

# **The Curse of Gold**

## **Democratic Republic of Congo**

**Human Rights Watch**

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Printed in the United States of America

ISBN: 1-56432-332-3

Cover photo: Miners working in the grueling conditions of an open pit gold mine in Watsa, northeastern Democratic Republic of Congo. © 2004 Marcus Bleasdale.

Cover design by Rafael Jimenez

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*This report was written in English and translated into French. If there are any inconsistencies between the French and English versions of this document, the English version will govern. This report was correct as at April 26, 2005.*

## Abbreviations

AGK	Ashanti Goldfields Kilo
APC	Congolese People's Army
CIAT	Committee for the Support of the Transition
DRC	Democratic Republic of Congo
FAPC	People's Armed Forces of Congo
FARDC	Armed Forces of the Democratic Republic of Congo
FNI	Nationalist and Integrationist Front
FRPI	Patriotic Force of Resistance in Ituri
ICC	International Criminal Court
IIA	Ituri Interim Administration
ILO	International Labor Organisation
KIMIN	Kilo Moto Mining International
MLC	Congolese Liberation Movement
MONUC	U.N. Organization Mission in the DRC
NCP	National Contact Point
OECD	Organization for Economic Co-operation and Development
OKIMO	Office of the Gold Mines of Kilo-Moto
PUSIC	Party for Unity and Safeguarding of the Integrity of Congo
RCD	Congolese Rally for Democracy
RCD-ML	Congolese Rally for Democracy – Liberation Movement
RCD-National	Congolese Rally for Democracy – National
SOKIMO	Society of the Gold Mines of Kilo-Moto
U.N.	United Nations
UPC	Union of Congolese Patriots





## I. Summary

*"We are cursed because of our gold. All we do is suffer. There is no benefit to us."*

Congolese gold miner

The northeast corner of the Democratic Republic of Congo (DRC) is home to one of Africa's richest goldfields. Competition to control the gold mines and trading routes has spurred the bloody conflict that has gripped this area since the start of the Congolese war in 1998 and continues to the present. Soldiers and armed group leaders, seeing control of the gold mines as a way to money, guns, and power, have fought each other ruthlessly, often targeting civilians in the process. Combatants under their command carried out widespread ethnic slaughter, executions, torture, rape and arbitrary arrest, all grave human rights abuses and violations of international humanitarian law. More than sixty thousand people have died due to direct violence in this part of Congo alone. Rather than bringing prosperity to the people of northeastern Congo, gold has been a curse to those who have the misfortune to live there.

This report documents human rights abuses linked to efforts to control two key gold mining areas, Mongbwalu (Ituri District) and Durba (Haut Uélé District), both bordering Uganda.

When Uganda, a major belligerent in the war, occupied northeastern Congo from 1998 to 2003, its soldiers took direct control of gold-rich areas and coerced gold miners to extract the gold for their benefit. They beat and arbitrarily arrested those who resisted their orders. Ignoring the rules of war for the conduct of occupying armies, they helped themselves to an estimated one ton of Congolese gold valued at over \$9 million. Their irresponsible mining practices led to the collapse of one of the most important mines in the area in 1999, the Gorumbwa mine, killing some one hundred people trapped inside and destroying a major livelihood for the residents of the area.

The Ugandan army withdrew from Congo in 2003, following Rwanda, another major belligerent, which had withdrawn the year before. Each left behind local proxies, the Lendu Nationalist and Integrationist Front (*Front des Nationalistes et Intégrationnistes, FNI*) linked to Uganda, and the Hema Union of Congolese Patriots (*Union des Patriotes Congolais, UPC*), supported by Rwanda. With continued assistance from their external backers, these local armed groups in turn fought for the control of gold-mining areas and trade routes. As each group won a gold-rich area, they promptly began exploiting

the ore. The FNI and the UPC fought five battles in a struggle to control Mongbwalu, each resulting in widespread human rights abuses. Human Rights Watch researchers documented the slaughter of at least two thousand civilians in the Mongbwalu area alone between June 2002 and September 2004. Tens of thousands of civilians were forced to flee from their homes into the forests to escape their attackers. Many of them did not survive.

In 2003, peace talks at the national level culminated in the installation of a transitional government, but northeastern Congo remained volatile and beyond central government control. Multinational corporations nonetheless sought to sign new deals or revitalize old ones to start gold mining and exploration operations in the rich gold concessions in the northeast. One of these companies, AngloGold Ashanti, one of the largest gold producers in the world, started exploration activities in the Mongbwalu gold mining area. Following earlier attempts to make contact with the UPC armed group, AngloGold Ashanti representatives established relations with the FNI, an armed group responsible for serious human rights abuses including war crimes and crimes against humanity, and who controlled the Mongbwalu area. In return for FNI assurances of security for its operations and staff, AngloGold Ashanti provided logistical and financial support – that in turn resulted in political benefits – to the armed group and its leaders. The company knew, or should have known, that the FNI armed group had committed grave human rights abuses against civilians and was not a party to the transitional government.

As a company with public commitments to corporate social responsibility, AngloGold Ashanti should have ensured their operations complied with those commitments and did not adversely affect human rights. They do not appear to have done so. Business considerations came above respect for human rights. In its gold exploration activities in Mongbwalu, AngloGold Ashanti failed to uphold its own business principles on human rights considerations and failed to follow international business norms governing the behavior of companies internationally. Human Rights Watch has been unable to identify effective steps taken by the company to ensure that their activities did not negatively impact on human rights.

In other small-scale mining operations conducted throughout the duration of the conflict, armed groups and their business allies used the proceeds from the sale of gold to support their military activities. Working outside of legal channels, a network of traders funnelled gold mined by artisanal miners and forced labour out of the Congo to Uganda. In return for their services some traders counted on the support of combatants from the armed groups who threatened, detained, and even murdered their commercial rivals or those suspected of failing to honor business deals. These traders sold the ore to

gold exporters based in Uganda who then sold to the global gold market, a practice that continues today.

In 2003, an estimated \$60 million worth of Congolese gold was exported from Uganda, much of it destined for Switzerland. One of the companies buying gold from Uganda is Metalor Technologies, a leading Swiss refinery. The chain of Congolese middlemen, Ugandan traders, and multinational corporations forms an important funding network for armed groups operating in northeastern Congo. Metalor knew, or should have known, that gold bought from its suppliers in Uganda came from a conflict zone in northeastern DRC where human rights were abused on a systematic basis. The company should have considered whether its own role in buying gold resources from its suppliers in Uganda was compatible with provisions on human rights and it should have actively checked its supply chain to verify that acceptable ethical standards were maintained. Through purchases of gold made from Uganda, Metalor Technologies may have contributed indirectly to providing a revenue stream for armed groups that carry out widespread human rights abuses.

The international community has failed to effectively tackle the link between resource exploitation and conflict in the Congo. Following three years of investigation into this link, a United Nations (U.N.) panel of experts stated that the withdrawal of foreign armies from Congo was unlikely to stop the cycle of conflict and exploitation of resources. But the U.N. Security Council established no mechanism to follow up on the recommendations of the panel. The trade in gold is just one example of a wider trend of competition for resources and resulting human rights abuses taking place in mineral rich areas throughout the Congo. The link between conflict and resource exploitation raises broader questions of corporate accountability in the developing world. Given the troubling allegations described in the U.N. panel of experts reports and in this report, it is imperative that further steps be taken to deal with the issue of natural resources and conflict in the Congo and beyond.

In preparation for this report, Human Rights Watch researchers interviewed over 150 individuals including victims, witnesses, gold miners, gold traders, gold exporters, customs officials, armed group leaders, government representatives, and officials of international financial institutions in Congo, Uganda and Europe in 2004 and 2005. Human Rights Watch researchers also met with and engaged in written correspondence with representatives from AngloGold Ashanti and Metalor Technologies to discuss concerns.

We wish to thank our Congolese colleagues in Justice Plus, and other individuals who cannot be named for security reasons, for their assistance and support in our research. They risk their lives to defend the rights of others and are to be commended for their courage and commitment.

## **II. Recommendations**

### **To the government of the Democratic Republic of Congo:**

- Urgently investigate and bring to justice those responsible for alleged violations of international humanitarian law in northeastern Congo, including leaders and combatants of groups such as the FNI, UPC and the FAPC.
- Halt immediately the promotion of armed group leaders to senior ranks in the Congolese army. Investigate and bring to justice those promoted to generals and other senior ranks in January 2004 named in this and previous Human Rights Watch reports including Jérôme Kakwavu, Forebear Kisembo, Bosco Taganda, Germain Katanga, and those promoted to other senior ranks such as Salumu Mulenda and Rafiki Saba Aimable amongst others.
- Sign up to and implement the standards of the Extractive Industry Transparency Initiative.
- Ensure adequate resources for the Ministry of Mines and Energy and customs administrations to enforce the law governing the extractive industries.

### **To the FNI, UPC, and FAPC Armed Groups:**

- Direct all combatants under your command to observe standards of international humanitarian law, in particular the right to life of civilians and non-combatants.

### **To the Ugandan, Rwandan and Congolese governments:**

- Provide no military, financial, or other assistance to armed groups that have committed widespread human rights abuses in northeastern Congo.
- Use your influence to persuade armed groups in Ituri to halt human rights abuses.

### **To the Ugandan government:**

- Improve import controls at border points to ensure that all gold entering Uganda has legal import and export documentation as specified under Congolese law. Develop legislation and regulations to stop Ugandan individuals or companies from participating in the illegal trade of gold.

**To AngloGold Ashanti and Anglo American:**

- Halt immediately any relationship which benefits, either directly or indirectly, armed groups in Ituri who abuse human rights, in particular the FNI. Consider temporarily suspending gold exploration operations in Ituri if such operations require cooperation with the FNI or similar armed groups.
- Urgently review and ensure compliance with the company's own internal business principles and policies as well as international business norms in your operations in Congo, such as the Voluntary Principles on Security and Human Rights, the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, and the OECD Guidelines for Multinational Enterprises.
- Help to establish and fund a 'special gold monitoring body' comprising of representatives of international mining corporations, OKIMO, district authorities, national government authorities, donors, U.N. agencies, trade unionists and civil society to monitor compliance with human rights and sustainable development standards and to consider compensation for victims of human rights abuses to which gold mining activity in northeastern Congo may, directly or indirectly, have contributed.
- Publish full details of all fees, 'taxes', compensation payments, community development funding and other payments made to the FNI armed group and other armed groups in Ituri.

**To Metalor Technologies SA:**

- Cease purchasing gold from suppliers in Uganda who may be buying gold from armed groups in northeastern Congo responsible for gross abuses of human rights.
- Urgently review and strengthen due diligence checks on the supply chain of gold purchased from Uganda, Congo or other conflict zones to make it as difficult as possible for armed groups responsible for human rights abuses to benefit, either directly or indirectly, from the revenue stream created by resource extraction in northeastern Congo. Publish the results of such reviews.
- Ensure supply chain monitoring is compliant with international business norms on human rights and sustainable development such as the OECD Guidelines for Multinational Enterprises and the U.N. Norms on Business and Human Rights.

**To the Swiss, South African, British and Ugandan governments:**

- Press corporations operating from your legal jurisdictions to take all necessary steps to ensure that their business activities do not carry detrimental consequences for

human rights in Congo. If applicable, investigate and hold accountable companies that have contravened domestic or international legislation.

- Use the OECD Guidelines for Multinational Enterprises implementation procedure to carry out investigations into whether the guidelines may have been violated by the activities of companies referred to in this report.

**To MONUC:**

- Establish a specialized unit to monitor links between natural resources exploitation and conflict in key resource rich districts in Congo, such as Ituri. Ensure such a unit is provided with adequate resources and that it reports regularly to the Special Representative of the Secretary General and to the Committee for the Support of the Transition (CIAT) for prompt action as required.

**To donor governments and international financial institutions:**

- Exert political, diplomatic, and economic pressure on the Ugandan, Rwandan and Congolese governments to dissuade them from supporting local armed groups responsible for massive human rights abuses.
- Publicly denounce violations of international human rights and humanitarian law by all local armed groups and their backers in Ituri and insist upon accountability for the perpetrators of such crimes.
- Carry out prompt investigations of the activities of companies which may have violated the OECD Guidelines in their business activities in Congo.
- Press for the establishment of and provide funding for a ‘special gold monitoring body’ for northeastern Congo as described above.
- Establish a high level working group including representatives of the Congolese government, international governments, donors, multilateral institutions, U.N. agencies and civil society to address and mitigate past problems linked with natural resource exploitation in the DRC and to prevent future ones.
- Fund programs in the gold mining region of northeastern Congo to rebuild, strengthen and support independent civil society organizations, including trade unions, that promote human rights and encourage learning from other such structures in Africa or abroad.
- Encourage full implementation by the Congolese government of the Extractive Industries Transparency Initiative and call for full disclosure of all payments made by companies to armed groups in Ituri and to OKIMO and the government.

- Assist the Congolese government in providing financial and technical resources to the Ministry of Mines and Energy and other relevant ministries to improve compliance with the Mining Code.
- Review Uganda's use of gold proceeds originating from the Congo and promote full transparency about the use of such revenues by the government in line with draft IMF Guide on Resource Revenue Transparency.

**To the International Criminal Court:**

- Investigate the links between individuals and armed groups involved in natural resources extraction who may have contributed to war crimes and crimes against humanity in Ituri.



### **III. Methodology**

Human Rights Watch researchers conduct fact-finding investigations into human rights abuses by governments and non-state actors in all regions of the world. We visit the site of abuses to interview victims, witnesses and others.

This report is based on six research missions conducted by Human Rights Watch researchers in 2004 and 2005. Our team carried out research in the DRC and Uganda in February, March, May, July and October 2004 and in Europe in January and April 2005. Additional research material from missions to the DRC and Uganda in 2003 was also incorporated. As part of its research Human Rights Watch visited five gold mines and several other small-scale mining operations in Mongbwalu and Durba, northeastern Congo.

In preparation for this report, Human Rights Watch researchers interviewed more than 150 individuals including victims, witnesses, gold miners, gold traders, gold exporters, customs officials, OKIMO officials, civil society members and union representatives. Our researchers also met with Ituri armed groups leaders, Ugandan army officials, DRC and Ugandan government representatives as well as with U.N. officials, international diplomats and officials of international financial institutions.

Human Rights Watch researchers met with representatives from AngloGold Ashanti on four occasions in Uganda and Congo, and put many of the most troubling allegations to the company in writing offering it an opportunity to respond. Human Rights Watch researchers also engaged in written correspondence with Metalor Technologies and met with the company representatives in Switzerland to discuss concerns.

The information in this report was reviewed by external legal counsel in numerous jurisdictions.

## **Box 1: Who is Who?**

### **Main armed groups mentioned in this report**

#### **Union of Congolese Patriots** (*Union des Patriotes Congolais, UPC*)

Leader: Thomas Lubanga.

The UPC is an armed group in Ituri promoting the interests of the ethnic Hema. It took control of Bunia in August 2002 with the help of Uganda. Soon after the UPC received support from Rwanda. In late 2003 the UPC split into two factions, one under Kisembo Bahemuka (known as UPC-K) and the other under Thomas Lubanga (known as UPC-L). The Lubanga faction was militarily stronger, led by Commander Bosco Taganda in the absence of Thomas Lubanga detained in Kinshasa. Despite series allegations of human rights abuses carried out by Commander Bosco Taganda, he was offered a position as a general in the new Congolese army, the FARDC (*Forces Armées du la République Démocratique du Congo*), in January 2005. To date he has refused to take up his post.

#### **Nationalist and Integrationist Front** (*Front des Nationalistes et Intégrationnistes, FNI*)

Leader: Floribert Njabu.

The FNI is an armed group in Ituri promoting the interests of the ethnic Lendu. Established in late 2002 it temporarily integrated the Lendu militia, known as the FNI, together with the Ngiti milita (Lendu from the south) known as the FRPI. The two branches split into separate armed groups in 2004 after leadership wrangles. The FNI is supported by Uganda. While Ugandan forces were in Congo in 2003 they carried out joint military operations with the FNI. In 2002 and 2003, the FNI also benefited from military training and support from a national rebel group, the RCD-ML. One of their senior commanders, Gode Sukpa, was integrated into the FARDC as a general in January 2005. No checks were carried out as to his suitability for the role.

#### **People's Armed Forces of Congo** (*Forces Armées du Peuple Congolais, FAPC*)

Leader: Jérôme Kakwavu Bukande.

An Ituri armed group based in northeastern Congo (Aru and Ariwara), established in March 2003 with the support of Uganda. Commander Jérôme switched alliances several times since 1998 moving from the RCD-ML, to the UPC before launching his own armed group. In May 2003 a mutiny attempt to overthrow Commander Jérôme was brutally put down with Ugandan support. Despite serious allegations of war crimes carried out on the order of Commander Jérôme, he was integrated into the new Congolese army, the FARDC, as a general in January 2005.

### **Other armed groups**

Northeastern Congo has a host of other armed groups mentioned in passing in this report. They include the following:

- **Party for Unity and Safeguarding of the Integrity of Congo** (*Parti pour l'unité et la sauvegarde de l'intégrité du Congo, PUSIC*), predominantly made up of ethnic Hema from the south.
- **Patriotic Force of Resistance in Ituri** (*Force de Résistance Patriotique d'Ituri, FRPI*), made up of ethnic Ngiti (Lendu from the south) who operate in areas south of Bunia.
- **Congolese Rally for Democracy – National** (*Rassemblement Congolais pour la Démocratie - National, RCD-National*), a rebel group led by Roger Lumbala based in the Isiro and Watsa areas to the north. Now integrated into the Congolese transitional government.
- **Congolese Rally for Democracy – Liberation Movement** (*Rassemblement Congolais pour la Démocratie – Mouvement de Libération, RCD-ML*), a rebel group led by Mbusa Nyamwisi based out of Beni in North Kivu. Its armed wing was called the Congolese People's Army (*Armée du Peuple Congolaise, APC*). This movement was integrated into the Congolese transitional government.

#### IV. Background: Enriching the Elites

Gold, one of the richest resources in the Congo, offers the potential to contribute to financial reconstruction after a war that has cost millions of lives and has left countless others in desperate poverty. But in recent years it has enriched only a fortunate few, many of whom have won control over the gold by use of force. Gold has contributed little to the overall prosperity of the nation; on the contrary it has been a curse to those who have the misfortune to live in regions where it is found.

In 1996 Rwandan and Ugandan forces invaded the Congo, ousted long-time ruler Mobutu Sese Seko, and installed Laurent Desiré Kabila in power. In July 1998 Kabila tried to expel the Rwandan troops, but they and the Ugandan forces instead engaged Kabila's government in the second Congo war, one that eventually drew in Zimbabwe, Angola, Namibia (supporting Kabila) and Burundi (allied with the Rwandans and Ugandans). Often termed as Africa's first world war, the conflict resulted in the deaths of 3.5 million people, the great majority in eastern DRC. Many victims were displaced people who died from exposure, hunger, or lack of medical assistance.<sup>1</sup> A first peace agreement, signed in Lusaka in 1999, had little effect but the U.N. agreed to establish a peacekeeping force known as the U.N. Organization Mission in the Democratic Republic of Congo (MONUC) in November 1999. Through continued international pressure, the national government and major rebel movements eventually signed a power-sharing agreement at Sun City in April 2002 that allowed for the establishment of the Global and All Inclusive Peace Agreement which set up the transitional government in June 2003. Despite this agreement and other bilateral and regional security agreements, insecurity continued in large parts of eastern Congo.

The war in northeastern Congo, specifically in Ituri, sprang from the larger Congo war, and became a complex web of local, national, and regional conflicts. It developed after a local land dispute in 1999 between Hema and Lendu ethnic groups was exacerbated by the Ugandan army who occupied the area and by national rebel groups keen on expanding their power base. The availability of political and military support from external actors, notably Uganda and Rwanda, plus growing extremists' sentiments, encouraged local leaders in Ituri to form more structured movements. Armed groups were born, generally based on ethnic loyalties, including the predominately northern

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<sup>1</sup> International Rescue Committee and Burnet Institute, *Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey*, December 2004.

Hema group the UPC<sup>2</sup>, the predominately Lendu FNI<sup>3</sup>, the southern Hema group PUSIC and the more mixed FAPC.<sup>4</sup> Each of these groups received military and political support from either the DRC<sup>5</sup>, Ugandan or Rwandan governments at different times turning Ituri into a battleground for the war between them.<sup>6</sup>

Between 2002 and 2004 these Ituri armed groups attempted to gain recognition on the national scene, hoping for positions in the Kinshasa based transitional government and in the newly integrated army. In this scramble, local militia leaders frequently switched alliances between themselves and other backers as their interests dictated. They attempted to control huge swathes of territory and strategic sites, including gold mines and lucrative customs posts, in order to enhance the importance of their movement. The strategic sites also provided much needed finance for the armed groups and favor with their backers. A U.N. special report on the events in Ituri published in July 2004 underlined that the competition for control of natural resources, particularly gold, by these armed groups was a major factor in prolonging the crisis in Ituri.<sup>7</sup>

### ***The Significance of Gold***

Gold was first discovered in the Agola River in northeastern Congo in 1903 by two Australian prospectors. They named the area after the local chief Kilo<sup>8</sup> and shortly thereafter made a similar discovery in the Moto River just to the north, from which the name Kilo-Moto derives. Exploitation of the gold started in 1905 and continued on an increased scale. During the first half of the twentieth century, colonial entrepreneurs exploited gold through private companies that introduced large-scale or industrial mining. After independence in 1960, the state nationalized many of these companies, including, in 1966, the Société des Mines d'Or de Kilo-Moto (SOKIMO) that worked the lodes of northeastern Congo. It granted the large SOKIMO concession in Ituri and Haut Uélé Districts of Orientale Province to a new state-owned Office of the Gold Mines of Kilo-Moto (OKIMO). To date, OKIMO officials estimate that more than 400

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<sup>2</sup> The northern Hema group is often referred to as Gegere, a sub-clan of the Hema.

<sup>3</sup> This included temporarily the southern Lendu group known as the Ngiti, who had formed the FRPI militia.

<sup>4</sup> Another group, the Popular Forces for the Democracy of Congo (FPDC) was also born but it has played only a minor role. PUSIC has not been active in the gold mining areas of Mongwalu and Durba and so goes largely unmentioned in this report.

<sup>5</sup> Assistance was received from the pre-transition Kinshasa government before mid-2003, though support allegedly continued from certain components of the transitional government after mid-2003.

<sup>6</sup> Human Rights Watch, "Ituri: 'Covered in Blood' – Ethnically Targeted Violence in North-eastern DRC", *A Short Report*, July 2003.

<sup>7</sup> Letter from the U.N. Secretary General to the President of the Security Council, "Special Report on the Events in Ituri January 2002 – December 2003", July 16 2004, p. 5.

<sup>8</sup> The local chief was actually called Krilo, but the Australians mistook the name for Kilo.

tons of gold have been extracted from their concession and that much more remains, though there is no precise estimate of how much.<sup>9</sup> Many industry experts agree that the OKIMO concession is one of the most exciting, and potentially the largest, unexplored gold reserve in Africa.<sup>10</sup> In the early 1990s OKIMO entered into arrangements with multinational corporations to exploit the large mines of northeastern Congo using industrial methods (discussed below) and also licensed local miners to work other areas by artisanal methods.

In 2000, the U. N. Security Council expressed concern that Congo's natural resources such as gold, diamonds and other minerals were fuelling the deadly war. They appointed a panel of experts<sup>11</sup> to look into the matter who published four separate reports between April 2001 and October 2003.<sup>12</sup> In these series of reports, the U.N. panel of experts reported that Rwandan, Ugandan, and Zimbabwean army officers as well as members of the Congolese elite were growing rich from the wealth of the Congo. They showed how extraction of these resources helped fund armed groups, thus fueling the war. They further documented how the minerals of the Congo were fed into the networks of international commerce. The panel concluded in its report of October 2002 that the withdrawal of foreign armies would not end the resource exploitation because the elites had created a self-financing war economy.<sup>13</sup>

In 2002, following heavy international pressure, in part because of the U.N. panel reports, both the Rwandan and Ugandan governments agreed to withdraw their soldiers from Congo. Uganda subsequently arranged with the Congolese government to keep some forces in northeastern Congo until 2003 when the last of their troops withdrew.

This report, focused on control of gold in northeastern Congo, shows that the pattern of exploitation of natural resources described by the U.N. panel of experts, does indeed continue as of this writing, resulting in widespread abuses of human rights. The trade in gold is just one example of a wider trend of competition for resources and resulting human rights abuses taking place in mineral rich areas throughout the Congo.

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<sup>9</sup> Pasteur Cosma Wilingula Balongelwa, General Director of OKIMO, "Written Presentation on OKIMO", Kinshasa, January 31, 2004.

<sup>10</sup> Human Rights Watch interviews, gold industry experts, Bunia, Kampala, London, February – May 2004. Industry experts use the term 'ore body' instead of the lay term gold reserve.

<sup>11</sup> Known as the U.N. Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo; hereafter the U.N. panel of experts.

<sup>12</sup> See reports from the U.N. Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, April 12, 2001 (S/2001/357), May 22, 2002 (S/2002/565), October 16, 2002 (S/2002/1146), October 23, 2003 (S/2003/1027) plus other addendums.

<sup>13</sup> *Ibid.*, U.N. panel report (S/2002/1146), October 16, 2002.

[Image]

Gold miners working in an open pit mine in Durba. © 2004 Marcus Bleasdale

### ***Ugandan Forces Plunder the Gold of Haut Uélé District, 1998-2002***

In August 1998, shortly after the start of the second Congolese war, Ugandan troops occupied gold-rich areas of Haut Uélé, including the town of Durba, (Watsa Territory, Haut Uélé District, Orientale Province), site of three important gold mines: Gorumbwa, Durba and Agbarabo. According to estimates of engineers and geologists familiar with the area, nearly one ton of gold was extracted from this region during the four-year period of Ugandan occupation.<sup>14</sup> Based on prices at the time, this would have been valued at some \$9 million dollars.

Ugandan troops were supporting the advance of their Congolese allies, the rebel Rally for Congolese Democracy (Rassemblement Congolais pour la Démocratie, RCD) and the Congolese Liberation Movement (Mouvement pour la Libération du Congo, MLC), but according to local observers, the Ugandans took Durba primarily for the wealth it offered. Within weeks of the second war, the Rwandan and Ugandan backed RCD rebel forces quickly announced their “control over the OKIMO mines” and in a written decision prohibited any illicit mining stating that the RCD was going to “economically

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<sup>14</sup> Human Rights Watch interview, OKIMO engineers and geologists, Durba, May 13, 2004. Estimates were based on regular observation and monitoring.

reorganize the territory under its control.”<sup>15</sup> One witness in Durba who witnessed the Ugandan army enter said, “The Ugandans were only here for the gold. . . There was no military reason [to be here] and they never fought any battles here.”<sup>16</sup> Officials of the state-owned gold mining agency OKIMO had been left in charge of the Durba mines after the flight of the expatriate staff of the Barrick Gold Corporation, a mining company which held a concession from OKIMO. A former OKIMO employee present when the Ugandans arrived said, “We understood that they came to our area only for economic interests. The moment they arrived they were more interested in OKIMO than anything else.”<sup>17</sup>

In the early days of the occupation, Ugandan soldiers, including a Ugandan officer called Major Sonko, came by helicopter to try to start gold production.<sup>18</sup> Finding it too difficult and costly to operate the mines on an industrial scale, they decided to use artisanal miners, (*orpailleurs*), although Congolese mining regulations prohibited such miners from working in industrial mines and restricted them to smaller-scale holdings. According to one former OKIMO employee, the decision to get gold immediately and cheaply by using artisanal miners led to the reckless mining practices that would destroy Gorumbwa mine, the most important in the area.<sup>19</sup>

Local sources said that Ugandan Lieutenant David Okumu gave the initial order to start mining in Gorumbwa.<sup>20</sup> According to a report prepared by OKIMO officials that provides further details, Ugandan soldiers took over mine security, chasing away OKIMO guards and the local police in order to benefit from the gold mining.<sup>21</sup> Local miners went to work in the mines, even though they were required to pay an entrance fee to Ugandan soldiers or to give them a portion of their ore when leaving. Witnesses reported that Ugandan soldiers beat local miners who refused to work under these conditions or who failed to deliver the expected amount of gold.<sup>22</sup> To speed extraction of the ore, Ugandan soldiers directed miners to use explosives taken from OKIMO

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<sup>15</sup> Rassemblement Congolais Pour La Démocratie (RCD), Cabinet du Coordinateur, Décision No. 004/RCD/CD/LB/98, Goma, October 28, 1998.

<sup>16</sup> Human Rights Watch interview, Durba, May 11, 2004.

<sup>17</sup> Human Rights Watch interview, OKIMO employee, Durba, May 13, 2004.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Human Rights Watch interviews, Congolese miners and other sources, Durba and Watsa, May 10 - 13, 2004.

<sup>21</sup> OKIMO Internal Memorandum to General Management, “La sécurité au Groupe d’Exploitation Moto”, March 17, 2000. Further details also provided in internal OKIMO memos of September 9, 1999 and May 29, 2000. Documents on file at Human Rights Watch. See also, William Wallis, “Warlords and Adventurers in Scrambles for Riches,” *Financial Times*, July 15, 2003.

<sup>22</sup> Human Rights Watch interview, Durba, May 13, 2004.



stocks. Local residents said that there were more than fifty explosions in the mines during the month of December 1999, some of them severe enough to shake nearby housing. Even the rock pillars that supported the roof in the mine were blasted to extract any ore that might be inside them.<sup>23</sup>

On several occasions OKIMO officials protested to Ugandan army commanders about the illegal mining, the theft of fuel and explosives from their stock, and the possible damage to the mines through the explosions.<sup>24</sup> Ugandan soldiers beat, arrested, and threatened some of those who protested. Lieutenant Okumu arrested the local OKIMO Director Samduo Tango and had him publicly beaten. A witness at the scene of the beating said,

[Samduo Tango] was arrested and taken to “Les Bruns” [a house in the OKIMO concession] by Commander Okumu and he was beaten. He was protesting against how the Ugandans were doing things. It happened a few months after the Ugandans arrived. They also beat other workers who were against them. Samduo had to pay to be released and then he fled. Another person who was beaten was Aveto as he witnessed the Ugandans taking dynamite from the warehouse. He was arrested along with Samduo and also publicly beaten. Commander Okumu beat them himself and he asked other soldiers to also beat them. I saw this myself.<sup>25</sup>

Another OKIMO official told a Human Rights Watch researcher,

I had many meetings with [Commander Okumu] to make him understand that they must not destroy the mine. But these meetings only put us more at risk. I myself was threatened because of all this. One time I was taken to their military camp for questioning.<sup>26</sup>

Lt Okumu left the Durba area in early 1999 but other Ugandan commanders continued with similar practices and took no actions to stop the illegal mining. In June 1999 OKIMO officials reported again on the situation and asked Commander Sula based in

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<sup>23</sup> Ibid., OKIMO Internal Memorandum, March 17, 2000, Also Human Rights Watch interview, OKIMO engineer, Durba, May 13, 2004.

<sup>24</sup> Ibid., OKIMO Internal Memorandum, March 17, 2000.

<sup>25</sup> Human Rights Watch interview, Durba, May 13, 2004.

<sup>26</sup> Human Rights Watch interview, OKIMO employee, Durba, May 13, 2004.

Isiro to intervene. He ignored the request and soon after the Durba-based Ugandan officer Freddy Ziwa arrested one of the OKIMO officials.<sup>27</sup> According to an internal OKIMO memorandum, Commander Sula met with local miners and Ugandan soldiers on July 12, 1999 in Durba and ordered them to organize more extensive mining in the OKIMO concession. On July 29, 1999 artisanal miners and Ugandan soldiers began work in the second largest mine in the area, the Durba mine.<sup>28</sup> The miners were reportedly transported to work in army vehicles.<sup>29</sup>

In December 1999, OKIMO officials met with two other Ugandan army officers heavily involved in the mining, Commanders Bob and Peter Kashilingi. They sought an end to the mining and warned again that Gorumbwa mine might collapse if the practice of blasting the supporting pillars continued. According to OKIMO officials, no action was taken by Ugandan commanders.<sup>30</sup>

In late 1999 the Gorumbwa mine collapsed killing a reported one hundred miners trapped inside and flooding the area.<sup>31</sup> According to one local engineer:

The Ugandan army were responsible for the destruction of Gorumbwa mine. They started to mine the pillars. It was disorderly and very widespread. People were killed when the mine eventually collapsed. It was not their country so they didn't care about the destruction. They kept promising to help stabilise the mine, but they never did.<sup>32</sup>

Another engineer thrown out of work by the collapse of the mine explained, "Gorumbwa mine was the most important. It was ruined by the Ugandans and this has halted development here. It has caused social degradation."<sup>33</sup>

In December 1998, an epidemic of Marburg hemorrhagic fever killed more than fifty people in Durba, the majority of them miners. The outbreak was believed to have

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<sup>27</sup> Ibid., OKIMO Internal Memorandum March 17, 2000.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Human Rights Watch interview, Durba, May 13, 2004. See also OKIMO Internal Memorandum, March 17, 2000.

<sup>31</sup> Wallis, "Warlords and Adventurers in Scrambles for Riches".

