



THE REPUBLIC OF UGANDA

JUDICIAL COMMISSION OF
INQUIRY

INTO

ALLEGATIONS INTO ILLEGAL
EXPLOITATION OF NATURAL
RESOURCES AND OTHER FORMS OF
10 WEALTH IN THE DEMOCRATIC
REPUBLIC OF CONGO 2001

(May 2001– November, 2002)

Legal Notice No. 5/2001, as amended

FINAL R E P O R T

November, 2002

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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
10 Congolese natural resources by individuals, governments and armed groups; and that the Government of the Republic of Uganda was one of those involved.

The Security Council considered the 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:

- | | | | |
|----|--|---|--------------|
| 10 | Hon. Justice David Porter | : | Chairman |
| | Hon. Justice J.P. Berko | : | Member |
| | Mr. John Rwambuya retired Senior UN official | : | Member |
| | Mr. Bisereko Kyomuhendo Principal State Attorney | : | Secretary |
| | Mr. Alan Shonubi, Advocate | : | Lead Counsel |

The Commission was ably assisted by Dr. Henry Onoria particularly on International Law and Mr. Vincent Wagona 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 | <ul style="list-style-type: none"> ■ 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
 10 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 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
 20 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 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
 30 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 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
10 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 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
20 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

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.

30 **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 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;

- 10 ■ 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
- 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.
- 20 ■ 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:

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, 30 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 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

10 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 :

“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;

20 ***(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;

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.

10 *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*

20 *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.

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.

30 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.

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.

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::

20

"C. Standards of Verification

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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. “

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

- 10 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 open hearings at the International Conference Centre.

10. SECTIONS OF EVIDENCE

- 20 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 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.

10 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.

20 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

30 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.

10 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.

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.

20 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.

30 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

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

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.

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.

10 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

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.

20

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.

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.

30 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 nations and representatives of the UN and is recognized and being implemented by the United Nations Security Council.

10 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.

20 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 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.

30 **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 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

20 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: --

30

"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
20 large quantities 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.

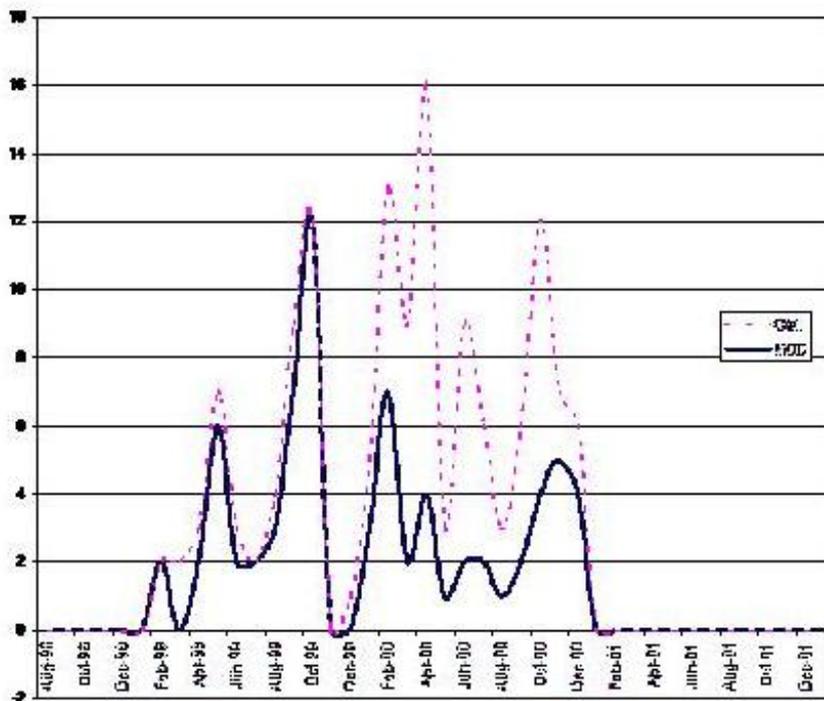


Figure 1: Data from URA Customs at Old Airport Entebbe

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.

- 10 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

- 20 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.

10 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.

20 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

30 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
 10 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.

