process of renouncing

20 Put in that way, possible solutions begin to present themselves, such as import, transit and re-export quotas for timber and minerals, although the question of diamond smuggling is much more complicated, and can probably only be resolved by International negotiation to control purchases by end users. It also begins to be clear that to ask the original Panel to investigate "illegal exploitation" was counterproductive, forcing Governments into defensive, rather than co-operative positions in dealing with the real problem, that of excesses in war situations.

31.2. Coltan

In the Addendum there is no criticism of Uganda in respect of exploitation of Coltan. There is only a reference in Paragraph 20 to a Ugandan-owned freight Company transporting coltan through Kigali, an allegation for others to consider.

31.3. Gold

30 The reconstituted Panel recite the well known fact that artisanal gold mining continues on a large scale. The Addendum states:

27. *The original Panel's report sheds light on the gold mining activities carried out by the Ugandan army, which assumed control of this gold-rich area. The sharp rise in Ugandan gold exports, which also exceeded national production, was given as further evidence that this gold is transported by UPDF elements to Kampala, from where it is exported. The Government of Uganda contested the findings of the original Panel in its report, attributing the increase in its exports to 1993 policies liberalizing gold sales and exports, where the revamped policies permitted artisanal miners in Uganda to keep hard currency earned from sales. Officials claimed that as a result of the ease with which gold can be smuggled, Uganda became the preferred destination for gold produced by artisanal miners in the surrounding region.*

28. *The discrepancy between the gold export figures registered by the Ministry of Energy and Mineral Development and those recorded by the Uganda Revenue Service was attributed to the fact that the Ministry's figures reflect the quotas set for the production of the Ugandan export permit holders. These permit holders can buy from artisanal miners, the total of which appears on the export permits. While small-scale smuggling may in part explain the discrepancy in Uganda's production and export figures, the original Panel has evidence that artisanal gold mining activities in the north-east by UPDF and RCD-ML, as well as the short-lived rebel coalition FLC, have continued. In the Kilo-moto area for example, operations at the Gorumbwa and Durba sites are under the control of UPDF and RCD-ML. The Malaka site reportedly employs 10,000 diggers and generates amounts of gold valued at \$10,000 per day. Gold produced is still being sold through the Victoria comptoir in Kampala.*

The original Panel Report quotes a figure of only 2000 artisanal diggers operating at Kilo Moto, producing sufficient gold to "pay off" up to 2 kg of gold a day. The reconstituted Panel gives no account for this inflationary figure, which raises suspicions of exaggeration by the original Panel's informants. The reconstituted Panel do not deal with this problem. There is another example of such exaggeration relating to the "skimming" by Mbusa Nyamwisi of taxes, dealt with at Paragraph 32 below of this report.

This Commission has dealt with Gold at Paragraph 21.1 above. As with diamonds, there are no import figures of gold, which, if it is sourced in the Democratic Republic of Congo, is clearly being smuggled. There is something in what the reconstituted Panel say, with regard to gold being sold through Victoria, who were licenced in respect of gold as well as diamonds, and this Commission is unable to exclude this possibility.

31.4. Copper and Cobalt

There are no allegations which involve Uganda in respect of these minerals. This Commission has drawn attention to the situation of Kasese Cobalt Ltd in Paragraph 21.6 above. The company has now ceased to function.

31.5. Diamonds

The reconstituted Panel say:

Diamonds from artisanal mining in northern Kisangani area have provided a source of revenue for the rebels, RPA and UPDF for the continuation of the conflict. The high combined taxes imposed by the RCD-Goma rebel group and RPA ultimately resulted in diamonds mined in this area being redirected to Kampala, where lower tax rates prevail.

The reconstituted Panel continue to quote the same figures from the Diamond High Council as were used in the original Panel Report, and to draw the same conclusions as the original Panel.

This Commission has dealt with the question of diamonds at Paragraph 21.2 above of this Report. Its conclusions are undeniable: there are no import figures for diamonds, nor transit figures. Diamonds are therefore quite clearly being smuggled through Uganda, and declared as sourced in Uganda by the smugglers on arrival in Antwerp. This Commission has evidence of one such transaction, privately conducted. That being so, since no tax is paid in Uganda, it is difficult to understand the relevance of lower tax rates in Kampala, how the Ugandan Treasury benefits, and how the UPDF is able to use the proceeds for the continuation of the war, as the reconstituted Panel claim. Tax paid in the Democratic Republic of Congo would be paid to rebel authorities, who would be able to use the money for the continuation of the war. This, however, would not be a matter to be laid at Uganda's door, although it is true that there is cause to believe that some top Commanders were secretly profiting for themselves from "Security Funding", a different matter.

This point is a specific example of the unfortunate failure of the reconstituted Panel to carry out its mandate, as mentioned in Paragraph 1 b) above. The response of the Uganda Government to the original Panel Report raises exactly this point, and the investigations of this Commission have confirmed the likelihood that the response was correct.

31.6. Timber

The reconstituted Panel complain that although timber is exported through Kampala to Mombasa, the Government of Uganda denies that timber is transited through Uganda. In the meeting with the reconstituted Panel, it was made clear that in their interviews, information such as this had mistakenly been given to the original Panel by a senior Ugandan Government official, but this Commission has discovered such information is quite wrong. URA has provided this Commission with transit information for Timber, and also import figures both from the Democratic Republic of Congo. It is difficult to understand how this misunderstanding has arisen, but a misunderstanding it certainly is. If only referring to the data from Dara Forêt, there is clear evidence of transit of timber: and this information was no doubt provided to the reconstituted Panel during their interview with Mr Kotiram. It certainly was provided to this Commission from that source, and finally from URA. There was without doubt, constant transit of timber through Mpondwe, and transit and import through Arua.

32. ALLEGATIONS AGAINST UGANDA IN THE ADDENDUM

In Paragraph 95 of the Addendum, the reconstituted Panel acknowledge what Uganda has said all along, that it had legitimate security interests which prompted its military intervention in the Democratic Republic of Congo. The Addendum acknowledges that there has been a significant withdrawal of UPDF troops, resulting in the perception that exploitation activities have reduced.

In paragraph 97 of the Addendum it is stated that while the effect of the original Panel's report and the significant withdrawal of UPDF troops have given the impression that the exploitation activities have been reduced, they are in fact continuing. It alleges that commercial networks put in place by Ugandan Army Commanders and their civilian counterparts that were described in the original Panel's report are still functioning in Orientale Province and Kampala. It cites, in particular, Trinity and Victoria Companies as examples of Commercial networks that are still actively exploiting diamonds, gold, coffee and timber from the Democratic Republic of Congo.

The two named companies have no direct Ugandan connection. Trinity was set up by the rebel leaders in control of the Oriental Province to generate funds to finance their war efforts, although it is possible that much of the income ended up in private rebel

pockets. According to Professor Wamba and Col Otafiire, Uganda has made strenuous diplomatic efforts at the time of the forming of FLC to bring it to an end. Victoria Group is registered in Goma and operates in Isiro, Bunia, Bondo, Buta, Kisangani, Beni and other places in the Democratic Republic of Congo and pays taxes to MLC as evidenced by one of the documents made available to this Commission by the re-constituted Panel of Experts. Neither of the companies has Ugandans living in Uganda as shareholders. They are not registered in Uganda and have no registered or Branch offices in Uganda. While it is true that this Commission has found that there are Ugandans who have interests in Victoria, nevertheless those individuals have done everything to keep their interests secret. Uganda as a state is not involved in their activities.

The ownership and nationality of the Companies could easily have been ascertained from the Registrar of Companies' offices in Uganda and the Democratic Republic of Congo. That would have prevented the erroneous allegation that the two companies are owned (rather than facilitated) by Ugandan Army Commanders and their civilian counterparts. In the case of Victoria, however, this Commission is unable to exclude that possibility. Trinity on the other hand appears to be a mainly Congolese affair, in respect of which strenuous efforts have been made by Uganda to end it and therefore this Commission doubts the reconstituted Panel's conclusion.

Paragraph 98 of the Addendum states that while the Government of Uganda does not participate directly in the exploitation activities, the culture in which its military personnel function tolerates and condones their activities. It alleges that Commercial activities of Senior UPDF officers are public knowledge but does not provide any evidence of that. To prove the alleged involvement of Senior UPDF officers in Commercial activities, it cites the alleged admission by General Salim Saleh that one of his Companies had been engaged in exporting merchandise to the eastern part of the Democratic Republic of Congo and the confiscation of the aircraft that was transporting the merchandise by Major General Kazini. The paragraph also alleges that General Kazini told the original Panel about his role in facilitating the transport of Uganda merchandise to Kisangani and other areas in the Democratic Republic of Congo.

This Commission interviewed both General Kazini and Lt. General Salim Saleh about the allegation. It appears that the reconstituted Panel in the Addendum has mixed up the role of Lt. General Salim Saleh as a businessman dealing in merchandise and as an aircraft operator. As a businessman, Lt. General Salim Saleh has denied that any of

his Companies has transported merchandise to the Democratic Republic of Congo. What he admits is that some of his aircraft have been chartered by Ugandan businessmen to transport merchandise to the Democratic Republic of Congo. It was one of these aircraft that landed at Kisangani airport without clearance and was confiscated by General Kazini and ordered to return back without discharging whatever cargo it was carrying. According to General Kazini it was the role of Lt. General Salim Saleh as an aircraft operator in the Democratic Republic of Congo that they tried to explain to the reconstituted Panel in August 2001 and not his role as a businessman sending merchandise to the Democratic Republic of Congo. He said that the aircraft came to Kisangani once and never returned. Further this took place in late 1998 or early 1999, and therefore cannot serve as an example of continuing exploitation.

With regard to the alleged role of General Kazini in facilitating the transport of Ugandan merchandise to Kisangani and other areas of the Democratic Republic of Congo the explanation of General Kazini was that when UPDF first went to the Democratic Republic of Congo they found that the people of the Democratic Republic of Congo were in dire need of basic commodities, like salt, sugar and soap. The UPDF had aircraft that brought military supplies to the Democratic Republic of Congo and returned empty. The Congolese businessmen pleaded with him to allow the aircraft to give them lifts to Kampala to buy some commodities and bring back to the Democratic Republic of Congo. He appreciated their problem and so whenever an aircraft was returning empty, he allowed the Congolese businessmen to go on board the aircraft to Kampala to buy commodities and if there was space, transport them back to the Democratic Republic of Congo. He assisted the Congolese in this way until some of the businessmen had money to charter their own aircraft.

He claims that he thought, quite wrongly, that he was implementing His Excellency The President's radio message to assist businessmen to do business in the Democratic Republic of Congo so as alleviate the acute shortage of the Congolese and also establish links for the future. General Kazini seems to have thought the President meant that Congolese businessmen, and apparently Lebanese, should be facilitated as well. When it was pointed out to him that the President only meant Ugandan businessmen, and only for security as opposed to transport, he admitted his mistake but said he was only trying to be flexible in the application of the President's directive.

In the Commission's view the role General Kazini played, as indicated above, supports to some extent the allegation in the Addendum that at least he established a mechanism to promote business in the areas under the control of UPDF. We find the allegation in Paragraph 98 sustainable, but are unable to lay blame at the door of the State of Uganda.

10 In paragraph 99 of the Addendum it is alleged that UPDF officers usually conduct their business through a Congolese affiliate, on whom they bestow power and support. To prove their point the reconstituted Panel stated that they had learnt that recently Mr. Lumbala had signed two Commercial agreements bearing the signatures of UPDF Commander Kahinda Otafiire and Belgian and Austrian parties. During a working session with the reconstituted Panel in Kampala in March 2002, this Commission asked the reconstituted Panel if they had in their possession copies of the Commercial agreement alleged to bear the signatures of UPDF Commander Kahinda Otafiire. The Chairman of the reconstituted Panel replied that they had only heard about the allegation, as stated in the Addendum, and had no documentation to support it.

20 This Commission finds it difficult to understand how a Panel of such stature could make such a serious allegation against Colonel (not Commander) Kahinda Otafiire, who is now a Minister of State in-Charge of Regional Co-operation, on hearsay evidence of a single uncorroborated witness. The Commission's immediate re-action was to ignore the allegation. But in order to put matters beyond dispute, the Commission summoned the Minister to come and tell the Commission what he knows about the alleged Commercial agreements. He told the Commission that he had not signed any commercial agreement with anybody and challenged the original Panel to produce the signed Commercial Agreements to prove him wrong. He had not been asked about them by the reconstituted Panel.

30 It is also alleged in paragraph 99 that Mbusa Nyamwisi "skims" up to USD 400,000 off the tax revenues collected from the Beni Customs post at the Uganda border and shared the money with General Kazini and General Salim Saleh. This allegation has been denied by Nyamwisi, General Kazini and General Salim Saleh and constitutes a substantial advance on the original allegation. As the alleged credible, and apparently very inflationary, source of the original Panel's information was not disclosed, this Commission has no alternative but to accept their denial, particularly as the source is quoted by the reconstituted Panel as single, and is not corroborated

In view of the findings of this Commission regarding the allegations in paragraphs 97, 98 and 99 above, this Commission thinks that the original Panel's conclusion in paragraph 100 that there is a link between the continuation of the conflict and the exploitation of the natural resources and that Ugandan influential Government Officials, military officers and businessmen continue to exploit the security situation for their commercial interests, is tenuous with the possible exception of the operations of Victoria. In particular the suggestion that Ugandan influential Government Officials are involved has no basis in the text. While it is true that businessmen continue to trade in the Democratic Republic of Congo, that does not necessarily have the result of the continuation of the conflict.