<sup>32</sup> Human Rights Watch interview, engineer, Durba, May 13, 2004.

<sup>33</sup> Human Rights Watch interview, former engineer, Durba, May 11, 2004.

begun in Gorumbwa mine.<sup>34</sup> According to a team of medical experts sent to the area by the U.N. several months later, the unhealthy conditions in the Gorumbwa mine increased the risk of workers contracting this fever.<sup>35</sup>

Ugandan soldiers had no authority to extract gold from mines in the Durba area. Possibly aware of the illegal nature of their exploitation, they sought once in May 1999 to create a semblance of legitimacy for their activities. Working through their local Congolese proxy the RCD, the local Congolese Brigade Commander, Mbangwa Buloba, held a meeting questioning OKIMO's legal title to the mining rights in the area and claiming it was the new rebel administration who were entitled to manage the artisanal gold exploitation. The effort, described in a memorandum by OKIMO officials, came to nothing.<sup>36</sup>

Nor did Ugandan soldiers have any military imperative to exploit or destroy the gold mines in the Durba area. As an occupying power they were responsible under international law for protecting civilian and non-military state assets, including mines, and had an obligation to properly maintain them. Their systematic and abusive exploitation of the gold mines represented an immediate loss to state assets and their destruction of the infrastructure and damage to the Gorumbwa mine decreased the value of the state assets for future use, all in violation of international law.<sup>37</sup>

In 2001 the U.N Panel of Experts on Illegal Exploitation in the DRC reported on the involvement of Ugandan officers in mining activities in Durba.<sup>38</sup> Their reports were followed-up in 2002 by the Ugandan government appointed judicial commission of inquiry led by Justice David Porter, commonly known as the Porter Commission, who were instructed to respond to the allegations made by the panel.<sup>39</sup> The Porter Commission interviewed various Ugandan officers about their involvement in illegal gold mining in Durba including Lt Okumu, Major Sonko and Lt Col Mugeny amongst

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<sup>34</sup> Human Rights Watch interview, Watsa, May 12, 2004. There have been previous outbreaks of Marburg fever in the area in 1992, 1994 and 1997. See also medical papers by Dr Matthias Borchert.

<sup>35</sup> Office for the Coordination of Humanitarian Affairs, "Rapport de mission du Conseiller Humanitaire: Epidémie de Fièvre hémorragique de Durba/Province Orientale," May 1999. Also Human Rights Watch interview, medical professional, Watsa, May 13, 2004.

<sup>36</sup> *Ibid.*, OKIMO Internal Memorandum March 17, 2000.

<sup>37</sup> Article 55 of the Hague Regulations (Convention IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, October 18, 1907.

<sup>38</sup> U.N. Panel of Experts, Report (S/2001/357), April 12, 2001, p. 11.

<sup>39</sup> "Final Report of the Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo 2001 (May 2001 – November 2002)", November 2002. Hereafter, this will be referred to as the "Porter Commission report".

others. All of them denied any involvement in such activities. The Porter Commission found the officers were lying and declared there had been “a cover-up” inside the UPDF to hide the extent of such activities.<sup>40</sup>

Despite the findings of the Porter Commission, no arrests were made of officers responsible for the wide-scale and abusive looting, nor was any compensation provided to OKIMO or the Congolese state for such activities. In September 2004 the DRC government demanded \$16 billion in compensation from the Ugandan government for the plunder of natural resources by its forces while they occupied parts of the DRC, in violation of international law.<sup>41</sup> In newspaper reports, representatives from the Ugandan government acknowledged some responsibility for the killings, plunder and looting the DRC suffered at the hands of their troops, but made no commitment to pay compensation stating the amount demanded was “colossal.”<sup>42</sup>

In 2002 under international pressure Ugandan forces started to withdraw from parts of the DRC and moved their troops out of Durba leaving the area to a breakaway faction of the original RCD, this one known as the RCD-ML and its armed group, the APC. After the Sun City agreement in 2002, RCD-ML became allied also with the national government. In the following two years, this gold mining region changed hands several times between rival national movements and local armed groups. Each time there was one constant. “Every time there was a change of armed group,” said one witness, “the first thing they did was to immediately start digging for gold.”<sup>43</sup> With the establishment of the transitional government in mid-2003, Kinshasa supposedly reasserted control over the region, but in fact formerly rebel military forces continued to play a role in exploiting the gold though they now claimed to be part of a newly integrated national army.<sup>44</sup>

### ***Local Armed Groups Fight for the Gold of Ituri, 2002-2004***

With the withdrawal of all – or most – of the Rwandan and Ugandan soldiers from eastern Congo in 2002 and 2003, local armed groups became the main direct contenders for control of areas rich in gold. In Ituri District the most important of these groups were affiliated with either the Hema or the Lendu, ethnic groups that had been battling

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<sup>40</sup> Ibid., p. 69 and 70.

<sup>41</sup> Article 55 of the Hague Regulations (Convention IV).

<sup>42</sup> David Musoke and A. Mutumba-Lule, “DRC Wants \$16 billion for Plunder by Uganda, Rwanda,” *East African*, September 27, 2004.

<sup>43</sup> Human Rights Watch interview, Durba, May 13, 2004.

<sup>44</sup> Human Rights Watch interviews, Durba and Watsa, May 11 – 13, 2004.

over land and fishing rights since 1999.<sup>45</sup> Because the ethnic conflict became intertwined with the struggle over gold, the fighting in Ituri District drew in far larger numbers of civilians than was the case around Durba, in Haut Uélé District. Both areas had significant gold mines but Durba suffered less historical ethnic tensions between the Hema and Lendu. Controlling sites rich in gold assured armed group leaders the means for buying guns and other supplies to carry on the conflict and also guaranteed political importance to the leaders, increasing the possibility that they would earn recognition and coveted posts at national level.<sup>46</sup>

Although local armed groups moved to center stage as the major actors, Ugandan and Rwandan soldiers continued to play a role, providing arms and advice to leaders of these armed groups, sometimes directly, sometimes through one or the other of the Congolese rebel movements with which they were allied. These supporting actors had their own agendas and were ready to shift alliances with local actors as circumstances changed. By 2002 Rwanda and Uganda had fallen out, a split highlighted by combat between their forces at Kisangani in May 2002. The division between them added further complexity to the dynamics of local alliances, sometimes increasing opportunities for local groups to play off one powerful backer against the other. A third armed group of mixed ethnicity, the FAPC led by Commander Jérôme Kakwavu, a Congolese Tutsi and former RCD-ML commander, joined the struggle in support of the Hema. Local armed groups, rebel movements, and Rwanda and Uganda all juggled multiple interests, but always important among them was desire to control the gold.

During this period, the Congolese government had little influence in Ituri, leaving local affairs largely to its ally, the RCD-ML. In an attempt by the international community to find a political solution to the ongoing fighting in Ituri, the U.N. chaired dialogue between the Congolese government, armed groups and the Ugandan government resulting in the establishment of an ad hoc Ituri Interim Administration (IIA) in April 2003. When this body proved ineffective, the national government and MONUC in May 2003 pressured representatives of six armed groups to pledge in writing to cooperate with the peace process. The Foreign Affairs Commissioner of the FNI showed no intention of honoring the pledge, saying, “We were forced to sign the document. It means nothing to us.”<sup>47</sup> Leaders of other groups apparently felt the same way and fighting has continued since then between militia themselves and between militia and

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<sup>45</sup> Human Rights Watch, “Ituri: ‘Covered in Blood’” and “Uganda in Eastern DRC: Fuelling Political and Ethnic Strife”, *A Short Report*, March 2001 and “Chaos in Eastern Congo: U.N. Action Needed Now,” *A Briefing Paper*, October 2002.

<sup>46</sup> United Nations Security Council, “Special Report on the Events in Ituri”, July 16, 2004, p. 5.

<sup>47</sup> Human Rights Watch interview, Floribert Njabu, President of the FNI and Lonu Lonema, Foreign Affairs Commissioner FNI, Kampala, July 3, 2004.

MONUC peacekeeping troops. In February 2005, after the killing of more U.N. peacekeepers in Ituri, MONUC renewed its pressure on the armed groups. Some of the militia leaders declared again they were prepared to participate in disarmament operations, though at the time it writing it was unclear if this time they would stick to their commitments.

Poorly funded by the international community and not supported by MONUC, the interim administration accomplished little and was dissolved in June 2004. The transitional government restored local administrative structures, and appointed administrators with little or no connection to the armed groups. The new functionaries remained largely unpaid and had no means to exercise control over armed groups.

In an attempt to resolve the security problems, President Joseph Kabila, who succeeded as president after the death of his father Laurent Kabila in 2001, signed a decree in late 2004 granting six leaders of the Ituri armed groups positions as generals in the newly integrated Congolese army and a further thirty-two militiamen positions as lieutenant-colonels, colonels and majors. Despite divisions within the transitional government about these appointments, the generals were welcomed into army ranks in January 2005. The government provided no assurances that the newly appointed generals would not be returned to Ituri nor did it make any commitments to starting judicial investigations into serious allegations of war crimes and crimes against humanity allegedly carried out by the new appointees. The integration of alleged war criminals into senior army ranks was denounced by Human Rights Watch and international diplomats.<sup>48</sup> In the aftermath of the killing of nine U.N. peacekeepers in Ituri in February 2005, the transitional government arrested Floribert Njabu, Thomas Lubanga and a handful of other senior Ituri commanders though at the time of writing they had not yet been charged with any crimes or brought to justice.

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<sup>48</sup> See Human Rights Watch, "D.R. Congo: Army Should Not Appoint War Criminals," *Press Release*, January 14, 2004.

## **V. Human Rights Abuses in the Mongbwalu Gold Mining Area**

During eighteen months of conflict in 2002 and 2003, Hema and Lendu armed groups fought to control the gold-mining town of Mongbwalu in Ituri. As they passed control of the rich prize back and forth five times, they also slaughtered some two thousand civilians, often on an ethnic basis. In addition, they carried out summary executions, raped and otherwise injured thousands of civilians, engaged in torture, and arbitrarily detained persons whom they saw as enemies. During the frequent clashes, tens of thousands of civilians were forced to flee their homes, losing much or all of their goods to looting or destruction.

The town of Mongbwalu lies some 150 km south of Durba within the Ituri section of the gold mining concession controlled by the state gold company OKIMO. Gold was first discovered in the area by Australian prospectors in 1905 and has been mined ever since. The Mongbwalu area is presumed to be one of the richest goldfields in the OKIMO concession and is home to the large industrial mine of Adidi, the former Belgian mines of Makala and Sincere, and a substantial gold refining factory where gold ingots were produced until 1999. At its height of operations in the 1960s and 1970s the OKIMO gold mining operation employed some six thousand workers and was the main provider of employment in northeastern Congo. Although it was in the center of the territory belonging to the Nyali ethnic group, people of different ethnicities had come to live in Mongbwalu to work in the gold mines or in related activities. Lendu formed the majority of its fifty thousand inhabitants with Hema a far smaller number. Despite ethnic clashes elsewhere in Ituri, Mongbwalu stayed generally calm before 2002 under the control of RCD-ML troops supported by soldiers of the Ugandan army; gold operations continued on a much reduced scale, most of it for the benefit of the RCD-ML and Ugandan soldiers.

In April 2002 the situation changed when the RCD-ML, strengthened by new solidarity with the national government in the Sun City Agreement, came into conflict with the Hema. Under the leadership of Thomas Lubanga, the Hema began to form structured militia groups, who would later be formally known as the UPC. The RCD-ML responded by attacking Hema civilians in Mongbwalu with the help of Lendu combatants. Hema militia then targeted Lendu civilians in the town and outlying areas. For greater security people who had lived in ethnically mixed areas moved to areas

inhabited by others of their own group. As one woman said, “People of each group fled to their own areas. Tensions were very high.”<sup>49</sup>

By early August 2002 the Ugandan government had decided to withdraw their support from RCD-ML – in part because of its links with Kinshasa – and to back its local challenger, the UPC. Ugandan troops and Hema combatants dislodged RCD-ML forces from Bunia, the capital of Ituri. Shortly thereafter the Ugandans reduced their backing for the Hema, suspecting they were moving towards an alliance with Rwanda and Rwanda increased its support for the UPC. According to a confidential supplement prepared by the U.N. panel of experts, Rwanda trained more than one hundred UPC combatants in the Gabiro training center in Rwanda between September and December 2002 and trained other intelligence officers directly in Bunia.<sup>50</sup> Meanwhile, the RCD-ML, humiliated by its loss of Ugandan backing and its hasty retreat from Bunia, forged even closer links to the Lendu militia, providing them with arms and carrying out joint attacks to stop or reverse UPC advances.

Once in control of Bunia, the UPC claimed to have set up a government for Ituri and moved to capture towns both north and south of Bunia. According to witnesses and documentary evidence, the UPC began planning an attack on Mongbwalu in September 2002, intent on winning control of its gold.<sup>51</sup> Even before a shot was fired, UPC President Lubanga asked the then general director of OKIMO, Etienne Kiza Ingani, who was himself Hema, to prepare a memo on how mining operations could be managed under UPC control. In the document Mr. Kiza warmly congratulated the UPC on its anticipated victory – weeks before Mongbwalu had actually been captured – and suggested the establishment of a “mixed Executive Council [including the UPC and OKIMO] to take stock of the terrain ... and decide quickly what we need to do.”<sup>52</sup> In meetings about investment in the mines held in Mongbwalu after the UPC victory, the finance director of OKIMO, Roger Dzaringa Buma, also a Hema, was presented as the financial advisor to UPC President Lubanga, illustrating a continuing close relationship between OKIMO officials and the UPC armed group.<sup>53</sup>

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<sup>49</sup> Human Rights Watch interview, Mongbwalu, May 1, 2004.

<sup>50</sup> *Ibid.*, Panel of Experts, “Confidential Supplement to the U.N. Security Council”, November 2003.

<sup>51</sup> Human Rights Watch interviews Mongbwalu, Bunia, Kinshasa, February and May 2004. Also Letter from OKIMO Director General, Etienne Kiza Ingani to Thomas Lubanga, President of the UPC. Ref DG/SDG/172/2002, October 1, 2002. Annex, “The Expectation of OKIMO”, October 2002.

<sup>52</sup> Letter from OKIMO Director General, Etienne Kiza Ingani to Thomas Lubanga, President of the UPC. Ref DG/SDG/172/2002.

<sup>53</sup> Human Rights Watch interview, OKIMO employee, Mongbwalu, May 4, 2004.



The UPC failed in its first attempt to take Mongbwalu on November 8, 2002, its forces pushed back by RCD-ML combatants and Lendu militia. Before undertaking a second attempt, UPC officials won the support of Commander Jérôme Kakwavu Bukande, who had commanded the RCD-ML 5<sup>th</sup> Operational Zone in the gold mining region of Durba. But in September Commander Jérôme had been driven from Durba by a combined force of two other rebel movements, the RCD-N and the Congolese Liberation Movement (MLC). He had retreated to Aru, a post at the Ugandan frontier that offered lucrative tax revenue. According to another senior combatant who also left the RCD-ML for the UPC at the same time, Commander Jérôme expected to get gold and ivory in return for his participation, as well as arms. He said,

Lubanga gave him [Commander Jérôme] the materials – mortars, rocket-propelled grenade launchers, grenade launchers that could be mounted on a vehicle, and many bombs. All of this was sent by plane via Air Mbau [Mbau Pax Airlines] an Antonov leased by the UPC. Some other ammunition came via road from Bunia. [Commander] Manu escorted it to Mongbwalu. This was the reserve.<sup>54</sup>

Rwandan support was also crucial to the UPC in its efforts to take Mongbwalu. In addition to providing military training, as mentioned above, the Rwandans supplied the UPC—and their ally Commander Jérôme—with weapons. The same combatant associated with Commander Jérôme said,

The weapons we received from Lubanga were from Rwanda. They had Rwanda written on the boxes. There is also a difference in the type of weapons that Rwanda and Uganda use. The MAG was a different model, an MMG while the Ugandans use a G2. Also the mortars were a different size from Rwandan ones.<sup>55</sup>

A later confidential supplement from the U.N. panel of experts confirmed that mortars, machine guns, and ammunition were sent from Rwanda to the UPC in Mongbwalu between November 2002 and January 2003. On other occasions arms sent from Kigali were airdropped at the UPC stronghold of Mandro.<sup>56</sup>

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<sup>54</sup> Human Rights Watch interview, former combatant, Mongbwalu, May 4, 2004.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid., Panel of Experts, "Confidential Supplement to the U.N. Security Council", November 2003.

[Image]

Thomas Lubanga, President of the UPC. © 2003 Khanh Renaud

According to the combatant who also participated in the assault on Mongbwalu, the operation was organized and led by UPC leader Lubanga, Commanders Bosco Taganda (UPC Chief of Operations) and Commander Kitembo Bahemuka (UPC Chief of Staff) as well as Commander Jérôme Kakwavu and two other officers associated with him, Commanders Salumu Mulenda and Sey. Rwandans reportedly assisted in planning and directing the attack, to the displeasure of Commander Jérôme and some of his men. As the combatant said, “It was the Rwandans who organized the attack- they gave the orders. The people of Jérôme were not happy with this.”<sup>57</sup> In assessing the role of Rwanda in Ituri, the U.N. panel of experts told the U.N. Security Council that key UPC commanders reported directly to the Rwandan army high command including Rwandan army Chief of Staff, General James Kabarebe, and Chief of Intelligence, General Jack Nziza.<sup>58</sup>

### ***Massacres and other Abuses by the UPC and their Allies***

#### ***Massacre at Mongbwalu, November 2002***

The UPC strengthened by Commander Jérôme’s combatants after the failed attack of November 8, 2002 attacked the Mongbwalu area again on November 18, 2002. During the six-day military operation, UPC forces slaughtered civilians on an ethnic basis, chasing down those who fled to the forest, and catching and killing others at roadblocks. In a co-ordinated strategy UPC and Commander Jérôme’s forces attacked to the north of Mongbwalu in the villages of Pili Pili and Pluto drawing the more experienced RCD-ML soldiers out of the town. Others, led by Commander Bosco, attacked to the south at the airport. A witness said the attackers worked systematically, going from one house to the next. He recounted,

The UPC arrived in Pluto at about 9:00 a.m. . . If they caught someone they would ask them their tribe. If they were not their enemies they would let them go. They killed the ones who were Lendu. . . . The UPC would shout so everyone could hear, “We are going to exterminate you – the government won’t help you now.”<sup>59</sup>

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<sup>57</sup> Human Rights Watch interview, former combatant, Mongbwalu, May 4, 2004.

<sup>58</sup> Ibid., Panel of Experts, Confidential Supplement to the U.N. Security Council, November 2003.

<sup>59</sup> Human Rights Watch interview, Beni, February 27, 2004.

Another witness described what he saw in Mongbwalu,

The Hema [UPC] and ... [Commander Jérôme's forces] came into town and started killing people. We hid in our house. I opened the window and saw what happened from there. A group of more than ten with spears, guns and machetes killed two men in Cité Suni, in the center of Mongbwalu. . . . They took Kasore, a Lendu man in his thirties, from his family and attacked him with knives and hammers. They killed him and his son (aged about 20) with knives. They cut his son's throat and tore open his chest. They cut the tendons on his heels, smashed his head and took out his intestines. The father was slaughtered and burnt. We fled to Saio. On the way, we saw other bodies.<sup>60</sup>

[Image]

A Lendu FNI fighter carries a rocket-propelled grenade. Proceeds from the sale of gold are frequently used to purchase weapons and other supplies for armed groups in Ituri.  
© 2003 Karel Prinsloop/AP

Many civilians fled with the Lendu combatants to Saio, about seven kilometers away, only to be attacked there the next morning. Civilians ran into the forests while others tried to hide in Saio, including at a church called "Mungu Samaki." When UPC combatants found civilians, they slaughtered them.<sup>61</sup> A witness said,

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<sup>60</sup> Human Rights Watch interview, Oicha, February 2003.

<sup>61</sup> Justice Plus interviews, Ituri, March 2003.

The [UPC] were using incendiary grenades and burned houses that still had people in them, like Mateso Chalo's house. Ngabu was a Lendu who couldn't flee. He had lots of children and was trying to carry them. They shot at him. He fell on one of his children and died. Another woman, Adjisu was shot in the leg. She had her baby with her. They caught her as she was trying to crawl along the ground. They cut her up with machetes and killed her. They cut the baby up as well. Some people were thrown into the latrines. The UPC said they were now the chiefs.<sup>62</sup>

The UPC pursued the fleeing Lendu combatants, the RCD-ML forces and thousands of civilians as they took to the forest. In a ten day trek seeking safety at Beni and elsewhere, scores of civilians died, particularly children and the weak. Those who tried to flee by road were caught at roadblocks and many of them were killed. One witness who fled said he had seen UPC combatants kill 120 people at a roadblock at Yedi. He later covered the bodies with leaves.<sup>63</sup>

Some civilians who were not Lendu returned to Mongbwalu in the following days. According to them, UPC Commander Bosco was in charge at first but then was replaced by Commander Salongo as the sector commander of Mongbwalu. Those who returned reported that Lendu, Nande and Jajambo peoples were not welcome in Mongbwalu. As one witness recounted, "You couldn't be Lendu in Mongbwalu or you would be eliminated."<sup>64</sup> Witness reported numerous bodies in the streets and fresh graves around the UPC military headquarters at the "apartments", formerly the lodgings of OKIMO employees. Those returning more than one week after the attack reported corpses still lying on the streets.<sup>65</sup>

### ***Massacre at Kilo, December 2002***

In December 2002 and early 2003, UPC forces attacked Kilo, Kobu, Lipri, Bambu and Mbijo, all villages near Mongbwalu. They took Kilo on December 6 and a few days later Commander Kitembo and Commander Salumu ordered the deliberate killing of scores of civilians. They held a meeting in the center of town with some sixty Nyali local authorities. According to witnesses at the meeting, Commander Kitembo said that all Lendu would be expelled from the area and that those who refused to go would be

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<sup>62</sup> Human Rights Watch interview, Beni, February 27, 2004.

<sup>63</sup> Ibid.

<sup>64</sup> Human Rights Watch interview, Mongbwalu, May 2, 2004.

<sup>65</sup> Human Rights Watch interview, Oicha, February 2003.

killed.<sup>66</sup> UPC combatants arrested men, women and children with bracelets, assuming them to be Lendu.<sup>67</sup> They forced them to dig their own graves before massacring them. UPC combatants also forced Nyali residents to help cover the graves.

[Image]

A Hema UPC combatant patrolling a village in Ituri. Machetes are frequently used by the FNI and UPC during their attacks. © 2003 Marcus Bleasdale

One man who was not Lendu said,

I saw many people tied up ready to be executed. The UPC said they were going to kill them all. They made the Lendu dig their own graves. I was not Lendu but forced to dig as well or I would be killed. The graves were near the military camp. It started in the morning. They called people to quickly dig a hole about four feet deep. They would kill the people by hitting them on the head with a sledgehammer. People were screaming and crying. Then we were asked to fill the grave up. We worked till about 16:00. We buried the victims still tied up. There must have been about four [UPC] soldiers doing the killing. They would shout [at the victims] that they were their enemies. One of the officers present was Commander David [Mpigwa]. Commander Kitembo was also there and he saw all this. He was giving the orders along with David. I don't know how many they killed in total, but I must have seen about one hundred people killed.<sup>68</sup>

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<sup>66</sup> Human Rights Watch interviews, Mongbwalu and Bunia, May 6 and October 8, 2004.

<sup>67</sup> Lendu combatants sometimes wear traditional arm bands or necklaces known as 'grigri' that they believe ward off harm and protect them against attackers.

<sup>68</sup> Human Rights Watch interview, village near Mongbwalu, May 6, 2004.

According to a special U.N. report on events in Ituri, UPC Commander Salumu led further military operations that killed at least 350 civilians from January to March 2003.<sup>69</sup>

Based on witness statements, information from local human rights organizations and other sources, Human Rights Watch estimates that of the total two thousand civilians killed at and near Mongbwalu during the period November 2002 to June 2003, at least eight hundred – including the 350 cited by the U.N. report – were killed in the attacks led by the UPC in late 2002 and early 2003.<sup>70</sup> Over 140,000 people were displaced by the series of attacks, some of whom remain in camps or in the forest at the time of writing. “I want to go back to my job in Mongbwalu,” said one witness, “but not when there are still lots of guns there that are used to kill people.”<sup>71</sup>

### ***Arbitrary arrest, torture and summary executions***

After taking control of Mongbwalu, Hema combatants arbitrarily arrested and, in some cases, summarily executed civilians suspected of being Lendu or of having helped Lendu.<sup>72</sup> One man, detained on the accusation that his brothers had helped the Lendu, was beaten for two days and then confined in a bathroom with four others at the “apartments,” headquarters of the UPC. He said that two of the four, elderly Lendu men, were killed and that the other two, who were not Lendu, also were taken away on the tenth day, just before his release.<sup>73</sup> Another witness related having been arbitrarily imprisoned at a military camp. He said he saw combatants select out and kill prisoners on an ethnic basis.<sup>74</sup>

[Image]

A Lendu man held in detention by the UPC, July 2003. The UPC frequently carried out campaigns searching for Lendu after taking control of an area. Known locally as “the man-hunt”, individuals detained during such campaigns are often subjected to tortured and then executed. © 2003 Marcus Bleasdale

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<sup>69</sup> Ibid., United Nations Security Council, “Special Report on the Events in Ituri”, p. 24.

<sup>70</sup> It is nearly impossible to get accurate statistics on death rates. It is possible the death toll of civilians could be much higher.

<sup>71</sup> Human Rights Watch interview, displaced persons camp, Beni, February 27, 2004.

<sup>72</sup> For more information on similar conduct by UPC in Bunia, see Human Rights Watch, “Ituri: Covered in Blood”, July 2003. Also United Nations Security Council, “Special Report on the Events in Ituri”, p. 34 – 38.

<sup>73</sup> Human Rights Watch interview, Mongbwalu, May 2, 2004.

<sup>74</sup> Human Rights Watch interview, Oicha, February, 2003.

One of the best known cases of arrest and execution involved Abbé Boniface Bwanalunga, the elderly Ngiti priest of Mongbwalu parish, who was arrested with three nuns and two other men on November 25, 2002. Targeted because of his ethnicity, Abbé Bwanalunga was the first priest killed as part of the Ituri conflict.<sup>75</sup>

In December, church officials confronted UPC President Lubanga about the responsibility of UPC combatants for the killing of Abbé Bwanalunga. According to them, Lubanga expressed his regret for the death and supposedly promised an investigation, which was never carried out.<sup>76</sup> Some Hema community leaders in Dego village, not far from Mongbwalu, reportedly sought to identify the perpetrators in order to avert possible repercussions on their community, but the results, if any of this effort, are not known.

[Image]

Abbé Boniface Bwanalunga, the Ngiti (Lendu) priest arrested, tortured and killed by UPC militias during their attack on Mongbwalu in November 2003. Abbé Bwanalunga was about 70 years old at the time of death and had been unable to flee to safety. He was killed for belonging to the Ngiti (Lendu) ethnic group. © Private.

### *Mining the Gold: Instances of Forced Labour*

According to one witness, the UPC promised gold to men who joined their forces in the attack on Mongbwalu.<sup>77</sup> Ordinary combatants may not have been the only ones who expected to share in the wealth. One journal that specializes in mining affairs reported that Rwandans had struck a deal with the UPC and that Lubanga promised to ship gold from the area under its control out through Kigali rather than through Kampala.<sup>78</sup> In

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<sup>75</sup> In total three nuns and five priests have been killed since 1999 in Ituri. The most recent one was killed in Fataki in August 2003. According to Catholic Church officials, two Hema priests killed in Bunia in May 2003 by Ngiti and Lendu combatants may have been targeted in retaliation for the killing of Abbé Bwanalunga. Human Rights Watch interview, Catholic Church officials, Bunia, May 10, 2004.

<sup>76</sup> Human Rights Watch interview, Catholic Church officials, Bunia, May 10, 2004.

<sup>77</sup> Human Rights Watch interview, Bunia, February 2003.

<sup>78</sup> "UPC Rebels Grab Mongbwalu's Gold", *African Mining Intelligence* No. 53, January 15, 2003.

January 2003 Mr. Kiza, general director of OKIMO, and Mr. Dzaringa, its finance director, hosted potential investors who had come from Rwanda to discuss industrial mining at Mongbwalu. The Rwandan visitors toured the gold mines, the factory and the laboratory before meeting the two OKIMO officials together with UPC military and political leaders.<sup>79</sup> OKIMO employees had been asked to prepare estimates on costs of resuming operations and they showed this data and geological maps to the investors. According to one, the rest of the negotiations were handled by the UPC.<sup>80</sup>

While waiting for the capital needed to begin industrial operations, the UPC encouraged workers, who had fled, to return and begin artisanal mining.<sup>81</sup> UPC commanders sought to identify and recruit OKIMO employees to help with the work.<sup>82</sup> According to miners and local authorities, some miners resumed working in the three main mines in Mongbwalu and at open pit areas known locally as Bienvenue and Monde Rouge; they had to pay a portion of their ore each day to UPC combatants who guarded the mines.<sup>83</sup>

But the UPC apparently found the number of such miners insufficient and they began forcing others to work one of three shifts a day, morning, afternoon, or night, in the mines. A miner said,

The workers were not paid. It was hard labor. They had to dig under big stones without machines. They had only hand tools like pick-axes. They were given bananas and beans to eat and they were beaten. Some tried to run away by pretending to go to the toilet. The Hema militia guarded them. As the Lendu had fled, all the other groups were made to dig.<sup>84</sup>

Another person forced to work five times recounted his first experience:

I had been there for less than a week when three soldiers came to find me at my house. They took me to a part of town called Cite Shuni. There I was given a basket of rocks to pound down into dust so they could get the gold. I had never done this before and I was forced to do

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<sup>79</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004

<sup>80</sup> Human Rights Watch interview, OKIMO employee, Mongbwalu, May 4, 2004

<sup>81</sup> Human Rights Watch interview, Bunia, February 2003.

<sup>82</sup> Human Rights Watch interview, Mongbwalu, May 2, 2004.

<sup>83</sup> Human Rights Watch interviews, Mongbwalu, May 2, 2004; Bunia, February 2003.

<sup>84</sup> Human Rights Watch interview, former gold miner, Oicha, February 2003.



it all day long. There were about 20 of us in that place forced to do the same work. I got so many blisters on my hands that I couldn't go on. The work was very hard. It seemed each soldier had his own workers producing for him. I did everything I could to escape from there.<sup>85</sup>

UPC combatants themselves also mined gold, sometimes with assistance from local miners whom they had required to work with them and who were sometimes paid a small percentage of the findings.<sup>86</sup> One former OKIMO employee forced to help the UPC set up a mining brigade said the group included fifty to one hundred combatants with a small number of skilled miners. This brigade mined in surrounding areas of Mongbwalu including Mbijo, Baru, Yedi and Iseyi under UPC military command.<sup>87</sup>

### *Increased Commerce*

According to witnesses, the number of flights in and out of Mongbwalu increased sharply as gold production began under UPC control. According to witnesses, gold went out and arms came in. One witness said:

When the UPC were in Mongbwalu they sent their gold to Bunia and from there it was sent to Rwanda. In exchange they got weapons. A number of soldiers told me this. When they were here there were at least two flights per day. The gold was used to buy weapons and uniforms.<sup>88</sup>

Another witness said he was forced to dig a hole for storage of weapons at the UPC headquarters in Mongbwalu. He said,

They put weapons into this hole. The weapons were still new. Some of the guns had wheels that needed to be pushed. They said they didn't know how to use these but that the Rwandans did know and they would come to show them how. My soldier friends told me that the weapons had been bought with gold. The hole was well guarded by them.<sup>89</sup>

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<sup>85</sup> Human Rights Watch interview, Mongbwalu, May 1, 2004.

<sup>86</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

<sup>87</sup> Ibid.

<sup>88</sup> Human Rights Watch interview, Mongbwalu, May 1, 2004.

<sup>89</sup> Ibid.

As previously mentioned, a confidential supplement by the U.N. panel of experts stated that weapons were delivered from Rwanda to Mongbwalu between November 2002 and January 2003.<sup>90</sup> Information from community leaders and other military sources also confirms the delivery of arms although it does not establish that gold was traded for them.<sup>91</sup>

### ***Justice for UPC crimes***

Human Rights Watch reported on the November 2002 massacre at Mongbwalu in July 2003 and a year later a report to the U.N. Security Council also detailed the massacre of civilians around Mongbwalu. To date the perpetrators of these crimes have not been brought to justice either by the UPC or by the DRC transitional government.

The UPC splintered into two factions in early December 2003. The branch led by Commander Kisembo changed from a largely military movement to a political party and received recognition as a national political party in mid-2004. Commander Kisembo was arrested by MONUC troops on June 25, 2004 for continued military recruitment but was later released without charge. Since October 2003 Thomas Lubanga, leader of the other UPC faction, has been restricted by the transitional government to Kinshasa where he lives at the Grand Hotel. He was arrested in Kinshasa in March 2005 but has not yet been charged with any crimes. Commander Bosco remains the chief military officer in charge of the UPC Lubanga faction based in Ituri. MONUC claims he is responsible for the attack on a MONUC convoy resulting in the death of a Kenyan peacekeeper in January 2004 and for taking a Moroccan peacekeeper hostage in September 2004.<sup>92</sup>

Commanders Salumu and Sey, still part of Commander Jérôme's forces, were selected for training at the Superior Military College in Kinshasa in preparation for joining the newly integrated Congolese army as senior officers. Human Rights Watch is not aware of any vetting carried out by DRC military officials or international donors who support army integration to determine their unsuitability for senior posts because of their involvement in human rights abuses.<sup>93</sup>

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<sup>90</sup> Ibid., Panel of Experts, "Confidential Supplement to the U.N. Security Council", November 2003.