20 ***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

30 ***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

20 Reference to the transcript of evidence will quite clearly show that, so far as Uganda was concerned, while the AFDL, together at least with the Rwandan army, if not the Angolan army, swept across the country, and finally attacked and took Kinshasa, the UPDF was concerned with dealing with incursions into Uganda at Uganda's 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.

30 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 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.

10 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.

20 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.

30 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.

20 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.

30 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

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.

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.

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.

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.

10 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.

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:

.....when 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).

30 *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.

“ ... 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.”

10 *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?

20 *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.

30 *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].

40 *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.

10 *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.

20 *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*

30 *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?*

10 **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?*

20 **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*

30 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.

40 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.

10 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.

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.

20 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.

30 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.

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.

10 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.

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.

20 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.

30 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 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.

10 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.

20 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
30 turning up at 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.

10 *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.

.....

30 *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:*
40 *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.

10 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
20 Aviation Authority, subject to clearance from the proper military authority in respect of security issues only.

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.

30 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.

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.

10 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.

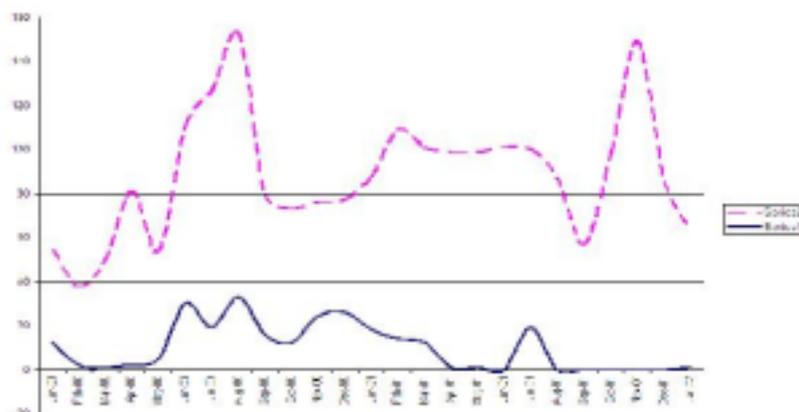


Figure 2: Flights out of Military Airbase

20 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.

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.

14.6.3. Implied Allegations against The Civil Aviation Authority

10 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:

20 advising the Government on policy matters concerning Civil Aviation locally and internationally,

- the licensing of air transport,
- 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.

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.

10 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.

20 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 .

30 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 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."

10 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.

20 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.

30 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:

“(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”

10

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”

20

and states that the Convention shall not apply to such aircraft. The Civil Aviation Authority Act makes similar provisions.

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.

30

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.

10 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.

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:

20

“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 .”

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.”

30

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).

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 Katafire remains the officer to give your staff such clearance.

10 ***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.”***

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.

20

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.”

30

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:

10

“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:

20

- 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.

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:

30

“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 ”

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:

10

“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).”

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:

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“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.”

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.

30

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.”

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.

10

“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”

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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.

10 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.

20 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:

15.1. Amex Bois

30 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 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

10 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. This allegation is unlikely to be true.

15.3. Confiscation of Coffee Beans

20 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.

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.

30 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

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.

10 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

20 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

30 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

10 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

20 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

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.

30 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.

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.

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.

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

10 As to the allegation that Madame Lotsove was instrumental in the collection and transfer of funds from her assigned administrative region to the Uganda authorities in 1999, this Commission has been interested in the mechanics of such a transfer of funds.

It would have helped this Commission in 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
 20 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

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.

30 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 (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
10 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
20 Star Holdings, whose Directors and Shareholders are exclusively Thai Nationals. Royal Star Holdings has 55% of Dara Forêt.

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.

10 ***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.

20 ***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.

30 There is no evidence before this Commission that Uganda as a country or as a Government harvests timber in the Democratic Republic of Congo. This Commission doubts that the allegation in the Report is correct. 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.

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.

- 10 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 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.

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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.

30

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
10 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
20 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

Yet DARA-Forest exported timber in violation of a normal procedure generally required and accepted by the international forest community and gradually considered to be international “soft law”. Companies importing this uncertified timber from DARA-Forest were essentially in major industrialized countries, including Belgium, China, Denmark, Japan, Kenya, Switzerland and the United States of America.

If companies so widely spread around the developed world are prepared to trade in uncertified timber, this Paragraph lends weight to this Commission's conclusion under the title "Illegality" at 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

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 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.