33. THE LINK BETWEEN EXPLOITATION OF RESOURCES AND THE CONTINUATION OF THE CONFLICT

33.1. Recent Developments

33.1.1. Uganda

In Paragraph 57 the original Panel say:

There are indications that clashes during the past seven months in the Oriental and Kivu Regions between the Mayi Mayi, who appear to be better equipped and coordinated than before, and UPDF and the MLC rebel group have been directly related to control of coltan and gold

It is odd that, while the reconstituted Panel do not mention Uganda when considering the exploitation of Coltan, nevertheless the Mayi Mayi clashes are attributed to the UPDF's desire for coltan. As to the desire for control of gold, when talking of the clashes with the Mai-Mai, this allegation appears to be geographically unrelated.

It is therefore probable that the reconstituted Panel ought perhaps to have gone beyond relying on pure indications, and to have looked for evidence, as has this Commission. This Commission has not found any such evidence, and would have appreciated any assistance either of the Panels could have given in this regard.

33.1.2. Democratic Republic of Congo - Dara Forêt

During a consideration of the link between exploitation of resources by the Democratic Republic of Congo and the continuation of the conflict, the

reconstituted Panel point out that Dara Forêt registered as a Congolese registered Company in Kinshasa in March 1998: it will be remembered that that was at a time when relationships between Kinshasa and Kampala were good, and trade opportunities were being investigated (see Paragraphs 14.2 and 14.3 above). Then in June 1998 Dara Forêt was granted a logging concession from North Kivu Provincial Authority, and an exploitation licence. The reconstituted Panel found that Dara Forêt had complied with all the regulations in effect, and pays taxes as before. It is checked by local; authorities in North Kivu to see that it is complying with the terms of its licence. It was also granted a certificate of registration by the Ministry of Justice in Kinshasa.

This is a completely different story from that of the original Panel, whose criticisms of Dara Forêt were attributed by the Mayi Mayi for their formation, and for the kidnapping of 24 Thai Nationals working there. There is no acknowledgement of any mistake by the original Panel: this Commission has examined the whole of the so-called Case Study of Dara Forêt and DGLI, and the allegations against the Uganda Government, and His Excellency the President, and found that far from there merely being no evidence of the original Panel's allegations, those allegations were completely wrong : and the reconstituted Panel have independently agreed, on the basis of additional evidence.

This Commission was expecting to see a specific withdrawal of the false allegations contained in the original Panel Report: it is absent.

34. CONCLUSIONS OF THE PANEL IN THE ADDENDUM

In paragraph 143 of the Addendum the reconstituted Panel alleges that the systematic exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo continues unabated. It alleges that the exploitation activities are carried out by a large number of state and non-state actors from the region and outside the region, some of whom are involved in the conflict, others not. It stated that some individuals and institutions who have been enriched from the exploitation are opportunistically making use of the current situation in the Democratic Republic of Congo to amass as much wealth as possible. And in paragraph 144 it alleges that without resolution of the broader conflict in the Democratic Republic of Congo and the region, it would be highly unrealistic to expect an end to the exploitation of the natural resources and other forms of wealth in the country.

This Commission agrees that exploitation of natural resources and other forms of wealth of the Democratic Republic of Congo is still continuing. The Government of Uganda has been acquitted of any wrong doing by the reconstituted Panel and no state institution has been found by it to be involved

in exploiting the natural resources and other forms of wealth in the Democratic Republic of Congo. This Commission, however, agrees that some top military Commanders and civilians have been enriched from the exploitation. This Commission also agrees that unless and until a permanent and a realistic solution is found to end the conflict in the Democratic Republic of Congo and the Great Lakes Region the exploitation will not end. It is the absence of effective state institutions and structures to maintain law and order in the Democratic Republic of Congo that have enabled the systematic exploitation to continue. However, this Commission notes the absence of the words “illegal” or “illicit” from this part of the Addendum, and therefore cannot see that these conclusions form a basis for interference or criticism from the International Community, although Uganda itself needs to look to the
 10 obvious contempt which Senior Army Officers have for civil institutions.

In paragraph 147 it is alleged that there is a link between the continuation of the conflict and exploitation of natural resources. The reason the original Panel gives is that all the parties involved in the conflict in the Democratic Republic of Congo have transformed their military operations and presence in the Democratic Republic of Congo into self financing activities, whereby no real budgetary burden is borne by the parties concerned. This allows them greater degree of freedom and no financial compulsion to end conflict. In paragraph 151 it is alleged that the actual sources for financing the war effort by all parties in the conflict remain shrouded in mystery.

While the allegations might be true of some of the countries involved in the conflict, that is not so with Uganda. In Uganda, the war was financed by the regular defence budget and any deficit was handled
 20 by the Treasury by way of a supplementary budget. This fact was acknowledged by the original Panel in paragraph 135 of its report and the policy has not changed since. This Commission has no doubt that if the original Panel had asked Uganda Government, it would have received a clear answer.

Since the reconstituted Panel agrees that the Government of Uganda did not participate directly in the exploitation activities, its military operations and presence in the Democratic Republic of Congo could not be self-financing activities as alleged in paragraph 147.

35. RECOMMENDATIONS OF THE PANELS

The original Panel in its report made a number of far-reaching recommendations which are set out in full in the original Panel Report. This Commission thinks that those recommendations, some of which in this Commission’s view are unreasonable and not well thought through,
 30 have been overtaken by the recommendations of the reconstituted Panel in the Addendum, which are more pragmatic than those of the original Panel.

35.1. Institutional

The first recommendation in the Addendum is a call on International Community to assist in formulating a plan of action on the building of State institutions in the

Democratic Republic of Congo which should be linked to the convening of an International Conference on peace and development in the Great Lakes Region. This is clearly in line with the Lusaka Cease Fire Agreement and a move in the right direction.

10 The second recommendation relates to concessions, commercial contracts and agreements signed during the era of Laurent Désiré Kabila (1997 – 2000) and subsequently in the rebel-held areas. These were to be reviewed and revised under the auspices of a special body to be created by the Security Council to address and correct all the irregularities. This Commission sees nothing objectionable with such a recommendation, which in this Commission's view will free the country from obligations arising from badly negotiated and dubious agreements.

In the third recommendation the reconstituted Panel urges the United Nations Organisation Mission in the the Democratic Republic of Congo (MONUC) to accelerate the disarmament, demobilisation and re-interrogation process in order to reduce the Security concerns of a number of states in the region, including the Democratic Republic of Congo, to a level that makes it possible for the countries concerned to negotiate among themselves the modalities of securing their borders without infringing upon the sovereignty of any state. This Commission thinks that this is a laudable recommendation within the spirit of the Lusaka Cease Fire Agreement to which Uganda is committed.

20

35.2. Financial and Technical

Unlike the call made by the original Panel to the World Bank and IMF to consider suspending their support to the budgets of the countries involved in the conflict in the Democratic Republic of Congo until the end of the conflict without regard to the effect of the measure on the ordinary people of those countries, the reconstituted Panel thinks that the World Bank, IMF and the other International donors are best placed to critically evaluate their assistance. In this Commission's view, this is a more pragmatic and humane way to deal with the matter.

30 The original Panel, in paragraph 221, recommended to the Security Council as part of recommendations on Sanctions to immediately declare a temporary embargo on the import or export of specified minerals and timber from or to Burundi, Rwanda and Uganda until those countries involved in the exploitation of the natural resources of the the Democratic Republic of Congo satisfy certain conditions. The reconstituted Panel, on the other hand, calls for a declaration of moratorium for a specific period of

time, banning the purchase and importing of precious products originating in areas where foreign troops are present in the Democratic Republic of Congo, as well as in territories under the control of rebel groups.

It also recommends that during the moratorium, countries directly or indirectly involved in the conflict in the the Democratic Republic of Congo and in particular transit countries such as Zambia, South Africa, Kenya and the United Republic of Tanzania, should review their national legislation, and pass the necessary laws to investigate and prosecute the illicit traffickers of the precious products from the Democratic Republic of Congo.

- 10 It further recommends that during the moratorium period, all technical measures such as standardisation of certificates of production, harmonisation of tax regimes and verification regulations, compilation of diamond production and trade statistics that are under consideration, should be finalised.

It was further recommended that Revenues from the resources of the Democratic Republic of Congo should be channelled through the States' budgets and that tax collection and use should be rigorously controlled to ensure transparency and accountability. This Commission has nothing against the above recommendations, which are considered reasonable and appropriate.

35.3. Sanctions

- 20 On sanctions, the reconstituted Panel has left it entirely to the discretion of the Security Council and the timing was made to depend on the Security Council's assessment of the evolution of the situation with regard to the exploitation of the natural resources as well as the developments in the Great Lakes region. This recommendation is preferable to the blanket imposition of sanctions by the original Panel without regard to the situation on the ground and the negative consequences of sanctions. However, so far as Uganda is concerned, now that troops have been withdrawn for the main part from the DRC, and although transit trade no doubt continues, there would seem to be little justification for consideration of sanctions against Uganda itself.

8. CONSIDERATION OF THE FINAL REPORT OF THE PANEL

36. METHODOLOGY

The reconstituted Panel say that owing to the nature of its mandate, gaining access to information has been difficult, but that in the end it was able to rely on information, mostly documentary evidence for its Report. The Panel claims to have made every effort to fairly and objectively evaluate the information it has gathered.

If all that is true, this Commission would ask why it has not been provided with further documentation.

- 10 The reconstituted Panel forwarded to this Commission a total of 12 documents (some with translations, one of which was a bad translation which misled this Commission severely), and a further 3 (counting attachments), were provided at the request of the Nairobi witness during the hearing in Nairobi. Of those twelve documents seven had problems as set out in Paragraph 20 above under the relevant individual actors: others were from Congolese officials, and incapable of verification. One was the statement of the Nairobi witness, kindly taken by the Panel at this Commission's request to save the expense of a double trip to Nairobi. All documents save the last were photocopies, making handwriting analysis more difficult. No documents were provided until this Commission had been working for nearly a year.

- 20 Leaving aside the question of "illegal and illicit" to which the reconstituted Panel suddenly return, countries involved in such matters all have their Constitutions to respect. In Uganda's case, the implication is that before action can be taken as required, evidence of wrongdoing contrary to the law is required. That is why the investigations of this Commission were not supposed to be a repeat of the Panel's work, but an examination of it, and why this Commission depended on the Panel to provide some evidence of its allegations, so that Uganda could take action in appropriate cases.

If a 59 page report, alleged to be based mainly on documentary evidence, resulting in allegations against 29 companies and 54 individuals, is in fact based upon 12 documents, then its basis must be very thin. The reconstituted Panel could clearly have assisted this Commission further.

37. ELITE NETWORKS

In Paragraph 98 the Panel turn to a description of the elite networks operating out of Uganda, which the Panel describe as “decentralized and loosely hierarchical”. This description seems to exclude the possibility of a network, and seems to show that the theory of a network, elite or not, is an unsuccessful attempt to fit all countries involved into the same description. There are probably separate and distinct organisations, on the basis of the evidence before this Commission, under generic names such as Victoria, or companies trading in the Democratic Republic of Congo, some of whom are entirely disconnected from the problems identified in the Panel reports: for instance Unilever, whose cocoa this Commission saw at the Military Air

10 Base. This Commission has interviewed representatives of many companies who produced copies of tax payments: Sam Engola was one of them and yet he is supposed to have been the initiator of Trinity, the archetype network, and exonerated from taxes.

37.1. Key Figures

Key figures are said to be Lt General Salim Saleh and Major General James Kazini.

37.1.1. Lt General Salim Saleh

This Commission has no evidence to prove that Salim Saleh is a key figure in any of the networks described, nor has the reconstituted panel provided any such evidence.

37.1.2. General Kazini

20 This Commission has found that General Kazini is involved in the Victoria network to such an extent that, on their behalf he was prepared to write what this Commission is satisfied was a veiled threat to the Rwanda supported Administration in Kisangani. (see Paragraph 20.3.1 above) To that extent, this Commission agrees with the Panel as to key figures.

37.2. Members of Networks

37.2.1. Col Mayombo

In support of its allegations against Col Mayombo, the reconstituted Panel supplied this Commission documents which purported to show that Col Mayombo claimed \$380,000 from RCD, through Professor Wamba, and supplied a witness who gave evidence as to payment thereof. This Commission has taken further evidence on the

matter, and is unable to agree with the Panel that this evidence is convincing. A full consideration is at Paragraph 20.6 above.

37.2.2. Col Otafiire

In support of its allegations against Col Otafiire, the Panel sent various documents to this Commission which have been considered at Paragraph 20.5 above. This Commission has been unable to rely upon them.