<sup>91</sup> Human Rights Watch interview, Mongbwalu, May 2 and 4, 2004.

<sup>92</sup> Human Rights Watch interview, MONUC human rights section, Bunia, February 20, 2004.

<sup>93</sup> Donors involved in security sector and army reform in the DRC include the Belgian and South African governments and the European Union.

In March 2003, the UPC lost control of the Mongbwalu area and the profits from its gold mines when they were attacked and pushed back by a new alliance of forces led by their former ally turned enemy: the Ugandan army.

### ***Massacres and other Abuses by the FNI, FAPC and the Ugandan Army***

After having dropped the Hema, Ugandan soldiers built a new alliance with the Lendu, who had created the FNI party under Floribert Njabu in November 2002. At the end of February 2003, Commander Jérôme also ended his link with the UPC and created his militia, known as the FAPC, based in the important border town of Aru, northeast of Mongbwalu. According to a special report to the U.N. Security Council on Ituri, the FAPC was created with direct Ugandan support.<sup>94</sup>

With international pressure growing to withdraw their troops from Ituri, Ugandan soldiers sought to secure maximum territory for their local allies. On March 6, 2003 reportedly in response to an attack by the UPC, the Ugandan army drove the UPC out of Bunia with the assistance of Lendu militias. One former Lendu leader who participated in the operation said that he and his men had done so at the request of Ugandan army Brigadier Kale Kayihura.<sup>95</sup> Ugandan soldiers and FNI combatants chased fleeing UPC troops northwards towards Mongbwalu.

### ***Massacre at Kilo, March 2003***

On March 10, 2003 the Ugandan and Lendu forces attacked Kilo, a town just south of Mongbwalu, with the Lendu arriving several hours before the Ugandans.<sup>96</sup> The Lendu combatants met little resistance from the UPC and began killing civilians who they presumed to be of Nyali ethnicity, accusing them of having helped the Hema. According to local sources, they killed at least one hundred, many of them women and children. They looted local residences and shops and required civilians to transport the booty for them.<sup>97</sup> Residents walking on the road near the town of Kilo nearly a month later still reported the smell of corpses rotting in the forest.<sup>98</sup>

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<sup>94</sup> Ibid., 0 Nations Security Council, "Special Report on the Events in Ituri", p13

<sup>95</sup> Human Rights Watch interview, former Lendu militia leader, February 21, 2004.

<sup>96</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>97</sup> Human Rights Watch interview, local analysts, Bunia, October 10, 2004. Also Human Rights Watch interview, Floribert Njabu, President of the FNI, May 2, 2004.

<sup>98</sup> Human Rights Watch interview, Mongbwalu, May 5, 2004.

A local woman witnessed her house being burned and then saw the Lendu combatants kill a man, five women, and a child with machetes. She was then forced to help transport loot for the Lendu combatants. She recounted that, en route, the Lendu selected four children between ten and fifteen years old, Rosine, Diere, Kumu and Flory, from the group and killed them and then killed five more adults. When some of the women faltered under the heavy loads they were forced to carry, the Lendu killed them and cut off their breasts and then cut their genitals. The witness said,

At Kilo Mission on top of the hill there were many Lendu combatants. They had a few guns but mostly machetes, bows and arrows. They were very dirty and had mud on their faces so we wouldn't recognize them. On the hill we saw many bodies of people who had been killed. They were all lying face down on the ground. They were naked. The Lendu were getting ready to burn the bodies. There were many of them, too many to count.<sup>99</sup>

According to witnesses, Commander Kaboss commanded the attack. He reported to Commander Matesso Ninga, known as Kung Fu, who was in charge of operations for the FNI, though he was not seen at Kilo during the massacre. At the time, the FNI Military Chief of Staff was Maitre Kiza.<sup>100</sup>

Ugandan troops under Commander Obote arrived a few hours after the Lendu and tried to stop their killing. The witness said,

When the Ugandan soldiers arrived they started to hit the Lendu and shot at them. They said to them, "Why have you killed people, we said you could loot but not to kill people. You will tarnish our reputation." They tried to return some of the loot but the Lendu were starting to run away. The Ugandans said they regretted the way the Congolese behaved and they regretted very much that the chief's house had been burned and ruined.<sup>101</sup>

Although the Ugandans stopped the killings in the town, the FNI combatants continued to kill people in the surrounding villages such as Kabakaba, Buwenge, Alimasi and Bovi.

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<sup>99</sup> Human Rights Watch interview, Bunia, February 24, 2004.

<sup>100</sup> Human Rights Watch interview, local analysts, Bunia, October 10, 2004. Also Human Rights Watch interview, Floribert Njabu, President of the FNI, May 2, 2004.

<sup>101</sup> Human Rights Watch interview, Bunia, February 23, 2004.

“If the Ugandans heard about the killings,” said one witness, “they would go to try and stop it, but it was often too late.<sup>102</sup> Local authorities also reported the rape of some twenty-seven women and the burning of villages, including Emanematu and Livogo which were completely destroyed.<sup>103</sup>

Although the Ugandan soldiers tried to limit FNI abuses after the Kilo attack, they neither disarmed the combatants nor ended their military alliance with them. Instead they continued their joint military operation towards Mongbwalu arriving there on March 13, 2003 and set up the military headquarters for the 83<sup>rd</sup> Battalion.<sup>104</sup> The next day a community leader sought security assurances from Ugandan Commander Okelo, who was in charge of the military camp. According to him, Commander Okelo confirmed that “he controlled the Lendu combatants and he had given them one week to put down their traditional weapons.”<sup>105</sup> Witnessed observed Ugandan army troops carrying out joint patrols with Lendu combatants and reported that “it was clear the Ugandan army was in command.”<sup>106</sup>

When the Ugandan soldiers left Ituri two months later, they were still working closely with the FNI. According to an Ugandan army document dated May 1, 2003, Ugandan Major Ezra handed over control of Mongbwalu to FNI Commanders Mutakama and Butsoro as Ugandan army troops left the area. All parties signed the document, witnessed by MONUC observer Oran Safwat.<sup>107</sup> Although Commander Jérôme and most of his troops had withdrawn to Aru, a contingent under Commander Sey remained at Mongbwalu.

Witnesses also said that Ugandan army commanders left behind some of their ammunition and weapons for the FNI.<sup>108</sup> In addition, a shipment of Ugandan arms bound for Mongbwalu was seized by MONUC in Beni several months after the Ugandans withdrew. Those accompanying the arms reported that the FNI were still getting aid from Uganda and that the weapons seized in Beni were meant for them.

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<sup>102</sup> Human Rights Watch interview, Bunia, February 24, 2004.

<sup>103</sup> Human Rights Watch interview, local authorities, Bunia, October 8, 2004.

<sup>104</sup> Letter from Brigadier Kale Kayihura to the Regional Director of MONUC in Bunia, RE: Disposition of UPDF in the Two Command Sectors of Bunia and Mahagi., April 17, 2003. The document also confirms that 1 Infantry Coy was left in Kilo.

<sup>105</sup> Human Rights Watch interview, Mongbwalu, May 2 and 4, 2004.

<sup>106</sup> Ibid.

<sup>107</sup> UPDF Restricted Document, “Withdrawal of Ugandan Peoples’ Defence Forces from the Democratic Republic of Congo,” UPDF Form No. AC/DRC/01 signed in Mongbwalu, May 1, 2003. Document on file at Human Rights Watch.

<sup>108</sup> Human Rights Watch interview, Mongbwalu, May 2, 2004.

According to the MONUC report on the incident, one of those accompanying the weapons, a deputy administrator from Mongbwalu, admitted he was constantly in touch with the Ugandans.<sup>109</sup>

### ***Accountability for the March 2003 Kilo Massacre***

Many witnesses reported the abuses to local authorities who in turn wrote a letter to the MONUC human rights section in Bunia on September 26, 2003 listing 125 civilian deaths, cases of torture and rape in the Kilo area from March to May 2003 carried out by FNI combatants while Ugandan soldiers were still present in the area.<sup>110</sup> No response was received and on November 20, 2003 a second letter was sent detailing a further nineteen deaths, eight cases of torture and two cases of rape between July to November 2003.<sup>111</sup>

The Ugandan army had command control over the FNI combatants during their joint military operation and should be held responsible for the abuses committed by FNI combatants. Although they may have attempted to minimize crimes by organizing joint patrols and requesting that combatants lay down their traditional weapons, they did not carry out any further steps to ensure accountability for these crimes. In addition, they soon armed the FNI with modern weapons. Human Rights Watch is not aware of any investigation or arrest made by either the Ugandan army or the FNI authorities into abuses committed by their troops. To date no one has been held responsible for the massacre of civilians and other serious human rights abuses committed in Kilo.

### ***The 48 Hour War, June 2003 and subsequent massacres***

After the Ugandan forces left in May 2003, the UPC retook Mongbwalu on June 10, 2003. Despite having recently received additional weapons from Rwanda, delivered at a newly constructed airstrip some 30 kilometers from Mongbwalu,<sup>112</sup> the UPC was able to hold the town for only forty-eight hours before being pushed back by the FNI combatants under the command of Mateso Ninga, known as Kung Fu. The FNI counter attacked with heavy weapons that had reportedly been left behind by the Ugandans.<sup>113</sup> For the Lendu, their victory in what became known as the “48 Hour War,” was a source

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<sup>109</sup> Confidential U.N. internal report on the investigation into the plane seizure in Beni, July 25, 2003.

<sup>110</sup> Letter from local authorities to MONUC Human Rights Section in Bunia, “Transmission of report on the tragic events carried out by Lendu combatants in Banyali/Kilo from March 9, 2003 till present against the civilian population”, Ref No 323/09/1,180/2003, September 26, 2003.

<sup>111</sup> Letter from local authorities to MONUC Human Rights Section in Bunia, “Table of Human Rights Violations in B/Kilo Sector”, Ref No 323/21/1,180/2003, November 20, 2003.

<sup>112</sup> Ibid., Panel of Experts, “Confidential Supplement to the U.N. Security Council”, November 2003.

<sup>113</sup> Human Rights Watch interviews, FNI authorities, Mongbwalu, May 2, 2004 and local residents, May 3, 2004.

of great pride. Based on local testimony, it appears that some 500 persons were killed during the Lendu counterattack, many of them civilians.<sup>114</sup>

FNI authorities asserted that the UPC attacked Mongbwalu in order to regain control of the gold.<sup>115</sup> In addition, a large number of civilians accompanied the combatants, apparently intent on looting and helping the combatants loot the town.<sup>116</sup> According to witnesses and FNI authorities, they represented a large number of those killed during the Lendu counterattack.<sup>117</sup> One witness recounted being shocked at the sight of so many bodies, civilians as well as combatants, in town on the day of the Lendu victory. He said,

[Commander] Kung Fu saw that many people died and he asked people to help with burying. But there were too many so they just decided to burn them instead. They burned for at least three days. There was a terrible smell in the air.<sup>118</sup>

FNI officials acknowledged to a Human Rights Watch researcher that civilians had accompanied the UPC combatants.<sup>119</sup> During a commemorative re-enactment of the battle at 2004 May Day celebrations in Mongbwalu stadium, witnessed by Human Rights Watch, women and young people playing the role of Hema civilians were portrayed carrying goods before they were killed by Lendu combatants under the command of Kung Fu. The play went on to show the community burning the bodies of those killed and declaring Commander Kung Fu a hero.<sup>120</sup> But when questioned on the issue, the self-styled president of the FNI, Floribert Njabu, asserted that there had been no civilians with the attacking combatants. He declared that the FNI had “professional commanders who know about the international rules of war”<sup>121</sup> implying they would not have killed civilians.

There is no evidence to suggest that the FNI combatants distinguished between military and civilian targets during the battle. According to local reports and witnesses the killing

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<sup>114</sup> Human Rights Watch interviews, Beni and Mongbwalu, February 27 and May 2, 2004.

<sup>115</sup> Human Rights Watch interview, FNI authorities, Mongbwalu, May 2, 2004.

<sup>116</sup> Human Rights Watch interview, Beni, February 27, 2004.

<sup>117</sup> Human Rights Watch interviews, Beni and Mongbwalu, February 27 and May 2, 2004.

<sup>118</sup> Human Rights Watch interview, Mongbwalu, May 1, 2004.

<sup>119</sup> Human Rights Watch interview, FNI officials, May 2, 2004.

<sup>120</sup> May Day Celebrations, Mongbwalu Stadium, May 1, 2004 attended by a Human Rights Watch researcher.

<sup>121</sup> Human Rights Watch interview, President Floribert Njabu of the FNI, Mongbwalu, May 7, 2004.

was indiscriminate and did not distinguish women and children from combatants. While it is not unusual for women and children to take part in looting activities in such military operations in Ituri, they should have been respected.

Shortly after retaking Mongbwalu from the UPC, FNI combatants continued their attacks against Hema civilians. Between July and September 2003, FNI combatants attacked numerous Hema villages to the east of Mongbwalu including Nizi, Drodro, Largo, Fataki and Bule. In the town of Fataki a witness arriving shortly after one such attack by FNI combatants reported seeing the fresh corpses of victims dead in the streets with their arms tied, sticks in their rectums, and body parts such as ears cut off.<sup>122</sup> In Drodro witnesses reported that FNI combatants attacked the hospital shooting Hema patients in their beds.<sup>123</sup> Local sources claimed scores of civilians had been killed in these attacks and thousands of others were forced to flee. A stark warning was left behind by the attackers etched on the wall of a building in Largo, “Don’t joke with the Lendu.”<sup>124</sup>

[Image]

A young Hema victim in the hospital in Drodro. Lendu combatants tried to kill her by chopping her neck with machetes. Many women and children, both Hema and Lendu, have been targeted on the basis of their ethnicity.

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<sup>122</sup> Human Rights Watch interview, international journalist, London, January 12, 2005.

<sup>123</sup> Ibid., See also Helen Vesperini, “DR Congo villagers reel from second massacre in four months,” *Agence France Presse*, July 27, 2003.

<sup>124</sup> Ibid.



There was a substantial MONUC presence in Ituri at the time as well as European Union peacekeeping troops as part of Operation Artemis.<sup>125</sup> No U.N. officials reported on the killings in Mongbwalu in June 2003. U.N. and E.U. troops were made aware of the later killings in areas to the east of Mongbwalu by international journalists who had visited the area and conducted fly-over operations in attempts to deter further violence. The Artemis mandate granted by the U.N. security council did not allow for peacekeeping actions outside of the town of Bunia.

### ***A 'Witch Hunt' for Hema Women and other Opponents***

Shortly after the UPC attack in June 2003, FNI combatants began accusing Hema women living in and around Mongbwalu of spying for Hema armed groups. Hema women still living in the area were few in number and most of them were married to Lendu spouses and had been able to live safely within the Lendu community. But after the "48 hour war" Lendu combatants arrested, tortured and killed these women and some men, accusing them of 'dirtying and betraying' their society. Using charges of witchcraft, Lendu combatants and spiritual leaders covered their crimes by claiming the killings had been ordered by a spirit known as Godza. More moderate FNI officials found it difficult to counter these claims and did nothing to stop them. A witness said,

After the June [2003] attack, the Lendu decided to kill all the Hema women without exception. There were women I knew who were burned. I had never seen that kind of thing before. Previously Hema women who were married to outsiders were not harmed. Now they wanted to hunt these women. The Lendu spirit, Godza, told them to kill all the Hema women during one of the Lendu spiritual ceremonies. One of the women they killed was Faustine Baza. I knew her well. She was very responsible and lived in Pluto. The FNI came to get her and took her to their camp. They killed her there. They killed other women as well. I did not want to be a part of this so I left. I couldn't stay while they were exterminating these Hema women. They did it in Pluto and Dego. They came from Dego with thirty-seven Hema women to kill. I don't want to return now - it's too hard.<sup>126</sup>

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<sup>125</sup> Operation Artemis was the name of the Interim Emergency Multinational Force sent by the European Union and authorised by the U.N. Security Council under Resolution 1484 on May 30, 2003 to contribute to the security conditions and improve the humanitarian situation in Bunia. It was a limited three month mission with a geographical scope to cover only the town of Bunia.

<sup>126</sup> Human Rights Watch interview, Beni, February 27, 2004.

Another witness said,

In July women were killed at Pluto and Dego. The strategy was to close them in the house and burn it. More than fifty were killed. Pluto was considered the place of execution for Hema people from Pluto and other places too. They captured the women from the surrounding countryside. They said it was to bring them to talk about peace. They put ten women in a house, tied their hands, closed the doors, and burned the house. This lasted about two weeks, with killing night and day. After that, no more Hema women were left in [our area] and the men were prevented from leaving with their children. They called the women “Bachafu” – dirty. Sometimes the men would be taken to prison. Suwa’s husband was asked to pay \$300. They told him they killed his wife, and he had to pay thirty grams of gold (\$300) to clean the knife they had killed her with.<sup>127</sup>

Many people were aware of the killings and bodies were often seen in the towns. A witness reported seeing six bodies of women at the Club, a well-known building in Mongbwalu, in mid-2003. He said many other passers-by also saw the nude and brutalized bodies and that Lendu combatants were trying to recruit people to help burn them.<sup>128</sup> A community leader in an outlying village expressed his frustration about the continuation of the practice, saying he had been interrogated more than ten times by Lendu combatants as to the whereabouts of Hema women. He said to a Human Rights Watch researcher, “I want to know what Kinshasa is going to do to help us. Are they going to let the FNI stay here? The population is really suffering.”<sup>129</sup>

The operation against Hema women extended to men and other tribes as well and continued at least until April 2004, killing some seventy persons in Pluto, Dego, Mongbwalu, Saio, Baru, Mbau and Kobu and possibly in other locations in the Mongbwalu area. By this point, the allegation of witchcraft became a common accusation, often resulting in death after a ‘judging ceremony’ by local spiritual leaders. Carried out in secret these judging ceremonies used different methods to determine a person’s guilt or innocence. One civilian accused of being Hema described to a Human Rights Watch researcher the ceremony he and others were forced to undergo after being caught by Lendu combatants in 2003:

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<sup>127</sup> Human Rights Watch interview, Beni, February 27, 2004.

<sup>128</sup> Human Rights Watch interview, Mongbwalu, May 2, 2004.

<sup>129</sup> Human Rights Watch interview, village outside Mongbwalu, May 6, 2004.

A local fetisher [spiritual leader] came to the place I was being held. He had two eggs with him. I was tied up and very scared. He rolled the eggs on the ground at my feet. I was told if the eggs rolled away from me then I would be considered innocent. But if the eggs rolled back towards me then I was considered to be a Hema and I would be guilty. I was lucky, the eggs rolled away from me. Another person, Jean, who I was with, was not so lucky. The eggs rolled the wrong way and he was told to run. As he ran the Lendu shot their arrows at him. He fell. They cut him to pieces with their machetes in front of my eyes. Then they ate him. I was horrified.<sup>130</sup>

In the Mongbwalu area the killings continued throughout 2003 and into 2004. A witness described to a Human Rights Watch researcher the ongoing killings:

[After the June war] they said they did not want the Hema to return. Those who stayed were killed. They killed them in Saio and Baru. They would just take them away. A man called Mateso, Bandelai Gaston, a Nyali, and his brother Augustin were killed because they were accused of being witches. There were also women who were killed. Celine, an Alur, was killed for witchcraft. Gabriel, a Kakwa, and his wife were also killed. They were accused of protecting Hema people.<sup>131</sup>

Some community leaders raised concerns about the 'Godza ceremonies' with FNI leader Njabu, in July 2003. At the time he seems to have done nothing to stop the killings, but according to local residents, the number decreased after he moved to Mongbwalu in February 2004, whether simply as a coincidence or as the result of his presence is unclear.<sup>132</sup>

While some FNI authorities may have been against such killings, and perhaps took steps to minimize them, at the time of writing no one has been held responsible for them. Human Rights Watch is not aware of any investigation carried out by FNI representatives into these killings.

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<sup>130</sup> Human Rights Watch interview, Arua, Uganda, February 2003.

<sup>131</sup> Human Rights Watch interview, Mongbwalu, May 5, 2004.

<sup>132</sup> Human Rights Watch interviews, Mongbwalu, May 2 and May 4, 2004.

### *Murder of two MONUC Observers*

On May 12, 2003, shortly after Ugandan troops had left Mongbwalu to the FNI and the FAPC, FNI combatants deliberately killed two unarmed U.N. military observers, Major Safwat Oran of Jordan and Captain Siddon Davis Banda of Malawi. Rumors of an impending Hema attack—which would actually happen with the “48 hour war” a month later—caused panic among town residents, about one hundred of whom sought refuge at the residence of the MONUC observers. The observers, apparently concerned themselves, arranged to be evacuated. When the U.N. helicopter arrived at a nearby airstrip, FNI combatants refused to allow the observers to pass. Led by FNI Commander Issa, the combatants took them to FAPC Commander Sey at his headquarters at the “apartments.” “The combatants were chanting that Sey should not let them leave,” said one witness.<sup>133</sup>

Shortly after, the combatants led the observers away again, apparently because Sey declined to take them under his protection, and killed them a short distance from the “apartments.” A witness who passed by later that afternoon said,

I found the bodies on the road leading down from the apartments. They had both been shot. One was shot in the head and the other in the stomach. I found the military of the FAPC around the bodies.<sup>134</sup>

Local residents transported the bodies to the FAPC headquarters and placed them in a nearby empty house. Sey and his combatants fled from Mongbwalu that evening, apparently seeking to distance themselves from the crime.<sup>135</sup> Local residents later buried the two bodies in a shallow grave in Mongbwalu.<sup>136</sup>

According to several Mongbwalu residents, FNI Commander Issa was responsible for the killings. Witnesses reported that FNI combatants took possession of the observers’ U.N. cars and used them until they were recovered by the U.N.<sup>137</sup>

During discussions with a Human Rights Watch researcher, the FNI’s leader Njabu said, “We did not investigate the killings. It is not our affair. Our military were at Saio at the

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<sup>133</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>134</sup> *Ibid.*

<sup>135</sup> Human Rights Watch interview Mongbwalu, May 5, 2004.

<sup>136</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>137</sup> Human Rights Watch interview, Bunia, and Mongbwalu, February 19 and May 4, 2004.

time, seven kilometers away. Commander Jérôme's combatants were at the apartments. You should ask Commander Sey what happened."<sup>138</sup> But in a second interview days later he admitted that Commander Issa might also have been present and he indicated that an investigation was ongoing.<sup>139</sup> More than one year later, FNI authorities had not yet announced any results of an investigation. According to one unconfirmed local report, FNI Commander Kung Fu did carry out an investigation and, presumably as a result, Commander Issa fled and was reportedly later killed.<sup>140</sup>

### ***Threat Against Human Rights Defenders and Others Reporting Abuses***

Some FNI combatants tried to keep local people from being in touch with MONUC or other outside agencies, apparently for fear that they would pass on information about FNI abuses.

Important FNI commanders threatened human rights activists from the organization Justice Plus after they had traveled to Europe and spoken about the situation in Ituri.<sup>141</sup> Other FNI leaders reportedly planned to look into activities of the organization and threatened that its staff would be considered enemies if they were found to have had contacts with the Rwandans and the Hema.<sup>142</sup>

FNI combatants acted more directly and immediately against local residents known to have spoken with MONUC staff during their occasional visits to Mongbwalu in late 2003.<sup>143</sup> One person so abused said,

I was taken by nine [Lendu] combatants in uniform. They came to my house and shouted, "Get up! What did you say to MONUC?" They threatened me with their spears. They took me to the apartments and I was interrogated by [a Lendu commander]. He asked me what I had said to MONUC. That is all he wanted to know. He threatened me. They hit me on the face. I said I had told MONUC nothing. They said they

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<sup>138</sup> Human Rights Watch interview, FNI President Floribert Njabu, May 2, 2004.

<sup>139</sup> Human Rights Watch interview, FNI President Floribert Njabu, May 7, 2004.

<sup>140</sup> Human Rights Watch interview, Mongbwalu, May 5, 2004.

<sup>141</sup> Human Rights Watch interview, Justice Plus, Bunia, February 24, 2004.

<sup>142</sup> Human Rights Watch interview, Justice Plus, Bunia, February 24, 2004.

<sup>143</sup> After the killing of the two MONUC observers, no other MONUC staff were posted to Mongbwalu until April 2005.

would put me in prison. They took \$100 from me but a commander who knew me saved me and they let me go.<sup>144</sup>

The same person was arrested a second time and severely beaten with bats and ropes. He was kept for seven days and regularly beaten.<sup>145</sup>

Witnesses reported that civilians were threatened for having applauded visits of MONUC staff.<sup>146</sup> After one such mission in November 2003, some twelve civilians were beaten and arrested, and at least one, a man named Choms, was summarily executed. A witness told a Human Rights Watch researcher that Mr. Choms had applauded the arrival of a U.N. plane, saying he thought this meant peace was coming. Local police reported this to the FNI and two combatants of the force arrested Mr. Choms and another person and took them to the police station. A witness who went to the police station the next day to check on Mr. Choms said,

The other prisoners told me he had been interrogated and beaten and that this was followed by a shot. . . . I forced my way into the room and the body was still there. He had no shirt on and there was a bullet in his chest. He had marks on his back from being whipped. They then questioned me and forced me to leave. They wouldn't give us the body for burial.<sup>147</sup>

### ***Arbitrary Arrests, Torture and Forced Labor***

FNI combatants imposed a number of “taxes,” collected in an arbitrary and irregular way, and organized forced community labour known as “salongo”. FNI representatives resorted to arbitrary arrests, beatings, and other forms of cruel and degrading treatment to obtain the maximum possible payment and service from civilians. According to local residents, these practices worsened considerably after the departure of Ugandan troops.<sup>148</sup>

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<sup>144</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>145</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>146</sup> Ibid.

<sup>147</sup> Human Rights Watch interview, Mongbwalu, May 5, 2004.

<sup>148</sup> Human Rights Watch interview, local residents, Mongbwalu, May 3 and 4, 2004.

Residents were required to pay a “war tax” that varied in amount and in the frequency with which it was due.<sup>149</sup> Traders at the market were also subject to confusing and irregular “tax” demands. One businessman said,

There are about five or six different taxes. They range from \$2 to \$20. Everyone has to pay. You pay when they come and sometimes they come back again after just a few days. It is very irregular. If you don’t pay you are beaten or taken to prison. . . . Both military of the FNI and civilians do this.<sup>150</sup>

Human Rights Watch researchers documented similar abusive cases throughout the Mongbwalu area, Kilo, Rethy and Kpandruma. “The people can say or do nothing,” said one witness. “We just do what the FNI say.”<sup>151</sup>

A young trader arrested on February 5, 2004 by the FNI for non-payment of tax was beaten and taken to the Scirie-Abelcoz military camp. He said,

There I spent two days in. . . a hole in the ground covered by sticks. They took me out of the hole to beat me. They tied me over a log and then they took turns hitting me with sticks – on my head, my back, my legs. They said they were going to kill me. . . There was a woman with me in the underground prison. They hit her also. They tried to force me to have sex with her but I couldn’t. She was called Bagbedu.

After two days I was taken to Mongbwalu. They made me carry the woman and forced me to sing songs as I was carrying her. I was escorted by three FNI combatants and one kadogo [child soldier]. On the road, we met other soldiers who forced me to drop the woman and beat me more. In Mongbwalu the soldiers beat me again with sticks. They took me to a prison in a house. They also put the woman in the prison but she died four days later. I spent five days there. Every day they beat me.<sup>152</sup>

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<sup>149</sup> Ibid.

<sup>150</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

<sup>151</sup> Human Rights Watch interview, Bunia, February 20, 2004.

<sup>152</sup> Ibid.

After a week, his family paid \$80 and Commander Maki of Camp Goli freed him.

FNI representatives showed a Human Rights Watch researcher a long list of taxes asked of residents, including a “war tax” that they claimed was voluntary.<sup>153</sup>

The FNI used similar practices to enforce the salongo policy of community labour to fix roads, collect firewood for the military, clean up the military camp, or even burn bodies as described above. At times salongo was required for as much as two full days a week, although by late 2004 it had been decreased to once a week for three hours. Participants received a piece of paper showing they had done the required labour. Persons who could not present such proof when asked by police or combatants were subject to beatings, arrest, fines or even death. According to one witness, a young man named Lite who failed to present the required proof when asked was smashed in the head with a gun by a FNI combatant and died from the blow. The witness asked FNI authorities what justice there would be for the family of Lite and, he said, “They responded that the family of Lite could kill the man who had done this act, but the family would not.”<sup>154</sup>

Another man reported that he was rounded up with a group of about one hundred men who had all refused to report for salongo labour some fifteen miles from their homes, saying it was too far. They were forced to walk all night and then were imprisoned and had to pay \$5 for each elderly person, \$10 for each young person, and \$20 for each businessman in order to be freed.<sup>155</sup>

A local administrative official admitted that in order to get laborers for salongo they needed to “intimidate people to come, otherwise they would not.”<sup>156</sup> A person responsible for the salongo in Saio told a Human Rights Watch researcher that the local chief would “deal with people who don’t work,” while a police commander added that he “sanctioned those who refused to work.”<sup>157</sup> He would not elaborate on what kind of sanctions were involved.

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<sup>153</sup> Human Rights Watch interview, Jean Pierre Bikilisende Badombo, Chef de Cité and Sukpa Bidjamaro, Deputy Chef de Cité, May 3, 2004.

<sup>154</sup> Human Rights Watch interview, Bunia, February 23, 2004.

<sup>155</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

<sup>156</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>157</sup> Human Rights Watch interview, Manu Ngabi, local authority and Gerard Kitabo, Police Commander, Saio, May 5, 2004.



[Image]

Young gold trader arrested and tortured in Mongbwalu in February 2004 by Lendu FNI combatants for being unable to pay a market tax. © 2004 Human Rights Watch

### ***Control of the Gold Mines***

Upon taking control of Mongbwalu on March 13, 2003, the FNI militia leaders, like the UPC previously, moved immediately to begin profiting from gold mining. Artisanal miners resumed digging, but had to pay FNI combatants fees to enter the mines, \$1 per person at some mines. Based on entrance records kept by FNI security guards at one mine and seen by Human Rights Watch researchers, the FNI made \$2,000 per month in entrance fees at this one mine alone.<sup>158</sup> Miners also had to deliver to FNI two to five grams of gold per week, often as raw ore. From such ore FNI combatants were able to assess the density of the gold and thus to locate the most valuable veins. They could then send in their own men to mine those areas.<sup>159</sup> As one miner said,

The money that circulates in Mongbwalu is gold. Gold is the economy.

The Lendu take the gold from the diggers. They take the best gold areas by force. Lots of people don't want to go and dig for gold as they know it will be taken from them.<sup>160</sup>

FNI combatants, some of them previously gold diggers, also mined gold themselves or organized groups of people to dig for them. In Itendey, a gold area just to the south of Mongbwalu, for example, FNI combatants forced young men to mine gold in a nearby riverbed. A local community leader who had fled from the area told a Human Rights Watch researcher,

The FNI combatants come every morning door-to-door. They split up to find young people and they take about sixty of them to the Agula River to find the gold. They [the young people] are guarded by the military and are not paid. They are forced to work. If the authorities try to intervene they are beaten. The chief has tried to stop this by

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<sup>158</sup> Human Rights Watch visit to Adidi mine, May 3, 2004. Statistics from the entrance book kept by FNI security officials at the entrance mine. Book clearly labeled as FNI.

<sup>159</sup> Human Rights Watch interview, Bunia, February 23, 2004.

<sup>160</sup> Human Rights Watch interview, Beni, February 25, 2004.

reasoning with them, but they don't like this. They even force the younger children to leave school to carry sand or transport goods.<sup>161</sup>

Miners worked in deplorable conditions, exposed to risk of accidents both in the mines and when handling mercury to process the ore.

[Image]

Entrance register kept by FNI security guards at Adidi gold mine ("Management of Adidi mine for the financial management and daily report, Ndjabu-Simo, FNI-FR"). Each gold miner paid US\$1 to enter the mine and was forced to give a portion of the mined gold to the guards when exiting. © 2004 Human Rights Watch

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<sup>161</sup> Human Rights Watch interview, Bunia, February 20, 2004.

## Box 2 - Conditions at the Mines

In May 2004 a Human Rights Watch researcher visited mines in Mongbwalu and Durba where many miners and engineering experts spoke of the deteriorating safety conditions at the mines. One former OKIMO engineer told Human Rights Watch about the lack of air in parts of the underground mine where equipment that used to ensure oxygen flows was no longer working. Miners recounted that some of their colleagues had died of suffocation in parts of the mine, especially when fires were lit in attempts to soften hard rock areas, a technique witnessed by Human Rights Watch researchers.<sup>162</sup> Miners also spoke of frequent rocks falls, flooding and other accidents. No safety equipment of any kind was visible.