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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.

20 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
30 advised that, in addition to certification of the timber from Uganda, he would have to show that timber from the Congo was also certified if it was to be processed in the factory, and sold as certified produce. This he was told would be a requirement of SmartWood, who

would be interested not only in the forests, but the whole operation. DGLI therefore needed to start with certification in Uganda at least.

Indeed, when the visit took place, from 14 to 16 April, the DARA group had not even applied for the concession of the Budongo forest (Uganda). It was only on 5 July 2000 that John Kotiram of the DARA group wrote to the Commissioner to request the concession on the Budongo forest.

The visit never took place, because the concessions in Uganda had not been granted by the suggested date. Prossy Balaba and Mr. Kotiram told this Commission that to write this letter so early was a genuine mistake brought on in the belief, based on discussions with the
10 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
30 Commission what he planned to do: there is no way that the conspiracy alleged would have fooled experts from SmartWood, as the capacity of the factory would have been obvious, as would the inability of the Ugandan Forests to supply it. The first question would have been where the balance was to come from. Mr. Kotiram accepts the list of overseas companies with whom his companies trade.

In a letter of 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 DGLI, and is its managing Director

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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.

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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.

30 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 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

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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.

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 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.

10 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

20 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 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:

30 *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.

10 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.

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.

20 **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"

30 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 hundred to three hundred grams a month. This might have raised the possibility of a confusion between RCD and UPDF soldiers.

20 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 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.

30 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)

10 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**.

20 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
- 30 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

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

10 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.

In fact Maj. Sonko did report on Lt Okumu: the numbering above is used as follows:

- 20 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.
- 30 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.

- 10 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
- 20 therefore that Lt Okumu knew nothing of it.
- 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
- 30 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.

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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.

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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.

30

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.

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.

10 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.

20 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.

30 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.

10 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

20 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 30 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

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 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

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

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.

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.

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:

“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.”

10 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.

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

20 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.

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.

30 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

10 **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.

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
 20 no evidence to support this allegation.

17.2. Control of the Economy

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

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 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.

10 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 with cocoa for Unilever on a visit to the military airport.

20 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 for Eastern Democratic Republic of Congo dwellers have always been Uganda, Rwanda and Burundi, due to proximity and infrastructure.

30 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.

10 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.

20 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
30 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.

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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

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

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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.

10 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.

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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".

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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, 30 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 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.

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.

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 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

10 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.

20 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

30 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.

10 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”.

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.

20 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.

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.

30 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.

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.

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.

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.

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
30 Mbusa Nyamwisi as the Commissar General and removed Tibasiima Ateenyi from Finance.

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
10 allegations in Paragraphs 79, 80, and 81 of the UN Report.

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
20 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.

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
30 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

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

10 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 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
20 “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

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
30 he uses both Victoria Group and Trinity for the purchase and the commercialisation of diamonds, timber, coffee and gold.

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.

10 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.

The Commission recommends that these cases should be pursued for appropriate action.

20 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.

30 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 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
 10 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

20 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.
 30 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
 10 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.

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
 20 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 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
 30 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)

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 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 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 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)

10

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.

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



Figure 3: Photograph of Hotel being built at Kasese attributed to General Kazini's ownership: Acknowledgement New Vision

report 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.

10 20.5.1. Documents obtained at the request of the Nairobi witness when giving evidence

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

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of October 2001, and 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.

10 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".

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.

30 20.6.1. Payment of US\$380,000.

Letter from Colonel Mayombo requesting payment (1).

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.

10 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).

20 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.

30 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.

10 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.

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)

20 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.

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.

30 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.

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”.

10 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.

20 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.

30 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.

10 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.

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.

10 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. 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.

20 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 .

30 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 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.

10 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.

20 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.

30 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.

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
30 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.

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.

30 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

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 issued 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.

10 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.

20 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.

30 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)

10 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.

20 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.

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.

30 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.

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
10 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.

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
30 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.

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**

10 In Paragraphs 94 to 108 economic data is set out in the report.

21.1. Gold

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
20 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.

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.

This Commission thought to confirm figures from the UN COMTRADE database said to have been provided by the Uganda Bureau of Statistics, which revealed
30 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.

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.

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.

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 :

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"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.

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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 30 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 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

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

10 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.

20 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.

30 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.