37.2.3. Sam Engola

Sam Engola gave evidence to this Commission. Mr. Engola was first mentioned as a Ugandan businessman working in the Democratic Republic of Congo by General Kazini. After some embarrassment, Major Katafiire was forced to admit that Mr. Engola had been travelling to the Democratic Republic of Congo on military planes. Capt Badogo was forced to admit that the plane also carried 1.5 tons of salt for Mr. Engola, on the authority of the Chief of Staff. Mr. Engola himself said that he was operating in the Democratic Republic of Congo, that he exported salt, sugar, soap, cigarette fuel, beer, jerrycans, and carried business people. He also travelled to the Democratic Republic of Congo, he said, over one hundred times. He described the prefinancing system which was set up by rebel leaders, and produced an exemption letter signed by Tibasiima: he told the Commission that he had been granted tax exemption against pre-financing payments by Mme Lotsove, Mbusa, Tibasiima and Professor Wamba, and described the problems which arose from the system for the businessman. He pointed out that he had written a letter of complaint where a pre-financing payment had been made and a letter of exemption issued but not honoured, to Professor Wamba and produced it. He also described the Trinity organisation as follows:

Sam Engola: As I told you that, it is not registered officially, so the people who run the company are the movement of Congo rebel leaders.

Lead Counsel: Which ones in particular?

Sam Engola: Tibasiima. (Let me help the Commission), as I told you earlier, the rebel group does not have the money or office or salary, now they tried to form a company called Trinity to raise money to help them meet their obligations and their finances. Now as I told you that, the government is not in the rebel territory to register a company, they just formed Trinity Investment, then they go to the Congolese business community i.e. all who were doing business in Congo. They invite us and

10

say; we want to raise money. Now when you pay money to Trinity then you get the exemption letter, that any goods under the name of Trinity is free in Congo, but you have paid. So this is prepayment of taxes. Now you find that my Congolese friends whom I know, whom I deal with, that is why they can implicate me and say that; I am among, Mr. Manu Soba signed by Tibasiima and Mr. Idi Taban, these are the rich men in Bunia. Now because Mr. Tibasiima comes from Bunia, you know, when you come from the area, you know who is who and who is rich and who can afford. So he would say; give us \$100,000 for Trinity, but there is no agreement, there is no receipt. But because he is a Minister, his signature is honoured at the border or at the Customs post, they would say; we were given a tax already for 6 months, but you have paid. But because the leaders are fighting for this money, or how to use this money or the accountability, then they mix the business community also and start saying that; they have not paid taxes, and yet you have paid. So these people have been paying money to Trinity's account which is for the movement and then they get the exemption letter and with this, they use it only for fuel, essential goods like, sugar, salt and soap, but you have paid.

In describing what he said was Mr. Engola's part in Trinity, and pre-finance, the witness
20 supplied by the panel and interviewed by this Commission in Nairobi said:

30

Lead Counsel: So what exactly was Trinity doing? How did this work within this framework that you've mentioned?

Witness: Tibasiima took charge of all the functions of Finance Minister, if my memory serves me right, between August and October 1999. Until when Wamba had to come, and established in Bunia, and during this time, there was already an analogue operation, which was operating under the name of Sam Engola. We did not understand that Tibasiima was going to take responsibility, to change the names, but to keep in place the same system. Sam Engola was going to disappear, to give way to Trinity, to pave way for Trinity.

Justice D. Porter: And who is Sam Engola?

Witness: He is a Ugandan businessman.

This Commission had difficulty in understanding how an operation similar to Trinity as described by witnesses could be operated by a Ugandan businessman, when the organisation clearly was of a nature which could only be authorised and profited from by a rebel leader, since it involved exoneration from tax against a pre-payment. The witness was unable to enlighten this Commission any further.

Any suggestion that Sam Engola was a founder or member of Trinity does not seem to make sense: what does seem to make sense is that he was, as the reconstituted Panel say, a private
40 entrepreneur trading with the Democratic Republic of Congo, but finding that the only way he could do so was to take the risk of paying the authority in control a sum to represent taxes in advance against an exemption letter (which did not always work) on an informal basis, which

system was later formalized by Tibasiima (though Tibasiima denies it). The fact that Mr. Engola, as a private businessman was trading with the Democratic Republic of Congo cannot, as has been examined elsewhere, be criticized.

It cannot be supported, on the evidence before this Commission, that Sam Engola was a member of the alleged network: the evidence does reveal that he, according to his own public admission, was conducting trade with the Democratic Republic of Congo, which cannot in itself be said to be illegal, illicit, or subject to criticism. There appears to be no reason to advise the Uganda Government to take any action against him.

37.3.Front Companies

10 37.3.1. Victoria

In Paragraph 99 the reconstituted Panel cite Victoria, Trinity, La Conmet, and Sagricof as front companies for the network.. This Commission has advised the Ugandan Government to take appropriate action in respect of those shown to have been involved in Victoria

37.3.2. Trinity

On the evidence received, Trinity is involved in tax fraud and personal theft by Congolese officials, and appears to be a Democratic Republic of Congo -based informal and unregistered organisation, headed by Tibasiima. Apart from the vague and unsupported allegation that Salim Saleh is at its head, of which this
20 Commission has no convincing evidence, there does not appear to be any Ugandan involvement. Indeed there is clear evidence that Uganda did its best to persuade rebel leaders to establish a financial system of transparency and accountability, and promoted FLC as a means to achieve the fair distribution of funds for all purposes.

37.3.3. La Conmet and Sagricof

This Commission has considered the position of La Conmet in Paragraph 40.2 below, and cannot see that it is anything but a trading company: there is no evidence that Sagricof is any different. One would expect such companies to be involved in personnel, logistics and financing, and this cannot be considered to be
30 a problem.

37.4. Methods used by Networks

The reconstituted Panel complain that the network relies on intimidation, maintenance of a public sector façade in the form of a rebel administration, and manipulation of money supply and the banking sector using counterfeit currency and other related mechanisms.

Certainly the evidence against General Kazini shows intimidation on behalf of Victoria: and his correspondence implies that without his assistance, a company trying to work in the Democratic Republic of Congo would run into all sorts of problems with the UPDF, whose Commanders were warned off Victoria by General Kazini. This evidence also shows that an attempt was being made to control the various administrations, including those who had no alliance with Uganda, and this Commission therefore agrees with the reconstituted Panel that a façade in the case of Victoria was being used.

As to manipulation of the banking sector, there is no evidence before this Commission, or in the text of the Final Report of the reconstituted Panel, to support these allegations.

37.5. Intimidation and use of force by UPDF

In Paragraph 101, the reconstituted Panel deal with the networks' use of the UPDF through intimidation and the threat and use of force. This Commission's finding on intimidation is dealt with in the preceding paragraph. In the case of gold, there is clear evidence of occupation of gold producing areas, though not originally for the sole purpose described, and the subsequent armed interference with artisanal production. As to the collection of taxes, there seems to be a dichotomy: on the one hand the reconstituted Panel complain of the pre-financing operations of Trinity, while on the other they accuse the networks of collecting taxes to generate revenue for the UPDF. This commission doubts, as it has said elsewhere in this report, that if such a thing is occurring, that it is a policy of the UPDF. On the other hand, individual officers have been shown to be only too ready to charge for "Security services", and General Kazini found it necessary to direct them to refer such matters to himself.

38. TRAINING OF PARAMILITARY FORCE

It is alleged in paragraph 102 that in anticipation of Uganda's agreement to withdraw all UPDF troops from the Democratic Republic of Congo , except for a reinforced battalion in

Bunia and a small number of units on the slopes of the Rwenzori Mountains, a paramilitary force is being trained under the personal authority of Lt. General Salim Saleh which is expected to continue to facilitate the commercial activities of UPDF officers after UPDF have departed. It is said that the paramilitary group is drawn from dissidents from Jean-Pierre Bemba's MLC, members of the Uganda-supported RCD-Congo including its leaders Professor Kin-Kiey Mulamba and Kabanga Babadi and others in the north – eastern Democratic Republic of the Congo who had supported UPDF in the past. It is said that Mr. Heckie Horn, the Managing Director of Saracen Uganda Ltd and Lt. General Salim Saleh are jointly supporting the paramilitary group. It is also said that Mr. Horn provides military
 10 training and arms to the group. The Panel do not say where this is taking place.

It is further said in paragraph 103 that Lt. General Salim Saleh and Mr. Horn consulted President Joseph Kabila to obtain support for this covert operation, whose primary objective had been to replace Mbusa Nyamwiisi with Roger Lumbala as head of RCD – K/ML in order to ensure access to the diamond-rich areas around Buta and Isiro controlled by Mr. Roger Lumbala's rebel group, RCD-Nationale, whilst their long-term objective is to bring about the downfall of Jean-Pierre Bemba. It is further said that the ultimate aim of the group is to confront RCD-Goma and Rwanda after it had obtained increased members and training.

The Panel agrees that when it interviewed Mr. Horn he denied categorically that he was involved in any such covert operations with Lt. General Salim Saleh. In spite of Mr. Horn's
 20 denial, the Panel included the allegation in its report to make it appear that it was true without indicating why it disbelieved Mr. Horn. It did not interview Salim Saleh on the subject.

This Commission has received sworn evidence from both Mr. Horn and Lt. General Salim Saleh on the issue. Mr. Horn has categorically denied the allegation. He said that he has personally never been to any part of the Democratic Republic of Congo. The nearest the company, Saracen Uganda Ltd, of which he is a Managing Director, has been to the Democratic Republic of Congo is along the banks of Semliki River where the company is providing security services to a company that is doing oil exploration. Semliki River is on the border between Uganda and the Democratic Republic of Congo.

Lt. General Salim Saleh admits he has 50% shares in a company called Special Services that
 30 has 25% shares in Saracen Uganda Ltd; 75% of the shares of Saracen Uganda Ltd is owned by Saracen International. Lt. General Salim Saleh consequently owns not 25% of Saracen Uganda Ltd, but 12.5%. Lt. General Salim Saleh told the Commission that neither Mr. Horn nor Saracen Uganda Ltd is involved in any covert operation with him in Democratic Republic of Congo or elsewhere, and that he has never been to Congo with Mr. Horn. He, however,

said that as part of the efforts to try and bring peace between Uganda and Democratic Republic of Congo, he has been given a special assignment by the President of Uganda to reorganise the Congolese rebel deserters whom he has gathered at Namboole near Kampala, so that they can be sent back to Kinshasa. That is the only force he was in touch with. The force was neither a paramilitary group nor a covert operation. What he is doing has the support of the President of Uganda, and of President Kabila. He said that he appeared before this Commission on 30th October, 2002, only two days after he had returned from a visit to President Joseph Kabila on the issue.

The Commission visited the Sports Hotel at Namboole where it observed a large number of families living, identified to this Commission as soldiers from rebel groups in the Congo, the same groups as mentioned by the reconstituted Panel, and Salim Saleh. These soldiers and their families were under the care of Pan Afrikan Center for Strategic and International Studies. There was no sign of any military training, and the only sign of security was two guards on the gate coming, not from Saracen, but from Interid. There was information that, spread around Kampala were other groups totalling some 500 ex-rebel soldiers in all. Visits to the Project, which was being handled by Salim Saleh, had been made by a Minister and others from Kinshasa, and also the Charge d'Affaires from the Embassy in Kampala. The desire of the participants was to go back to Kinshasa as soldiers for the Kinshasa Government. This appears to be a genuine project, supported jointly by the Uganda and Kinshasa Government.

There is no evidence of any other group being trained in Uganda or the Democratic Republic of Congo for such purposes, and since the reconstituted Panel have not revealed their source, nor where the alleged paramilitary training is taking place, there is nothing further this Commission can do to investigate this allegation.

To quote Mr Horn:

30

If I may say something; I just feel that it's extremely irresponsible for people to make allegations like this without any proof. And I can say we are supplying work to 1300 people in this country. This can have a tremendous ripple effect within the commercial market. Our clients can turn around and say, look at what Saracen is doing. And that's one of the reasons why I am standing here today, is again I want to categorically deny these things, we are not selling guns in the Congo, we are not training rebel groups in Congo, I've never been inside the Congo, we are a commercial security company. And I want to protect the company as well as the people working for the company. Because to put 1300 people out of work because of malicious rumours I think it is very, very unfair. From what is supposed to be a responsible panel organisation - or whatever you want to call it.

It is of course possible that there is some secret paramilitary group being organised and funded by Lt. General Saleh as the Panel describe. It is also possible that the group Lt General Saleh has told this Commission about at Namboole and elsewhere in Kampala is the group to which the Panel refer. From the Panel's report, it is impossible to tell whether they and Lt General Saleh are talking of the same group. If they are, then the Panel has clearly been misled by its sources. If not the matter could have been cleared by specifying where the group was being trained: either the Panel or this Commission could have then visited the area, when the matter would no longer have been in issue. Now that there has been a general withdrawal of UPDF troops, without evidence of such a paramilitary force, the Panel's theory of networks
 10 under the continuing control of the UPDF is considerably weakened.

This Commission therefore has no reason to disbelieve Lt. General Salim Saleh and Mr. Horn: indeed the composition of the people collected at Namboole derive from such disparate rebel organisations according to the Panel that that fact alone gives support to his evidence.