Miners worked individually or in small groups with rudimentary tools such as hammers and chisels. They were generally in bare feet and carried candles or small flashlights to light their way. In some underground mines, workers walked for kilometers through chest-high water and narrow passages to get to galleries where they could work. Women also worked in the mines often being used as porters.

Mining in open-pit mines, some as deep as 300 meters, is also precarious. Miners spoke of frequent mud-slides and falls. Expert gold engineers lamented the anarchic mining that was taking place with no regard for the safety of the miners themselves or for the longer term damage being caused to the mining facilities.<sup>163</sup>

*One miner said, "There are some areas which were boarded up by the Belgians many years ago. But we just break down the boards and go in anyway. We use a hammer and a large iron bolt or chisel to dig for the gold. The work is very hard and I could only work about six hours per day."*<sup>164</sup>

*Miners, if they are lucky, get about \$10 per day. One miner said, "I can make between \$5 and \$20 per day if I am lucky and find a good gold vein. Otherwise I could work for 2 weeks just looking for gold and make nothing."*<sup>165</sup>

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<sup>162</sup> Human Rights Watch interview, former gold engineer, Mongbwalu, May 2, 2004. Also Human Rights Watch visit to Adidi and Makala mines, Mongbwalu, May 3, 2004.

<sup>163</sup> Human Rights Watch interview, OKIMO engineer, Durba, May 13, 2004.

<sup>164</sup> Human Rights Watch interview, gold miner, Bunia, February 21, 2004.

<sup>165</sup> Ibid.

When asked why they worked in such dangerous conditions, one miner responded, *“Tell me what choice I have? This is the only way I can make any money. Its about my own survival and that of my family.”*<sup>166</sup>

The entire mining and refining process is done by hand. After the ore is mined, it is pounded down into sand with the use of an iron bar. The sand is then mixed with water and mercury, which attracts the gold particles and separates it from the rock dust. The mixture of gold and mercury is then heated so the mercury evaporates and the gold remains. Mercury, a dangerous substance, is readily available in the market areas. Human Rights Watch witnessed numerous miners using mercury with no gloves or masks, taking no safety precautions when handling the substance.

In addition to profiting directly from mining, FNI leaders sought to control the trade in gold. According to gold traders, FNI control of the trade was still haphazard and sometimes involved direct use of force. In May 2004, the FNI Commissioner of Mines explained to a Human Rights Watch researcher that the FNI were well aware of the significance of the gold market in Mongbwalu and that “they were looking for additional ways to control the trade.”<sup>167</sup> There are no reliable statistics on the amount of the gold trade from Mongbwalu nor of the proceeds reaped by the FNI from it. Local traders and other informed sources estimated that between 20 and 60 kilograms of gold left the Mongbwalu area each month, a value of between \$240,000 to \$720,000 per month at the time of writing. The majority of the gold is traded from Mongbwalu to Butembo in North Kivu where Dr Kisoni Kambale is one of the main gold exporters (see below).

As one gold miner explained, “The profits enter into the pockets of the FNI,”<sup>168</sup> both in the sense of personal profit and in the sense of profit to the FNI. A former senior FNI commander told a Human Rights Watch researcher that some of the gold proceeds were used to buy weapons and ammunition to supplement weapons recuperated from the battlefield.<sup>169</sup> The leader of the FNI, Njabu, himself admitted to Human Rights Watch researchers that his combatants mined gold and that he traded gold for weapons. He calculated the proceeds he would make from the sale of five kilograms of gold to be about \$50,000, adding “This is not looting as I am Congolese.”<sup>170</sup> A MONUC

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<sup>166</sup> Human Rights Watch interview, gold miner, Mongbwalu, May 2, 2004

<sup>167</sup> Human Rights Watch interview, Mr. Basiani, FNI Commissioner of Mines, May 5, 2004.

<sup>168</sup> Human Rights Watch interview, gold miner, Bunia, February 23, 2004.

<sup>169</sup> Human Rights Watch interview, former FNI commander, Bunia, February 21, 2004.

<sup>170</sup> Human Rights Watch interview, FNI President Floribert Njabu, Kinshasa, October 7, 2003.

investigation into weapons seized in Beni in July 2003 confirmed that the FNI used taxes from the gold mines to buy weapons.<sup>171</sup> Njabu admitted to a Human Rights Watch researcher that he had purchased these weapons, adding, “I want them back or I will fight to get them.”<sup>172</sup>

[Image]

Artisanal miners transporting tubs of raw ore mixed with dirt out of an open-pit gold mine in Durba. Mining in open-pit mines, some as deep as 300 meters, can be precarious with frequent mud-slides and falls. © 2004 Marcus Bleasdale

The FNI armed group was also approached by multinational companies eager to gain access to the significant gold reserves in the area. The FNI Commissioner of Mines explained to Human Rights Watch that they had been approached by a number of different companies but that officially AngloGold Ashanti had the concession in the Mongbwalu area and that they were in contact with them (see below for further information).<sup>173</sup> The arrival of multinational companies into a volatile area where conflict and competition for the control of natural resources are closely interlinked creates further complexities and has the potential to create more violence. While AngloGold Ashanti is the only mining company working in the Mongbwalu area, other companies have signed contracts for work in gold mining areas further north in the town of Durba.

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<sup>171</sup> U.N. internal report on the investigation into the plane seizure in Beni, July 25, 2003.

<sup>172</sup> Human Rights Watch interview, FNI President Floribert Njabu, Kinshasa, October 7, 2003.

<sup>173</sup> Human Rights Watch interview, Mr. Basiani, FNI Commissioner of Mines, May 5, 2004.

## VI. AngloGold Ashanti – Starting Gold Exploration Activities

The installation of the transitional government in Kinshasa in June 2003 sparked vigorous competition for mining rights in the DRC. Numerous mining companies sought to win rights to develop parts of OKIMO's vast gold concession in northeastern Congo. While the transitional government had only minimal administrative control over some of the areas in the OKIMO concession, and no control over others, this did not stop OKIMO from signing new contracts, nor did it stop private foreign companies from starting mining and exploration operations. As of September 2004, eleven mining companies had signed contracts with OKIMO to explore or mine the gold in northeastern Congo, the majority of them from South Africa.<sup>174</sup>

[Image]

The dilapidated offices of the state gold company Kilo-Moto (OKIMO) in Bunia. OKIMO has exclusive mining rights to a zone of 83,000 square kilometers, an area three times the size of Belgium. The area is considered to be one of largest unexplored goldfields in Africa. © 2004 Human Rights Watch

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<sup>174</sup> Human Rights Watch interview, OKIMO managers, Kinshasa, March 1 and October 2, 2004

### **Box 3 - OKIMO's Gold Reserves**

The Office of Kilo-Moto (OKIMO) is a parastatal gold company with a management committee appointed by the DRC Minister of Mines. It has exclusive mining rights to a zone of 83,000 square kilometers in Haut Uélé and Ituri districts of northeastern Congo; an area three times the size of Belgium.

OKIMO divided the most promising part of the gold reserve into three concessions in the 1980s and sought private companies to help develop the area through exploration for new gold deposits and the mining of existing gold mines. Companies brought in investment funds, paid rental for part or all of the concession for a specific duration of time, and shared future profits in a joint venture arrangement with the state.

Concessions were broken down as follows:

**Concession 38** – 4,560 square kilometers in the northern part of the OKIMO reserve around the towns of Durba and Watsa. This concession is home to the former industrial mine of Gorumbwa (flooded after its destruction in 2000), the highly lucrative mine of Agbarabo with one of the highest gold ore densities in the world, and the mine of Durba amongst others. The Belgian built gold processing factory and laboratory still function though at significantly reduced capacity.

**Concession 39** - 4,880 square kilometers in the eastern part of the reserve around Djalasiga and Zani. This area held a productive mine that was reportedly closed after the killing of a number of Belgian expatriates during the rebellion of the early 1960s. Local sources report that gold mining has recently restarted in the riverbeds by a Ugandan based company.

**Concession 40** – 8,191 square kilometers in the southern part of the reserve around Mongbwalu. This has been a highly contested concession and is assumed to hold significant gold reserves. It is home to the industrial mine of Adidi (now defunct), and the former Belgian mines of Makala and Sincere. There was a Belgian-built processing factory and a laboratory both of which were destroyed during the fighting in Mongbwalu between November 2002 and July 2003. This concession was granted by the DRC government to AngloGold Ashanti (formerly Ashanti Goldfields) in 1998.

The five-year war in DRC fractured OKIMO with armed groups attempting to control each sector independently. In 2003 three separate individuals appointed by different armed groups claimed to hold the position of General Director at OKIMO.

See Map: Trade and Control of Gold in Northeastern DRC.

### **Competition for the Mining Rights to the Mongbwalu Mines**

AngloGold Ashanti Ltd. is one of the largest gold production companies in the world with the majority of its shares owned by the international conglomerate, Anglo American plc.<sup>175</sup> AngloGold Ashanti was established in October 2003 by a merger of two large African gold mining companies: Ashanti Goldfields Ltd. and AngloGold Ltd. The promising gold mining concession in northeastern Congo had become part of the Ashanti Goldfields portfolio in 1996 when the company bought a stake in a joint venture operation between Mining Development International and OKIMO called Kilo-Moto International Mining s.a.r.l. (KIMIN).<sup>176</sup> This purchase gave Ashanti Goldfields part of the rights to the highly lucrative Concession 40 which included 2,000 square kilometers around Mongbwalu.

The competition for the control of mining concessions throughout the DRC was intense during the first and second Congo wars in 1996 and in 1998.<sup>177</sup> President Laurent Kabila frequently renegotiated mining agreements as his interests changed, causing considerable confusion for companies. Ashanti Goldfields temporarily lost the rights to Concession 40 in 1997 to Russell Resources International Ltd. in what the company called “unusual circumstances”<sup>178</sup>, but its rights were reinstated the following year.<sup>179</sup>

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<sup>175</sup> Anglo American plc owns 54% of AngloGold Ashanti. The companies have a separate management structure though there is some overlap of key executives.

<sup>176</sup> Such contracts are referred to as ‘Contracts d’Amodiation’ under which OKIMO as the holder of the mining concession leases out exploitation and exploration rights to a third party. The contract between MINDEV and OKIMO was signed on October 10, 1991; in it OKIMO held 51%.

<sup>177</sup> Congo’s first war started in October 1996 and lasted till April 1997 when Laurent Kabila’s forces overthrew President Mobutu Seso Seko. Congo’s second war led by rebel groups backed by Uganda and Rwanda started on August 2, 1998 officially ending in June 2003 with the installation of a transitional government in Kinshasa. Despite the official end of the war, there has been no peace in vast parts of eastern DRC.

<sup>178</sup> Fax from Steven Lenahan, Executive Officer, Corporate Affairs, AngloGold Ashanti to Anneke Van Woudenberg, Human Rights Watch, December 7, 2004. Document on file at Human Rights Watch.

<sup>179</sup> See Vincent t’Sas, “Ashanti to fight Kabila’s Congo in Court”, *Reuters*, April 15, 1998; Erik Kennes, “Le secteur mineur au Congo: ‘Déconnexion et Descente aux Enfers’”, *L’Afrique des Grands Lacs, Annuaire 1999-2000*, 2000; IPIS, “The Political Economy of Resource Trafficking in the DRC,” September 2003, p. 20; “New Mining Imbroglio in Congo,” *African Energy and Mining*, May 13, 1998; William Wallis, “New Congo Terminates Kilomoto Gold Contract”, *Reuters News*, September 10, 1997; Els Botje, “Ashanti finally gains control of Congo Mine,” *Reuters News*, November 20, 1998. See also Mining Convention between OKIMO and Russell Resources International Ltd, Projects Kilo and K.M.R., November 1997; and Ministry of Mines, arrêté ministériel



On June 23, 2000 the partnership between OKIMO and Ashanti Goldfields was officially established as a new joint venture called Ashanti Goldfields Kilo s.a.r.l.(AGK) replacing the defunct KIMIN.<sup>180</sup> Just over a year later, on September 25, 2001, the government of President Laurent Kabila approved an amendment to the AGK joint venture contract granting it mining rights to all of Concession 40, an area of over 8,000 square kilometres in the heart of Ituri with Mongbwalu at its center, a significant increase on the 2,000 square kilometers the company bought a few years earlier.<sup>181</sup> When Ashanti Goldfields merged with Anglo Gold in October 2003, Concession 40 became part of the portfolio of AngloGold Ashanti.

### ***AngloGold Ashanti Seeks to Start Exploration Activities in Mongbwalu, 2003***

When the transitional government was installed in June 2003, it supposedly assumed control over all of the Congo, but in many regions this control was ineffective on the ground. Ituri was one of those regions. Neither the Ituri Interim Assembly (April 2003-June 2004) nor an agreement with local armed groups (May 2003), as described above, succeeded in bringing the area under effective administration by the transitional government. Njabu, head of the FNI, and Lubanga, head of the UPC, were called to Kinshasa to discuss establishing order in Ituri in August 2003 along with other armed group leaders. All parties signed a memorandum of understanding to end hostilities, but like previous agreements it was not upheld. Transitional government officials in effect detained Njabu and Lubanga in the capital, where they lodged at the Grand Hotel.<sup>182</sup> But their required residence in Kinshasa did not materially change the situation on the ground, perhaps because they were in frequent telephone contact with their followers in Ituri.<sup>183</sup> Throughout the later part of 2003 and into 2004, the armed groups continued skirmishes with each other and with MONUC, carrying out abuses against civilians throughout Ituri. U.N. peacekeeping forces made little progress in most of the region, although they restored order in the capital, Bunia.

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No. 0225/CAB.MINES/00/ MN/98, signed by Frédéric Kibassa-Maliba, November 4, 1998. Documents on file at Human Rights Watch.

<sup>180</sup> OKIMO Internal document, "Argumentaire de L'OKIMO Pour l'Equilibre Des Intérêts Dans AGK," September 2003. Also Presidential Decree No 090 "Autorisant les modifications apportées aux statuts de KILO-MOTO Mining International, en abrégé 'KIMIN', S.A.R.L." Kinshasa, June 23, 2000.

<sup>181</sup> Avenant au Contract d'Amodiation, signed by Pasteur Cosma Wilungula, OKIMO, and Trevor Schultz, Ashanti Goldfields, September 25, 2001.

<sup>182</sup> Human Rights Watch interviews, Floribert Njabu, October 7, 2003 and other government officials, October 7 – 9, 2003

<sup>183</sup> Human Rights Watch interviews, Floribert Njabu, October 7, 2003 and Thomas Lubanga, October 8, 2003. During the interviews both leaders frequently took calls they said were from Ituri.

[Image]

Civilians in Ituri fleeing from armed attacks. Displacement has been frequent in Ituri, especially in the gold mining regions. Tens of thousands of civilians fled their homes into the forests in the Mongbwalu area to escape their attackers between 2002 and 2004. Many of them did not survive. © 2003 Marcus Bleasdale

On March 7, 2003, before the start of the new transitional government in DRC, a representative of AngloGold Ashanti, Trevor Schultz, participated in a board meeting with their joint venture partner OKIMO.<sup>184</sup> At the meeting, the participants reportedly discussed launching activities for gold exploration drilling in Mongbwalu.<sup>185</sup> At the time, the FNI together with the Ugandan army were involved in military operations in areas just outside Mongbwalu. They attacked and took Kilo on March 10, 2003 massacring at least one hundred women and children and abducting many others before moving on to Mongbwalu on March 13, 2003. Between March and June 2003 as the Ugandan soldiers departed, the FNI combatants established their effective control over the Mongbwalu area by military means, as detailed above. In the months following their initial board meeting when AngloGold Ashanti may have been considering beginning activities in Mongbwalu, the FNI exercised de facto control over the land, including Concession 40, and people in that area. It held the airport and controlled access by roads so that travellers needed FNI authorization to enter and to leave the area. FNI combatants also controlled entry to and exit from the mines and set up a system to collect taxes for any entry to Mongbwalu or the mines.

Both during military operations and after having taken effective control of the area, FNI combatants committed grave human rights abuses and violations of international humanitarian law. By July 2003 the human rights violations in Ituri had been documented in reports by Human Rights Watch, by other organizations, and in the press<sup>186</sup> and the prosecutor of the International Criminal Court had announced that crimes committed during combat in Ituri would be among his first targets of

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<sup>184</sup> Human Rights Watch requested confirmation and further details about this meeting from AngloGold Ashanti. At the time of writing, no response had been received to our query.

<sup>185</sup> "Congo: The People Behind Ashanti's Return," *Africa Mining Intelligence* No 57, March 12, 2003.

<sup>186</sup> In addition to two detailed reports from Human Rights Watch there were also reports by Amnesty International, "DR of Congo: Ituri – a need for protection, a thirst for justice", October 2003; International Crisis Group, "Congo Crisis: Military Intervention in Ituri", June 13, 2003, and U.N. Security Council, "Special Reports on Events in Ituri". There were also numerous other press reports.

investigation.<sup>187</sup> In October 2002, June 2003, and October 2003, the U.N. panel of experts detailed links between the exploitation of natural resources and continued war, with its related abuses, including in Ituri. In an annex to their October 2002 report the U.N. panel of experts detailed concerns about compliance with the OECD Multinational Guidelines by eighty-five multinational companies operating in the DRC including Ashanti Goldfields (the predecessor to AngloGold Ashanti).<sup>188</sup> Ashanti Goldfields denied the allegations in a one-page response to the panel in early 2003.<sup>189</sup> No further investigations were conducted and in their final report the panel determined that all issues with Ashanti Goldfields and forty-one other companies had been resolved.<sup>190</sup> The panel however added an important caveat in their final report stressing that “resolution should not be seen as invalidating the panel’s earlier findings with regard to the activities of these [companies]”<sup>191</sup>, and thus left open the question about whether companies such as Ashanti Goldfields may have violated the OECD guidelines in their activities (see Chapter VII below for further discussion of the OECD guidelines and the DRC).<sup>192</sup> The panel’s attention to the matter and Ashanti Goldfields’ official response illustrated that Ashanti’s representatives were aware of concerns expressed by the U.N. and other organizations about the link between the conflict and the exploitation of resources such as gold.

In October 2003, AngloGold Ashanti representatives discussed the company’s intentions to start gold exploration drilling in Mongbwalu with two Congolese vice-presidents and two ministers.<sup>193</sup> In its December 7, 2004 letter to Human Rights Watch, the company wrote that “These [government] officials were supportive of AGK’s intentions.”<sup>194</sup>

According to one employee of AngloGold Ashanti, it was Jean-Pierre Bemba, a vice-president of the transitional government for economy and finance who suggested the

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<sup>187</sup> On July 16, 2003, the chief prosecutor of the International Criminal Court announced his intention to closely follow the situation in Ituri. See ICC press release at [www.icc-cpi.int/press/pressreleases/67.html](http://www.icc-cpi.int/press/pressreleases/67.html) (retrieved February, 2005).

<sup>188</sup> Ibid., Annex III of the U.N. Panel of Experts Report, October 2002.

<sup>189</sup> Ibid., Addendum to the U.N. Panel of Experts Report, June 20, 2003. Response No. 15.

<sup>190</sup> Ibid., U.N. Panel of Experts Report, October 2003.

<sup>191</sup> Ibid., paragraph 23.

<sup>192</sup> For further information see Rights and Accountability in Development (RAID), “Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo,” April 2004; and the British All Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, “The OECD Guidelines for Multinational Enterprises and the DRC,” February 2005.

<sup>193</sup> Human Rights Watch interview, Ashley Lassen, AngloGold Ashanti representative, Bunia, May 13, 2004. See also Brendan Ryan, “Rumble from the Jungle”, *Financial Mail*, Denver, October 10, 2003

<sup>194</sup> Ibid., Lenahan to Van Woudenberg, December 7, 2004. Document on file at Human Rights Watch.

company deal with FNI. The company employee said that Bemba told them, “Go and talk to the little guy in the Grand Hotel.”<sup>195</sup> Njabu, small in size, was then still residing at the Grand Hotel in Kinshasa. When asked about this exchange by a Human Rights Watch researcher, Bemba replied, “I told them they [AngloGold Ashanti] could start mining if they wanted to. It wasn’t I who signed their contract, it was the previous government. Why would I tell them to deal with the FNI? They aren’t even in the government.”<sup>196</sup> The discussions took place just weeks after FNI combatants carried out a killing spree in September 2004 to areas east of Mongbwalu in Concession 40 brutally killing scores of civilians. In a follow-up letter to Human Rights Watch on December 13, 2004, AngloGold Ashanti wrote that Vice President Bemba assured the company that Ituri was safe and stated Mr. Bemba “urged the company to continue with its exploration program in the region.”<sup>197</sup>

### ***AngloGold Ashanti develops a relationship with the FNI armed group***

There are serious questions about the relationship that AngloGold Ashanti established with the FNI in order to facilitate their gold exploration activities in Mongbwalu. AngloGold Ashanti’s official dealings and its mining contract were with the transitional government in Kinshasa, but the government did not physically control the area around Mongbwalu, the key mining site. While government ministers may have expressed support for AngloGold Ashanti’s gold exploration program, as described in the company’s December 7, and December 13, 2004 letters to Human Rights Watch, such verbal support did little to change the realities on the ground. Mongbwalu was under the de facto control of the FNI armed group who had no legal authority over the OKIMO concession and was not a legitimate administrative agent of the transitional government; it had rejected disarmament of its combatants and participation in the peace process and it exercised its control through the open use of force. In light of the fact that the transitional government exercised no control over Mongbwalu, AngloGold Ashanti representatives began establishing a relationship with the FNI, an armed group with an atrocious record of human rights crimes who continued to carry out serious and widespread abuses even as they entered discussions with AngloGold Ashanti representatives.<sup>198</sup>

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<sup>195</sup> Human Rights Watch interview, AngloGold Ashanti representatives, Bunia, May 13, 2004.

<sup>196</sup> Human Rights Watch interview, Vice President Jean Pierre Bemba, Kinshasa, October 1, 2004.

<sup>197</sup> Fax from Steven Lenahan, Executive Officer, Corporate Affairs, AngloGold Ashanti to Anneke Van Woudenberg, Human Rights Watch, December 13, 2004. Document on file at Human Rights Watch.

<sup>198</sup> There were numerous public reports about the situation in Ituri and the human rights abuses of armed groups operating there, including the FNI. In addition to two detailed reports from Human Rights Watch there were also reports by Amnesty International, DR of Congo: Ituri -- a need for protection, a thirst for justice, October 2003; International Crisis Group, Congo Crisis: Military Intervention in Ituri, June 13, 2003; U.N. Security Council, Special Reports on Events in Ituri, July 2004. In July 2003 the prosecutor of the International

By entering into a relationship with the FNI who had effective control over the Mongbwalu gold mining area, AngloGold Ashanti delivered material benefits and prestige to the FNI, as discussed below. These resources could in turn be used to further FNI control over the area and help in resisting efforts by the transitional government, the United Nations and other actors to end violence and human rights abuses in Ituri.

The start of a relationship with the FNI was not the first time AngloGold Ashanti had made contact with an armed group responsible for human rights abuses. In May 2002, when the war was still being fought in northeastern Congo and more than a year before a national transitional government was installed, Ashanti Goldfields (the predecessor to AngloGold Ashanti) had sent a representative to assess the situation in Mongbwalu.<sup>199</sup> During the following six months, a company representative made contact with the UPC armed group that then controlled Mongbwalu to discuss starting gold exploration activities.<sup>200</sup> The UPC had won control of Mongbwalu and surrounding areas after a battle with Lendu combatants that killed some 800 civilians, many of them slaughtered on the basis of their ethnicity. In late September 2002, UPC leader Lubanga asked the OKIMO director in Bunia, a supporter of the UPC, to draw up conditions for mining once the UPC took Mongbwalu, as described above. The OKIMO official replied that the UPC needed to provide clear directives to, and complete support for, OKIMO in its negotiations with Ashanti Goldfields. He deplored the joint venture contract provisions and castigated the company for being an “arrogant purchaser.”<sup>201</sup>

After the FNI pushed the UPC out of Mongbwalu in the first half of 2003, AngloGold Ashanti was also prepared to hold discussions with them. Following discussions with transitional government officials, AngloGold Ashanti representatives met with self-styled FNI president Njabu while he was in Kinshasa in late 2003 to apparently ask for permission to start gold exploration drilling activities in Mongbwalu, necessary because the FNI were in physical control of the mines and surrounding territory. In an interview with a Human Rights Watch researcher Njabu said,

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Criminal Court announced his intention to follow the situation in Ituri. There were also numerous other press report.

<sup>199</sup> Human Rights Watch interview, AngloGold Ashanti representatives, Howard Fall and Jean-Claude Kanku, Kampala, March 10, 2004.

<sup>200</sup> Human Rights Watch interviews, senior UPC officials, Bunia, February 21, 2004.

<sup>201</sup> Letter from OKIMO Director General, Etienne Kiza Ingani to Thomas Lubanga, President of the UPC. Ref DG/SDG/172/2002, October 1, 2002 with Annex, “The Expectations of OKIMO,” October 2002.

The government is never going to come to Mongbwalu. I am the one who gave Ashanti<sup>202</sup> permission to come to Mongbwalu. I am the boss of Mongbwalu. If I want to chase them away I will. It is not Bemba who controls there. The contract for Ashanti is with the government but we [the FNI] control Mongbwalu so they need to come to see me if they want to work there.<sup>203</sup>

As a result of the meetings with AngloGold Ashanti officials, Njabu confirmed in writing the company could start work in Mongbwalu and informed other FNI leaders including the FNI commissioner of mines, Mr. Basiani, and the FNI commissioner of defense, Commander Iribi Pitchou Mbodina, of his decision, instructing them to cooperate with the company.<sup>204</sup> As AngloGold Ashanti received permission from the FNI to start operations in Mongbwalu, FNI combatants were returning from their murderous campaign of ethnic killings they carried out between July and September 2003 in Drodro, Nizi, Fataki, Bule and Largo, villages in the vicinity of Mongbwalu, where they had left some of their victims dead in the streets with their arms tied, sticks in their rectums, and body parts cut off, as described above.

In setting up a relationship with the FNI resulting in mutual benefits, AngloGold Ashanti may have violated a U.N. arms embargo on eastern DRC. The U.N. Security Council passed resolution 1493 in July 2003 demanding that “no direct or indirect assistance, especially military or financial assistance, [be] given to the movements and armed groups present in the DRC.”<sup>205</sup> It specifically set up an arms embargo on “all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement.”<sup>206</sup> The U.N. group of experts investigating breaches to the arms embargo stated in a report to the U.N. security council in January 2005 that AngloGold Ashanti could arguably have violated the arms embargo through their direct payment and assistance to the FNI, an embargoed party.<sup>207</sup> The group of experts requested further

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<sup>202</sup> In the region, the company is ordinarily referred to simply as “Ashanti.”

<sup>203</sup> Human Rights Watch interview, Floribert Njabu, President of the FNI, Kampala, July 3, 2004.

<sup>204</sup> *Ibid.*, Lenahan to Van Woudenberg, December 7, 2004. Document on file at Human Rights Watch. Also Human Rights Watch interviews, Mr. Basiani, FNI Commissioner of Mines, Mongbwalu, May 5, 2004; Floribert Njabu, President of the FNI, Mongbwalu, May 3, 2004; Mongbwalu businessman, Beni, February 25, 2004; Ashanti representatives, Mongbwalu and Kampala, March 10 and May 4, 2004; Iribi Pitchou, FNI Defence Commissioner, February 19 and October 10, 2004.

<sup>205</sup> U.N. Security Council resolution 1493 (S/2003/757), paragraph 18, July 28, 2003.

<sup>206</sup> *Ibid.*, paragraph 20.

<sup>207</sup> U.N. Security Council, “Letter from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of Congo [on the arms embargo]”, (S/2005/30),

clarification on the matter from the U.N. security council sanctions committee. In an April 27, 2005 e-mail communication to Human Rights Watch, AngloGold Ashanti wrote, "There has been no intention on the part of AngloGold Ashanti to violate the embargo either acting by itself or in concert with any party."<sup>208</sup> While the company may not have had an 'intention' to break the embargo, Human Rights Watch believes that the decision by AngloGold Ashanti to work in a context of violence and conflict, such as that of Mongbwalu, increased its risks and placed the company on the thin edge of ethical and responsible business.

[Image]

Floribert Njabu (left), President of the FNI. © 2004 Human Rights Watch

### ***AngloGold Ashanti benefits from its relationship with the FNI armed group***

Having received permission from the FNI to start gold exploration activities, AngloGold Ashanti representatives started to conduct visits to Bunia and Mongbwalu from the company's office in Uganda, a much closer logistical support base than the company's office in Kinshasa. AngloGold Ashanti's consultant, Jean Claude Kanku, went to Bunia where he was seen several times in the company of FNI representatives, including the FNI commissioner of defense, Commander Iribi Pitchou, who acted as leader of the FNI while Njabu was held in Kinshasa.<sup>209</sup> In an interview with a Human Rights Watch researcher, Commander Pitchou confirmed that he had regular contact with AngloGold Ashanti representatives in Bunia and Uganda.<sup>210</sup> A primary concern for starting gold exploration drilling was security and the company representatives including Ashley Lassen, (Consultant and AngloGold Ashanti's head of office in Uganda), Desire Sangara (AngloGold Ashanti's head of office in DRC), Howard Fall (geologist and project

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January 25, 2004, para 134; hereafter called report of the group of experts on the U.N. arms embargo. See also S. Brummers, "AngloGold Aided Warlord," *Mail and Guardian*, Johannesburg, February 4, 2005.

<sup>208</sup> E-mail communication, Steven Lenahan, Executive Officer, Corporate Affairs, AngloGold Ashanti to Anneke Van Woudenberg, Human Rights Watch, April 27, 2005.

<sup>209</sup> Human Rights Watch interviews, Bunia, February 20 – 23, 2004.

<sup>210</sup> Human Rights Watch interview, Iribi Pitchou Kasamba, FNI Defence Commissioner and acting President, February 19, 2004 and October 10, 2004.

manager for Mongbwalu operations), Jean Claude Kanku (consultant), accompanied by an OKIMO representative, consulted Emmanuel Leku, the administrator of the Ituri Interim Assembly, on this question in October 2003. Leku told them that it was too dangerous to visit Mongbwalu and that his administration did not control the area.<sup>211</sup> The representatives also discussed plans to start activities in Mongbwalu with the head of the MONUC office in Bunia, Dominique Ait-Ouyahia McAdams. She and her staff told them that the time was not right for the start of operations in Mongbwalu.<sup>212</sup> Engaged in trying to reduce the power of local armed groups, MONUC staff were unlikely to support any arrangements which would strengthen or grant prestige to the FNI. Due to security concerns, insufficient capacity, and logistical complications, MONUC peacekeeping had not then deployed to Mongbwalu.

Despite the caution from the administrator and MONUC officials, AngloGold Ashanti representatives went to Mongbwalu in November 2003, accompanied by FNI commissioner Commander Pitchou, still acting in place of FNI leader Njabu. The AngloGold Ashanti visit took place the same month as FNI leaders and combatants carried out a series of arbitrary arrests and summary executions against civilians in Mongbwalu, including the killing of Mr. Choms who had applauded the arrival of a U.N. plane which he hoped would bring peace to the area. In an interview with a Human Rights Watch researcher, Commander Pitchou explained how he helped AngloGold Ashanti get installed in Mongbwalu. He said,

President Njabu had given Ashanti written permission in Kinshasa. Ashanti said they would rebuild roads and hospitals for us - they promised us this. I took the Ashanti delegation to Mongbwalu in November 2003. We held joint meetings there and met many workers. On other trips I sent my chief of staff to accompany them. We are in regular contact with them, even with their headquarters in London.<sup>213</sup> I have spoken to Mr. Sangara [Head of AngloGold Ashanti in Kinshasa] myself and with Jean Claude Kanku [AngloGold Ashanti consultant based in Kampala]. We have given them guarantees of security.<sup>214</sup>

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<sup>211</sup> Human Rights Watch interview, Emmanuel Leku, Bunia, February 18, 2004 and MONUC staff, Bunia February 24, 2004.

<sup>212</sup> Human Rights Watch interview, Dominique Ait-Ouyahia McAdams, MONUC Head of Office, Bunia, February 23, 2004.

<sup>213</sup> This presumably refers to the Ashanti Goldfields office in London.

<sup>214</sup> Human Rights Watch interview, Iribi Pitchou Kasamba, FNI Defence Commissioner and acting President, February 19, 2004 and October 10, 2004.



In November 2003 and on February 7 and March 17 and 18, 2004 AngloGold Ashanti representatives including the designated project manager for the operation, Howard Fall, consultant Jean Claude Kanku, and engineer Mark Hanham, carried out at least three site visits to Mongbwalu, often accompanied by FNI armed group representatives.<sup>215</sup> At that time, FNI combatants continued to carry out their ongoing ‘witch hunt’ in Mongbwalu and its immediate vicinity against Hema women and other opponents. Victims accused of witchcraft were often brutally killed after ‘judging’ ceremonies by local spiritual leaders (see above).