20 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

30 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. 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.

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.

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.

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. Picadilly Import and Export

10 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.

20 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.

30 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

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.

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.

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
10 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.

20 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
30 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.

10 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.

20 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
30 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.

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

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.

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.

10 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.

20 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.

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.

30 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

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		

21.5. Mineral Transit figures

In Paragraph 102 of the Report, the original Panel say:

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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.*

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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 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 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.

10 **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.

20 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.

30 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.

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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.

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

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22.1. Budgets compared to military expenditure.

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.

10 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

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.

20 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.

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

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:

- 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:-

10 *“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.”*

20

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.

30 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.

10 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

10 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.

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.

20 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 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.

30 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.

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.

10 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

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.

20 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

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.

30 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.

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 :-

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“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.

30

Justice J.P. Berko: And that one would not reflect, in treasury accounts.

40

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

10 *“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?

20 *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

Michael Atingi-Ego: Paragraph 138, the very first sentence reads:

30 *“Secondly, illegal exploitation of gold in the Democratic Republic of Congo brought a significant improvement in the balance of payments of Uganda*

That statement is wrong because 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

40 *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

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 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”

30 22.2.6. MLC, RCD Goma and RCD-ML

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.

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.

20 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

30 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.

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.

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:

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.

10 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.

20 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.

30 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.

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.

10 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.

20 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.

30 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.

10 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

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“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.

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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.

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.

10 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
20 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
30 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.

10 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?

20 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 reconstituted Panel have come to much the same conclusion in the
30 Addendum.

22.5.2. Multilateral 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 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.

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.

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.

10 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
20 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.

30 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
 10 in minerals 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
 20 eradication, education and governance, have enabled Uganda to free funds for the war in the 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
 30 between GDP and Defence expenditure, and the fact that Uganda does not profit from transits or 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
 10 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 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)

20 Alexander Mahuta and

Agad Didi

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
10 the 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 Authorised Share Capital and Share Transfers on the part of
30 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 :

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“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
20 required. It may be thought that this is not a sufficiently serious offence for further 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
30 checked for compliance, and immediate action taken against companies which offend 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 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 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 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
 20 Republic of Congo 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.*

30 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.

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.

10 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.

20 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.

30 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.

10 **31. EXPLOITATION OF THE NATURAL RESOURCES**

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:

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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.

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:

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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

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:

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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

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.

20 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

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

30 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

The reconstituted Panel recite the well known fact that artisanal gold mining continues on a large scale. The Addendum states:

10 *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.*

20 *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.*

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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.

40 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:

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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.

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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.

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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
10 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
20 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
30 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.

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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.

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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:

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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.

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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).
 10 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
 20 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.
 30 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
 10 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 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
 20 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 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.

30 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, 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

10 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.

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.

20 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.

35.2. Financial and Technical

30 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.

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.

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

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
30 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
10 Commission saw at the Military Air 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
30 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

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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:

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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
30 be 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.

10 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

20 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.

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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 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 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 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
10 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
20 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
30 Commission can do to investigate this allegation.

To quote Mr Horn:

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

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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
20 withdrawal of UPDF troops, without evidence of such a paramilitary force, the Panel's theory of networks 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

30 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 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, 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

10 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

20 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

30 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.

10 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.
20 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.

30 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

10 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.

20 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.

30

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.

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

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 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.

10 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
20 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
30 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
10 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
20 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.

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
30 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. 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.

10 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 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.

20 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.

30 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.

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.

10 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.

20 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 over-simplification, but that is why this Commission views the Panel as accusers, or complainants.

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
30 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.

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 Commission, copied to the Panel.

To simplify the matter, imagine a prosecution of a man for murder, based upon an 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 Plaintiff 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

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.

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.

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.

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.

40.7.4. Comparative Procedures

10 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?

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?

20 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?

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.

30 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

10 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 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.

20 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.

40.8. Agreement in General

30 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:

- 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.

10 **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 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
20 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 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.

30 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.

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

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

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 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

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
 10 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

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
 20 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.

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
 30 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 harrasment 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.

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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.

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- **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
20 to 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.

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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

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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.

10 *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:

20 *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.