It also follows that, if there is no training of a paramilitary force to take over from the UPDF when the UPDF leaves, then the case for the establishment of networks controlled by UPDF becomes even thinner.

39. TAX EXEMPTIONS

In Paragraph 104 the reconstituted Panel refer once again to tax exemptions. On the evidence the probability is that tax exemptions arise from pre-financing deals. Those not directly
 20 involved would only see the letter of exemption, particularly in cases where it is said that those payments were made to Trinity or others, and disappeared into a Congolese pocket. This would give rise to a perception that the companies were benefiting, and this Commission thinks that, in the majority of cases, it is this perception upon which the reconstituted Panel has been misled to rely

As an example of the granting of a tax exoneration to Col Otafiire, at the request of the witness interviewed in Nairobi the reconstituted Panel provided him with a document which he produced in evidence. This was a letter from Col Otafiire introducing a proposed commercial operator who wanted to import petrol. It bore no request for tax exoneration: and in the circumstances, if it had, the exoneration would have benefited the commercial operator,
 30 not Col Otafiire. Col Otafiire agrees that he introduced a number of commercial operators to authorities in the Democratic Republic of Congo, and said that as Minister of State for Regional Cooperation, such things were part of his duty. If the reconstituted Panel is relying

on such letters, (and only the one example has been provided), then this Commission cannot agree with their conclusions in this Paragraph.

39.1. Local Operators

In Paragraph 105, the reconstituted Panel point out that such favours shown to Ugandan importers would affect local commercial operators badly. Obviously this would be so, where no tax was paid, but the reconstituted Panel leave out of account the pre-financing payments which the evidence, even that of the Nairobi witness, clearly shows were being collected from importers. The question of the sufficiency, and the application of these collections would be a matter which should be taken up with the rebel authorities to whom they were paid.

39.2. Victor Bout

In Paragraph 107 the Panel refer to the involvement of the transnational criminal group of Victor Bout. From a list of outbound flights from 1998 to 2002 from Entebbe (which was provided to the reconstituted Panel by this Commission), the reconstituted Panel make a connection with Planet Air, which is said to file flight plans on behalf of his airlines, named as Okapi Air, renamed Odessa.

This Commission prepared the list in question from CAA log entries of flights to the Democratic Republic of Congo, and also has the incoming flights on another database. The list with outgoing flights was submitted to Mr. Raeymaekers of IPIS, who was able to match up the plane registration numbers with ownership of the planes. There are 97 flights of planes said to belong to Victor Bout recorded. They have been registered by CAA individually as operated variously by ACS, Air Cess, Central African Air, Air Pass, Military and Nyota. There is only one flight recorded as of Planet Air. There are no flights for Okapi Air or Odessa.

While it is clear that planes of Victor Bout have been used extensively from Entebbe to the Democratic Republic of Congo, the connection to Planet Air and Jovial Akandwanaho is unsupported by the database to which the reconstituted Panel refer.

40. STRATEGIES AND SOURCES OF REVENUE

40.1. Coltan:

In Paragraph 108, the reconstituted Panel make the first specific allegations against Ugandans in respect of Coltan. In earlier reports the matter has been largely ignored.

It is too late in the day for this Commission to launch a further inquiry on this subject. This Commission would point out that the description by La Conmet, which is accused of operating within Trinity, of the gathering of Coltan, supported by their copy purchase receipt book, reveals purchase of small amounts of Coltan from hundreds of different artisans over a period of 6 months, and payment of taxes on the subsequent export. This does not reveal a coordination of the supply under Trinity.

40.2. La Conmet

The reconstituted Panel, in its Final Report, allege in paragraph 108 that Coltan has been exploited extensively in Oriental Province by various armed groups under the protection of UPDF and used a company called La Conmet as a case study of a commercial chain involving coltan in paragraphs 109 – 111. The allegation was that in March 2002, the reconstituted Panel members met with one Valentina Piskounov who, together with her husband, Anatoli Piskounov, represents and operates La Conmet from Kampala. It alleged that Ms Piskounov told the Panel that because of the collapse of the international coltan market, prices for the mineral in the eastern Democratic of Congo had dropped dramatically, but the international dealers continue to have interest in coltan from Democratic Republic of Congo due to ‘very low’ labour costs of extracting the mineral. Therefore La Conmet continue to buy coltan from its office in Butembo in the Democratic Republic of Congo. Ms Piskounov is alleged to have told the Panel that their purchase price for coltan with a 30% tantalum content was \$ 10 per kilogram, which the Company sold at \$ 17 per kilogram.

Ms Piskounov is also alleged to have told the Panel that the company’s coltan was transported by road from the Democratic Republic of Congo to Entebbe International Airport from where it was transported to Kazakhstan for processing. It is said that in addition to the profit made on the sales of the coltan, La Conmet had been granted ‘full exoneration’ for all its activities involving exploitation for the territory of Beni-Lubero in the Democratic Republic of Congo. The exoneration included freedom from paying fiscal and customs duties. The document granting the exoneration signed by Mbusa Nyamwisi, who was then Commissioner General for RCD – Kisangani on 5th January, 2000 in which General Salim Saleh is identified as the owner of La Conmet, was said to be in possession of the Panel. This Commission has not seen it.

This Commission received evidence from Ms Valentina Piskounova and her husband as well as Lt. General Salim Saleh. The evidence of the Piskounovs show that La Conmet S.P.R.L is a company registered in the Democratic Republic of Congo. It is

owned by a Uganda registered company Kullinan Finance Investment Company. Kullinan Finance Investment Co. Ltd is owned by Mr. Anatoli Piskounov and an offshore company called Term Invest Company INC, an international Business Company incorporated in the British Virgin Islands on 11th September, 2000. Kullinan Finance Investment Co Ltd owns 99% of the shares in La Conmet whilst 1% of the Shares is owned by Ituri Gold Mining Co.

The Commission is in possession of the registration documents of both companies. Lt. General Salim Saleh has no interest in any of the companies that own La Conmet. Therefore he could not be the owner of La Conmet. Lt. General Salim Saleh has testified on oath that he has no interest in La Conmet. His evidence is corroborated by Mr. and Mrs. Piskounov.

According to the evidence available, La Conmet exported only one consignment of coltan from Democratic Republic of Congo to Ulba, Kazakhstan in October 2000. The commission has in its possession receipts for taxes paid by the company to the Congolese authorities in respect of that export. Therefore it is not correct that the company was exempt from paying fiscal and customs duties.

It will be remembered that the original Panel ran into some trouble in its case study of Dara Forêt: here is another example of a problematic case study, involving a report of an interview which does not reflect the facts revealed by documentation. No doubt a complete case study would have involved looking at the documentation available from the Piskounovs, compared with the document in the panel's possession. Unfortunately the reconstituted Panel did not avail that document to this Commission, which must proceed on available evidence.

Consequently this Commission has come to a conclusion that the allegations contained in paragraphs 109 – 111 are not supported by credible evidence.

40.3. Diamonds - Victoria

In Paragraph 112 the reconstituted Panel set out briefly the information supplied to it by this Commission in relation to Victoria's diamond operations, and Khalil. This Commission has no evidence to connect Lt. General Saleh with Victoria, nor is there any evidence available upon which this Commission could act, that Victoria has been purchasing gold from local comptoirs with counterfeit money: it may or may not be so, but there is no evidence upon which this Commission can recommend any action by the Government of Uganda.

40.4. Tax Fraud and the requisition of assets

This Commission has no information on the matters dealt with by the reconstituted Panel in Paragraphs 114 to 117.

40.5. Economic exploitation and ethnic conflict.

This Commission has dealt with the ethnic conflicts at Paragraph 22.4 above. According to the reconstituted Panel in Paragraph 122, and 123, there is a Protocol d'Accord dated 22nd February 2002, signed by Mbusa Nyamwisi and John Tibasiima for RCD-K/ML, and by Col Mayombo as an official representative of the Government of Uganda. It is alleged to provide for reduction of armed conflict in Ituri, keeping a contingent in place for that purpose, with a provision for payment of the UPDF of \$25,000, and exoneration from all duties and taxes due to the rebel administration. If such an agreement exists, this Commission is astonished that the reconstituted Panel would not have supplied this Commission with a copy of it, and access if necessary to the original. It is not quite clear whether the reconstituted Panel are saying that the document, or a copy of it, is in their possession, or whether, as in another case, they had merely heard of it. The alleged document has been denied on behalf of the Ugandan Government by the Minister of Foreign Affairs, and in evidence before us by Col Mayombo. In the face of such direct evidence, this Commission cannot take the matter any further, nor make any recommendations which might be able to put into effect action based upon the allegations in these Paragraphs, other than that, if it does exist, it should be publicly renounced.

Since completion of the final draft of this Report the Ministry of Foreign Affairs requested, and was availed from the UN Panel Office, a copy of the alleged Protocole d'Accord, and in view of Col Mayombo's evidence, this Commission sent it to the handwriting expert for analysis, together with specimen signatures of the three parties who are alleged to have signed it. In respect of the purported signatures of Mr Tibasiima and Col Mayombo, the opinion of the handwriting expert is uncompromising, and matches the untutored observation of this Commission, that these signatures are clumsy forgeries. The purported signature of Mr Nyamwisi is not so obviously forged to the untutored eye,. However, the handwriting expert reports that it is highly likely that the document was not executed by Mr Nyamwisi.

In addition to the evidence obtained from the handwriting, Col Mayombo points out that it would have been crazy for the parties to execute such a document at a time when the UN Panel and this Commission were actively investigating

This Commission itself is confused as to the purpose of the document. On the face of it, it appears to be an agreement for, inter alia, payment of US\$25,000 per month to UPDF Officers, and further, exoneration from tax for the UPDF and certain airlines.

The document describes “the ally” in Paragraph 2 of the decisions, not as the Uganda Government, on whose behalf the Panel would have Col Mayombo as signing, but as the UPDF.

10 Only a little thought makes it very unlikely that the whole UPDF, from Army Commander to the lowest private, would be able to secure complete exoneration from tax on behalf of favoured companies, or indeed themselves, merely by signature, for ever more. This in itself raises doubts about the document.

Further, the agreement would be an agreement which could never be used, because it could never be made public in the event of a dispute, and therefore never enforced. This is so because, as the Final Report of the Panel shows, publication of the terms of the agreement would immediately be accompanied by an outcry from the International Community.

The purported Protocole d’Accord is a final attempt by the Panel’s informants to drag the name of Uganda as a state into the limelight for criticism. The attempt fails.

40.6. Armed Conflict and its consequences: Malnutrition and mortality

20 This Commission groups together Paragraphs 124 to 131, because in those Paragraphs the reconstituted Panel describes the horrifying consequences of war, not solely attributable to the actions of the UPDF. This Commission does not wish to minimise the seriousness of these problems, and joins with the reconstituted Panel, and no doubt the whole International Community, in decrying such actions wherever in the world they occur, and in fervently praying for peace, particularly in the Democratic Republic of Congo . So far as Uganda is concerned, any step of disengagement taken, consistent with Uganda’s border security and the Lusaka Agreement is recommended. It might also be thought that officers named in the Panel’s Final Report, whether found by this Commission to have been implicated or
30 not, should be removed from all official connection with the Democratic Republic of Congo, in order to avoid unfortunate perceptions, and further allegations of interference.

40.7. Cooperation

Under the heading “Collaboration of the Panel with the Porter Commission in Uganda”, the reconstituted Panel appear to be critical of the work of this Commission.

At the inception of the enquiries of the reconstituted Panel, this Commission was unable to obtain any documents at all from the reconstituted Panel. On one visit to this Commission, it was explained by the Panel’s Chairman that UN Panels never released their sources of information, bearing in mind protection of their sources. This Commission therefore lobbied many of the Diplomats in Kampala to exert pressure through the UN for the release of some information: and, late in the proceedings, one document with attachments relating to General Kazini was sent, whether as a result of that lobbying or not being unknown. After a successful (from the point of view of the Panel) cross examination of General Kazini, other documents were sent.

This Commission has been disappointed that more documents have not been made available, to enable it to take to task officers of the UPDF who have clearly been lying before this Commission. As an example, this Commission would have expected the Panel to have volunteered a copy of the Protocole d’Accord alleged to have been signed, amongst others, by Col Mayombo as an official representative of the Government of Uganda, referred to in the reconstituted Panel’s Final Report at Paragraph 122. Minutes of the meeting referred to in the following paragraph would also have been of great assistance. This Commission has been able to take evidence from Col Mayombo on this matter: he denies having signed any such document, and it would have been beneficial to have been able to put it to him, in order to demonstrate that he is the liar the reconstituted Panel believes him to be. In fact after completion of the final draft of this report, the Ministry of Foreign Affairs obtained a copy of the alleged Protocole, which this Commission has examined at Paragraph 40.5 above. The document is clearly, even to the untutored eye, a forgery.

Since the Panel is in the position of accuser, rather more help, in the form of ammunition for cross-examination of witnesses, was hoped for, although this Commission would immediately acknowledge the great assistance given by the reconstituted Panel in availing the statement of, and facilities for interview of, the Nairobi witness.