In February 2004, Njabu evaded officials keeping him in Kinshasa and, using a false name and a round-about route, managed to arrive in Mongbwalu. Njabu confided to supporters that he was returning to Mongbwalu to profit financially from the presence of the new investors.<sup>216</sup> Soon after arriving back, Njabu organized a public meeting to direct the local population and FNI combatants to not block the work of AngloGold Ashanti.<sup>217</sup> He then set up his headquarters in Mongbwalu. After their March mission, an AngloGold Ashanti official, Howard Fall, reported—in writing--that Njabu told them they were “welcome in the area, and would be allowed to carry out their activities unhindered.” He specifically assured them that “they need not to be alarmed by the presence of armed militia.”<sup>218</sup> While AngloGold Ashanti representatives may have been provided with security assurances, the local population were not. Throughout February 2004 and in the months that followed, FNI combatants frequently arrested civilians for failure to pay ‘taxes’ or participate in forced labor, often beating and torturing their victims (see above).

From May 2004 AngloGold Ashanti brought some thirty-five expatriate geologists, engineers and security personnel to Mongbwalu to assist with their exploration drilling activities.<sup>219</sup> Company executives talked publicly about launching mining activities in Mongbwalu claiming the area was a “huge gold province.”<sup>220</sup> Charles Carter, Vice President at AngloGold Ashanti, stated in a mining forum that the company had made preparations to “commence exploration drilling on the Kimin prospect [OKIMO] in the

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<sup>215</sup> Human Rights Watch interviews, OKIMO official, Bunia, February 22, 2004; Mongbwalu businessman, Beni, February 25, 2004; Ashanti representatives, Mongbwalu and Kampala, March 10 and May 4, 2004; Iribi Pitchou Kasamba, FNI Defence Commissioner and acting President, February 19, 2004 and October 10, 2004.

<sup>216</sup> Human Rights Watch interview, Kinshasa, October 2, 2004.

<sup>217</sup> Human Rights Watch interviews, Mongbwalu businessman, Beni, February 25, 2004; Ashanti representatives, Mongbwalu, May 4, 2004.

<sup>218</sup> Ashanti internal report written by Howard Fall, “Mongbwalu Sitrep - AGK site visit 17/18 March 2004.” Copy on file at Human Rights Watch.

<sup>219</sup> Human Rights Watch interview, AngloGold Ashanti representatives, Howard Fall and Jean Claude Kanku, Kampala, March 10, 2004 and Ashley Lassen, May 13, 2004 and Mark Hanham, July 8, 2004.

<sup>220</sup> “AngloGold Ashanti hits rich vein of savings from merger,” *Business Day*, South Africa, July 29, 2004.

Ituri region of the DRC,” adding “while this is obviously a tough environment right now, we are looking forward to the opportunity to fully explore the properties we have in the Congo, believing that we now have access to potentially exciting growth prospects in Central Africa.”<sup>221</sup>

Not surprisingly, security for personnel and company property in Ituri was an important issue. AngloGold Ashanti contracted with the private security company ArmorGroup International Ltd. to furnish armed guards for their activities and lodgings of company staff.<sup>222</sup> As a result of the relationship they established with the FNI, AngloGold Ashanti was able to access the gold producing areas in Mongbwalu for exploration drilling benefiting from security against any possible attacks by local militias.

Howard Fall, manager of the AngloGold Ashanti project in Mongbwalu, confirmed the company had contact with the FNI and that the armed group had granted permission for the company to work in Mongbwalu, but he added that there “was no relationship with Njabu.”<sup>223</sup> Other AngloGold Ashanti employees expressed different views. A number of witnesses told a Human Rights Watch researcher that an AngloGold Ashanti consultant had frequent contact with the FNI leaders, including Njabu, often acting as a bridge between the company and the armed group.<sup>224</sup> Human Rights Watch also learned that AngloGold Ashanti knew there were possible difficulties in having a direct relationship with the FNI and hence employed consultants to facilitate such discussions.<sup>225</sup> In its April 27, 2005 e-mail communication with Human Rights Watch the company denied the allegations, though they did add that on the occasions where there had been “unavoidable contact” with the FNI, the company had sought to ensure such contact was “transparent” and was “directly between ourselves and the militia group.”<sup>226</sup>

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<sup>221</sup> Presentation by Charles Carter, AngloGold Ashanti Vice-President, Diggers & Dealers Forum, Kalgoorlie, Australia, July 2004. See also “AngloGold Ashanti hits rich vein of savings from merger,” *Business Day*, South Africa, July 29, 2004.

<sup>222</sup> Human Rights Watch interview, Lee Smith, Head, Armor Group, Kampala, July 8, 2004 and ArmorGroup Chief Executive Officer, Noel Philip, London, July 2004.

<sup>223</sup> Human Rights Watch interview, AngloGold Ashanti representatives, Howard Fall and Jean Claude Kanku, Kampala, March 10, 2004.

<sup>224</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004; Also Human Rights Watch interviews local leader, Mongbwalu, May 5, 2004 and civil society activist, Bunia, May 13, 2004.

<sup>225</sup> Human Rights Watch interviews, Mongbwalu, May 4 and civil society activist, Bunia, May 13, 2004.

<sup>226</sup> E-mail correspondence, Lenahan to Van Woudenberg, April 27, 2005.

### ***Benefits for the FNI Armed Group***

As a result of the relationship with AngloGold Ashanti, the FNI obtained important benefits for the movement and certain of its leaders. The company's local consultant in Mongbwalu claimed that he told the FNI, "We could not help them openly but we could assist them in others ways."<sup>227</sup> When Njabu asked money from AngloGold Ashanti's consultant based in Uganda, Ashley Lassen, he got it. Lassen told a Human Rights Watch researcher in May 2004 that the situation was complex. "We don't want to cut Njabu out," he said. "He needs to feel included. He just wants money and then he will go away. We have given him a little, a few hundred dollars here and there, but that is all. We know how to deal with people like him."<sup>228</sup> Another close observer to events in Mongbwalu also told Human Rights Watch that payments were being made by AngloGold Ashanti to the FNI, though he believed the amounts being paid were higher.<sup>229</sup> When questioned about payments to the FNI in an interview with Human Rights Watch researchers in July 2004, AngloGold Ashanti's Howard Fall strongly denied any form of financial assistance to the FNI.<sup>230</sup>

The denials about financial assistance to the FNI armed group were contradicted by AngloGold Ashanti in February 2005 when the company's spokesperson, Steven Lenahan, was quoted in various press reports detailing payments the company had made to the FNI.<sup>231</sup> Responding to questions from Human Rights Watch about such payments, AngloGold Ashanti responded in an e-mail communication on April 27, 2005, that AngloGold Ashanti had made an \$8,000 payment to the FNI in January 2005 "under protest and duress" after the FNI threatened the "safety of staff and the company's assets."<sup>232</sup> In the same e-mail communication, AngloGold Ashanti added that the company had sought the advice of the Bunia based District Commissioner before making the payment, though the company stressed the payment was never "approved by executive management at AngloGold Ashanti" and that such payments were "not consistent with AngloGold Ashanti's business principles."<sup>233</sup> AngloGold Ashanti further confirmed in its April 27, 2005 e-mail that the company had paid the

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<sup>227</sup> Human Rights Watch interview, AngloGold Ashanti consultant, May 4, 2004.

<sup>228</sup> Human Rights Watch interview, Ashley Lassen, AngloGold Ashanti, Bunia, May 13, 2004.

<sup>229</sup> Human Rights Watch interview, observers to events in Mongbwalu, Bunia, October 10, 2004 and Europe, April 26, 2005.

<sup>230</sup> Human Rights Watch interview, AngloGold Ashanti representatives, Howard Fall, Jean-Claude Kanku, and Mark Hanham, Kampala, July 8, 2004.

<sup>231</sup> Antony Sguazzin, "AngloGold says it paid 'safety tax' to rebels," *Bloomberg*, February 7, 2005; Tim Wood, "Can AngloGold Lock its Congo Pandora's Box?" *Resource Investor*, South Africa, February 7, 2005; S. Brummer, "AngloGold Aided Warlord," *Mail and Guardian*, Johannesburg, February 4, 2005.

<sup>232</sup> *Ibid.*, E-mail correspondence, Lenahan to Van Woudenberg, April 27, 2005.

<sup>233</sup> *Ibid.*

FNI a levy of six US cents per kilogram of cargo flown into the local airport at Mongbwalu. It stated that this had been “common practice” until September 2004 when it came to the attention of company officials in Kinshasa and in light of “the fact that it contravened the provisions of the U.N. resolution, it was discontinued.”<sup>234</sup> AngloGold Ashanti’s spokesman stated to journalists that the company still believed the risks associated with operating in Mongbwalu were “manageable.”<sup>235</sup>

In addition to the payments described above, AngloGold Ashanti provided various other forms of support to the FNI armed group in Mongbwalu, including some assistance with logistics and transportation. In an environment of extreme poverty, minimal infrastructure and continued insecurity, such assistance was important for the activities of the FNI. In the context of Ituri, AngloGold Ashanti knew, or should have known, that the FNI armed group they were giving assistance to was responsible for widespread human rights abuses. Njabu and other senior FNI representatives used the 4x4 AngloGold Ashanti vehicle so often that the company began insisting that they put their requests in writing so transportation arrangements could be better planned.<sup>236</sup> AngloGold Ashanti also permitted FNI leaders to travel on planes they had hired for flights from Mongbwalu to Beni or Kampala.<sup>237</sup> Throughout the period of late 2003 and into 2004, as FNI leaders were getting such benefits from AngloGold Ashanti, FNI combatants continued to carry out their policies of witch hunts, arbitrary detentions, torture and forced labor. Some victims were so badly brutalized for not paying taxes or carrying out the FNI’s policy of forced labor that they fled to Bunia or other places hundreds of kilometers away seeking safety (see above).

A United Nations group of experts monitoring the arms embargo on eastern DRC reported in January 2005 that AngloGold Ashanti also provided Njabu, the FNI leader, with his house in Mongbwalu.<sup>238</sup> When Human Rights Watch interviewed Njabu in Mongbwalu in May 2004 he was living in a house on the AGK concession (of which AngloGold Ashanti is a majority stakeholder). As witnessed by Human Rights Watch researchers, Njabu’s house was guarded by FNI combatants, some of them child soldiers, and was used as the main headquarters of the FNI armed group; numerous FNI planning and strategy meetings were held on the premises. When granted a request to meet with Njabu and other members of the FNI armed group, Human Rights Watch

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<sup>234</sup> Ibid., also the Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 133.

<sup>235</sup> Ibid., Antony Squazzin, “AngloGold says it paid ‘safety tax’ to rebels”.

<sup>236</sup> Human Rights Watch interview, Ashanti consultant, Mongbwalu, May 4, 2004.

<sup>237</sup> Human Rights Watch interviews, Commander Iribi Pitchou, Bunia, October 10, 2004; Floribert Njabu, President of the FNI, Kampala, July 3, 2004.

<sup>238</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 133.

researchers were directed to the house of Njabu on the AGK concession.<sup>239</sup> In its April 27, 2005 e-mail correspondence to Human Rights Watch, AngloGold Ashanti confirmed that the FNI occupied several of the houses on the property acquired by the company “without either seeking our permission or receiving our approval.”<sup>240</sup> AngloGold Ashanti did not report how their local representatives who lived in another house on the property a few hundred meters away reacted to this, nor whether advice was sought from their headquarters on the matter or if any measures were taken to remove the FNI from the company’s property.

In addition to these material benefits, AngloGold Ashanti representatives also intervened with local authorities and U.N. officials on behalf of the FNI, both for individuals and for the group. On one such occasion an AngloGold Ashanti consultant, Ashley Lassen, interceded with MONUC officials. In an e-mail sent on March 20, 2004 to senior MONUC officials based in Ituri, Lassen expressed his view that the FNI were weary of fighting and wanted a peaceful settlement, if their personal safety could be guaranteed. He went on to prevail on MONUC to “adopt a conciliatory stance in their dealings with some of the armed groups.”<sup>241</sup> MONUC viewed this e-mail as an attempt to promote favor for the FNI armed group.<sup>242</sup>

The FNI further capitalized on their relationship with AngloGold Ashanti. Their association with a powerful, rich multinational corporation offered the possibility for increasing their legitimacy locally and at the national level. Commentators in Kinshasa noted that few of the national politicians had taken an interest in Njabu until AngloGold Ashanti expressed its desire to start activities in Mongbwalu. In an interview with Human Rights Watch, Njabu remarked that President Kabila and Vice President Bemba had contacted him directly in relation to gold mining in Mongbwalu, clearly viewing such contact as legitimizing his position.<sup>243</sup> One individual in Kinshasa noted, “Njabu now has power due to the gold he controls and [the presence of] AngloGold Ashanti. This is his ace and he will use it to get power in Kinshasa.”<sup>244</sup> Such intentions were further clarified in the April 27, 2005 e-mail correspondence from AngloGold Ashanti to Human Rights Watch, where the company stated that the funds they paid were to be used for FNI “meetings with Government and other political organizations” in

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<sup>239</sup> Observations made by a Human Rights Watch researcher, Mongbwalu, May 1 to May 7, 2004.

<sup>240</sup> Ibid., E-mail correspondence, Lenaha to Van Woudenberg, April 27, 2005.

<sup>241</sup> E-mail correspondence between Ashley Lassen, AngloGold Ashanti, and MONUC officials, March 20, 2004. Copy on file at Human Rights Watch.

<sup>242</sup> Ibid.

<sup>243</sup> Human Rights Watch interview, Floribert Njabu, Mongbwalu, May 3 and Kampala, July 3, 2004.

<sup>244</sup> Human Rights Watch interview, local analyst, Mongbwalu, May 4, 2004.

Kinshasa.<sup>245</sup> At local level the contact with AngloGold Ashanti was also seen as useful for the FNI. One worker in Mongbwalu summed up the situation by saying “Ashanti will give dignity to the FNI.”<sup>246</sup> When Njabu returned to Mongbwalu in February 2004 another local analyst concluded he had made the move to ensure he was the key interlocutor with the company adding, “this will become Njabu’s power base.”<sup>247</sup> For a senator in Kinshasa the relationship between such a powerful multinational and the FNI was likely to strengthen the armed group politically and was just plain “dangerous.”<sup>248</sup>

### ***AngloGold Ashanti View of Contacts with the FNI***

In a December 7, 2004 letter to Human Rights Watch, AngloGold Ashanti wrote that AGK, its joint venture with OKIMO, had “no working or other relationship with FNI.”<sup>249</sup> This position appeared to contradict information elsewhere in the same letter concerning frequent contacts between AGK representatives and FNI leaders, contacts that in effect made it possible for AGK to begin work in Mongbwalu. The letter stated that AGK officials met in late 2003 with F. Ndgabu (sic), the president of FNI, in Kinshasa to discuss their wish to visit Mongbwalu to assess possibilities for starting work there. According to the letter, the FNI president “identified with AGK intentions and wrote his representatives in Bunia and Mongbwalu indicating his support for the commencement of work by AGK.” The letter said also that AGK officials met with the FNI in March, May, July, and September 2004 so that AGK could outline its work program.

In its April 27, 2005 e-mail communication to Human Rights Watch, AngloGold Ashanti stated, “It is not the policy or practice of this company to seek to establish continuous, working relationships with militia groups in conflict zones.” In the same communication the company admitted there had been contact between the company’s “management and the FNI” but added these contacts had been “unavoidable” and in the cases where it had occurred the company had “attempted to keep the contact to a minimum and have ensured that the meetings and their outcomes are communicated with all interested parties.”

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<sup>245</sup> Ibid., E-mail correspondence, Lenahan to Van Woudenberg, April 27, 2005.

<sup>246</sup> Human Rights Watch interview, former OKIMO employee, Mongbwalu, May 6, 2004.

<sup>247</sup> Human Rights Watch interview, civil society leader, Mongbwalu, May 2, 2004.

<sup>248</sup> Human Rights Watch interview, Congolese Senator, Kinshasa, October 4, 2004.

<sup>249</sup> All quotations in this section are taken from the December 7, 2004 and December 13, 2004 letters of Lenahan to Van Woudenberg plus e-mail correspondence of Lenahan to Van Woudenberg on April 27, 2005. Documents on file at Human Rights Watch.

Human Rights Watch has obtained materials and witness testimony reflecting the frequent contact between AngloGold Ashanti and senior FNI leaders including meetings held, written permission granted, and payments made to FNI representatives.<sup>250</sup> This information casts serious doubts on the claim that no working or other relationship existed between the company, its joint venture partner AGK, and the FNI armed group and that such contact was ‘unavoidable’ as suggested by AngloGold Ashanti’s December 7, 2004 letter and its April 27, 2005 e-mail correspondence to Human Rights Watch. In light of the circumstances on the ground, Human Rights Watch believes it is unlikely that AngloGold Ashanti would have been able to work in Mongbwalu without such a relationship with an armed group who effectively controlled access to the mining site including all road and airport access and who militarily controlled the town and surrounding areas. This reality was made clear by Njabu himself when he told Human Rights Watch, “I am the boss of Mongbwalu. If I want to chase [AngloGold Ashanti] away then I will.”<sup>251</sup>

The AngloGold Ashanti December 7, 2004 letter said that AGK’s decision to begin work at Mongbwalu was “founded on its critical assessment of the security situation and its belief that the population appears well-disposed towards exploration and mining operations in the area.” The company’s decision to restart activities in the Mongbwalu gold mining area in October 2003 came only weeks after the FNI’s attacks in villages just 30 kilometers to the east of Mongbwalu where scores of civilians were killed, including hospital patients, women and children and where thousands of others were forced to flee (see above).

By instructions given to combatants in its militia, by public appearances in the company of AGK representatives, and by instructions to local residents at a public meeting, all detailed above, the FNI leaders provided the assurances needed by AGK both concerning security in general and concerning the attitude of the population.

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<sup>250</sup> Ibid., Human Rights Watch interviews, OKIMO employee, Bunia, February 19, 2004; OKIMO official, Bunia, February 22, 2004; union member, Bunia, February 22, 2004; local journalist, Bunia, February 20, 2004; MONUC officials, February 23 and October 8, 2004; Ministry of Mining official, Kinshasa, February 29, 2004; senior OKIMO official, Kinshasa, March 1, 2004; local leader, Mongbwalu, May 4, 2004; civil society activist, Bunia, May 13, 2004; Mr. Basiani, FNI Commissioner of Mines, Mongbwalu, May 5, 2004; Vice President Jean-Pierre Bemba, Kinshasa, October 1, 2004; Floribert Njabu, President of the FNI, Kinshasa, Mongbwalu, Kampala, October 7, 2003, May 3, July 3, 2004; local analyst, Mongbwalu, May 4, 2004; Congolese senator, Kinshasa, October 4, 2004; Mongbwalu businessman, Beni, February 25, 2004; AngloGold Ashanti representatives, Mongbwalu and Kampala, March 10, May 4, May 13, July 8, 2004; Iribi Pitchou Kasamba, FNI Defence Commissioner, Bunia, February 19 and October 10, 2004; OKIMO manager, Kinshasa, October 2, 2004; E-mail correspondence AngloGold Ashanti, and MONUC officials, March 20, 2004; AngloGold Ashanti internal report, March 2004; Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005; Fax from Lenahan to Van Woudenberg, December 7, 2004. Copies of all documents on file at Human Rights Watch.

<sup>251</sup> Human Rights Watch interview, Floribert Njabu, President of the FNI, July 3, 2004.

In its December 7, 2004 letter to Human Rights Watch, AngloGold Ashanti wrote that “steps have been taken to ensure that human rights will be upheld at all times” and that AGK will “ensure that dealings with local and other organizations, including the discharge of social responsibilities, are carried out in accordance with criteria which comply with reasonable standards of good governance.” The company stated it had given “consumables and supplies” to the local hospital and school, had replaced the pump at the hospital, and carried out minor repairs to roads, as described in the same letter. These benefits were granted to local authorities in Mongbwalu who were appointed by, or depended on, the FNI for their authority. But giving in an environment like Mongbwalu is not politically neutral and may have contributed to increased prestige for the FNI. The dynamics of how the FNI wished to capitalize on the presence of AngloGold Ashanti in Mongbwalu was explained to a Human Rights Watch researcher by FNI Commander Pichou,

We agreed with [AngloGold] Ashanti that all complaints from the local population against the company would be organized via the FNI. We would give these complaints to Ashanti. We also stated we wanted to organize a structure, like an NGO, to sort out development issues in Mongbwalu...They were happy for the FNI to create an NGO that Ashanti would then finance. We even have minutes of these meetings at the FNI office in Mongbwalu.<sup>252</sup>

### ***Failure to Respect Human Rights, International Norms and Business Standards***

Congo is at a critical phase in its transition to the rule of law and needs investment by business corporations to help generate revenue, to repair a shattered infrastructure, and revitalize the economy. Such business involvement needs to support economic and political development, not work against it. In an environment of continued conflict, as in northeastern DRC, multinational corporations need to ensure that their activities do not in any way support directly or indirectly armed groups responsible for widespread human rights abuses.

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<sup>252</sup> Human Rights Watch interview, Commander Iribi Pitchou, Bunia, October 10, 2004.



#### **Box 4 – Tackling Discrimination at OKIMO**

Local OKIMO and former KIMIN union members in Ituri raised fundamental concerns about relaunching mining activities in Ituri when past discriminatory management practices at OKIMO which had contributed to inter-ethnic tensions had not been addressed. OKIMO has a history of discriminatory practices favoring the Hema, who predominate in management positions, and discriminating against the Lendu, who constitute the great majority of miners and other manual laborers. According to OKIMO employees, Lendu workers were rarely promoted and those who did reach management positions were compensated at a lower rate than were non-Lendu at equivalent levels.<sup>253</sup> As the largest employer in the Ituri District, OKIMO's discriminatory practices contributed to tensions between Hema and Lendu. As early as 1999 Hema and Lendu employees of OKIMO at one of their main offices in Bambu engaged in fighting along ethnic lines, a forerunner of later and wider violence.<sup>254</sup>

In February 2004 union members wrote to OKIMO management requesting that efforts be made to reconcile these ethnic groups within the organization before any industrial gold operations were undertaken.<sup>255</sup> But at the time of writing union members and other employees claimed that no discussions had taken place on past discriminatory practices and that no plans were in place to prevent further ethnic conflict within OKIMO.<sup>256</sup> An ad hoc parliamentary committee of senators and deputies from northeastern DRC launched an investigation into the management of OKIMO in September 2004. They also claimed to be concerned about this issue and may examine it during its review.<sup>257</sup>

Asked about any policies that had been adopted to deal with apparently discriminatory practices at OKIMO, AngloGold Ashanti answered in its December 7, 2004 letter to Human Rights Watch, that it “did not seek to interfere in the internal workings” of OKIMO because it wished to maintain a good working relationship with OKIMO and wished to respect its “corporate status.”<sup>258</sup> Given that tensions between Hema and Lendu ethnic groups have contributed to the conflict and widespread human rights abuses in Ituri, it is inappropriate for AngloGold Ashanti to have a hands off approach

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<sup>253</sup> Human Rights Watch interview, Kinshasa, March 1, 2004.

<sup>254</sup> Human Rights Watch interview, former OKIMO employee who worked in Bambu, February 22, 2004.

<sup>255</sup> Ibid.

<sup>256</sup> Human Rights Watch interview, union representative, Bunia, October 10, 2004.

<sup>257</sup> Human Rights Watch Interview, Senator Uringi-pa-Dolo, Vice Chair of Parliamentary Investigation Committee on OKIMO, Kinshasa, October 4, 2004.

<sup>258</sup> Lenahan to Van Woudenberg, December 7, 2004. Document on file at Human Rights Watch.

to such issues, especially in relationship to the joint venture partnership AGK in which AngloGold Ashanti has a majority share.

Although states have primary responsibility for promoting and ensuring respect for human rights, business corporations also carry a number of responsibilities, as is increasingly recognized by international law and norms. In August 2003 a group of U.N. experts adopted the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, thereby signaling the growing consensus for standards on corporate responsibility. The norms are based on a wide range of recognized international instruments including the Universal Declaration of Human Rights, international conventions such as those on torture, genocide, slavery, and rights of the child, the Geneva Conventions and the Rome Statute of the International Criminal Court amongst others. These U.N. norms help to clarify the international legal framework for obligations on companies in relation to human rights. Specifically they set out that companies have the “obligation to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights recognized in international as well as national law.”<sup>259</sup> They further add that companies “shall not engage in nor benefit from war crimes and crimes against humanity” nor “torture, forced disappearances, forced or compulsory labour” as defined by international law.<sup>260</sup> It does not appear that AngloGold Ashanti upheld these obligations in its activities in Mongbwalu. Through the establishment of a mutually beneficial relationship with an armed group responsible for war crimes and crimes against humanity, AngloGold Ashanti failed to uphold its obligations to secure respect for human rights.

AngloGold Ashanti’s own business principles say it strives to ensure that “[host] communities are better off for AngloGold Ashanti’s having been there” and committing itself to seeking “mutually beneficial, ethical long-term relations with those with whom we do business.”<sup>261</sup> AngloGold Ashanti has itself committed to complying with all laws, regulations, standards and international conventions applying to its business in the area of protection for human rights including the Universal Declaration of Human Rights, the Fundamental Rights Convention of the International Labour Organization (ILO), the principles and values referred to in the United National Global Compact<sup>262</sup> and the

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<sup>259</sup> Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003), Section A, General Obligations.

<sup>260</sup> *Ibid.*, Section C, Rights to Security of Persons.

<sup>261</sup> *Ibid.*, Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 134.

<sup>262</sup> The U.N. Global Compact is an initiative launched by the Secretary General to advance responsible corporate citizenship. It seeks to mainstream ten principles in relation to human rights, labor, the environment and anti-corruption. Both AngloGold Ashanti and its parent company Anglo American are participants in the Global Compact. See [www.unglobalcompact.org](http://www.unglobalcompact.org).

Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises in its global operations.<sup>263</sup> In September 2002 AngloGold signed an important agreement with the 20-million strong International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), to promote and respect human and trade union rights, health and safety, environmental protection and the promotion of good relationships with local mining communities in all their operations worldwide.<sup>264</sup> AngloGold Ashanti's own business principles further state that AngloGold Ashanti will promote the application of its principles to "those with whom it does business" and that acceptance of these principles is an "important factor in our decision to enter into and remain in such relationships."<sup>265</sup>

AngloGold Ashanti failed in its operations in Mongbwalu to uphold its own business principles, as detailed in this report. The company did not abide by its own internal standards on promoting its business principles to those with whom it does business when deciding whether to enter into a relationship with the FNI armed group. Throughout its research, Human Rights Watch was unable to identify effective steps taken by the company to ensure human rights were respected in Mongbwalu, a context of significant vulnerability for local civilians and ongoing conflict. As a multinational company with considerable influence, Human Rights Watch believes that AngloGold Ashanti should have exercised its leverage to pursue local actors to respect human rights and should have conditioned its gold exploration activities on such commitments.

As described earlier, in an annex to their October 2002 report, the U.N. panel of experts detailed concerns about compliance with the OECD Multinational Guidelines by eighty-five multinational companies operating in the DRC including Ashanti Goldfields (the predecessor to AngloGold Ashanti).<sup>266</sup> The OECD Guidelines are recommendations addressed directly to companies setting down 'shared expectations for business conduct'. They are the first international instrument on corporate social responsibility to provide a government-supported (though voluntary) mechanism for monitoring and influencing corporate behavior. The guidelines provide standards of conduct for all key aspects of company operations including respect for human rights and sustainable development

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<sup>263</sup> "AngloGold Ashanti's Business Principles: Living Our Values," May 2004 from the AngloGold Ashanti website at [www.anglogold.com/Social+Responsibility/](http://www.anglogold.com/Social+Responsibility/). In their response to the U.N. Panel of Experts, Ashanti Goldfields stated that their exploitation and mining activities are guided by the Guidelines. Commitments to the OECD Guidelines for Multinational Enterprises. Addendum to U.N. Panel of Experts on Illegal Exploitation in the DRC report, (S/2002/1146/Add.1), June 20, 2003.

<sup>264</sup> See "Global Agreement between AngloGold Ltd and ICEM, The Promotion and Implementation of Good Industrial Relations in AngloGold Operations Worldwide", September 2002, at [www.icem.org](http://www.icem.org) (retrieved February 2005).

<sup>265</sup> *Ibid.*, "AngloGold Ashanti's Business Principles: Living Our Values," May 2004.

<sup>266</sup> *Ibid.*, Annex III of the U.N. Panel of Experts Report, October 2002.

amongst others that are to be observed wherever a company operates.<sup>267</sup> In relation to the U.N. panel's report of 2002, Ashanti Goldfields denied any contravention of the OECD Guidelines in a one-page response to the panel in early 2003.<sup>268</sup> No further investigations were conducted and in their final report the panel determined that all issues with Ashanti Goldfields and forty-one other companies had been resolved.<sup>269</sup> Questions need to be raised however about AngloGold Ashanti's compliance with the OECD Guidelines in their activities in Mongbwalu since 2003. AngloGold Ashanti's relationship with and the support its has provided to the FNI, an armed group responsible for widespread human rights abuses, appear to be in contravention of the OECD Guidelines in relation to respect for human rights.

Many corporations involved in the extractive industry have agreed to a set of Voluntary Principles on Security and Human Rights.<sup>270</sup> AngloGold Ashanti has not yet subscribed to the code, but these principles provide guidelines that could have been useful to it in deciding when and under what circumstances to start operations in Mongbwalu. The code asks corporations:

- to maintain the safety and security of their operations within a framework that ensures respect for human rights
- to assess the conduct of armed groups or other forces operating in the area based on available human rights records
- to consider local capacity to hold accountable those responsible for abuses
- to monitor the use of their equipment to ensure it is not used in an inappropriate manner
- to record and report any credible allegations of human rights abuses by local public security forces or other armed groups responsible for security in the area
- to urge for investigations where appropriate.

AngloGold Ashanti developed a relationship with the FNI armed group whose abuses of human rights and international humanitarian law were at the time already well

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<sup>267</sup> OECD Guidelines for Multinational Enterprises (Paris: OECD), Section II, General Principles, point 2, 2000.

<sup>268</sup> *Ibid.*, Addendum to the U.N. Panel of Experts Report, June 20, 2003. Response No. 15.

<sup>269</sup> *Ibid.*, U.N. Panel of Experts Report, October 2003.

<sup>270</sup> In December 2000 the U.K. and USA governments together with companies in the extractive industry sector and non-governmental organizations, agreed the Voluntary Principles on Security and Human Rights. Companies who have signed up to the principles include Amerada Hess, BG Group, BHP Billiton, B.P., ChevronTexaco, ConocoPhillips, ExxonMobil, Freeport-McMoRan, Marathon Oil, Newmont, Norsk Hydro, Occidental Petroleum, Rio Tinto, Shell, and Statoil.

documented. During the first year of the AngloGold Ashanti operations in Mongbwalu, Human Rights Watch researchers met with AngloGold Ashanti representatives in February, May and July 2004, highlighting human rights concerns about the FNI and other armed groups operating in Ituri including widespread ethnic massacres, arbitrary detention, summary execution, the use of torture and other forms of ill-treatment and sexual violence. As its representatives stated to Human Rights Watch researchers, AngloGold Ashanti did not raise human rights concerns with the FNI nor did they request an end to their abuses. In its letter of December 7, 2004 AngloGold Ashanti claimed it was not in a position to place any conditions on the FNI as “it had no working or other relationship with the FNI,” which is inconsistent with the information presented in this report.

Before and during the period of its relationship with AngloGold Ashanti, the FNI group was illegally mining and trading gold in an area that it had taken by force of arms. It held its power in Mongbwalu through the use of force carrying out grave abuses of human rights in the process.

In return for assurances of security for its operations and staff and access to the mining site, AngloGold Ashanti provided certain financial and material support to the FNI. The FNI also derived political benefit from its relation with AngloGold Ashanti in that it found added strength in resisting efforts by the national government to bring it under control.

Given the ongoing conflict in Ituri, the widespread and systematic abuses taking place in the area and the political and military leverage that could be gained for an armed group through a relationship with a major multinational mining company, AngloGold Ashanti should have waited to restart their exploration drilling activities in Mongbwalu. They do not appear to have done so. Business considerations came above respect for human rights. AngloGold Ashanti failed in its operations in Mongbwalu to uphold its own business principles on human rights considerations and failed to follow international business norms governing the behavior of companies internationally. Human Rights Watch has been unable to identify effective steps taken by the company to ensure that their activities did not negatively impact on human rights. AngloGold Ashanti should cease immediately any relationship with the FNI and consider halting temporarily its mining exploration activities in Mongbwalu until such operations can contribute positively to the lives of the people who live there.

The price of gold on world markets is currently the highest it has been in over a decade. Industry experts believe the price may rise still further due to a shortage of new gold

production.<sup>271</sup> The search for new sources of ore and the current high price of gold is likely to stimulate demand for new gold mines. Any mining companies seeking to engage in the gold-rich areas of northeastern Congo must ensure that its activities do not further conflict and human rights abuses. The citizens of north-eastern Congo should benefit from their gold resources, not be cursed by them.

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<sup>271</sup> Kevin Morrison, "Dollar's troubles put new gleam in gold commodities", *Financial Times*, London, November 6, 2004.