30 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 Ketrah Tukuratire
31	KT/2/31	Certificate of Incorporation, Memorandum and Articles of Association for DARA GREAT LAKES (INDUSTRIES) LIMITED.	“
32	KT/2/32	Certificate of Incorporation, Memorandum and Articles of Association for NYOTA WOOD INDUSTRIES (U) LIMITED.	“

33	KT/2/33	Certificate of Incorporation, Memorandum and Articles of Association for ROYAL STAR HOLDING LIMITED.	“
34	PB/2/34	Application for CERTIFICAION authority in respect of Budongo and Bugoma forests dated 21 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 Ketrah 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 Ketrah 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 Kaffire
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 WNBF.	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	<ol style="list-style-type: none"> 1. Map showing Wildlife and forestry protected areas in Uganda. 2. Summary of Wildlife specimen seizures and court cases, 1994-June 2001. 3. Report on ‘Trade in Ivory in Uganda’ dated 18 Nov. 2000. 4. Wildlife Statute, No. 14/1996. 	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 vide 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
10 by 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

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.

territories in the Middle East; Turkish occupation of Northern Cyprus; and the Iraqi occupation of Kuwait.

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 stata*
 10 *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 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

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.

**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 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
 10 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

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

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.

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 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
10 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 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
20 carrying out of an activity in violation of an existing body of regulations.¹⁴

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.

¹² See, e.g. Security Council resolutions:

¹³ Expert Panel report, para. 15.

¹⁴ Ibid., para. 15(b).

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 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'.

- 10 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 effective control by such authorities in the Democratic Republic of Congo?

- 20 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 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

- 10 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 activities carried out in violation of international law are illegal.¹⁶

- 20 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*

¹⁵ Ibid., para. 15(c).

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 resources.¹⁷ In this regard, the exploitation of natural resources by either side or all parties to the conflict that would not benefit (or is inimical to the interests of) the Congolese peoples would be in violation of international law and, therefore, inherently *illegal*.

10 **47. THEORETICAL AND DOCTRINAL POSTULATIONS ON ILLEGALITY –
CONCEPT**

and its Application

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.

A concept of *illegality* has in application in international law been founded on the desire to proscribe certain conduct on part of States. This is particularly so where the conduct offends the so-called values in the realm of *order public* of the international community, e.g. non-use of force, self-determination, non-discrimination (*apartheid*). Traditionally, theory and doctrine was concerned with the illegality and non-recognition of entities or territorial acquisitions in violation of international law such as Manchuria and the Iraqi occupation of Kuwait respectively. In the past century, theory and doctrine came to 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
10 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*. 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.

20 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 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
10 *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 private lives and social ordering of peoples were to be excepted from the realm of illegality.²¹ 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*).

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.

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 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*.

- 10 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

in the occupied territories, the United Nations generally treated Israel’s exploitation of resources as illegal and unlawful;²⁵

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.

²⁵ See e.g. GA Res. 3171 (XXVIII), 17 Dec. 1973.

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 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
 10 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:

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
 20 principle of international law recognised in GA Resns. 1803 and 3218. In effect, if the

²⁶ See e.g. concerns expressed over import of chrome from Rhodesia by the United States: SC Res. 232 (1966)

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* 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;

- 10 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

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.

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.

provision of social services – education, health, infrastructure) or that it is part and parcel of the *normal and daily life, wage-earning employment or activities* of the inhabitants of the territory. In effect, even activities that are taking place without the consent of the legitimate government may be legal if they meet this criterion. In effect, the Panel's definition of illegality in its first element can be taken as only partially correct, with the second part of that definition being not entirely correct in light of the practical realities of societal existence (requiring that activities that support livelihood of a people should continue being carried out) and more so in the specific peculiarities of the Democratic Republic of Congo.

- 10 that exploitation of resources must in the event that it meets element 3 above must be undertaken under a clear regulatory framework put in place by occupier state or other authority in *effective power* (e.g. rebel groups). The existence of a regulatory framework established and put in place by groups such as RCD, MLC, etc. must be ascertained. Otherwise, an absence of such a framework permits for lawless and arbitrary acts in exploitation of resources. If there are regulations requiring exploitation of timber with licence, then *harvesting and extraction* of timber without a licence or one granted by one who has no authority to grant it should be regarded as unlawful and thus illegal. In the finality, such acts would revert to element 1 above.

49. CONCLUDING REMARKS

- 20 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. 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
- 30 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.