In respect of those documents which have had to be ignored due to the opinion of the handwriting expert, and the observation of the members of this Commission, it should

be pointed out that the opinion of the handwriting expert is supported by photographs clearly showing the problems he identified: it should also be said that a simple test by lining up a piece of A4 paper, while not definitive, can easily identify such problems before making the decision to forward such matters for expert opinion, and can even now be conducted on the exhibits available to confirm for the uninitiated what the expert has clearly demonstrated in his reports. Such evidence is not easy merely to dismiss by statement without investigation.

The original purpose of the Panel was to investigate allegations of illegal exploitation. It reported on many such matters, and its report was met with criticism, a great deal of which this Commission has found to have been justified. Early meetings with the reconstituted Panel reflected this, and could well have contributed to a perception of strained relations, and criticism on the part of the Panel, which at that time was composed of a majority of original Panel members. The initial refusal of the Panel to name sources or release documents certainly contributed to the difficulty of conducting this Commission.

In the Addendum, the reconstituted Panel moved from the word “illegal” to the word “illicit”. This Commission has also explained the consequences of this, both to the reconstituted Panel in meetings, and in this Report.

In the final Report, so far as Uganda is concerned, the reconstituted Panel appears to have abandoned the use of either word completely, contenting itself with talking of networks which in themselves, “closely resemble criminal organisations” supported by organized or transnational criminal groups.

The reconstituted Panel has clearly moved on from its original mandate to look at excesses: this Commission had dealt with this at Paragraph 31.1 above, and would not criticize the reconstituted Panel for that: it would merely comment that the Commission’s terms of reference are tight, relating to illegal exploitation of the natural resources of the Democratic Republic of Congo, and therefore the Commission could not accompany the reconstituted Panel on its wider journey.

Nevertheless, on that journey, the reconstituted Panel has come across additional factors which go to show that some of the criticisms of the original Panel, though denied by witnesses before this Commission, and unsupported by evidence before this Commission, were in fact right: and there is no better example than the correspondence showing that General Kazini was working on behalf of Victoria, leading to a connection with a chain of evidence referred to by the reconstituted Panel

in Paragraph 112 of their report, which evidence was supplied to the reconstituted Panel by this Commission, (although there is no acknowledgement of that).

The Chairman of this Commission communicated to the Chairman of the reconstituted Panel his satisfaction that at last it had been possible to make a finding based on clear evidence with respect to that, in the hope that once the deadlock over the supply of documentation by the reconstituted Panel had been broken, further assistance would be availed.

10 The wording of the communication, set out in the Final report, clearly shows a, perhaps inappropriate, satisfaction that finally the Commission was able to get somewhere, and to make a finding which the reconstituted Panel might have recognised as a desire fairly to investigate and confirm, according to its rules of evidence, an allegation the truth of which the reconstituted Panel was satisfied, and reveals this Commission, where evidence was available, as being prepared to support the objects of the reconstituted Panel.

This Commission was a little surprised that a personal comment such as this, revealing a conclusion apparently reached before publication of its final report, has been published in such a public way. However, what is done is done, and this Commission has found no reason to change what, by then, was a tentative conclusion.
20 No harm has in fact resulted.

40.7.1. "Concessions"

However the reconstituted Panel seems to have continued to treat this Commission with suspicion, as can be seen from Paragraph 136 of the Final Report. The evidence for this is contained only in one word, but the word is so inappropriate, and twice repeated, that it bears a certain amount of consideration.

When cross-examining General Kazini with the benefit of the three documents supplied by the reconstituted Panel, the record is quite clear that this Commission was extremely tough on General Kazini, as is its function if it is forced to descend into the arena. It accused him of lying on previous occasions. In later discussions
30 with the reconstituted Panel, this was indeed repeated.

But on neither occasion was this a "concession": on both occasions it was a comment on the situation as this Commission saw it at the time on the evidence

before it, and indeed now as it completes its Final Report. To use the word “concede” on both occasions is to imply an antagonistic stance by this Commission which it has never taken: far from antagonising the reconstituted Panel, this Commission supplied evidence of the chain which connected with General Kazini, which the reconstituted Panel has set out and relied upon at Paragraph 112. The transcript was provided with a view to apprising the Panel of what was being said to the Commission, in the hope that this would provoke some reaction in the form of documentation upon which the Panel claim to have relied.

10 Further, as the transcript (most of which has been supplied already to the reconstituted Panel) will show, this Commission has throughout done its best to expose weaknesses in the evidence of those who have given evidence before it, although it has had little ammunition upon which to base that cross-examination.

This Commission is criticized for submitting “one of the Panel’s informants to an unusually aggressive questioning designed to frighten the individual and discredit his testimony”. This Commission concedes (this time) that the session was unusually long, and points out that it offered a break to the following day, of which offer the witness did not want to take advantage.

20 However, the manner of questioning was in no way unusual, nor designed to frighten or discredit: those accused by the Panels have been treated in the same manner. That is the function of a Commission, and a method of getting at the truth established over centuries. Establishing the credit of a witness cannot usually be achieved merely by listening to what is said without testing it. The offer has always been open to the reconstituted Panel to observe or participate in the proceedings if it wished. It has not done so.

30 In the circumstances obtaining here, leaving aside technical data and similar matters, and confining the area of investigation to the involvement of Ugandans, one can expect four types of witnesses: the Democratic Republic of Congo Government supporters of various ranks, rebels and their leaders residing in the Democratic Republic of Congo, dissident rebels and Ugandans residing out of the Democratic Republic of Congo, and Ugandans who may or may not have been misbehaving in the Democratic Republic of Congo. Each of those classes can be expected to have an interest in criticizing the others, and in telling less than the whole truth. Complainants who are not prepared to make their complaints in

public should be treated with particular care. Possible mistaken perceptions should also be taken into account and challenged.

In the nature of things, the Panel would have primary access to those who were complaining about the behaviour of Ugandans, normally of the first three classes, and would, (or at least should) thereafter approach and interview those accused, that is, normally, Ugandans on the subject of the complaints. This may be an oversimplification, but that is why this Commission views the Panel as accusers, or complainants.

10 This Commission's position is different: it is tasked to investigate the allegations made by the Panel, and recommend to the Government of Uganda steps which the Government could take. In performing its task, while it has wide powers of investigation in Uganda, it has none elsewhere, and particularly not in the Democratic Republic of Congo . This Commission would in the nature of things have primary access to the fourth class, those accused who would also have an interest in criticising others and telling less than the whole truth. The best manner to resolve any differences would have been for open communication between the Panel and the Commission.

In regard to a general allegation there is little that can be done. The Uganda Government has asked in its response for specificity and supporting evidence.

20 In regard to an allegation against a particular individual, unsupported by primary evidence of a witness in complaint (which the Panel appears not to be able to avail, due to protection of its informants, a position this Commission understands in some cases), or by supporting documentation, this Commission's hands are tied. All it can do is to put the allegation to the person accused, listen to him deny it, and conclude that it cannot recommend to the Government of Uganda that further steps be taken, for lack of evidence. Sometimes the accused person, in denying accusations, provides information which can be used in cross-examination of other accused persons, which may result in a useful conclusion. Sometimes evidence can be compared with other sources, such as the databases prepared by this
30 Commission, copied to the Panel.

To simplify the matter, imagine a prosecution of a man for murder, based upon a newspaper article, with no witnesses for the prosecution, no weapon no motive and no dead body: or a civil case in which the Plaintiff files a Complaint but does not give evidence. These are parallel situations.

The first documentation supplied by the reconstituted Panel in respect of General Kazini, gave this commission some hard evidence upon which to come to a conclusion which supported the Panel's. Its consideration of the evidence, the documents themselves, and a transcript of the evidence taken are there for all to see.

40.7.2. Questionable documents

10 With regard to the next bundle of documents, there were problems. The documents were not received until shortly before the end of this Commission's already extended life, and in order to investigate, a further extension of 3 months was required.

This Commission has considered those documents at Paragraphs 20.3 above to 20.7 above. Unlike the first set, which General Kazini admitted writing after some of the "aggressive" questioning of which the reconstituted Panel complain, those concerned on oath said that many of the documents were forgeries. This cast the burden on this Commission of looking into the matter.

20 None of the members of this Commission profess any knowledge of the technicalities of forgery of documents, and documents which appeared suspicious were sent to a handwriting expert, in the normal course of investigation. The expert has reported: his evidence is contained in exhibits and is available for all to see. In some cases he has advised this Commission that some documents are forgeries, and this Commission has decided, on the basis of that evidence, and in some cases, due to the contents of the documents themselves, that it is unable to rely upon them. This decision was communicated to the reconstituted Panel in the spirit of co-operation, and resulted in the offer of a witness in support. This witness was interviewed (in Nairobi, with the Panel's welcome assistance), and a further witness, mentioned by that witness as one who would confirm his evidence, but who gave contrary evidence, interviewed in London.

30 In addition to the above, the Protocole d'Accord referred to by the Panel has turned out to be a definite forgery: and this adds verisimilitude to the decisions made by this Commission in respect of other questionable documents. The danger of relying on these documents cannot be dismissed out of hand, as the Panel has done in Paragraph 135 of their Report.

40.7.3. Credibility

The Panel say “The Panel’s many efforts to establish a constructive relationship with the Commission have mostly been met with attempts to dismiss its credibility”, and gives the above as examples. This Commission has been presented with evidence, has examined it, found problems with some of it, and decided that it is unable to recommend to the Government of Uganda that it can take action upon it. This should not be construed as an attempt to discredit the Panel.

10 As the reconstituted Panel say, this relationship is unique, and in the respectful submission of this Commission, eminently desirable. However, it is plain, from what the reconstituted Panel say, that without the encouragement of Member States, no working relationship could have been established. This Commission has had no such approach, and was always desirous of establishing a working relationship. The difficulty has always been the Panel’s reluctance to release information. This interpretation is confirmed by the fact that this Commission had been working for nearly a year before information considered useful by the reconstituted Panel began to be provided. This Commission takes the view that an opportunity to enable Uganda to confirm Panel allegations and to act upon them with hard evidence has been lost.

20 40.7.4. Comparative Procedures

This Commission has not questioned the Panel’s credibility as alleged: it has merely considered the evidence before it, and recorded its conclusions. On many occasions this information has been supplied to the Panel. This Commission takes the view that there are sufficient arguments over the Democratic Republic of Congo and would have preferred not to have to enter the lists. However, in view of Paragraph 135 of the Final Report, this Commission would ask, in view of its own consideration of the evidence, whether the Panel is right in saying that “reliable witnesses have testified to their (letters) validity”. Are the witnesses truly reliable? Did the Panel ever entertain any doubt of it, or test the witnesses and the documents as has this Commission, whether aggressively or not?

30

Is the Panel right, by saying that this Commission “has submitted other documents signed by ranking officials to handwriting analysis to imply that they may be forgeries”, to suggest that this Commission has by some underhand and unfair

means cheated the Panel out of the ability to rely on documents which appear to be at the basis of the Panel's case against certain officers?

How can the Panel say "The analysis of those documents, however, suggests that the signatures were probably genuine." What analysis? By whom? How does it compare with the expense, care, effort and time spent by this Commission on this subject? Is it available to the public for assessment, as are the evidences and the deliberations of this Commission?

10 This Commission takes the view that, if documents are shown on the evidence to be questionable, they should not be relied upon either by this Commission or by the reconstituted Panel.

As to the matter raised by the Panel, relating to its credibility (considered at Paragraph 40.7.3 above), or, as this Commission would prefer to put it, the credibility of its Report, it is only necessary to refer to the unfortunate matter of the forged Protocole d'Accord to form an opinion on the matter. The whole report of the Panel is undermined by the failure of the Panel to deal with this problem, since if the Panel can be so badly misled by one informant on a subject so strongly relied upon in their Report, it cannot be ruled out that the same has happened in other areas.

40.7.5. Powers of the Commission

20 Lastly, the reconstituted Panel, in Paragraph 137 have set out what it conceives to be the position of this Commission. Unfortunately, there are some misunderstandings. Commissions of Inquiry report direct in confidence to the Minister who called them, in this case the Minister of Foreign Affairs. It is a matter for that Minister to decide whether to publish the report or not. In this case the Minister is on record, sight unseen, as saying that it will be published. His Excellency the President, on behalf of Government, has said publicly that action will be taken on recommendations in the report. If a report contains recommendations for investigation with a view to prosecution, it is a matter for the Minister involved to decide whether the recommendation for prosecution is
30 justified, and if he does, then he will forward the papers to the Director of Public Prosecutions who has a Constitutional discretion to initiate a prosecution.

The Final Report also states that this Commission has no powers to obtain military records and documents from the Defence Ministry. This is not so, and indeed this

Commission has obtained sheaves of information from such sources, included in the exhibits. Therein lies the problem. There is too much information. What this Commission was trying to get over to the Panel was that in order to make meaningful requests for such records and documents, that is, to narrow the field, this Commission needed documents in support of the Panel's allegations, and that there was no purpose in making such requests without such documentation. This was a problem in communication which was probably the fault of the Chairman of this Commission in trying every tactic to obtain documentary evidence from the reconstituted Panel, which is regretted.