## VII. Human Rights Abuses in the Durba Gold Mines and Trade Routes

The control of Durba and adjacent gold-rich areas in Haut Uélé District, about 150 kilometers north of Mongbwalu, was contested during the war years by the three rebel movements mentioned above, RCD-ML, RCD-National and the MLC. This region was not torn by the kind of ethnic massacres and other killings that devastated Ituri, but contending forces committed serious abuses against the local people.<sup>272</sup>

[Image]

An open-pit mine in the gold town of Durba in Haute Uele district. Durba is a major gold center in northeastern Congo. Gold from Durba is traded through the market town of Ariwara, on the border with Uganda, controlled by Commander Jerome's FAPC who use the proceeds to support their military operations. © 2004 Marcus Bleasdale

Although local administrators were present in Aru, the effective force in the area since 2003 has been a local armed group, the People's Armed Forces of Congo (FAPC), under Commander Jérôme Kakwavu. According to residents of Durba, Aru, and Ariwara, Commander Jérôme's troops committed more serious abuses than other armed forces that operated in the area. As one witness said, "Jérôme's reign was the worst. Who could stop Jérôme? He would just kill you. Even the civil authorities could do nothing."<sup>273</sup>

As mentioned above, Commander Jérôme was originally part of the RCD-ML and in control of Durba until September 2002 when a coalition of RCD-National and MLC forces drove him out. He retreated to the nearby towns of Aru and Ariwara where he retained control over the border posts and benefited from duties charged on trade, especially on gold. In September 2002 he moved south to support the UPC in taking

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<sup>272</sup> Human Rights Watch interviews, Durba and Watsa, May 10 – 14, 2004 and also interviews in Aru and Ariwara, March 6 – 7, 2004.

<sup>273</sup> Human Rights Watch interview, Watsa, May 12, 2004.

Mongbwalu, subsequently broke with them, and founded his own militia, the FAPC. Although based in Aru, the FAPC then allied with the FNI and shared control of Mongbwalu after March 2003. The FAPC and the FNI also shared control of gold-producing areas nearer Aru and Ariwara until mid-2004 when they fought each other for mines at Djalasiga. At that time, the FAPC broke with the FNI and renewed its alliance with the UPC.

Throughout Commander Jérôme's frequent changes of alliances, the one constant has been his support from Uganda. They assisted him in establishing the FAPC (see above) and, according to a later MONUC investigation, left him weapons when they withdrew in 2002.<sup>274</sup> A U.N. group of experts investigating violations to the arms embargo in eastern DRC reported in January 2005 that Uganda continued to provide weapons and ammunition to the FAPC throughout 2003 and 2004 some of which came from the UPDF military camp in Arua, just across the border from Aru in the DRC.<sup>275</sup> Although they knew about Commander Jérôme's human rights abuses, Ugandan soldiers supported him at least once (see below) in keeping command of the FAPC, reportedly to be sure that the gold trade and other resources remained in the hands of an ally. According to the U.N. group of experts and local sources, Ugandan soldiers again entered Congo in 2004 to support the FAPC in its fight for Djalasiga and supplied the FAPC ammunition for the battle.<sup>276</sup>

And throughout his various operations, a primary objective for Commander Jérôme has been obtaining gold. As a combatant in the RCD-ML force in August 12, 2004, Commander Jérôme wrote to OKIMO officials, saying: "From now on the army will take 60 percent of the production of Moto-Doko [gold mines] to finance its operations."<sup>277</sup> The following day eight combatants, led by Commander Jérôme's second-in-command, Commander Guy Kolongo, looted 285 grams of gold from the OKIMO safe.<sup>278</sup>

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<sup>274</sup> U.N. internal report on the investigation into the plane seizure in Beni, July 25, 2003.

<sup>275</sup> *Ibid.*, Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, pages 31 – 34.

<sup>276</sup> Human Rights watch interviews, Bunia, October 7 – 9, 2004. See also Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 135.

<sup>277</sup> Letter from Commander Jérôme Kakwavu Bukande, Commander of the 5<sup>th</sup> Operational Zone to the Director of OKIMO based in Doko-Durba, No. 105/APC/EM-5 ZOPS/COMDT/2002, Watsa, August 12, 2002.

<sup>278</sup> OKIMO internal document, "Process Verbal De Constat Au Coffre Au Labo Durba", signed by all present, August 13, 2002. Document on file at Human Rights Watch.



### **Summary Executions by Commander Jérôme, 2002-2004**

Human Rights Watch researchers documented five public summary executions of combatants or soldiers ordered by Commander Jérôme and carried out in his presence. In each case there was no investigation or trial, and in some cases the public was asked to judge the fate of the accused.

In one such case, a young combatant named Atibho was publicly executed on December 29, 2003 for having thrown a grenade, killing three people and injuring some fifty others in the central market place in Ariwara. According to witnesses, Commander Jérôme asked persons hospitalized with injuries from the attack what should be done with the Atibho. Several responded that he should not be killed as “they thought enough blood had been spilled already.”<sup>279</sup> Commander Jérôme then brought the soldier to the center of town in Ariwara and asked the population what should be his fate. According to a witness, some of Commander Jérôme’s own guard said he should be spared. The witness said,

Jérôme then said to some of his guards, “Those who said no should be whipped.” They took out three soldiers and whipped them. . . Then Jérôme asked the crowd again what he should do. They said to kill the soldier. . . Jérôme pushed him from the truck and said, “Execute him.” One of the bodyguards then shot him in his upper back. He wasn’t dead yet and then he shot him again in the back of his head. The soldiers then threw the body into the truck and drove away. His mother was there.<sup>280</sup>

According to Ariwara residents, Commander Jérôme on January 17, 2004 also asked a large public crowd to judge the fate of a combatant accused of killing motorbike taxi driver Claude Kiombe. A witness said that after the crowd called for his execution, Commander Jérôme then gave the order to kill him. “Jérôme was present throughout,” said a witness, “as were Major Theo, Commander Salumu, Captain Mutumbo and others.”<sup>281</sup>

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<sup>279</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

<sup>280</sup> Human Rights Watch interview, Ariwara, March 8, 2004.

<sup>281</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

Commander Jérôme also carried out public executions in Durba when he was in control of the 5<sup>th</sup> operational zone for the RCD-ML. Among those so executed was a soldier called Masumboko executed in May 2002 on charges of rape and murder.<sup>282</sup>

In these cases and others documented by Human Rights Watch researchers, there were no investigations, trial procedures, or independent judgments. Commander Jérôme was the sole arbiter of the law and, in ordering these men executed, he committed war crimes.

In an interview with Human Rights Watch researchers, Commander Jérôme said that the FAPC had a military tribunal with lawyers and judges but was unclear if it had authority to impose the death penalty. He claimed that he needed to carry out executions in order to maintain law and order. He said, “We are in a time of war. We are still rebels. We are here to satisfy the population. We need popular measures to maintain discipline.”<sup>283</sup> Local residents, however, fear Commander Jérôme. As one said, “There is no one to appeal to. It is Commander Jérôme who controls everything. Civilians have no rights here at all. The population really suffers.”<sup>284</sup>

### ***Executing and Torturing Supposed Political Opponents***

Commander Jérôme and his troops detained, beat, and killed combatants and civilians who were perceived to support Commander Jérôme’s rivals for power. In Durba in 2002 Commander Jérôme sought out persons who had been close to his predecessor and rival Colonel Monga, including a civilian named Anygobe who was killed by Commander Jérôme’s combatants in mid-2002. Witnesses close to his home reported hearing him scream as he was taken away. His mother hoped to buy his release with two goats, but failed and Anygobe was reportedly shot the next morning and his body was dumped in an old latrine at the military camp.<sup>285</sup>

Commander Jérôme also sought out civilians accused of spying. In early June 2002 Kamile Leta, aged 25, was arrested along with two women in Tora, a town outside Durba, accused of spying for Commander Jérôme’s enemies. According to witnesses, Mr. Leta was taken from his cell on June 12, 2002 to see Commander Jérôme. Shortly thereafter a guard took him behind the building, stabbed him numerous times, and left him for dead in a pit with other decomposing bodies. Still alive, the victim crawled out

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<sup>282</sup> Human Rights Watch interview, Durba, May 13, 2004.

<sup>283</sup> Human Rights Watch interview, Commander Jérôme Kakwavu Bukande, Aru, March 8, 2004.

<sup>284</sup> Human Rights Watch interview, Ariwara, March 6, 2004.

<sup>285</sup> Human Rights Watch interview, Watsa, May 12, 2004.

of the pit and sought help from persons who took him to the hospital in Watsa. A witness reported that he saw Mr. Leta with multiple stab wounds and covered with maggots.<sup>286</sup> Hospital records show the victim arrived at 19:30 on June 13, 2002 with “multiple wounds on the neck and body from stabbing by the military.”<sup>287</sup>

According to witnesses at the hospital, the territorial administrator arrived with the police commander and combatants loyal to Commander Jérôme led by Commander Banda Yowa Likimba, known as Jaguar. Commander Jaguar, who appeared to one witness very angry, demanded to see Mr. Leta. The witness said,

We were obliged to get him. Commander Jaguar said they would treat him themselves. They demanded a stretcher. They tied his hands. They made him lie down on the stretcher and then they covered his body and his face with a sheet. The victim was crying and said he was innocent, that he had done nothing wrong. They took him.

About one hour later, the police commander came by and told us that the man was no longer alive. He told us Jaguar had asked the prisoners to dig a grave. He said Jaguar had said that since the man would not die by the knife he would now die his own way. He kicked the man into the grave they had dug and then threw the first shovel of dirt on him. They buried him alive. It was in the yard of Commander Jaguar’s house. The police commander was there throughout and he told me all this. [Commander] Jérôme gave the order that the victim be killed in the first place.

For two months the hospital was almost empty. People were too scared to come for treatment after that.<sup>288</sup>

Outright opposition to Commander Jérôme was rare, but combatants led by Raymond Isala sought to oust him and take control of the FAPC on May 22, 2003 while Commander Jérôme was across the border in Uganda. They failed when Ugandan

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<sup>286</sup> Human Rights Watch interview, Watsa, May 12, 2004.

<sup>287</sup> Watsa Hospital Admittance Records for patient Kamile Leta, aged 25 from Tora. According to hospital records the patient was admitted to the hospital on June 13 and left hospital on June 14, 2002, signed by attending doctor. Hospital records seen by Human Rights Watch on May 13, 2004.

<sup>288</sup> Human Rights Watch interview, Watsa, May 12, 2004.

forces based in Arua<sup>289</sup> crossed into Congo at the Vura border point and helped forces loyal to Commander Jérôme defeat the mutineers.<sup>290</sup> Later that day Ugandan soldiers helped Commander Jérôme's FAPC arrest Congolese believed to have been involved in the mutiny attempt who had fled into Uganda. Among those arrested were Jacques Nobirabo, Paul Avoci, Leti Leopold Apo, Commander Idrise Bobale and two of his bodyguards, some of whom were detained in the Ugandan military barracks in Arua. According to witnesses, Commander Jérôme and officers loyal to him killed other mutineers in Aru, including Commander Mboio, Commander Kato, Commander Rasta and others.<sup>291</sup> The leader of the mutiny, Raymond Isala, fled.

Several days later, Ugandan Major Besisira handed over to Commander Jérôme refugees captured in Uganda, an action that violates international conventions regarding refugees.<sup>292</sup> In some cases, the persons were delivered in a clandestine fashion, suggesting the Ugandan soldiers may have wished to avoid responsibility for having delivered them. To further distance themselves from the eventual fate of those handed over, some Ugandan soldiers asked the FAPC not to harm the detainees and required them to sign a document promising not to harm them.<sup>293</sup> According to witnesses, many of those handed over to Commander Jérôme were tortured and some were reportedly killed, including the cases described below. A U.N. inquiry on Ituri reported credible testimony that Major Besisira was paid by Commander Jérôme for various services, including delivering to him FAPC combatants who had fled to Uganda. Some of these persons were reportedly later executed in Aru.<sup>294</sup>

A detainee delivered by Ugandan soldiers to Commander Jérôme on June 7, 2003 at the Ugandan military barracks in Arua said that he was returned that night with others to the military camp in Aru. He said,

The next day we were taken out and five soldiers told us we had to dig our own graves. All of us went out and we started to dig a big hole about two meters deep. Commander Idrise was very weak. [Commander] Jérôme came and started to threaten him and us. He said we were under his control. He said he would make us suffer till we died. He ordered that

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<sup>289</sup> Arua is in Uganda just opposite the Congolese town of Aru across the border.

<sup>290</sup> Human Rights Watch interviews, Kampala, March 10, 2004; Mongbwalu, May 4, 2004; Aru, March 8, 2004. See also U.N. Security Council, "Special Report on the Events in Ituri", July 2004, p. 39.

<sup>291</sup> Human Rights Watch interview, Mongbwalu, May 4, 2004.

<sup>292</sup> Human Rights watch interview, Kampala, March 10, 2004.

<sup>293</sup> Ibid.

<sup>294</sup> U.N. Security Council, Special Report on the Events in Ituri, July 2004, p. 39.

Idrise be beaten. First they stripped him and then put him face down on the ground. Some soldiers held his feet and arms while another sat on his head. Then they beat him five hundred times with whips made from ropes and branches. After finishing with Idrise they took [another prisoner] and pushed him with their guns. They stripped him and then ordered he be given one hundred strokes. They also sat on his head and held him down. Then it was my turn and the same thing happened. Throughout all this time Jérôme was there and watched. Then he gave the order not to give us water or food. We spent four days like that in container with nothing. We really suffered.<sup>295</sup>

The Ugandan Major Besisira intervened on June 12 and took several of the detainees back to Uganda. After keeping them for several days, he released them, warning them to speak to no one, especially not to journalists.<sup>296</sup> At least one of those originally detained in Uganda, Leti Leopold Apo, was supposedly executed. Commander Idrise, suffering from diabetes and hypertension, remained in detention in Aru in very poor health until December 2004.<sup>297</sup>

After the attempted mutiny, Commander Jérôme continued to hunt down any political opposition in the area under his control. Beginning on January 7, 2004 Commander Jérôme detained and himself interrogated persons suspected of opposing his leadership, seeking to learn the names of others who might have participated in the attempted mutiny in May, 2003.<sup>298</sup> Detainees were beaten, sometimes twice a day, for over a week and were forced to do labour including cleaning and digging toilets. Some of the civilians were later released.<sup>299</sup>

### ***Arbitrary Detention and Torture***

As determined to ensure his economic dominance as his political power, Commander Jérôme authorized and carried out arbitrary detention and torture of gold traders in order to assure his own control and that of his business colleague, Mr. Omar Oria, over the lucrative trade. In one case, the ill-treatment of a victim resulted in his death.

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<sup>295</sup> Human Rights Watch interview, Kampala, March 10, 2004.

<sup>296</sup> Human Rights Watch interview, Kampala, March 10, 2004.

<sup>297</sup> Human Rights Watch interview, Bunia, December 1, 2004.

<sup>298</sup> Human Rights Watch interview, Aru, March 8, 2004.

<sup>299</sup> Ibid.

Mr. Oria, a Ugandan citizen, is one of the largest gold traders in the area, buying gold from Durba and selling it to traders in Kampala (see below).<sup>300</sup> According to several witnesses, Mr. Oria and Commander Jérôme had a close business relationship and Mr. Oria provided assistance, including financial assistance, to the FAPC.<sup>301</sup> Mr. Oria told a Human Rights Watch researcher that he was not involved in politics, but that he was a contractor for Commander Jérôme and was building a hotel for him in Ariwara.<sup>302</sup> Human Rights Watch researchers documented a number of cases of arbitrary detention and torture involving Commander Jérôme and Mr. Oria, including those described below.

On June 17, 2003 Mr. Oria and some of his employees including Likambo Lumaya, abducted Floribert<sup>303</sup>, a gold dealer whom they accused of cheating Commander Jérôme by selling him ore that was not gold. They beat Floribert with sticks, kept him overnight, and the next day took him to Commander Jérôme in Aru who, according to Floribert, “judged” him. Floribert said,

Jérôme gave the order for me to be whipped five hundred times. [The soldiers] tied me to a tree with a rope like those use for goats. I had my arms around the tree, facing it. They beat me five hundred times. There were lots of military hitting me, two on the left, two on the right. They used ropes. Jérôme and Oria were there throughout. Jérôme was sitting in a chair.<sup>304</sup>

Floribert was then kept for three days in a shipping container, used as a place of detention, with six combatants and three other civilians. Mr. Oria arranged for his release, Floribert believes, but the next day demanded that he pay him \$2,480. “He said if I didn’t pay him the money, he would send me back to Aru,” said Floribert. “I couldn’t say anything as he was much stronger than me.” Floribert sold his home and bicycle to be able to pay the money demanded, although he saw this as extortion. He claims that the gold was good quality and that he considered taking them to justice. He

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<sup>300</sup> Human Rights Watch interviews, Ariwara, March 6 - 8, 2004 and gold traders in Kampala, July 7 and 8, 2004. Representatives from Machanga Ltd, a gold exporting business in Kampala, stated they bought gold from Mr. Oria.

<sup>301</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

<sup>302</sup> Human Rights Watch interview, Omar Oria, Kampala, March 10, 2004.

<sup>303</sup> The name of the victim has been changed for his protection.

<sup>304</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

said, “I thought about bringing a complaint against them but I don’t think it is possible. How could I accuse them? They are stronger.”<sup>305</sup>

In a similar case, Mr. Oria and his employee Likambo Lumaya abducted Lipanda Lumeri on September 28, 2003, accusing him of having stolen fifty-four grams of gold. They drove him to Commander Jérôme’s residence, a hotel named Don de Dieu, in Ariwara where Commander Jérôme, surrounded by seventeen combatants, threatened to kill Lipanda and pointed his revolver at him. At Commander Jérôme’s order, his combatants undressed him and tied his arms and legs together behind his back. They threw him in Commander Jérôme’s vehicle and took him to Angarakali, the FAPC military camp. Lipanda said,

They [six combatants] threw me onto the ground and whipped me three hundred times, from the back down to the buttocks. They made me count. They whipped me with small pieces of wood. . . . Each had a stick and they were beating me at the same time. It lasted about forty-five minutes or an hour.<sup>306</sup>

Lipanda was then confined in a hole in the ground with twelve combatants and another civilian, all of whom had been beaten. He was taken out and beaten again at midnight that night and twice a day for the next four days. According to his count, he was struck at least 1,300 times. During his ill-treatment, he was urinating and excreting blood. Lipanda said that he was told repeatedly to return the stolen gold or pay for it. He said,

I told them I didn’t have the gold or the money. They said the gold was for Commander Jérôme and he needed money to build his house. They said if I didn’t give the money, Jérôme would give the order for me to be killed.

On the fifth day Jérôme came with his officers to the prison . . . and pointed his gun at me. He said: “Since the first day, I said I would kill you. I don’t joke. Today it’s the end of your life.” They made me get out of the hole and lie down. Jérôme loaded his revolver and put it to the back of my neck.<sup>307</sup>

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<sup>305</sup> Ibid.

<sup>306</sup> Human Rights Watch interview, Ariwara, March 6, 2004.

<sup>307</sup> Ibid.

The first revolver misfired several times, so Commander Jérôme took another weapon and shot Lipanda twice in the left hand and then twice in the right hand. Lipanda was put back in the prison.<sup>308</sup> Upon his release, Lipanda went to the hospital in Ariwara where the doctor said that the bones in his hands had been fractured by the bullets.<sup>309</sup> Lipanda claimed that the missing gold had been taken by one of Mr. Oria's employees and said he intended to file a criminal complaint against Commander Jérôme, Omar Oria and Likambo Lumaya.<sup>310</sup>

### ***Tolerating Abuses by Business Allies***

Commander Jérôme, the most powerful person in the area, tolerated the abduction and beating of a Mr. Kokole on orders of Mr. Oria in January 2004. Mr. Kokole died of his injuries the same day.<sup>311</sup> Commander Jérôme's combatants protected Mr. Oria from Kokole's family and others who demanded his arrest and escorted him to safety at the Ugandan border.

Mr. Oria abducted Mr. Kokole in Ingbokolo and took him back to his own home where had Mr. Kokole beaten in an effort to recover \$19,000 owed to him by the victim. A witness saw Kokole, dressed only in his underwear and with signs of having been badly beaten, at Oria's house the day of his death. Kokole's head and arms were swollen, his back showed a large wound, and there was blood visible. According to the witness, Mr. Oria and others to whom Kokole owed money were present, all trying to get him to say where he had hidden the money owed to them. Kokole was so badly injured that he could not sit upright. At about 3p.m. five FAPC combatants arrived, one officer and his bodyguards. According to the witness, "The officer pointed a gun at him and said: 'If you don't give us the money, I'll kill you.'" When Kokole replied that the money was in Ingbokolo, the combatants threw him in a black Suzuki truck that belongs to Oria. Kokole was taken away in the truck, with the combatants accompanying it in their own vehicle. Some two hours later, the combatants delivered Kokole to the hospital.<sup>312</sup>

An agent of the Congolese government administration was present at the hospital when Kokole was brought there, about thirty minutes before he died. He said,

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<sup>308</sup> Human Rights Watch interview, Ariwara, March 6, 2004.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Human Rights Watch interviews, Ariwara, March 6 and 7, 2004.

<sup>312</sup> Human Rights Watch interview, Ariwara, March 6, 2004.



He [Kokole] had wounds to the chest and side of his head as if he had been hit with a hammer. I went to Oria and asked him why he had done it. Oria said he owed him money. He did not deny that Kokole had been at his house. Oria killed Kokole.<sup>313</sup>

According to witnesses, some of Mr. Kokole's family and others assembled in a threatening way at Mr. Oria's house. FAPC combatants who were there fired in the air to protect Oria and escorted him to the Ugandan border so he could make his escape.<sup>314</sup>

Mr. Oria admitted to a Human Rights Watch researcher that Mr. Kokole had owed him money, that he had brought him from Ingbokolo to his own house and that he had been present when Mr. Kokole was beaten. He denied having struck Mr. Kokole himself, saying, "I did not use my two hands to hit anyone. I did not."<sup>315</sup> He said he had been interrogated by Congolese police who came to Arua in Uganda to interview him, but the case has now been dropped because he had reached an arrangement with Mr. Kokole's family, agreeing to erase his debt and to build the family a warehouse in Ariwara to provide them with income in the future.<sup>316</sup>

Commander Jérôme told Human Rights Watch researchers that another person responsible for the killing had himself died soon afterwards and hence the case was closed.<sup>317</sup> No further investigations or arrests have been carried out for this or other cases of arbitrary arrest and torture. When Human Rights Watch researchers discussed these and other cases with Commander Jérôme, he denied that such abuses took place saying, "There is no torture here. We don't torture people. This is wrong and ultra wrong." (*"La torture n'existe pas. On ne torture pas les gens. C'est faux et archi-faux."*)<sup>318</sup>

### ***Djallasiga: Continued Conflict over Gold Mines***

Ugandan support to the FAPC, important at its founding and since, not only helped Commander Jérôme contend with a mutiny but more recently assisted FAPC forces in fighting to control Djallasiga and surrounding areas, part of Concession 39 of OKIMO's reserves and home to the gold mines of Zani.<sup>319</sup>

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<sup>313</sup> Human Rights Watch interview, Ariwara, March 7, 2004.

<sup>314</sup> Ibid.

<sup>315</sup> Human Rights Watch interview, Omar Oria, Kampala, March 10, 2004.

<sup>316</sup> Ibid.

<sup>317</sup> Human Rights Watch interview, Commander Jérôme Kakwavu Bukande, Aru, March 8, 2004.

<sup>318</sup> Ibid.

<sup>319</sup> Human Rights Watch interviews, Bunia, October 7, 2004 and by telephone to Ariwara, October 10, 2004.

FNI forces and Commander Jérôme's FAPC forces had worked together since the establishment of the FAPC in early 2003. The two agreed not to attack each other, to carry out joint patrols in areas that shared a common boundary, and to split tax and customs receipts on trade between their areas of control. But in mid-2004 the FAPC National Secretary of Mines, Pierre Nzia, signed a contract with a Ugandan-based company to mine gold in the Zani river in Djalasiga. Once operations were launched, it was critical for the FAPC to retain control over the Zani area and they appointed administrators there.<sup>320</sup> Soon after, there were allegations that Lendu in the area were being mistreated.

In June 2004 FNI and the FAPC forces began fighting one another and control of Djalasiga changed hands frequently over the following months. Tens of thousands of civilians fled their homes.<sup>321</sup> In one counter-attack a number of senior FAPC combatants were killed and heavy weapons, including rockets and mortars, lost to attacking FNI forces.<sup>322</sup> Commander Jérôme later admitted to a U.N. group of experts investigating violations of the arms embargo that the weapons lost had been those supplied to him by Uganda.<sup>323</sup> In early July FAPC combatants arrested two local Lendu civilians in Aru and accused them of spying. The Lendu were summarily executed a few days later on the order of Commander Ali Mbuyi Gatanazi, whose younger brother was killed in the fighting.<sup>324</sup>

Faced with losses to the Lendu, Commander Jérôme requested assistance from Uganda. Numerous witnesses reported seeing Ugandan soldiers arriving to assist FAPC forces.<sup>325</sup> In one incident, Ugandan Colonel Peter Karim<sup>326</sup> held a public meeting in the Kud'i Koka market area in Congo to support the FAPC. He reportedly provided ammunition to Commander Jérôme to assist in the war effort.<sup>327</sup> In a later incident on November 7, 2004 a shipment of weapons from Uganda intended for the FAPC fell into the hands of the FNI. The U.N. group of experts investigating breaches to the arms embargo

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<sup>320</sup> Ibid.

<sup>321</sup> Human Rights Watch interview, OCHA official, Kinshasa, October 2004.

<sup>322</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 135.

<sup>323</sup> Ibid., para 135.

<sup>324</sup> Human Rights Watch interview, Bunia, October 9, 2004.

<sup>325</sup> Human Rights Watch interviews, Bunia, October 7 and 9, 2004 and by telephone to Ariwara, October 10, 2004. See also Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 135.

<sup>326</sup> Ugandan UPDF Commander Peter Karim is also mentioned in Ibid., Human Rights Watch, "Ituri: Covered in Blood", and in the report from Judge Porter, Ibid., Porter Commission report.

<sup>327</sup> Human Rights Watch interview, FNI official, Bunia, October 10, 2004.

reported the captured truck contained mortars, rocket propelled grenade launchers, arms and other ammunition.<sup>328</sup>

Thomas Lubanga's UPC forces also helped the FAPC against the FNI. According to local sources, Commander Jérôme's FAPC and Lubanga's UPC negotiated a new agreement during July and September 2004, with Commander Ali representing the FAPC. In early September 2004 the two former enemies reached an agreement that included a division of control over gold mining areas as a key component.<sup>329</sup> FAPC forces also reportedly received assistance from SPLA troops operating to the north in the DRC-Sudan border areas.<sup>330</sup>

The control of the gold in Djalasiga was one of the main causes of the conflict. An FNI representative told a Human Rights Watch researcher that there had been dissatisfaction between the two groups and "that the FAPC wanted all the gold and the money for themselves." "This", he said, "created the conflict."<sup>331</sup> A MONUC official who sought to mediate the dispute said that although the parties refused to say why they were fighting, it was clear from the discussions that they were fighting over control of gold and other money flows.<sup>332</sup>

Local sources claimed numerous civilians were killed during the fighting over Djalasiga.<sup>333</sup> Due to continued insecurity in the area, Human Rights Watch researchers have thus far been unable to document the human rights abuses committed.

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<sup>328</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 136.

<sup>329</sup> Human Rights Watch interviews, Bunia, October 7 and 9, 2004 and by telephone to Ariwara, October 10, 2004.

<sup>330</sup> Ibid.

<sup>331</sup> Human Rights Watch interview, FNI official, Bunia, October 10, 2004.

<sup>332</sup> Human Rights Watch interview, MONUC political officer, Bunia, October 8, 2004.

<sup>333</sup> Human Rights Watch interviews by telephone to Ariwara, October 10, 2004.

## VIII. Trade in Tainted Gold

International mining companies restarted mining operations in northeastern DRC only in 2003.<sup>334</sup> But while modern mining methods may not have been available, gold has continued to be mined by local artisanal miners throughout the duration of the conflict, sometimes in large quantities. The gold mining and trading activities are controlled by the armed groups and their business allies. They funnel this gold out of the Congo to Uganda via a network of traders who operate outside of legal channels. The trade in gold allows armed groups to transform the gold into money to sustain their operations. Without the proceeds from the gold trade, armed groups in Ituri would face serious difficulties in carrying out their military operations; activities which frequently include widespread human rights abuses.

[Image]

A gold trading house in Beni where gold from Mongbwalu is bought and sold.  
© 2004 Human Rights Watch

From 1996 through the present, the Congolese transitional government has had little, if any, control over some eastern parts of the country where the richest sources of gold are found. Hidden by the “fog of war” in this region, unlicensed parties grew rich by trading gold while armed groups that protected and were supported by them continued conflict and human rights abuses against civilians. The U.N. panel of experts on illegal exploitation in the Congo reported that the complexity of relationships among those who support, protect, and benefit from such trade and their dependency on it, makes ending these activities very difficult.<sup>335</sup> A conclusion confirmed by another U.N. group

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<sup>334</sup> Current multinational activities in both Mongbwalu and Durba are predominately at an exploration stage. AngloGold Ashanti at the time of writing was not yet extracting ore.

<sup>335</sup> Final Report of the U.N. Panel of Experts, October 16, 2002, S/2002/1146, p 152. Recent academic research has also shown how informal or “shadow” economies are subject to criminalization and are often linked with armed groups. See Mark Taylor and Anne Huser, “Security, Development and Economies of Conflict: Problems and Response,” *FAFO AIS Policy Brief*, November 2003. See also Ballentine, K. and J. Sherman, eds., “The Political Economy of Armed Conflict: Beyond Greed and Grievance”, (International Peace Academy, 2003).

of experts investigation into breaches to the arms embargo who reported in January 2005 that the business networks, including gold traders, which helped to sustain arms trafficking remained active in eastern DRC.<sup>336</sup>

Human Rights Watch researchers traced the trade in gold between the local buyers in Mongbwalu and Durba to a second group of purchasers who in turn sold the gold to larger-scale trading houses in bigger towns. These trading houses and their owners fraudulently exported the gold to legally registered traders in Uganda. Ugandan traders sold the gold to companies abroad, primarily in Switzerland and other parts of Europe, thus completing its integration from the conflict zone into the global economy. Those who participate in buying tainted gold from northeastern DRC may indirectly be providing a revenue stream for armed groups who carry out massive human rights abuses.

### ***The New DRC Mining Code***

In July 2002 the Congolese government, assisted by the World Bank, established a new Mining Code to regulate the extraction and trade in certain listed minerals, including gold.<sup>337</sup> Many investors applauded the code, expecting it to bring order to the extractive industries. Some regulations, like those on artisanal exploitation of minerals, were similar to previous legislation. Artisanal miners, licensed by the state, were to be permitted to extract minerals throughout the country, except in areas restricted by concessions granted by the government. To show they were authorized to extract gold, diamonds, or other minerals, artisanal miners had to obtain cards valid for the area concerned.<sup>338</sup> Artisanal miners were permitted to sell gold only to state-authorized traders, exchange markets, or trading houses<sup>339</sup> Traders, who generally brought at the mining site and sold to trading houses in larger towns, could sell only in the Congo and were not authorized to export gold.<sup>340</sup> The new mining code permitted the export of gold only by trading houses so authorized by the Minister of Mines in Kinshasa, who had authority to limit the number of export licenses granted.<sup>341</sup>

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<sup>336</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 36.

<sup>337</sup> Law No.007/2002 of July 11, 2002 Relating to the Mining Code and replaced the previous Decree/Law No. 81-013 of April 2, 1981 as well as subsequent legislation. Legislation available in English and French at [www.miningcongo.cd](http://www.miningcongo.cd).

<sup>338</sup> Mining Code, Article 111.

<sup>339</sup> Mining Code, Article 116.

<sup>340</sup> Mining Code, Article 117.

<sup>341</sup> Mining Code, Article 120 and 122.

In an interview with a Human Rights Watch researcher, officials from the Ministry of Mines deplored the lack of funding from the government and international donors to implement the new regulations, a process they expect to take years.<sup>342</sup> Ministry officials in Kinshasa know little about mining contracts or how the code is being applied in former rebel-held territories and claim there is no funding for them to go to the east to enforce regulations. They further claim the Minister of Mines, an appointment from civil society, was often left out of decisions on mining made by the President or the Vice-Presidents. He was removed from his position by President Kabila for mismanagement and corruption in December 2004, charges the minister denied.<sup>343</sup> One senior official at the Ministry of Mines said,

The multinational companies don't care whom they talk to. They just want to go and see the boss ... the Vice Presidents or the President. The Ministry of Mines is simply not involved. The politicians are just pursuing their own interests. We are powerless to control all of this. We have no means to do so. It's all the same, nothing has changed since the U.N. Panel report came out. The rebels and other government people who have arrived all have different agendas and they are not united. The big problem is money. If you want to succeed in politics you need money. So they are not in a rush to review the contracts signed previously.<sup>344</sup>

### ***Organization of the Gold Trade through Butembo and Ariwara***

With government officials lacking the means to enforce regulations, a few important traders based in Butembo, North Kivu Province, and Ariwara, Oriental Province, have monopolized the gold trade from Mongbwalu and Durba. Several of them are accused of providing transport services, including the transport of arms, to leaders of armed groups in return for their help in controlling the gold trade and assuring the smooth export of their gold (see below). According to the U.N. group of experts investigating violations of the arms embargo in eastern DRC, armed groups and their business partners generate the revenue needed to buy weapons and carry out military activities by controlling the trade in gold and other commodities and manning strategic border posts.<sup>345</sup>

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<sup>342</sup> Human Rights Watch interview, Ministry of Mining officials, Kinshasa, February 29, 2004.

<sup>343</sup> Ibid., *Le Potentiel Newspaper*, Kinshasa, November 29, 2004.

<sup>344</sup> Human Rights Watch interview, Ministry of Mining official, Kinshasa, February 29, 2004.

<sup>345</sup> Ibid., "Report of the Group of Experts on the U.N. Arms Embargo", January 25, 2005, para 95.

In Butembo, one of the largest trading houses (*comptoirs*) is owned by Dr. Kisoni Kambale and, in Ariwara, one of the major houses is owned by Mr. Omar Oria. Other traders estimated that these two control over fifty percent of the gold trade from northeastern Congo.<sup>346</sup>

The artisanal miners in northeastern Congo estimate they earn about \$10 a day selling their gold for cash to local traders. In Mongbwalu for example, miners sell to one of some forty traders who then sell it to one of a second group of ten purchasers who in turn sell to trading houses in Butembo. In some cases the trading houses provide cash advances to the local traders to facilitate their purchases. Owners of the major trading houses generally set the local price to be paid for the gold and control the means of transportation to and from the mining areas.<sup>347</sup>

### *Dr Kisoni in Butembo*

Dr Kisoni Kambale, owner of the Congocom trading house, is the most important gold trader in Butembo. Congocom handles so much gold that it operates its own foundry to melt the ore into ingots before exporting it, as Congocom customers have seen.<sup>348</sup>

According to one such customer, Kisoni bought the machinery with help from Ugandan associates.<sup>349</sup>

Traders in Mongbwalu told a Human Rights Watch researcher that they bought gold for Dr. Kisoni,<sup>350</sup> an assertion confirmed by the FNI Commissioner of Mines. He said,

Dr Kisoni gives money to people and they buy the gold in Mongbwalu. Nearly all of the gold purchasers work for Dr Kisoni. There are about ten of them and they control the gold buying. Dr Kisoni owns Butembo Airlines. The gold goes straight from the plane to his office in Butembo.<sup>351</sup>

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<sup>346</sup> Human Rights Watch interviews, gold traders, Butembo, Ariwara, and Mongbwalu, March, May 2004. Also interviews with gold traders in Kampala, July 2004.

<sup>347</sup> Ibid.

<sup>348</sup> Customers purchasing gold from Dr. Kisoni in February 2004 saw his gold foundry and the ingots it produced at his place of business. Human Rights Watch interview, Butembo, February 25, 2004.

<sup>349</sup> Human Rights Watch interview, Butembo, February 25, 2004.

<sup>350</sup> Human Rights Watch interview with gold traders in Mongbwalu, May 1 – 5, 2004.

<sup>351</sup> Human Rights Watch interview, Mr. Basiani, FNI Commissioner of Mines, Mongbwalu, May 5, 2004.

[Image]

The aviation company Butembo Airlines run by Dr Kisoni Kambale unloading its cargo after a flight to Mongbwalu. The plane is frequently used to transport gold.

© 2004 Human Rights Watch

Local traders and other informed sources estimated that between twenty and sixty kilograms of gold left the Mongbwalu area each month, most of it destined for Butembo. Based on the price of gold at the time of writing, this would have a value between \$240,000 and \$720,000. Human Rights Watch could not confirm such estimates, which may be below the actual amount traded (see below).<sup>352</sup>

Dr. Kisoni and his company lease a small Antonov plane that flies under the name of Butembo Airlines (BAL) and that transports merchandise, including gold. Butembo Airlines makes regular trips to Mongbwalu, sometimes flying on a daily basis. At the time of writing, it offered the only transport by air to Mongbwalu, which is hard to reach by road. Some traders who used BAL to transport their gold said the plane also carried weapons for the FNI.<sup>353</sup> A British Parliamentary report in October 2004 quoted Dr. Kisoni as saying that he regularly supplied food to the armed groups in Mongbwalu and that he did not check the contents of the cargo on his plane.<sup>354</sup> The U.N. group of experts investigating violations to the arms embargo reported that BAL had gained exclusive landing rights into Mongbwalu on the condition it facilitated outward shipment of gold for the FNI. They went on to express concern that the contents of the plane were never checked.<sup>355</sup> Mavivi Air, another transport company that once flew between Mongbwalu and Butembo had its craft impounded at Beni airport for carrying weapons in July 2003. A MONUC investigation into the affair reported that Mavivi and other such airlines were playing an important role in the trafficking of arms in the region.<sup>356</sup> Mavivi Air has since gone out of business.

Numerous witnesses in Mongbwalu, Butembo, and Kinshasa described the connections between gold traders and the RCD-ML armed political movement. Although at the time of research in early 2004, the RCD-ML was nominally a partner in the transitional

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<sup>352</sup> Gold export statistics from Uganda indicate the trade is \$46 million per year for 2003, of which the vast majority comes from the DRC. Based on such figures it is possible the trade from Butembo could be higher.

<sup>353</sup> Human Rights Watch interviews with gold traders, Mongbwalu and Butembo, February - May 2004.

<sup>354</sup> British All Party Parliamentary Group on the Great Lakes, "Arms Flows in Eastern DR Congo".

<sup>355</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 129 and 130.

<sup>356</sup> U.N. internal report on the investigation into the plane seizure in Beni, July 25, 2003.



government, it continued to act as an autonomous agent profiting from the gold trade in the region it controlled. One important member of RCD-ML told a Human Rights Watch researcher that Dr Kisoni was essential in financing his movement. He said, “Kisoni was the cashier of the rebellion.”<sup>357</sup> Another witness explained the reciprocal arrangement between RCD-ML authorities and the traders. He said,

When the [RCD-ML] movement needs money they ask the traders. They in turn get exemptions from taxes [collected by RCD-ML agents] at the border for their trade and this is how the deals are done. The movement then uses this money to buy weapons.<sup>358</sup>

An official from the Ministry of Mines agreed that there was an important tie between Kisoni’s company and the RCD-ML. He said, “Congocom has the monopoly on the gold trade and they are sustained by the [RCD-ML] rebellion.”<sup>359</sup>

[Image]

A gold ingot from ore mined in Ituri made at the foundry of Dr. Kisoni Kambale in Butembo. The gold is smuggled to Uganda, from where it is exported to global gold markets in Europe. © 2004 Human Rights Watch

Traders who export gold illegally, without paying taxes or duties to the state, violate articles 120 and 126 of the Mining Code and are liable to fines of between \$10,000 and \$30,000 and to being prohibited from engaging in the gold trade for five years. Any person who threatens mining officials carrying out their lawful duties is subject to six months imprisonment.<sup>360</sup> But mining officials in North Kivu told Human Rights Watch researchers that they lacked the resources to enforce the provisions of the code and for this reason had not executed ministry instructions to put an official in each trading house in Butembo. They said they also feared retribution from powerful commercial and political interests should they attempt to enforce the law.<sup>361</sup>

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<sup>357</sup> Human Rights Watch interview, RCD-ML insider, Kinshasa, March 1, 2004.

<sup>358</sup> Human Rights Watch interview, Beni, February 25, 2004.

<sup>359</sup> Human Rights Watch interview, Ministry of Mine officials, Butembo, February 25, 2004.

<sup>360</sup> Mining Code, Article 309.

<sup>361</sup> Human Rights Watch interview, Ministry of Mines officials, Butembo, February 25, 2004.

One ministry of mines official told Human Rights Watch researchers that no trading house in Butembo had a license from the Congolese government to export gold, including Congocom. He said that Congocom had never declared its exports to state agents even though it was—as he knew—the largest gold exporter in the area.<sup>362</sup> He said that because much of the gold was traded in violation of the mining code, it was impossible to know the amount of gold exported from the area. “We just watch our country’s resources drain away with no benefit to the Congolese people” he said.<sup>363</sup>

### ***Omar Oria in Ariwara***

Human Rights Watch researchers visited the thriving town of Ariwara in March 2004 and found more than forty gold trading houses in the central market area. Gold traders and other local sources estimated that between 80 and 160 kilograms of gold were traded each month through Ariwara, which is located near the Ugandan border. Such estimates cannot be verified but seem to fit generally with statistics for the export of gold from Uganda (see below).<sup>364</sup> At the time of writing the trade was valued at between \$1 to \$2 million per month.<sup>365</sup>

Ariwara lies in the zone controlled by Commander Jérôme’s FAPC forces, whose abuses have been extensively discussed previously. Gold traders must purchase permits (*carte de negociant d’or*) from the FAPC to trade gold, a requirement modeled on state practice.<sup>366</sup> The FAPC keeps all registration fees for its own use. The U.N. group of experts investigating violations of the arms embargo concluded that Commander Jérôme organized strict control over key exports such as gold together with businessmen willing to do his bidding.<sup>367</sup>

Omar Oria, a Ugandan citizen, is one of the main gold traders in Ariwara, according to other gold traders and residents, and as previously mentioned, works closely with Commander Jérôme.<sup>368</sup> One trader told Human Rights Watch researchers that Mr. Oria

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<sup>362</sup> Ibid.

<sup>363</sup> Human Rights Watch interview, Butembo, February 25, 2004.

<sup>364</sup> Ugandan Bureau of Statistics, Value of Exports by Commodity 1998 – 2003. In 2003 the trade was valued officially as \$46 million.

<sup>365</sup> Human Rights Watch interviews, gold traders and other gold industry experts, Ariwara, March 7 and 8, Watsa, May 12, 2004 and Durba, May 11, 2004.

<sup>366</sup> This is in violation of the DRC mining code which reserves the authority to issue such licenses exclusively to the state. Mining Code, Article 16.

<sup>367</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 116.

<sup>368</sup> The U.N. group of experts on the arms embargo also named Mr. James Nyakuni, Vincent Adjua and Ozia Mazio as other gold traders who work with the FAPC. Ibid., “Report of the Group of Experts on the U.N. Arms Embargo”, January 25, 2005, para 118.

advanced each of his local purchasers between \$5,000 and \$10,000 a week to buy gold on his behalf.<sup>369</sup> Much of this gold was bought in Durba and the immediate surrounding area. Many local traders in Durba confirmed that they worked for Mr. Oria.<sup>370</sup> In an interview with a Human Rights Watch researcher, Mr. Oria said that he traded gold, explaining that he sold gold in Uganda for Congolese clients and then depositing the proceeds into foreign bank accounts on their behalf.<sup>371</sup>

Mr. Oria's business is not authorized by the state as a trading house and so cannot legally export gold from the Congo nor is it licensed to operate in the foreign exchange market.<sup>372</sup> Mr. Oria's relationship with Commander Jérôme facilitates his illegal trade. Mr. Oria is protected by some of Commander Jérôme's combatants, several of whom have beaten, tortured, and even killed gold traders accused by Mr. Oria of having cheated him (see above). Witnesses claimed Mr. Oria helped finance the FAPC movement and regularly provided food and perhaps other supplies for FAPC combatants.<sup>373</sup> The U.N. group of experts investigating violations of the arms embargo concluded that proceeds from customs and immigration, including those from the gold trade, were channeled into the coffers of the FAPC and used to pay for its military infrastructure. In one case, the group of experts obtained forty handwritten receipts signed by FAPC commanders withdrawing cash from border proceeds for "military emergencies" and "combat rations."<sup>374</sup> Several witnesses said that Mr. Oria and Commander Jérôme were frequently seen together and that Mr. Oria on occasion stayed in Angarakali, the FAPC military camp in Ariwara.<sup>375</sup>

### ***Congolese Gold Exported to Uganda***

The gold traded from northeast Congo goes principally to one destination – Uganda. Both Dr Kisoni and Mr. Oria sell their 'tainted gold' to Ugandan traders based in Kampala, many of whom in turn sell gold to companies in Switzerland and other destinations.<sup>376</sup> Most of this gold is exported illegally from Congo: traders have no export permits or exchange documents, are not authorized trading houses, do not keep accounts at the Central Bank of Congo and do not pay relevant taxes and duties as

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<sup>369</sup> Human Rights Watch interview, gold trader, Ariwara, March 7, 2004.

<sup>370</sup> Human Rights Watch interview with gold traders and business people in Durba, May 13, 2004.

<sup>371</sup> Human Rights Watch interview, Omar Oria, Kampala, March 10, 2004.

<sup>372</sup> Mining Code, Articles 120, 126, 128.

<sup>373</sup> Human Rights Watch interviews, Ariwara, March 6 and 7, and Aru March 7, 2004.

<sup>374</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 109.

<sup>375</sup> Human Rights Watch interviews Ariwara, March 6, 2004 and March 7, 2004.

<sup>376</sup> While the primary destination is Switzerland, gold is also traded to Dubai, South Africa and other European countries.

required under Congolese law.<sup>377</sup> The Congolese population gain almost no benefit from this trade; instead they suffer grave human rights abuses by groups seeking to control the trade and the gold mines.

[Image]

Gold traders conducting business. © 2004 Marcus Bleasdale

The gold is “legalized” in Uganda. Traders in Kampala do not require their Congolese clients to present documents authorizing the export of gold, operating on an “ask no questions” basis. They treat the gold as if it were a transit good, filling out customs forms and other documents required to make its export legal from Uganda and acceptable in the unregulated global market.<sup>378</sup>

In the 1990s most unlicensed exports of gold from Congo went to Burundi, but civil war in Burundi and a regional trade embargo declared in 1997 made Burundi less attractive as a transit point. After a brief shift through Kenya, the trade moved to Kampala where the climate was more favorable. In 1993 the Ugandan Central Bank eased restrictions on gold sales and decided not to tax gold exports.<sup>379</sup> This change followed five years later by the establishment of Ugandan army control over rich gold mining areas of northeastern Congo resulted in a dramatic increase in gold exports from Uganda (see chart below).

### ***Gold Export Figures from Uganda***

According to official statistics, Uganda exported nearly \$60 million in gold in 2002, a peak year, and about \$46 million in 2003. But in 2003 specialists in the trade valued it

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<sup>377</sup> All these requirements are set out under the Mining Code of July 2002.

<sup>378</sup> Human Rights Watch interviews with representatives from Uganda Commercial Impex Ltd, Machanga Ltd and A. P. Bhimji Ltd, Kampala, July 7 and 8, 2004.

<sup>379</sup> U.S. Geological Survey, “The Mineral Industry of Uganda”, 1997.

still at \$60 million.<sup>380</sup> According to the Central Bank of Uganda, data from these industry experts may be more accurate than that compiled from government customs data.<sup>381</sup> Whether using industry or official statistics the increase in gold exports has been remarkable. Gold is currently the third top Ugandan export, after coffee and fish.<sup>382</sup> In 2001 gold accounted for 84 percent of the total value of all minerals exported from Uganda; in 2002 it was 99 percent.<sup>383</sup>

Most of the gold exported from Uganda comes from Congo. Domestic production in Uganda is negligible, despite encouragement from the World Bank and new mining regulations introduced in 2001. Statistics from the Ministry of Energy and Mineral Development and official export figures shows that Ugandan gold production accounts for less than 1 percent of the official gold exports.<sup>384</sup> In the annual report of the Ministry of Energy and Mineral Development, discrepancies between gold production and gold exports are striking. In 2002, for example, domestic gold production was valued at \$24,817 while gold exports for the same year were listed as just under \$60 million.<sup>385</sup> When Human Rights Watch researchers asked Ministry representatives about this discrepancy, they refused to comment.<sup>386</sup>

Import statistics fail to show the real scale of the gold trade. Officially, gold brought into Uganda should be declared upon entry as an import if expected to stay in the country, or as a transit good if intended for another final destination. But official Ugandan import statistics show a tiny amount of gold imported to the country and show no statistics for transit goods. The unofficial trade in gold is likely facilitated by the lax enforcement of regulations at the Uganda-Congo border posts. According to a study conducted in 2004 by the Ugandan Bureau of Statistics (UBOS), over 50 percent of all imports and exports went unrecorded at six border posts.<sup>387</sup> In cases where people wanted to hide precious minerals, the study estimated the entry of such goods went completely unrecorded. The U.N. group of experts monitoring the arms embargo to eastern DRC observed that at

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<sup>380</sup> Human Rights Watch interviews with representatives from Uganda Commercial Impex Ltd, Machanga Ltd and A. P. Bhimji Ltd, Kampala, July 7 and 8, 2004.

<sup>381</sup> E-mail correspondence with the Central Bank of Uganda, July 12, 2004.

<sup>382</sup> Ugandan Bureau of Statistics, Value of Exports by Commodity 1998 – 2003.

<sup>383</sup> Annual Report 2002, Ugandan Ministry of Energy and Mineral Development available at [www.energyandminerals.go.ug](http://www.energyandminerals.go.ug) (retrieved at February 2005).

<sup>384</sup> Based on statistics on production from the Ugandan Ministry of Energy and Mineral Development and official export figures from the Ugandan Bureau of Statistics from 1998 to 2003.

<sup>385</sup> Annual Report 2002, Ugandan Ministry of Energy and Mineral.

<sup>386</sup> Human Rights Watch interview, Ugandan Ministry of Energy and Mineral Development Representative, July 2004.

<sup>387</sup> Human Rights Watch interview, Ugandan Bureau of Statistics, Trade Representative, Entebbe, July 2004.

the northern border post of Vurra, between Aru (DRC) and Arua (Uganda), there was limited or no customs and immigration inspection, especially in the case of FAPC combatants who were allowed to cross freely.<sup>388</sup>

Since Ugandan gold production figures are less than 1 percent of official exports, most gold being exported must have entered Uganda from elsewhere. Official statistics fail to record the entry of significant amounts of gold hence most of this trade must be illegal and unrecorded. In 2004 the discrepancy between gold produced in the country and that exported was just over \$45 million per year, as shown by the official figures below.

**Table 1:**  
**Official Ugandan Gold Import, Export and Production, Figures in US\$**

Year	1998	1999	2000	2001	2002	2003	2004
Gold Exports	18,600,000	38,360,000	55,730,000	50,350,000	59,900,000	45,760,000	45,590,000
Gold Imports	0	2,000	3,076,000	890,000	0	2,000	n/a
Local Gold Production	n/a	40,307	477,000	1,412	24,817	23,000	21,000
<b>Discrepancy</b>	18,600,000	38,317,693	52,177,000	49,458,588	59,875,183	45,735,000	45,569,000

*Note: Statistics for 2004 are estimates*

*Source: Ugandan Bureau of Statistics, Ministry of Energy and Mineral Development and Central Bank of Uganda.*

### ***Gold Traders in Kampala***

Gold industry experts in Kampala acknowledged and readily explained the discrepancy between domestic production of gold and amount of its export, as shown by official statistics. In interviews with Human Rights Watch researchers, gold traders confirmed that most of the gold they exported came from Congo. They estimated the trade to be worth about \$60 million per year.<sup>389</sup> There are three main gold export businesses in Kampala. The largest two, Uganda Commercial Impex Ltd and Machanga Ltd, control an estimated 70 percent of the export trade from Uganda. Since profit margins on each

<sup>388</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, para 98.

<sup>389</sup> Human Rights Watch interviews with representatives from Uganda Commercial Impex Ltd, Machanga Ltd and A. P. Bhimji Ltd, Kampala, July 7 and 8, 2004.

trade are relatively small, these traders make profits by trading in high volume and by offering good quality gold, for which they need a reliable source of supply.

Uganda Commercial Impex Ltd. is the largest gold exporter in Uganda. In an interview with Human Rights Watch researchers, its representatives said that nearly 90 percent of their gold came from Ituri and they confirmed that Dr Kisoni Kambale from Butembo was “one of their customers.”<sup>390</sup> Company representatives explained they paid their customers cash for the gold or transferred funds into the customer’s bank accounts held either locally or abroad. Like Dr. Kisoni, they had their own refinery on the premises, to process any gold that arrived as ore before exporting it to Switzerland and South Africa. Representatives of the company stated they declared the gold upon export, ensuring that a customs form and airway bill accompanied each shipment.<sup>391</sup>

Representatives of Machanga Ltd, the second largest gold exporter, also told Human Rights Watch researchers that the gold they traded came from Congo and they confirmed that one of their customers was Mr. Omar Oria.<sup>392</sup> They further explained they advanced cash for the purchase of gold, sometimes as much as 30 percent of the anticipated purchase price, a system used also by Mr. Oria in Ariwara. Machanga representatives stated they exported all their gold to Metalor Technologies SA, a gold refining company in Switzerland.<sup>393</sup> Other traders stated they also sold gold to Switzerland as well as to other locations such as South Africa and Dubai.

Trading companies in Kampala do not operate illegally but rather benefit from the loose regulation of the gold trade. Not required to request import documentation or to ask the origin of the gold, they buy smuggled Congolese gold as if it had entered Uganda legally and export it as a legal commodity. An essential bridge to the global economy, they benefit from the risks taken by Congolese dealers like Dr. Kisoni and Mr. Oria and from their relationships with local armed groups.

They may however be breaching a U.N. arms embargo. The U.N. group of experts concluded that firms and individuals entering into financial relationships with Ituri armed groups may be in violation of the U.N. arms embargo on eastern DRC.<sup>394</sup>

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<sup>390</sup> Human Rights Watch interview, Kanak Chune, Uganda Commercial Impex Ltd, Kampala, July 7, 2004.

<sup>391</sup> Ibid.

<sup>392</sup> Human Rights Watch interview, Jigendra Jitu, Machanga Ltd, Kampala, July 8, 2004.

<sup>393</sup> Ibid.

<sup>394</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, pages 30-33.

### ***Encouragement of the Gold Trade by the Ugandan Government***

President Museveni has sought to expand the weak economic base in Uganda by increasing exports. Coffee, the most important export commodity in the past, provided some 40 percent of overall export earnings. But a drop in world price for coffee hit the Ugandan economy hard, as did increased international oil prices. Continuing poor revenue return and corruption have further weakened the economy. The impact of joining the East African Community customs union, expected to be beneficial in the long run, may be negative at first.<sup>395</sup> Increase in the export of gold, one of the fastest growing non-traditional export sectors, offers some hope in this otherwise bleak picture. The government believes that trade in minerals has the potential to rival coffee as a source of foreign exchange for Uganda. In January 2004 the Ugandan government signed a \$25 million loan agreement with the World Bank to finance exploration of the country's mineral deposits.<sup>396</sup> Domestic mineral production may at some point substitute for some of the gold imported from Congo, but such a development is a long time in the future.

Since 1999 the Ugandan government has rewarded Ugandan gold exporters for their efforts to promote the trade. In 2002 Uganda Commercial Impex Ltd. received the President's Export Award for best performance in the gold trade sector and Machanga Ltd. placed second in the competition. Hon. Omwony Ojok, the Minister of State in the office of the President responsible for Economic Monitoring, represented the President at the gala awards ceremony, attended also by five other government ministers.<sup>397</sup> The companies were honored for encouraging the export trade and for fulfilling social responsibilities as part of their business. It is not clear how carefully the selection committee examined their business relationships with Congolese traders, themselves linked to armed groups responsible for human rights abuses in Congo.

The Ugandan government has proposed tighter controls on gold imports, perhaps in an effort to increase its own revenues. Among the regulations being discussed is one that requires permits for all precious metals imported into Uganda and that imposes an import tax of .5 percent of the purchase price.<sup>398</sup> These regulations have not yet been accepted as law. Stricter regulation of the gold trade in Uganda and other transit countries would assist in stamping out the illegal smuggling and in cutting the link

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<sup>395</sup> Human Rights Watch interview, World Bank economist, Kampala, July 2004 and diplomatic economic advisors, Kampala, July 2004.

<sup>396</sup> Steven Odeu, "Uganda gets funds to explore minerals," *New Vision*, January 22, 2004.

<sup>397</sup> Ugandan Export Promotion Board, *Export Bulletin*, News Highlights: Presidents' Export Aware (PEA) 2002, Edition 3, Jan-March 2004. Also President Export Award 2002, Evening Programme, December 5, 2003. Ugandan Commercial Impex Ltd also won the Gold Award in 1998 and 1999.

<sup>398</sup> Ugandan Government Draft Mining Regulations 2004, Subsection 3, Section 117.



between the gold traders and armed groups who commit human rights abuses. The proposals by the Ugandan government would increase Ugandan revenue and may help somewhat in recording the gold trade coming from the DRC but without requiring further checks such as exit certificates, it is unlikely to curb the trade by illegal smugglers.

### ***Buyers of Tainted Gold***

According to the U.N. panel of experts on the illegal exploitation of Congolese resources, companies who buy gold from Uganda may also be contributing indirectly to human rights abuses in the Congo. After mapping the interconnections between Congolese parties to the conflict, foreign governments, and companies, the panel maintained that some business activities, directly or indirectly, deliberately or through negligence, contributed to the prolongation of the conflict and related human rights abuses.<sup>399</sup> Gold industry experts and companies who trade in gold must, or should be, aware that most of the gold traded from Uganda comes from a conflict zone in the Congo and that it was likely to have been exported illegally.

### ***Switzerland: Unaccounted Gold?***

According to industry experts in Uganda, over 70 percent of the gold exported from Uganda is destined for Switzerland. Switzerland is one of Uganda's main trading partners. According to Ugandan trade statistics, exports to Switzerland jumped from \$29 million in the year 1999 to \$99 million in the year 2000, a record high for trade from Uganda to Switzerland. Although trade decreased to \$70.6 million and then to \$69 million in the following two years, it remained considerably higher than in the years before war began in Congo. According to Ugandan trade figures in 2002, Switzerland was Uganda largest single trading partner receiving over \$69 million worth of goods, with Kenya its second largest trading partner receiving goods valued at \$61.5 million.<sup>400</sup>

It is likely that a large percentage of the trade from Uganda to Switzerland is gold. According to official Swiss information, imports from Uganda, excluding gold, amounted to just over \$11 million in both 2002 and 2003; most of this trade was in coffee.<sup>401</sup> Swiss imports of gold are classified as "sensitive data." The Swiss government provides only the total amount of gold it imports and exports each year, without

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<sup>399</sup> Ibid., U.N. Panel of Experts reports, April 12, 2001 (S/2001/357) para 215, and October 16, 2002 (S/2002/1146) paras 174 and 175.

<sup>400</sup> Ugandan Bureau of Statistics, "Statistical Abstract 2003", Exports by Region and Country of Destination 1998 – 2002.

<sup>401</sup> Administration Fédérale des Douanes (AFD), Commerce Extérieur de la Suisse, "Statistiques Selon Les Pays et Marchandises", 1998, 1999, 2000, 2001, 2002, 2003.

producing a breakdown of the country of origin. But Swiss government officials estimated imports from Uganda, to have been approximately \$13 million in 2003 (see table below).<sup>402</sup>

**Table 2:**  
**Swiss Import and Ugandan Export Statistics:**  
**Some Glaring Discrepancies**

Year	2001	2002	2003
Swiss imports from Uganda excluding gold	\$6,965,000	\$11,405,898	\$11,637,025
Swiss gold imports from Uganda (unofficial number)	\$14,315,187	\$1,684,140	\$12,631,047
TOTAL Swiss imports from Uganda according to Swiss import statistics (gold plus other imports)	\$21,280,187	\$13,090,037	\$24,268,072
TOTAL exports from Uganda to Switzerland according to Ugandan export statistics	\$99,104,000	\$70,674,000	\$69,011,000
<b>Discrepancy</b>	\$77,823,813	\$57,583,963	\$44,742,928

*Source: Administration Federale des Douanes (AFD), Commerce Exterieur de la Suisse; and Ugandan Bureau of Statistics. Unofficial figures come from Swiss federal government sources.*

A comparison of Ugandan export and Swiss import statistics in 2001, 2002 and 2003 shows some glaring discrepancies. In 2003 goods from Uganda worth over \$44 million were not registered at the point of entry into Switzerland and were unaccounted for; in 2001 the figure was \$77 million. When questioned about the discrepancies, Swiss customs agents told Human Rights Watch researchers that it was possible the goods had entered Swiss free port zones; areas normally based around airports which effectively operate outside of Swiss government control.<sup>403</sup> Goods entering such zones are not registered or taxed, are not reflected in Swiss import statistics and are sent to other locations without export duties. As the most valuable commodity imported from Uganda, gold could form a substantial part of the Ugandan goods entering the free port zones. According to one Swiss trade official, Swiss banks are possible candidates who

<sup>402</sup> Human Rights Watch interview, Swiss official, Berne, January 26, 2005.

<sup>403</sup> Human Rights Watch interviews, Swiss customs agents, Berne, January 26, 2005. Free ports also exist in other countries, but control of free ports in Switzerland is considered weaker than that in other European countries, making it attractive for many traders.

may be buying gold through free port zones.<sup>404</sup> While free port zones are part of Swiss territory, they operate outside of Swiss customs control. A Swiss customs official told Human Rights Watch researchers, “The control of free ports is beyond us.”<sup>405</sup>

Free ports are not transparent and may hide illegal activities. Recognizing these risks, the Swiss government in December 2003 submitted a new Customs Act to parliament to tighten control at free ports. At the time of writing the new act was still under discussion with no consensus on which goods should be more closely monitored by customs agents. But a Swiss customs official told Human Rights Watch researchers that gold was unlikely to be subject to stricter controls under the new law.<sup>406</sup> Were Switzerland to impose stricter controls on gold transiting through free ports, it could facilitate efforts to stop the trade in tainted gold from Congo to other parts of the world.

### ***Metalor Technologies SA***

While a large part of the gold traded from northeastern Congo via Uganda is difficult to trace, it is clear that an estimated \$13 million worth of gold entered Swiss territory from Uganda in 2003 and was officially registered as an import.<sup>407</sup> According to research done by Human Rights Watch, some of this gold imported into Switzerland is bought by Metalor Technologies SA based in Neuchâtel, Switzerland, one of the oldest manufacturers of products for the international gold market. Metalor ranks among the leading refiners in the world of gold and other precious metals. In 2003 the company’s net sales were \$225 million.<sup>408</sup>

A representative of the Ugandan-based gold exporting agency Machanga Ltd., told Human Rights Watch researchers that his company exported all its gold to Metalor.<sup>409</sup> Representatives of Machanga also confirmed to Human Rights Watch representatives that they bought gold from Mr. Omar Oriia,<sup>410</sup> a close business associate of Commander Jérôme, based in northeastern Congo. Mr. Oriia directly participated in human rights abuses including cases of torture and arbitrary detention carried out by Commander Jérôme and his FAPC armed group as documented by Human Rights Watch (see

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<sup>404</sup> Human Rights Watch interview, Swiss trade official, Berne, January 26, 2005. A statement supported by a Ugandan based trader who stated he sold gold to Swiss banks, Human Rights Watch interview with representatives from Uganda Commercial Impex Ltd, July 7, 2004.

<sup>405</sup> Human Rights Watch interview, Swiss customs agent, Berne, January 26, 2005.

<sup>406</sup> Ibid.

<sup>407</sup> Human Rights Watch interview, Swiss industry expert, Berne, January 26, 2005.

<sup>408</sup> “Annual Report 2003”, Metalor Technologies International SA.

<sup>409</sup> Human Rights Watch interview, Jigendra Jitu, Machanga Ltd, Kampala, July 8, 2004

<sup>410</sup> Human Rights Watch interview, Jigendra Jitu, Machanga Ltd, Kampala, July 8, 2004.

above). A United Nations group of experts monitoring the arms embargo on eastern DRC also reported that Metalor was a buyer of gold from Machanga.<sup>411</sup> Thus Metalor through its purchases of gold from Machanga may be indirectly involved in a trade that supports an armed group responsible for serious human rights abuses.

In a December 17, 2004 letter responding to an inquiry from Human Rights Watch, Metalor declined to say whether Machanga was a supplier of gold to the company without first seeking Machanga's approval, stating that "disclosing information on our suppliers and certain transactions would be contrary to confidentiality and secrecy obligations imposed on us."<sup>412</sup> It is not clear from this or subsequent correspondence if the company attempted to contact Machanga to obtain such permission.<sup>413</sup> In a meeting with Human Rights Watch on April 21, 2005, a representative from Metalor confirmed the company bought gold from suppliers in Uganda, though the company insisted on retaining confidentiality as to the identity of those suppliers.<sup>414</sup>

In its meeting with Human Rights Watch and in its letters of December 17, 2004 and April 14, 2005, Metalor stated it did not accept goods originating from criminal activity, from criminal or terrorist groups or goods used to finance criminal activities. It claimed to comply with all measures required by a Swiss federal law on money-laundering and the Swiss precious metals control act, including requiring assurances from its suppliers that they owned the goods, that such goods had been acquired legally and that all necessary measures had been taken to prohibit the trade of goods from unlawful origin.<sup>415</sup> In its meeting with Human Rights Watch, the company representative explained that Metalor's client managers regularly visited their suppliers, including any in Uganda, to conduct due diligence checks, though she was unclear as to when the last visit had taken place to the company's suppliers in Uganda.<sup>416</sup>

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<sup>411</sup> Ibid., Report of the Group of Experts on the U.N. Arms Embargo, January 25, 2005, p. 32.

<sup>412</sup> Dr. Scott Morrison, Chief Executive Officer, Metalor Technologies to Anneke Van Woudenberg, Human Rights Watch, December 17, 2004. Document on file at Human Rights Watch.