10 **40.8. Agreement in General**

Nevertheless, leaving aside details and personalities, in general this Commission and the reconstituted Panel are not so far apart. There is agreement that the original Panel's allegations against Uganda as a State, and against President Museveni were wrong. There is agreement that officers to a very senior level, and men of the UPDF have conducted themselves in the Democratic Republic of Congo in a manner unbecoming. Arising from this, this Commission recommends that the ongoing Defence Review include:

- 20
 - a careful assessment of the ability, intelligence, and educational achievements of, particularly, officers. Some of those who have given evidence before this Commission have barely been able to make themselves understood, even to the rank of Major.
 - A stringent examination of the capacity of the officer to fill his office as a professional soldier
 - The commitment of the officer to the defence of the State rather than self-advancement and self-enrichment, and respect for Civil Authority as required under the Constitution.

41. RECOMMENDATIONS IN THE FINAL REPORT

Many of the recommendations in the Final Report are of a wide nature, and far outside this Commission's terms of reference. Most are unobjectionable, and a valuable contribution to
30 resolution of the regional problem.

However there are problems with some of the recommendations. This Commission has in Paragraph 36 above pointed out the difficulty in complying with the recommendations in Paragraph 172, relating to phased reductions in aid disbursements, due to lack of specific evidence.

There are similar problems in the recommendations as to restrictions on business enterprises and individuals, many of whom appear in the Annexes without a word in the text to support allegations against them.

Before action is taken against companies alleged to be breaking OECD guidelines, it would be necessary to be sure that the companies involved were covered by those guidelines.

42. ADDITIONAL EVIDENCE

Since completing the final draft of this report, this Commission has been approached by a possible witness who stated that he had information which appeared to support some of the allegations made by the Panel in the Final Report. These were matters involving Col Peter
 10 Kerim, Salim Saleh, Mr Horn and others. The reliability of this prospective witness was instantly in question, first because he has come so late, second because he refused to assist, or even to sign the statement taken from him without payment of a very large sum of money.

Additionally, one of the allegations he made was that Salim Saleh was using a company called Eagle Drill to pump crude petroleum from the Democratic Republic of Congo to Kasese along pipes which he had obtained from some abandoned water pipes belonging to the Government. This allegation was so ridiculous that this Commission was unwilling to take the matter further: however, one allegation relating to the possession of elephant tusks could be investigated by the Police, and this Commission set these investigations in train. At the time of writing, the investigators have been given the run around.

20 For these reasons, this Commission cannot take the matter further.

43. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION

In this Commission's Terms of reference, the Commission was tasked to cover four general subjects as set out below:-

43.1. Inquiry into allegations of illegal exploitation of natural resources

43.1.1. Exploitation

10 There is no doubt that there has been excessive exploitation of the natural resources of the the Democratic Republic of Congo since 1998, and indeed from before that. This exploitation includes minerals, coffee, timber, livestock, wildlife and ivory, and has been carried out by foreign governments, but not by the Ugandan Government: by foreign armies under the policies of their governments, but not in the case of Uganda: by international companies (such as Unilever) and businessmen in the ordinary course of trade, operating through Uganda, mainly for export to Europe and America: by senior army officers working on their own and through contacts inside the Democratic Republic of Congo : by individual soldiers taking advantage of their postings: by cross border trade and by private individuals living within Uganda, and, for all this Commission knows, within other countries who have established contacts and assist in facilitating transport and clearance of goods through transit countries.

43.1.2. Illegality

20 This Commission has dealt at length with the question of illegality of exploitation at Paragraphs 11 and 31.1 above. It is clear that the paths of this Commission and of the reconstituted Panel now diverge on this point. This Commission's Terms of reference are specific as to illegality, while the reconstituted Panel are now looking at ways to stem excessive exploitation, whether illegal, illicit or merely prejudicial to the interests of the Democratic Republic of Congo when political normality returns. While this is a praiseworthy object, with which this Commission would have liked to assist, it is not within this Commission's Terms of Reference. The only matter to note is that the reconstituted Panel have almost completely abandoned allegations that what was going on in the Democratic Republic of Congo was illegal, terming it "illicit" instead. As this Commission has shown in Paragraph 31.1, this volte face removes many of the allegations of the original Panel from the need for consideration by this Commission. The Final

30

Report abandons any pretence of “illegal” or “illicit” in respect of Uganda until its recommendations, for instance Paragraph 172. This reference has no support in the text.

43.2. Inquiry into allegations of Mass Scale Looting and Systematic Exploitation

43.2.1. Mass scale Looting

10 This Commission has dealt with the allegations of Mass Scale Looting at Paragraph 15 above, and notes that the reconstituted Panel has abandoned this as a separate heading. Each specific instance given by the original Panel was considered separately by this Commission, and in most cases this Commission found that the allegations were unlikely to be true for reasons given. The outstanding matter was Looting, about which General Kazini clearly knew as he sent a radio message about it. This commission is unable to exclude the possibility that individual soldiers of the UPDF were involved, or that they were supported by senior officers

43.2.2. Systematic and Systemic Exploitation

20 This section of the original Panel Report contains the flawed Dara Forêt Case Study, with which this Commission has dealt at length in Paragraph 24 above, and in respect of which the reconstituted Panel have found Dara Forêt to be legally established. In the Addendum the reconstituted Panel have cleared the Uganda Government of involvement in such exploitation, and this Commission’s investigations have revealed the same. However in the Final Report, Dara Forêt resurfaces as a company which breaches OECD guidelines for Multinational Enterprises. There is no basis in the text for this allegation, and further, the Democratic Republic of Congo, where Dara Forêt is registered, (not in Thailand as alleged in the Annex III), is not a member or signatory of the OECD. Nor is Uganda. It is difficult then to understand the inclusion of Dara Forêt in Annex III to the Final Report.

30 In respect of the Mining sector, there were allegations of Mining Disasters caused while UPDF soldiers were using civilians to mine for them, and the imposition of a gold tax. This Commission’s investigations in Paragraph 16.2 above reveal that there is no doubt that both RCD and UPDF soldiers were imposing a gold tax, and that it is very likely that UPDF soldiers were involved in at least one mining accident. Unfortunately investigations conducted by the UPDF were so

compromised as to be useless. There was also confirmation available of harassment of civilians as alleged by the original Panel (See Paragraph 16.2.2 above). In this area, the UPDF has revealed a lack of discipline which has shamed Uganda on the International Scene.

Under the heading of Wildlife, this Commission's investigations raised many suspicions, but due to lack of specificity in the original Panel Report, this Commission was unable to investigate sufficiently.

Additionally there were allegations of Monopolies and price fixing. On examination of each allegation, this Commission found nothing in these allegations.

10

43.3. Inquiry into Allegations of Complicity by His Excellency the President and his family

Those involved are:

- **His Excellency the President.** This Commission has examined each and every allegation against His Excellency with great care. None of the allegations are based in fact: in one case, the so-called Dara Forêt Case Study, this would appear to call for a specific admission that the original Panel was wrong.
- **Salim Saleh.** This Commission is not impressed by the denials of Salim Saleh, bearing in mind his involvement in air transport to and from the Democratic Republic of Congo. However, apart from the deception practiced upon His Excellency the President, to which this Commission has referred in Paragraph 18.3 above, there is no evidence available to this Commission to take the matter any further, though there is great suspicion arising from evidence from the Nairobi witness that Salim Saleh was involved in Trinity. There are some internal matters upon which recommendations for investigation with a view to prosecution have been made in Paragraph 28 above relating to Salim Saleh, Air Alexander and Take Air. In the Final Report, there are new allegations in relation to Salim Saleh's involvement in La Conmet, which this Commission is unable to confirm (see Paragraph 37.3.3 above), and he is also said to have been the head of Trinity, upon which the evidence before this Commission is confined to the evidence of the Nairobi witness which amounts to an unsupported undetailed allegation only.

20

30

- **Jovial Akandwanaho.** This Commission has set out Jovial Akandwanaho's involvement with Khalil's diamond smuggling ring at Paragraph 21.3.5 above
- **Muhoozi Kainerugaba.** There is nothing in the allegations against this officer. This Commission has dealt with the allegations at Paragraph 14.3 above.

43.4. Inquiry into Allegations of Involvement of Top Ranking Army Officers and other Ugandans

This Commission has found a number of areas in which the allegations of the original Panel
 10 against General Kazini are soundly based in evidence. The main area was General Kazini's involvement with Khalil and Victoria, dealt with at Paragraph 21.3.4 above. In the matter of control of his commanders in the field, investigation, follow up and disciplinary action in relation to complaints under this officer's area of command were suspiciously weak. There is no doubt that as a matter of practice "Security/Intelligence Funding" was imposed on RCD, businessmen and companies, or that General Kazini's regret was that his commanders were likely to take the money for themselves, rather than accounting to him. (See Paragraph 21.3.4 above)

The reconstituted Panel have forwarded to this Commission two documents which involve the Hon Wapakhabulo, Col Mayombo and Col Otafiire in a claim that there was a payment to
 20 them by RCD Kis of \$380,000. This Commission heard evidence from a witness in Nairobi provided by the Panel, and another witness interviewed in London: their evidence was completely opposite. This Commission has considered this matter in full detail (see Paragraph 20.6), and is unable to confirm the Panel's conclusions in this matter. This Commission would further comment that the two documents, one signed by Col Mayombo and the other by Professor Wamba appear to the handwriting expert to be genuine so far as can be told from a photocopy, although denied by the signatories,. This Commission is not satisfied that the main witnesses involved have told the whole truth. However there is no reliable evidence against Col Otafiire and the Hon Wapakhabulo.

There are other allegations against Col Mayombo (Paragraph 20.7 above and Col Otafiire
 30 (Paragraph 20.5 above) which were supported by questionable documents upon which this Commission is unable to rely.

There are a number of occasions on which this commission has found that senior officers have lied to protect themselves while giving evidence: those involved in the mining incidents, Col. Mugenyi, Major Ssonko, and Lt. Okumu as examples. Further the evidence of the liaison

officers at the Military Air Base has been shown to be untrue in respect of goods arriving at the Air Base on military aircraft.

44. RECOMMENDATIONS OF THE COMMISSION

44.1. Indiscipline of UPDF Officers

This Commission recommends that the deliberate and persistent indiscipline by General Kazini and his Senior officers throughout the Democratic Republic of the Congo as revealed by General Kazini's radio messages should be further and thoroughly investigated urgently, and disciplinary action taken (see Paragraph 13 above). Disciplinary action is recommended against those officers named in this section of the Report at Paragraph 13 above.

10 44.2. General Kazini

This officer has been mentioned in connection with a number of incidents in all the reports prepared by the UN Panels. This Commission has heard very clear evidence to confirm many of those allegations. In particular, this Commission recommends that thorough investigation and appropriate action should be undertaken in respect of General Kazini's radio instructions to his commanders not to keep any payments for security funding given to them, but to send such payments to him at TAC HQ (see Paragraph 17.4 above).

This officer has shamed the name of Uganda, and this Commission recommends that disciplinary action against him be taken by the relevant authority.

44.3. UPDF Officers conspiring to allow illegal flights

- 20 The Commission recommends that investigations and disciplinary action should be taken against UPDF military authorities who conspired to see that flights illegal by both Uganda Law and International Convention were falsely recorded as the flights of State Aircraft, which they were not, thereby endangering Uganda's participation in International Air Transport (see Paragraph 14 above)

44.4. UPDF and the Ongoing Defence Review

This Commission recommends that the ongoing Defence Review include:

44.4.1. Assessment

a careful assessment of the ability, intelligence, and educational achievements of, particularly, officers. Some of those who have given

evidence before this Commission have barely been able to make themselves understood, even to the rank of Major.

44.4.2. Professional ability

A stringent examination of the capacity of the officer to fill his office as a professional soldier

44.4.3. Constitutional Requirements

The commitment of the officer to the defence of the State rather than self-advancement and self-enrichment, and respect for Civil Authority as required under the Constitution.