<sup>413</sup> Ibid., Also Letter from Dr. Scott Morrison, Chief Executive Officer, Metalor Technologies to Anneke Van Woudenberg, Human Rights Watch, April 14, 2005. Also e-mail from Morrison to Van Woudenberg, February 1, 2004. Documents on file at Human Rights Watch.

<sup>414</sup> Human Rights Watch interview, Mrs Nawal Ait-Hocine, Head of Legal and Compliance, Metalor Technologies SA, Neuchâtel (Switzerland), April 21, 2005.

<sup>415</sup> Ibid., Morrison to Van Woudenberg, December 17, 2004 and April 14, 2005. Documents on file at Human Rights Watch. Also Human Rights Watch interview, Mrs Nawal Ait-Hocine, Head of Legal and Compliance, Metalor Technologies SA, Neuchâtel, Switzerland, April 21, 2005.

<sup>416</sup> Human Rights Watch interview with Mrs Nawal Ait-Hocine, Head of Legal and Compliance, Metalor Technologies SA, Neuchâtel, April 21, 2005. Also Ibid., Metalor Annual Report 2003.

In an email communication on February 1, 2005, Metalor claimed, “Due diligence [was] carried out by all reasonable and lawful available means (such as governmental bodies, official institutions, diplomatic representations, financial information providers, registries of commerce, etc.)”<sup>417</sup> In its April 2005 meeting with Human Rights Watch, a Metalor representative stated that as part of these checks the company had sought information from authorities such as the Swiss State Secretariat for Economic Affairs (SECO).<sup>418</sup> When questioned about the results of these checks, the Metalor representative explained that such contacts were not always formal or documented but that the company had received no “negative responses” in relation to the trade of gold from Uganda.<sup>419</sup>

Despite these assurances, questions remain about the thoroughness of Metalor’s due diligence checks. Since Uganda’s domestic gold production is negligible and since Uganda does not import gold from other countries, gold exported from Uganda to Metalor is almost certainly mined in northeastern Congo. When presented with publicly available gold export and mining production statistics from official Ugandan sources, the Metalor representative expressed surprise at the obvious discrepancy.<sup>420</sup> The representative stated Metalor had never seen such statistics and was unaware of any discrepancy, even though the company admitted to having met on more than one occasion with the Ugandan mining commissioner,<sup>421</sup> an individual likely to have been well aware that the vast majority of gold exported from Uganda originated from northeastern Congo as reflected by the statistics published in department’s annual report.<sup>422</sup> Metalor stated the information presented by Human Rights Watch during the meeting of April 2005 would be fed into its due diligence process.

The Metalor representative stated to Human Rights Watch that the company “believed the gold [it bought] was of legal origin.”<sup>423</sup> Yet the gold traders in Kampala from whom Metalor acquired its gold were clear when interviewed by Human Rights Watch researchers that the gold they bought originated from Congo and that they did not request documentation from their Congolese suppliers such as import and export

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<sup>417</sup> Ibid., Morrison to Van Woudenberg, e-mail correspondence, February 1, 2005. Document on file at Human Rights Watch.

<sup>418</sup> Ibid., Morrison to Van Woudenberg, April 14, 2005.

<sup>419</sup> Human Rights Watch interview with Mrs Nawal Ait-Hocine, Head of Legal and Compliance, Metalor Technologies SA, Neuchâtel, April 21, 2005.

<sup>420</sup> Ibid.

<sup>421</sup> Ibid.

<sup>422</sup> Ministry of Energy and Mineral Development, Government of Uganda, Annual Report, 2002.

<sup>423</sup> Ibid.

certificates.<sup>424</sup> Between 2001 and 2004 numerous reports were published, including ones in Swiss newspapers, about the trade in natural resources from the Congo describing the horrific human rights abuses that the revenue helped to finance.<sup>425</sup> In its April 2005 meeting with Human Rights Watch, the representative from Metalor stated the company was unaware of such information and had not heard about a series of public U.N. panel of experts reports published between April 2001 and October 2003 describing in detail how the exploitation of Congo's resources had funded armed groups in eastern Congo and how the trade in gold from Congo was being funneled through Uganda.<sup>426</sup> In its meeting with Human Rights Watch, the Metalor representative explained that on occasion the company carried out additional checks on its suppliers in circumstances when it noticed 'red flags' – information from public or private sources raising questions about a specific country of origin or the ethics of a supplier.<sup>427</sup> Until recently when Metalor was mentioned in a report by a U.N. group of experts monitoring the arms embargo in eastern DRC, it appears no red flags were raised in relation to the gold Metalor bought from its suppliers in Uganda. Metalor representatives did inform Human Rights Watch that they were carrying out further checks with their suppliers in light of the U.N. report.<sup>428</sup>

Metalor knew, or should have known, that gold bought from its suppliers in Uganda came from a conflict zone in northeastern DRC where human rights were abused on a systematic basis. Under international business norms such as the OECD Guidelines for Multinational Enterprises, to which Switzerland is a party, companies are obliged to encourage suppliers to apply principles of corporate conduct compatible with the OECD Guidelines, including provisions on human rights.<sup>429</sup> The U.N. Norms on the

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<sup>424</sup> Human Rights Watch interviews with representatives from Uganda Commercial Impex Ltd, Machanga Ltd and A. P. Bhimji Ltd, Kampala, July 7 and 8, 2004.

<sup>425</sup> There were numerous public reports about the situation in Ituri and the human rights abuses of armed groups. For reports published in Swiss newspapers see, for example, "Or: la descente aux enfers," *L'Hebdo*, July 29, 1999; David Haeblerli, "Justice : La Suisse bloque 13 millions de dollars issus d'un trafic de minerai congolais", *Le Temps*, November 30, 2002; Alexis Masciarelli, "Après le départ de l'armée ougandaise, les massacres interethniques reprennent à Bunia," *Le Temps*, May 12, 2003 ; "Les vraies causes des guerres civiles: Misère ethnique? Non, économique", *L'Hebdo*, June 19, 2003; "La CPI s'intéressera tout d'abord au Congo. Deux priorités pour le procureur de la CPI : L'Ituri et le business de la guerre", *La Tribune de Genève*, July 17, 2003. See also *Ibid.*, Reports from Human Rights Watch, March 2001, October 2002 and July 2003; Amnesty International, October 2003; International Crisis Group, June 2003; U.N. Security Council, July 2004 amongst others.

<sup>426</sup> See reports from the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, April 12, 2001 (S/2001/357), May 22, 2002 (S/2002/565), October 16, 2002 (S/2002/1146), October 23, 2003 (S/2003/1027) plus other addendums.

<sup>427</sup> *Ibid.*, Human Rights Watch interview with Mrs Nawal Ait-Hocine, Head of Legal and Compliance, Metalor Technologies SA, Neuchâtel, April 21, 2005.

<sup>428</sup> *Ibid.*

<sup>429</sup> *Ibid.*, OECD Guidelines Paragraph II.10 and General Policies, paragraphs 1 and 2. A recent study in the OECD looked specifically at the issue of trade from conflict zones. See OECD Working Party of the Investment

Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, state that companies “within their respective spheres of activity and influence,”<sup>430</sup> including through their suppliers, have an obligation to promote and ensure respect for human rights. Metalor should have considered whether its own role in buying gold resources from its suppliers in Uganda was compatible with ensuring respect for human rights and it should have actively checked its supply chain to verify that acceptable ethical standards were maintained. In its own annual report, the company reaffirmed its commitment to do so.<sup>431</sup>

Armed groups in Ituri would face serious difficulties in supporting their military operations if they were unable to turn gold into funds to buy arms and other necessities. The chain of Congolese middlemen, Ugandan traders and multinational corporations together generate the revenue stream from which armed groups reap substantial financial benefits. Through any purchases of gold made from this network, Metalor Technologies may have contributed indirectly to the revenue stream that supports armed groups in Ituri who carry out widespread human rights abuses. Any failure to terminate relationships with suppliers in Uganda dealing with armed group leaders in Congo may indirectly implicate Metalor in the human rights abuses these groups were committing.

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Committee, “Conducting Business with Integrity in Weak Governance Zones: Issues for Discussion and a Case Study of the DRC,” November 26, 2004.

<sup>430</sup> Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003), Section A, General Obligations.

<sup>431</sup> Ibid, Metalor Annual Report 2003.

## **IX. International Initiatives to Address Resource Exploitation in the DRC**

Continued fighting in eastern DRC throughout 2004 and early 2005 was a stark reminder of the fragility of the peace process. During the first two years of the transitional government, the international community focused on short-term crisis management and failed to provide consistent diplomatic assistance to implement the peace process. While timely intervention from the U.K., U.S.A. and South African governments twice pulled Rwanda back from new military operations in Congo, such efforts were sporadic and in the end Rwanda temporarily sent its troops back across the border in November 2004. Key international actors paid little attention to tackling the underlying causes of the conflict. While most international governments acknowledged that resource exploitation played a central role in exacerbating and prolonging the conflict in the DRC as a result of the U.N. panel of experts reports, few efforts were made to deal with the issue. The DRC example of conflict and resources raised broader questions of corporate accountability in the developing world, particularly in conflict zones where the exploitation of natural resources could help fund military operations and fuel war.

### ***U.N. Panel of Experts Reports on Illegal Resource Exploitation in the DRC***

The U. N. Security Council first expressed concern about the link between conflict and natural resources in the DRC in June 2000 when it appointed an independent panel of experts to research and analyze the matter.<sup>432</sup> The U.N. panel of experts produced a series of reports, the last in October 2003 that detailed how the exploitation of resources had funded many of the different armed groups (local and foreign) fighting in eastern DRC, enriching individual officers of the Rwandan, Ugandan and Zimbabwean armies that intervened in the conflict, as well as elite Congolese actors.<sup>433</sup>

The U.N. panel of experts not only documented the link between resource exploitation and conflict in the region, but also considered the connection between the exploitation of resources and international business. The minerals and other resources from Congo

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<sup>432</sup> U.N Security Council Presidential Statement (S/PRST/2000/20), June 2, 2000. The mandate of the Panel was (i) to follow up on reports and collect information on all activities of illegal exploitation of natural resources and others forms of wealth in the DRC, including violation of the sovereignty of that country; (ii) to research and analyse the links between the exploitation of the natural resources and others forms of wealth in the DRC and the continuation of the conflict; and (iii) to revert to the council with recommendations.

<sup>433</sup> See reports from the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, April 12, 2001 (S/2001/357), May 22, 2002 (S/2002/565), October 16, 2002 (S/2002/1146), October 23, 2003 (S/2003/1027) plus other addendums.



were predominantly destined for multinational companies based in Europe and North America. In an unprecedented step, the U.N. panel of experts in its October 2002 report listed twenty-nine companies and fifty-four individuals against whom it recommended the Security Council impose financial restrictions and travel bans including a list of eighty-five other companies, which it declared to be in violation of the OECD Guidelines for Multinational Enterprises.<sup>434</sup>

The naming of companies by the U.N. panel of experts resulted in considerable controversy. Some governments criticized the panel for basing its allegations on evidence that was not always solid or well-explained. The panel lumped together companies against which it had strong proof together with others for which it did not, thus casting doubts on the whole effort. Companies and civil society groups criticized the panel for its failure to provide more detailed information on the activities of certain companies. Numerous corporations responded to the report with swift denials and lobbied governments to ensure their names were removed from the panel's list, a process which lacked transparency and may have been subject to abuse.<sup>435</sup> The Security Council requested the panel to open dialogue with the named companies.

In their final report published in October 2003, the U.N. panel of experts annexed a list of companies categorizing them according to whether the allegations against them had been resolved to the panel's satisfaction. In this final report the panel claimed that the cases of forty-one companies were now 'resolved', though it provided no information on how it had come to such a decision. To complicate matters further, the panel added an important caveat stressing that the category of 'resolved' should not be seen as invalidating their earlier findings.<sup>436</sup> This left the question of whether companies had breached the OECD guidelines hanging. Speaking to a British parliamentary group, some companies expressed concern about the categorization process claiming that those companies who had breached the guidelines had "got away with it," while others who had not were unable to clear their names with certainty.<sup>437</sup> The parliamentary committee recommended that the panel's categorization process should not be relied upon to determine whether a case had been resolved.<sup>438</sup>

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<sup>434</sup> See Annexes of the Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, October 16, 2002 (S/2002/1146).

<sup>435</sup> Ibid., RAID, "Unanswered Questions," April 2004; and Ibid., British All Party Group on the Great Lakes Region, February 2005.

<sup>436</sup> Ibid., Panel of Experts Report, October 23, 2003 (S/2003/1027), para 23.

<sup>437</sup> Ibid., British All Party Parliamentary Group on the Great Lakes Region, February 2005, p. 12.

<sup>438</sup> Ibid. p17.

The experience of the U.N. panel of experts in the DRC illustrates that there should be stricter guidelines used by U.N. panels to ensure an adequate level of proof is obtained, that such investigations are thorough and that transparency is assured. But as this report has shown, corporations like AngloGold Ashanti have violated international business norms and did breach the OECD guidelines. Lack of thorough investigations may indeed exonerate those whose behavior ought to be questioned.

Despite the controversy about the named companies, the U.N. panel of experts' reports contributed to a growing consensus amongst U.N. Security Council members and other international actors that resource exploitation was a key factor in the DRC war. The council passed four presidential statements and two resolutions drawing attention to the natural resource exploitation in the DRC and its link with the conflict.<sup>439</sup> In Resolution 1457 the council strongly condemned the illegal exploitation of natural resources in the DRC, noted its concern that this plunder fuelled the conflict, and demanded that all states act immediately to end these illegal activities. It urged all States "to conduct their own investigations as appropriate through judicial means, in order to clarify credibly the findings of the Panel" adding that exploitation should occur transparently, legally and on a fair commercial basis, to benefit the country and its people.<sup>440</sup>

The panel's reports raised the expectation that U.N. member states would hold to account those companies that were responsible for misconduct, but these hopes were misplaced. After the publication of their final report in 2003, its mandate of the U.N. panel of experts was ended and the information uncovered by the panel was archived for 25 years. The failure of the U.N. to follow up on the panel's recommendations has been a major blow to further progress on the critical issue of the link between conflict and natural resources in the DRC and beyond.

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<sup>439</sup> U.N. Security Council Presidential Statements, June 2, 2002 (S/PRST/2000/20), May 3, 2001 (S/PRST/2001/13), December 19, 2001 (S/PRST/2001/39), November 19, 2003 (S/PRST/2003/21) and Security Council resolutions 1457 and 1499, January 24, 2003 and August 13, 2003.

<sup>440</sup> U.N. Security Council Resolution 1457 (S/RES/1457/2003), January 24, 2003.

## ***Investigations on Breaches of the OECD Guidelines***

The U.N. panel of experts' reports significantly increased the profile of the OECD Guidelines for Multinational Enterprises for monitoring corporate behavior in conflict zones. The OECD Guidelines, adopted by governments in all thirty OECD member countries and by eight non-members, are recommendations addressed directly to companies setting down 'shared expectations for business conduct'. They are the first international instrument on corporate social responsibility to provide a government-supported (though voluntary) mechanism for monitoring and influencing corporate behavior. The guidelines provide standards of conduct for all key aspects of company operations including respect for human rights and sustainable development amongst others that are to be observed wherever a company operates.<sup>441</sup> The guidelines are not directly binding on companies. Adhering governments who have signed up the guidelines, however, are required to set up an implementation procedure. These governments are obliged to set up 'National Contact Points' (NCPs) to promote the guidelines and to examine specific instances of company misconduct.<sup>442</sup>

The U.N. panel of experts recommended that NCPs conduct follow up investigations of companies whose cases were listed by the panel as 'unresolved'. With the exception of Belgium and the U.K., no other OECD member state launched investigations into any of the companies mentioned. Governments and their NCPs repeatedly blamed the panel for failing to forward the relevant evidence to them and claimed they could carry out no fact finding investigations of their own, despite provisions for such activity under the implementing rules of the guidelines. NGO consortiums in the U.K., Belgium, the Netherlands, Austria, USA and Canada filed complaints to the relevant NCPs on specific breaches to the guidelines by companies listed by the panel. In countries like the U.K. where the NCP did attempt to take cases forward, a parliamentary committee found that progress by the British government "had been slow." The committee added that it was concerned civil society groups had been excluded from the complaints procedure despite practices to the contrary by other national NCPs and clear guidance on their right to be included as set out in the implementation procedures.<sup>443</sup>

The NCP procedure for dealing with these complaints in all relevant countries has been slow and ineffective. Most government representatives have chosen to use the most narrow, and sometimes unjustified, interpretations of the guidelines. In a complaint brought by civil society in the Netherlands, the NCP decided the guidelines did not

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<sup>441</sup> OECD Guidelines for Multinational Enterprises (Paris: OECD), 2000.

<sup>442</sup> *Ibid.*, Implementation Procedures.

<sup>443</sup> *Ibid.*, British All Party Parliamentary Group on the Great Lakes Region, February 2005, p. 4, 16, 17.

cover trading relationships, only companies that invest, rendering the guidelines inapplicable in this type of common business activity.<sup>444</sup> As a result of the narrow interpretations, civil society groups and trade unions have questioned the political will of member states to use them as a corporate accountability instrument.<sup>445</sup> The British parliamentary committee recommend in their report that more resources and a higher ranking civil servant be appointed to deal with the outstanding British cases, a recommendation that could be picked up by other governments.<sup>446</sup> The parliamentary committee added that there should be “more international attention focused on how the take the [whole] process forward.”<sup>447</sup> The DRC example illustrated that governments have shown a minimal commitment to fully tackling the causes of conflicts.

## ***Response of Regional Governments***

### ***The Ugandan Porter Commission***

Following the first report by the U.N. panel of experts, the Ugandan government established the Porter Commission to look into allegations of Ugandan involvement in illegal exploitation of resources from the DRC. It produced its final report in November 2002. The mandate of the Porter Commission was narrow and it was only allowed to investigate allegations made by the U.N. panel of experts. From the start of its work, the Commission was hampered by lack of funds for investigation. General James Kazini, in charge of Ugandan forces in the DRC, blocked the commission from going to Ituri to speak with witnesses according to Mr. Justice Porter, and claimed there was no transportation available for commission members.<sup>448</sup> On the basis of its hearings, the Porter Commission report exonerated the Ugandan government and its army of any official involvement in the exploitation but supported the U.N. panel of experts’ findings in relation to senior Ugandan army officers who, said the Commission, had “lied to protect themselves.”<sup>449</sup> It particularly singled out General Kazini for having “shamed the name of Uganda”<sup>450</sup> and it recommended disciplinary action against him. It also

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<sup>444</sup> Oxfam-Netherlands (NOVIB) and Nederlands Instituut voor Zuidelijk Afrika (NIZA), “Dutch NGOs Disappointed with Outcome of Case Against Traders in Congolese Coltan,” June 15, 2004.

<sup>445</sup> Ibid., RAID, “Unanswered Questions.”

<sup>446</sup> Ibid., British All Party Parliamentary Group on the Great Lakes Region, February 2005, p. 5.

<sup>447</sup> Ibid., p. 5.

<sup>448</sup> Human Rights Watch interview, Justice David Porter, Uganda, July 8, 2004.

<sup>449</sup> Final Report of the Judicial Commission of Inquiry into Allegations into Illegal Exploitation of Natural resources and Other Forms of Wealth in the Democratic Republic of Congo 2001 (May 2001 – November 2002), Kampala, November 2002, p 199.

<sup>450</sup> Ibid., p. 203.

recommended further criminal investigations into Salim Saleh, the brother of President Museveni, who had violated the Ugandan Companies Act.<sup>451</sup>

To date no judicial action has been taken against either of these two senior officers mentioned above. The supporting documentation sent twice on different occasions by the Commission to the Ugandan Ministry of Foreign Affairs was 'lost'.<sup>452</sup> In 2003 General Kazini was sent for retraining in Nigeria and in 2004 Salim Saleh went back to school.

Although the Ugandan army withdrew its forces from northeastern DRC in May 2003, it continued to provide support to armed groups in the DRC. A confidential supplement from the U.N. panel of experts to the U.N. Security Council in 2003 stated direct transfers of funds were made from the Ugandan Office of the Presidency to support armed groups in Ituri and further claimed arms and military supplies were provided to these groups on a coordinated, institutional-basis.<sup>453</sup> In a move to continue to protect his allies, President Museveni wrote on August 26, 2004 to the U.N. Secretary General Kofi Annan requesting provisional immunity from prosecution for Ituri armed group leaders and the suspension of investigations by the International Criminal Court.<sup>454</sup>

### *Rwandan Investigations*

Rwanda responded to both the October 2002 and October 2003 reports of the U.N. panel of experts which accused it of organized mass scale looting through a centralized apparatus in the armed forces known as the 'Congo desk'.<sup>455</sup> In its response to the October 2002 report, the Government of Rwanda said that the panel's report lacked credibility and was "biased, subjective and not based on credible evidence."<sup>456</sup> In response to the final panel report a year later, the Rwandan Government objected to the panel's methodology, suggesting it was being unfairly targeted calling the report a "deliberate effort to tarnish Rwanda's image, while denying it the opportunity to defend itself."<sup>457</sup> In October 2003, Rwandan Foreign Minister Charles Murigande pledged that his government would set up a commission of inquiry under the Office of the

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<sup>451</sup> Ibid., p. 204.

<sup>452</sup> Human Rights Watch interview, Justice David Porter, Uganda, July 8, 2004.

<sup>453</sup> Ibid., Confidential Supplement to U.N. Security Council, November 2003.

<sup>454</sup> Letter from President Yoweri Katuga Museveni to H.E. Kofi Annan, Secretary General of the U.N., Re: Integration of Ituri Armed Groups, July 3, 2004.

<sup>455</sup> Ibid., U.N. Panel of Experts Report (S/2002/1146), October 16, 2002.

<sup>456</sup> Ibid., U.N. Panel of Experts Report, Addendum Report, (S/2002/1146/Add.1) June 20, 2003.

<sup>457</sup> U.N., "Reaction of Rwanda to the final report of the Panel of Experts on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of DR Congo", S/2003/1048, October 30, 2003.

Prosecutor General to investigate two cases of alleged illegal exploitation of DRC resources by Rwandan companies and individuals.”<sup>458</sup> To date, there have been no results published of this inquiry.

Meanwhile, numerous witnesses and a confidential supplement to the U.N. panel of experts report stated Rwanda continued to help Lubanga’s UPC in Ituri with advice, military training and the delivery of ammunition.<sup>459</sup> As described above, UPC combatants had control of gold mining areas from November 2002 until March 2003. The U.N. also reported that UPC elements went for training in Rwanda between September to December 2002, that senior UPC officers reported directly to Kigali and that Rwandan forces evacuated Lubanga from Ituri in March 2003 when UPC troops were losing ground to joint Ugandan and FNI troops in and around the gold mining areas.<sup>460</sup> A former UPC spokesperson informed a Human Rights Watch researcher in February 2004, “It is not a secret that we were supported by the Rwandans,” adding, “everyone is interested in our gold.”<sup>461</sup>

### ***DRC Government Response***

In response to the U.N. panel of experts’ allegations, the Kabila government initially suspended a number of government ministers and advisors who were named as having been involved in the illegal exploitation. In 2003 Kabila ordered an internal review of the allegations against individuals. The review carried out by Professor Akele after the U.N. panel of experts’ findings recommended criminal prosecutions but Human Rights Watch is not aware that the recommendations of this review were implemented. Many of the ministers initially suspended returned as government advisors.

The accords between the main Congolese rebel groups and the DRC government signed in Sun City in 2002 agreed to the creation of a special committee to review the legality of commercial mining contracts signed by all parties during the war and to ensure that contracts were beneficial to the DRC state.<sup>462</sup> Chaired by Christophe Lutundula the committee was authorized to demand compensation from companies for state losses. Although slow in starting and initially blocked by Kabila’s own party in the national assembly, the committee took on an active role reviewing a number of contracts and

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<sup>458</sup> “DRC-Rwanda: Kigali to probe allegations of plunder of Congo’s resources”, *IRIN News*, October 23, 2003,

<sup>459</sup> Human Rights Watch interviews with a range of sources in Beni, Bunia, Kampala, February 2004. Also *Ibid.*, Panel of Experts, Confidential Report to U.N. Security Council, November 2003.

<sup>460</sup> *Ibid.*, United Nations Security Council, Special Report on the Events in Ituri, July 2004, p. 13. Also, *Ibid.*, Confidential Supplement to the U.N. Security Council, November 2003.

<sup>461</sup> Human Rights Watch interview, former UPC spokesperson, Bunia February 21, 2004.

<sup>462</sup> Established under the Global and All Inclusive Agreement on the Transition in the DRC.

over ruling some previous decisions. In one case, a decision by President Kabila to cancel a contract with Canadian gold mining company Banro entered into by the RCD rebel group was reversed.<sup>463</sup> In another case, a shareholding obtained by a company in Katanga from the post-transition government was reduced.<sup>464</sup> In September 2004, the committee received financial backing from the World Bank and logistical support from MONUC. Its first report is due in early 2005 but the Chairman has expressed fear that “powerful and corrupt forces may succeed in shutting it down.”<sup>465</sup>

## **MONUC**

In October 2004, the U.N. Security Council renewed the mandate of the U.N. peacekeeping force in DRC, MONUC, increasing its troops by 5,900 to a maximum of 16,700, though this number fell short of the 23,000 troops requested by the U.N. Secretary General. The mandate of MONUC was strengthened giving the peacekeeping force authorisation to use force to deter threats to the peace process, to protect civilians under imminent threat of physical violence, and U.N. personnel, to support disarmament operations, to implement the arms embargo and to provide a secure environment for elections.<sup>466</sup> There was however only passing reference to the issue of natural resources in the new mandate. The U.N. Security Council categorically condemned the illegal exploitation and urged all states, including the DRC itself, to carry out investigations and other appropriate steps to end these activities. But it made no further reference to what it would do to cut the link between arms trafficking and resource exploitation, a link the panel itself drew attention to in its public reports and in a confidential supplement it sent to U.N. Security Council members in November 2003.<sup>467</sup>

Some MONUC personnel expressed frustration at the lack of capacity to deal with issues of economic exploitation. The mission has not integrated the link between resources and conflict into its political analysis, seen as an absolute minimum by many observers to understanding the political context.<sup>468</sup> As a result there has been little follow-up to the findings of the U.N. panel of experts within MONUC and no action taken to monitor or tackle the link between conflict and control of natural resources which continue to take place in Ituri (see above) and other areas.

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<sup>463</sup> Francois Misser, “Once the Wild West for business, the DRC is now reviewing all its resource contracts,” *Business Report*, October 2004.

<sup>464</sup> Human Rights Watch interview by telephone from London, December 8, 2004.

<sup>465</sup> Misser, “Once the Wild West for business, the DRC is now reviewing all its resource contracts”.

<sup>466</sup> U.N. Security Council Resolution 1565 (2004), S/RES/1565 (2004), October 1, 2004.

<sup>467</sup> *Ibid.*, Confidential Supplement of the U.N. Panel of Experts.

<sup>468</sup> Human Rights Watch interview, diplomatic analyst, Kinshasa, September 30, 2004.

[Image]

MONUC peacekeepers on the streets of Bunia. MONUC has a limited presence in the gold mining areas in Ituri, the site of widespread ethnic killings and human rights abuses.  
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### ***International Financial Institutions***

Uganda is often cited as an economic success story in Africa, but there has been little scrutiny by international financial institutions (IFIs) regarding the role of its illegal exploitation of resources in the DRC in bolstering its economy. The U.N. panel of experts reported in 2001:

[T]he illegal exploitation of gold in the Democratic Republic of the Congo brought a significant improvement in the balance of payments of Uganda. This in turn gave multilateral donors, especially the IMF, which was monitoring the Ugandan treasury situation, more confidence in the Ugandan economy.<sup>469</sup>

This problem has not been publicly acknowledged by the IFIs. Thomas Dawson, the director of the External Relations Department in the International Monetary Fund (IMF), wrote in June 2002, “in recent years, the Ugandan government’s economic policies have proven quite successful in containing inflation and promoting strong economic growth — the IMF has fully supported this program with advice and lending.” In a September 2003 review of Uganda’s performance under the Poverty Reduction Strategy Paper (PRSP) process, the IMF and World Bank praised the country for its export-led growth. Although the report raised concerns about human rights and the humanitarian situation in northern Uganda, it was silent on the country’s role in the DRC.

The IMF has illustrated in other countries that it can be a forceful proponent of transparency and accountability of government revenue but it has been inconsistent regarding transparency globally. It has been notably silent on Uganda’s role in the DRC

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<sup>469</sup> Ibid., U.N. Panel of Experts Report, April 2001 (S/2001/357).



despite significant evidence that government revenue is coming from the illegal exploitation of resources across the border.

The World Bank has also been moving towards a consistent approach on transparency. A two-year-long review by the World Bank assessing its role in the extractive industries has largely concluded that the bank should consistently address these issues by requiring audits and accurate public disclosure of revenues and expenditures. Despite such conclusions, it has not been forceful on promoting such an approach in Uganda, Rwanda or the DRC. Should such an approach be followed, the public in resource-rich countries could have an opportunity to exercise oversight over government accounts.

Other bilateral donors have taken few steps to support initiatives to further investigate resource exploitation. The U.K. Department for International Development (DfID) has been an exception funding some projects looking at resource management and corruption. The U.K. has also promoted the Extractive Industry Transparency Initiative which seeks to increase transparency in transactions between governments and companies within the extractive industries sector. The DRC government, however, is not a participant.

### ***International Criminal Court***

Justice is an essential element in rebuilding the DRC and ending impunity. As the U.N. secretary general highlighted “[i]mpunity...can be an even more dangerous recipe for sliding back into conflict.”<sup>470</sup> On June 23, 2004 Luis Moreno Ocampo, the prosecutor of the International Criminal Court (ICC) announced the beginning of the first-ever investigation by the prosecutor’s office into war crimes and crimes against humanity committed in the DRC. Earlier in the year, the transitional government triggered the action by requesting the ICC prosecutor to investigate crimes in the Congo. One of the priority areas for the ICC is to be Ituri. The ICC prosecutor stated in September 2003 that crimes committed in Ituri appear to be directly linked to control of resource extraction sites and that “those who direct mining operations, sell diamonds or gold extracted in these conditions, launder the dirty money or provide weapons could also be authors of the crimes, even if they are based in other countries.”<sup>471</sup> He added that his office would independently verify links between the killings and the exploitation of resources<sup>472</sup>, thereby providing a glimmer of hope that justice might be done for crimes committed in Mongbwalu and other similar resource rich areas in the DRC.

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<sup>470</sup> U.N., “Report of the secretary-general to the U.N. Security Council on the protection of civilians in armed conflicts”, S/2004/431, May 28, 2004.

<sup>471</sup> Luis Moreno-Ocampo, “Report of the Prosecutor of the International Criminal Court to Second Assembly of States Parties to the Rome Statute”, September 8, 2003.

<sup>472</sup> Ibid.

## **X. Conclusion**

Gold has been a critical factor in human rights abuses in northeastern DRC. War crimes, crimes against humanity and other serious human rights abuses have been committed by armed groups seeking to control gold mines or key customs posts in Congo. While the international community acknowledged that natural resource exploitation played a central role in exacerbating the conflict, minimal steps have been taken to stop it. Continued fighting in eastern Congo has been a stark reminder of the fragility of the peace process. It risks failure unless attention is focused on the underlying causes of the conflict and serious attempts made to cut the links between conflict and natural resource extraction. The re-engagement of multinational companies needs to promote peace and respect for human rights, not work against it. The DRC government, its neighbours, the U.N., international donors and the private sector need to work together to stop the trade in illegal smuggled gold and other resources. Working in collaboration they need to ensure no support of any kind is provided to armed groups responsible for serious human rights crimes. Congolese citizens deserve to benefit from the country's rich resources, not be cursed by them.

## **XI. Acknowledgements**

This report was researched and written by Anneke Van Woudenberg, senior researcher in the Africa Division of Human Rights Watch. Additional research was provided by Alex Vines of the Business and Human Rights Division, Carina Tertsakian and Karen Stauss of the Africa Division, and Carroll Bogert, Associate Director of Human Rights Watch. Research assistance was provided by Alison Holder, Lizzie Parsons and Sébastien Gillioz.

The report was edited by Alison Des Forges, senior advisor to the Africa Division with input from Arvind Ganecasan, director of the Business and Human Rights Division; Alex Vines, senior researcher; Georgette Gagnon, deputy director of the Africa Division; Peter Takirambudde, executive director of the Africa Division; Iain Levine, program director; Ken Roth, executive director. Wilder Tayler, legal and policy director, provided valuable input and extensive legal review. Production assistance and coordination was provided by Lizzie Parsons, associate in the Africa division; with help from Andrea Holley, publications director; and Veronica Mathushaj, photo editor. Anne Fonteneau translated this report into French.

We wish to thank all those individuals who contributed their time and advice to the legal review of this report. Special thanks to Derek Spitz, Barrister at One Essex Court Chambers and to legal counsel at Morrison & Foerster MNP, amongst others.

We wish to especially thank our Congolese colleagues in Justice Plus and other individuals who cannot be named for security reasons for their commitment and assistance. They risk their lives to defend the rights of others. We greatly appreciate all those who took the time and courage to speak to our researchers, in particular those who have themselves been the victims of abuse.