10 **44.5.Senior Officials of CAA**

The Commission recommends that senior officials in the Civil Aviation Authority be considered for fitness, arising from their failure to see that the provisions of the Chicago Convention and the Civil Aviation Authority's Statute were followed, thereby putting Uganda's international standing in air transport at risk. (See Paragraph 14.6.3 above)

44.6.Military Air Base

This Commission recommends that the Military Air base at Entebbe be closed, or revert to civilian operation under the CAA. In any event, apart from true Military Flights, shown to be chartered by Ministry of Defence, all traffic from the Air Base should immediately stop. In that regard, it is recommended that CAA insist on production of written proof of charter
20 before clearing the flight for takeoff. Customs should maintain a full time presence at the Air Base. (See Paragraph 14.6 above)

44.7.Mining Sector

The Commission recommends that the whole question of inquiry into complaints against officers of the UPDF relating to mining sector should be looked into extremely carefully. The officers involved in this matter include General Kazini, Lt. Col. Mayombo, Lt. Col. Mugenyi, Major Sonko, Major Kagezi, Lt. Okumu. Investigations made by UPDF in respect of these complaints have been poorly conducted either purposely or through incompetence (see Paragraphs 16.2,16.2.1 and 16.2.2 above)

44.8. Lt. General Salim Saleh

44.8.1. Disobedience to the orders of the President

The Commission recommends that the disobedience shown by Lt. General Salim Saleh in respect of purporting to dispose of control of Air Alexander International Ltd., while retaining control in fact, contrary to the President's orders be further investigated for appropriate action. (See Paragraph 18.3 above)

44.8.2. Take Air Ltd

10 The Commission recommends further investigations in respect of Take Air Ltd, to trace and confirm accountability for Ushs 111 million. The Commission has been unable to complete inquiries as Salim Saleh has failed to produce the necessary supporting documentation. See Paragraph 18.4 above

44.8.3. Offences against the Companies Act

The Commission recommends that two other specific offences against the Companies Act committed by Lt. General Salim Saleh should be pursued for appropriate criminal action. (See Paragraph 28.1 above or Paragraph 20.1 above and Paragraph 44.10.4 below)

44.9. Diamond smuggling:

20 The Commission has had information which confirms the participation of Jovial Akandwanaho in the smuggling operations of Victoria. There is every indication that there is a link between General Kazini, Victoria, Khalil and Jovial Akandwanaho. The evidence which came to light during Police investigation of a robbery case opened many channels of investigations. In the circumstances, this Commission recommends strongly that this smuggling of diamonds, contrary to the Laws of Uganda, should be thoroughly investigated for further action on the basis of the evidence revealed in this report.(see Paragraph 21.3 above)

44.10. Registration of Companies

44.10.1. Updating of Register

This Commission recommends that the updating of the Registry referred to above be implemented speedily (see Paragraph 28 above).

44.10.2. Proactive management of Registration

This Commission recommends that the Registrar and the staff of the Registry should seriously accept responsibility for proactive management of the Registry and of the important actions required of Registered Companies. All current files should be checked for compliance, and immediate action taken against companies which offend the requirements of the Companies Act.

44.10.3. Revision of penalties

This Commission recommends that fines and sentences for offences under the Companies Act be revised urgently. They are currently too low.

10

44.10.4. Air Alexander

This Commission recommends that, as an example of the Government's determination to rationalize the Registry, and to encourage other Companies to comply with the Act, the facts revealed by this Commission's investigations of the file of Air Alexander at Paragraph 35.1 above be presented to the Director of Public Prosecutions for further investigation with a view to prosecution of the responsible parties.

44.11. URA

20

A Commission of Inquiry into the URA has been established. It is suggested that this Commission's recommendations on the URA be copied to that Commission for further consideration in the context of the mandate of that Commission.

44.12. Addendum to the original Panel Report

For this Commission's comments on the recommendations in the Addendum, see Paragraph 34 above)

44.13. Panel's Final Report

44.13.1. General

In Paragraph 41 above this Commission said the following

Many of the recommendations in the Final Report are of a wide nature, and far outside this Commission's terms of reference. Most are

unobjectionable, and a valuable contribution to resolution of the regional problem.

However there are problems with some of the recommendations. This Commission has in Paragraph 36 above pointed out the difficulty in complying with the recommendations in Paragraph 172, relating to phased reductions in aid disbursements, due to lack of specific evidence.

There are similar problems in the recommendations as to restrictions on business enterprises and individuals, many of whom appear in the Annexes without a word in the text to support allegations against them.

Before action is taken against companies alleged to be breaking OECD guidelines, it would be necessary to be sure that the companies involved were covered by those guidelines.

However, in respect of the Panel's general conclusions, as stated in Paragraph 40.8 above:

Nevertheless, leaving aside details and personalities, in general this Commission and the reconstituted Panel are not so far apart. There is agreement that the original Panel's allegations against Uganda as a State, and against President Museveni were wrong. There is agreement that officers to a very senior level, and men of the UPDF have conducted themselves in the Democratic Republic of Congo in a manner unbecoming.

The necessary recommendation in that regard is made above.

In Annex II to the Panel's final report, recommendations are made for a personal travel ban and financial restrictions. These recommendations involve the following (references to Paragraphs in the Final Report):

44.13.2. Colonel Burundi and LA CONMET.

This officer is named in Paragraph 108 only as having been involved in Coltan operations under Trinity. The question of Coltan has been dealt with in this report at Paragraphs 40.1 above and 40.2 above. The second paragraph deals with the Piskunov's of LA CONMET, who are also mentioned in the list. This Commission is unable to recommend any action against these individuals, due, in respect of Colonel Burundi to lack of specific information, and in respect of the Piskunov's due to evidence, documentation and explanations given on oath before this Commission.

44.13.3. Sam Engola

Mr Engola is named in Paragraph 98. Paragraph 98 is a catchall Paragraph describing the alleged elite networks. This Commission has no idea what Mr Engola is accused of specifically. This Commission is therefore unable to recommend any action against this individual. He is also mentioned in Paragraph 116 (with a different spelling, and as a Ugandan parliamentarian, which he is not) as being involved with illegal logging and fraudulent evacuation of wood. Paragraph 116 also names Colonel Peter Karim and Colonel Otafiire as similarly involved. These are serious criminal accusations, which require support, and at least some indication of the grounds upon which the accusations are made. These are absent. This Commission is therefore unable to recommend any action against these individuals

44.13.4. Colonel Peter Karim.

This officer is named in Paragraph 98, and for the same reason, on this ground alone this Commission is unable to recommend any action against this individual. This officer is also mentioned in Paragraph 116 dealt with above.

44.13.5. Major General James Kazini.

This officer's name figures throughout this Report, and recommendations for action by the Uganda Government have been made. It is respectfully submitted that no action by the International Community is required, pending action by Uganda.

44.13.6. Colonel Noble Mayombo.

This officer is mentioned in Paragraph 98. On this ground alone this Commission is unable to recommend any action against this individual. He is also mentioned in Paragraph 122 in relation to the forged Protocole d'Accord. No action is called for in this regard. There have also been allegations, not mentioned in the Final Report, which this Commission has investigated and found to be unsupportable.

44.13.7. Colonel Otafiire.

Colonel Otafiire is mentioned in Paragraph 98, in respect of which no action can be recommended. Also in Paragraph 104, as benefitting from tax exemptions, which this Commission has dealt with at Paragraph 20.5 above, in respect of

documents produced by the Panel upon which this Commission has been unable to rely. He also is mentioned in Paragraph 116, dealt with above. A travel ban in respect of this officer bearing in mind his responsibilities for regional Co-operation, would have far reaching consequences for Uganda.

44.13.8. Lt. General (ret'd) Salim Saleh.

This officers name has also been mentioned throughtout this Report, and recommendations made on the basis of supportable evidence. There are allegations which have been investigated, and which cannot be supported.

10 Signed by Justice D C Porter Chairman

Signed by Justice J P Berko Commissioner

Signed by John G Rwambuya Commissioner

ANNEXTURES

9. ANNEX 1: EXHIBITS

N.B Scanned copies of the exhibits are available from Ministry of Foreign Affairs on CD ROM

NO.	MARKED AS	SUBJECT	TENDERED BY
1.	BKB1/1	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.	SKB1/3	Protocol between DRC/Uganda on Security along common border in April 1998.	CW/01/02Steven B. Kavuma
4.	SBK1/4	Radio Message by HE President to Chief of Staff banning trading in DRC by UPDF Officers/Men on 15/12/1998.	“
5.	SBK1/5	Press report of interview with Mr. Steven Kavuma, the then Minister of State for Defence: <i>New Vision</i> , 24/11/1998.	“
6.	SBK1/6	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.	SBK1/7	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.	SBK1/8	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 Communiqué Between DRC and Uganda of 1/6/1999.	“
15.	BM/1/15	Ministry of Defence Approved Estimates of Revenue and expenditure (Recurrent and Development) 1998/99.	CW/01/05 Ben Mbonye
16.	BM/1/16	Ministry of Defence Proposed Estimates 1998/99, Financial Analysis of Programme 02 and 03 as at 30/06/99.	“
17.	BM/1/17	Ministry of Defence Approved estimates of revenue and expenditure (Recurrent and Development) 1999/2000.	“
18.	BM/1/18	Ministry of Defence Proposed Estimates 1999/2000, Financial Analysis of Programme 02 and 03 as at 30/06/2000.	“
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 Keträh 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 st march 2000 by Pross Balaba of DARA GREAT LAKES (INDUSTRIES) LTD., to the Commissioner, Forestry.	CW/02/03 Pross Balaba
35	PB/2/35	Application for CONCESSION in respect of Budongo, Bugoma and Mabira forests, dated 21 st march 2000 by Pross 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/2/36A	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 Ketrach Tukurature
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 th October 1999, by Pross Balaba of DARA GREAT LAKES (INDUSTRIES) LTD., to the Commissioner, Forestry.	CW/02/03 Pross 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/2/43	SI 56/1987 The External Trade (Export Restricted Goods) Order, 1987. Prohibits the Export of TIMBER.	CW/02/04 Deogratius Nkeija Byarugaba
45	DNB/2/44	Letter dated 25 th 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/1/45	(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/1/46	UPDF Salary Payments to units Under operation Safe Haven for: - August – December 1998; January – December 1999; January – December 2000; January – June 2001.	“
48	GDM/1/47	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/1/48	UPDF Aero plane Charter Payments for 1998/1999; 1999/2000; 2000/2001.	“

50	GDM/1/49	Agreement for Lease and Charter Services Between the Government of the Republic of Uganda and Uganda Air Cargo Corporation dated 26 th July 2000.	“
51	GDM/1/50	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 rd 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 rd April 2001.	“
60	KT/2/58	Memorandum and Articles of Association of VICTORIA BIOTECHNOLOGY LTD.	CW/02/01 Ketrach Tukuratiire

61	NM/1/59	<p>Photographs Depicting Scenes of and Atrocities by Rebels Fighting Uganda Government.</p> <p>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>	CW/01/11 Lt. Col. Noble Mayombo
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 th October 1999 from DARA GREAT LAKES (INDUSTRIES) LTD by Pross Balaba, being Applications for Permits to Harvest timber from Bugoma and Mabira Forests Respectively.	“
64	JN/2/62	Letter dated 18 th 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/1/63	Contract dated 19 th 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 Schedules 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 Schedules 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 Schedules 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 Schedules 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 Destination 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 URA to 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/Exploration 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 WNBK.	CW/02A/05 Bart Kakooza

86	YKM/01/84	<p>DOCUMENTS TENDERED BY PRESIDENT YOWERI KAGUTA MUSEVENI: -</p> <p>A bound file of photo copies of news paper cuttings with articles on ADF atrocities;</p> <p>Another file similar to 1 above on the MPONDWE attack by ADF on 13/11/1996;</p> <p>The President's Statement on - <i>Background to the situation in the Great Lakes Region</i>;</p> <p>The Presidents Statement on <i>Conflicts in the Great Lakes Region</i>, circulated to the U.N. Security Council, 24/01/2000</p> <p>The President's speech to the SADC FORCE, 18/08/1998;</p> <p>Record of Meeting Between the President and the UN Expert Panel on Illegal Exploitation of Resources of DRC;</p> <p>The President's Response to the UN Expert Panel Report, 02/05/2001.</p> <p>UPDF Court Martial Criminal Proceedings against RA – 134917 PTE Okello Otim Tonny for the murder of Congolese nationals in Gemena, DRC on 23/5/2001.</p> <p>A specimen of UPDF FORM NO. AC/DRC/01 filled during withdrawal of UPDF from DRC.</p>	CW/01/15 President Yoweri Kaguta Museveni
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/2/90A	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>	CW/04/02 Justus Kashagire Tindigarukayo

103	SS/7/100	Memorandum and Articles of Association for AIR ALEXANDER.	Cw/07/01 Hon. Maj. Gen. Caleb Akandwanaho alias Salim Saleh
104	SS/7/101	Memorandum and Articles of Association for TAKE AIR.	“
105	FM/7/102	Statement (and attachments) to CMI by Lt. Col. Fenekasi Mugenyi 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 Mugenyi
106	KM/3/103	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/3/106	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/2/108	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	<p>1. Letter dated 17/12/1999 by Col. Peter Kerim to President Museveni on ethnic fighting in Ituri Province.</p> <p>2. Letter dated 26/2/2000 by Gen Kazini appointing col. Peter Kerim to streamline liaison duties in Bunia, DRC.</p>	CW/05/05 Col. Peter Kerim
114	SH/2A/111	Documents relating to AIR NAVETTE and its trading activities between Uganda and DRC.	CW/02A/06 Shiraz Hudani
115	GAW/8/112	<p>Message by Col. Katumba Wamala (as he then was) to Zaire authorities and Businessmen at the height of West Nile bank Front (WNBf) insurgency.</p> <p>Tape recording.</p>	CW/08/10 George Ambe William
116	EA/08/113	Forestry Statistics relating to Timber Movement from Congo and Uganda (Arua) – 11/9/97 – 15/5/2000.	CW/08/12 Edison Adiribo
117	SL/7/114	Report by the then Major Sonko Lutaaya, following assignment by Lt. Col. Fenekasi Mugenyi to investigate allegations of indiscipline by troops under Lt. Okumu near Kilomoto gold mines in DRC.	CW/05/07 Lt. Col. Sonko Lutaaya
118	SL/7/115	Report to CMI by Lt. Col. Sonko Lutaaya, following mission to DRC.	CW/05/07 Lt. Col. Sonko Lutaaya
119	JPB/7/116	Documents in French tendered by Jean Pierre - Bemba	CW/07/08 Jean Pierre - Bemba
120	AR/02A/117	<p>Aircraft time log and flight reports for KNIGHT AVIATION for 10/1/99, 13/1/99, 25/1/99, 12/2/2000;</p> <p>Aircraft time log and flight report for VR PROMOTIONS LTD. for 28/2/2000;</p> <p>CAA Tax invoices serial Nos. 1056, and 1623, issued to Ministry of Defence and KNIGHT AVIATION respectively</p>	CW/02A/11 Andrew Rugasira

121	BMS/3/118	Insurance claim investigation report relating to a claim by NAMI GEMS BVBA for robbery of cash US \$ 550,000 from diamond sales vides Criminal Case Ref. ENTEBBE CRB 280/2000.	CW/03/10 Simon Mugenyi Byabakama
122	SS/7/119	Document titled, 'MY PERSPECTIVE ON THE ALLEGATION OF ILLEGAL EXPLOITATION' authored by Lt. Gen. Salim Saleh.	CW/07/01 Hon. Maj. Gen. Caleb Akandwanaho alias Salim Saleh
123	JK/01/120	Various Army instructions or messages during Operation Safe Haven (OSH) in DRC	CW/01/03 Brig. James Kazini
124	JK/01/121	Map of the Democratic Republic of Congo	“
125	SM/03/122	Copies of a Police File on robbery of cash US \$ 550,000 from diamond sales vide Criminal Case Ref. ENTEBBE CRB 280/2000.	CW/03/11 Steven Musobya
126	ZK/07/123	Documents and correspondences between GOU and Silver Springs Hotel relating to accommodation bills for Congolese nationals	CW/07/10 Zia Khan
127	CE/1	Letters attributed to the authorship of Brig. Kazini seeking clearance for business by VICTORIA in areas of DRC	Provided by UN Panel
128	CE/2	Documents relating to Trinity and the alleged payment of \$ 380,000 to Hon. Wapakhabulo, Col. Mayombo and Col. Otafiire	Provided by UN Panel
129	CE/3	Report by handwriting expert on the signatures attributed to Prof Wamba Dia Wamba, Brig. Kazini and Col. Mayombo in exhibits CE/2 above.	Report submitted by Mr. A.M. Ntarirwa, GOU Analyst / handwriting Expert.
130	CE/4	Report by handwriting expert on the signatures attributed to Prof Wamba Dia Wamba and Col. Otafiire in exhibits CE/5 below.	Report submitted by Mr. A.M. Ntarirwa, GOU Analyst / handwriting Expert.

131	CE/5	<p>Letter attributed to the authorship of Prof. Wamba Dia wamba authorizing payment of \$ 13,000 to Col. Otafiire;</p> <p>Letter by Col. Otafiire introducing one John Kalimasi a Ugandan businessman, to RCD authorities for possible assistance.</p>	Provided by UN Panel
132	AP/07/124	Documents relating to registration of a company called LA CONMET S.P.R.L, its purchases from Congo and export of coltan f through Uganda.	CW/07/12 Anatoly Piskunov

10. ANNEX 2: WITNESSES

N.B. The complete transcript of evidence is available from Ministry of Foreign Affairs on CD ROM.

BRIEF 1

Background to Uganda Involvement in Congo

NO.	FULL NAMES	REFERRED AS
01	Bernadette Kyomugisha Bigirwa	CW/01/01
02	Steven B. Kavuma	CW/01/02
03	Brig. James Kazini	CW/01/03
04	Hon. Dr. Kamanda Bataringaya Cos	CW/01/04
05	Ben Mbonye	CW/01/05
06	Maj. Gen. Katumba Wamala	CW/01/06
07	Ralph Ochan	CW/01/07
08	Gabindade Musoke David	CW/01/08
09	Hon. Amama Mbabazi	CW/01/09
10	Hon. Maj. Tom Butime	CW/01/10
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
18	Adele Lotsove Mugisa	CW/01/18
19	Prof. Ernest wamba dia Wamba	CW/01/19

BRIEF 2

Exploitation Allegations Pertaining to Timber – DARA Case and Other Timber Related Allegations

NO.	FULL NAMES	REFERRED AS
01	Ketrah 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
09	Boniface Kakare	CW/02/09

BRIEF 2 (A)

Transport

NO.	FULL NAMES	REFERRED AS
01	Lt. 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
07	Anthony Rubombora	CW/02A/07
08	Valentine Tendo	CW/02A/08
09	Capt. Johnson Turyahikayo	CW/02A/09
10	Andrew Musoke	CW/02A/10
11	Andrew Rugasira	CW/02A/11
12	Samuel Muneza	CW/02A/12
13	Binta Kasojo	CW/02A/13

BRIEF 3

Exploitation Allegations Pertaining to Minerals, Diamonds, Gold, Cassiterite, Other Minerals and Economic Data

NO.	FULL NAMES	REFERRED AS
01	Watuwa 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
09	WITNESS X	CW/03/09
10	Byabakama Mugenyi Simon	CW/03/10
11	Steven Musobya	CW/03/11

BRIEF 4

Exploitation Allegations Pertaining to Coffee, Livestock, Wildlife, Ivory, Money and other Property

NO.	FULL NAMES	REFERRED AS
01	Henry 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

NO.	FULL NAMES	REFERRED AS
01	Elizabeth 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
06	Lt. Col. Sonko Lutaaya	CW/05/06
07	Capt. Joseph Balikudembe	CW/05/07

BRIEF 7

Alleged Exploitation by Individuals and Top UPDF Officers

NO.	FULL NAMES	REFERRED AS
01	Maj. Gen. Caleb Akandwanaho Salim Saleh	CW/07/01
02	Lt. Muhoozi Kainerugaba	CW/07/02
03	Lt. Col. Fenekasi Mugenyi	CW/07/03
04	Lt. David Livingstone Okumu	CW/07/04

05	Jovial Akandwanaho	CW/07/05
06	Mbusa Nyamwisi	CW/07/06
07	Jean Pirre – Bemba	CW/07/07
08	Felly Tshiana	CW/07/08
09	Dr. Gala Mido	CW/07/09
09	Zia Khan	CW/07/10
10	Heckie Horn	CW/07/11
11	Anatoly Piskunov	CW/07/12
12	Valentina Piskunova	CW/07/13

BRIEF 8

Witnesses from Border Areas (Kasese, Bwera, Fort Portal, Arua)

NO.	FULL NAMES	REFERRED AS
01	Tushabe Christopher alias Benz	CW/08/01
02	Masereka 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

08	John Masoro	CW/08/08
09	Kasoro Williams	CW/08/09
10	George Ambe William	CW/08/10
11	Milton Rahuka	CW/08/11
12	Edison Adiribo	CW/08/12
13	Alex Angundru	CW/08/13

AFFIDAVITS

NO.	FULL NAMES
01	ROGER LUMBALA
02	TIBASIIMA ATEENYI
03	IDDI TABAN
04	MICHAEL J. STEVENS
05	GARY JOHN JEFFERY
06	HANNINGTON KARUHANGA
07	COL. PETER KERIM

11. 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

45. INTRODUCTION.

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
10 courts. The earliest post-19th 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 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.¹ Since then the concept of *illegality* and the doctrine of *non-recognition* have come to underpin conduct of states in international law.² This has been the case in the respect of the 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 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/I, 81, 11 Mar. 1932.

² 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.

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.³ Or for that matter conduct on part of then *apartheid* South Africa that confirmed the segregation policy in creation of *bantustans* as *separate statal entities*.⁴ 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.⁵ Thus if Uganda (and
 10 Rwanda) purported to annex the eastern part of the Democratic Republic of Congo 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.⁶

46. THE CONCEPT OF 'ILLEGALITY' AND THE DEMOCRATIC REPUBLIC OF CONGO EXPERT PANEL'S INTERPRETATION.

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 (the Democratic Republic of Congo). The Panel of Experts established by the United

³ *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 (here-inafter *Namibia case*)

⁴ See e.g. Resolution on the so-called Independent Transkei and other Bantustans, GA Res. 31/6, 26 Oct. 1976.

⁵ See e.g. GA Res. 32/5, 1 Nov. 1977; SC Res. 446 (1979), 22 Mar. 1979.

⁶ 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.

Nations⁷ 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’.⁸ Further, it states that: ‘almost all actors in the conflict and observers requested a clear definition of illegality’.⁹ In the finality, the Panel adopted what it saw as a wish of the Security 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 Democratic Republic of Congo and (d) violations of international law (including ‘soft law’).¹⁰

10 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.¹¹

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 the Democratic Republic of Congo territory as a violation of territorial integrity and political independence of

20

⁷ The Expert Panel was constituted by the UN Secretary-General on 31st 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.

⁸ Expert Panel report, para. 15.

⁹ Id.

¹⁰ Id.

¹¹ Ibid., para. 15(a). The Panel refers for this element to the statement of the President of the Security Council of 2 June 2000.

the Democratic Republic of Congo,¹² this *particular* conduct on the part of 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.¹³ 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.

With regards to the second element, the Panel expressed thus:

... if authorities exerting effective power and control over their sovereign area recognise or set
 10 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.¹⁴

This is a rather vague recognition that activities in rebel-held areas of the Democratic Republic of Congo territory *may be* legal if they are carried out in accordance 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
 20 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'.

¹² See, e.g. Security Council resolutions:

¹³ Expert Panel report, para. 15.

¹⁴ Ibid., para. 15(b).

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 Democratic Republic of Congo 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:

who was or were the *authorities in effective power*; and

was or has there been in existence a *viable regulatory framework* prior to or after exerting of
 10 effective control by such authorities in the Democratic Republic of Congo?

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 the Democratic Republic of Congo 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?

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
 20 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.¹⁵

¹⁵ Ibid., para. 15(c).

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 Democratic Republic of Congo 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 looting, confiscation, forced monopolies are perhaps better conceptualised in relation to the functioning of the *de facto* authorities.

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
 10 activities carried out in violation of international law are illegal.¹⁶

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?

However, what is perhaps more crucial and was not dealt with by the Panel is the principle in international law on permanent sovereignty of *States* and *peoples* over their natural
 20 resources.¹⁷ In this regard, the exploitation of natural resources by either side or all parties to

¹⁶ Ibid., para. 15(d).

¹⁷ 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.

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*.

**47. THEORETICAL AND DOCTRINAL POSTULATIONS ON ILLEGALITY –
CONCEPT**

and its Application

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
 10 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 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.

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*.
 20 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.

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 territory¹⁸ - 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
 10 entity is a people',¹⁹ 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*.²⁰

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
 20 private lives and social ordering of peoples were to be excepted from the realm of illegality.²¹

¹⁸ Namibia case, *supra*, note 3, paras. 123-4.

¹⁹ *Ibid.*, para. 127.

²⁰ *Ibid.*, para. 125.

²¹ 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.

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 the Democratic Republic of Congo), 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*).

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.²² Thus apart from registration of births and deaths and of marriages, it can encompass the ‘maintenance of law and order’, ‘provision of social services (education, health)’, ‘economic policy’, commercial
10 activities etc.²³

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*.

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;²⁴

²² 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.

²³ 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.

²⁴ 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.

in the occupied territories, the United Nations generally treated Israel's exploitation of resources as illegal and unlawful;²⁵

in respect of Rhodesia during Ian Smith's regime, concern was expressed by the United Nations over chrome ore;²⁶

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'.²⁷

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
 10 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 Democratic Republic of Congo, and that such activities (and related trading or commercial activities in such resources) have been the mainstay of the *livelihood* of its peoples.

48. CONCEPT AND PARAMETERS OF 'ILLEGALITY' REVISITED

The conceptual definition of illegality remains crucial in determining which exploitation or trading in the Democratic Republic of Congo natural resources is to be considered or treated as *illegal*. One may vouch a number of positions:

²⁵ See e.g. GA Res. 3171 (XXVIII), 17 Dec. 1973.

²⁶ See e.g. concerns expressed over import of chrome from Rhodesia by the United States: SC Res. 232 (1966)

²⁷ *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.

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;²⁸

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*
 10 illegal. This is however dependent upon:

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;

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;

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
 20 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 activities

²⁸ 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.

that support livelihood of a people should continue being carried out) and more so in the specific peculiarities of the Democratic Republic of Congo.

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
 10 regarded as unlawful and thus illegal. In the finality, such acts would revert to element 1 above.

49. 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 the Democratic Republic of Congo. 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 Democratic Republic of Congo (at least after Lusaka agreement) while its conduct remains at least ambivalent in that regard.
 20 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 the Democratic Republic of Congo. This seems to have left a vacuum of authority in which lawlessness and arbitrary acts in the exploitation of the Democratic Republic of Congo resources thrives, and thus left any concept of *illegality* highly fluid in itself.