

STOP-PILLAGE

PILLAGE IS A WAR CRIME

MEDIA KIT

November 2013

under strict embargo until Monday 4 november 2013 16:00 CET



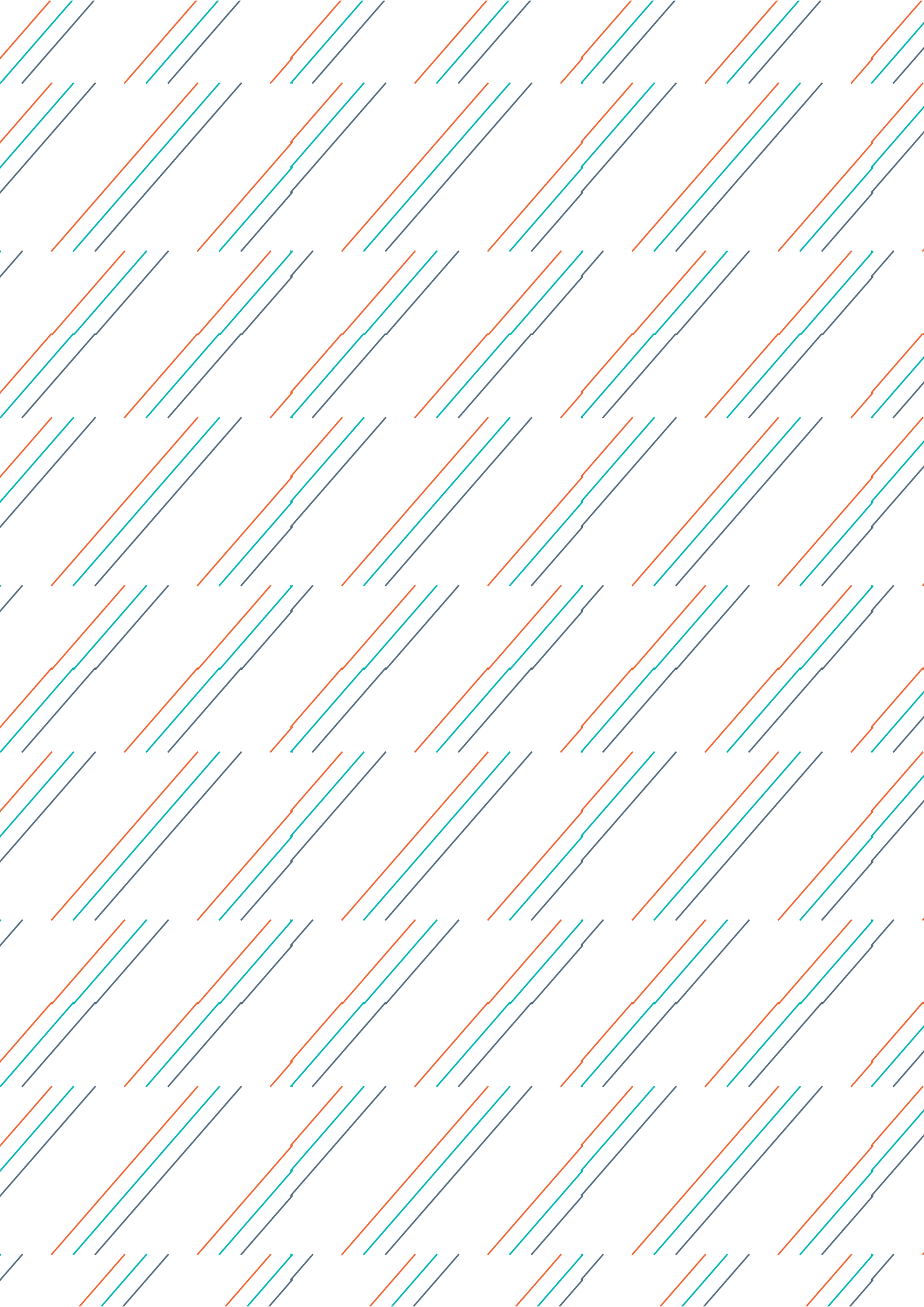


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1.

A Criminal Complaint Against Argor-Heraeus SA

On Friday, 1 November 2013, TRIAL, an international NGO fighting against impunity for international crimes filed a criminal complaint (dénunciation pénale) to the Swiss Federal Prosecutor's Office against Argor-Heraeus SA, a Swiss gold refinery based in Mendrisio (Ticino, Switzerland). TRIAL has evidences that show the potential involvement of Argor-Heraeus SA in the crime of serious money laundering. From 2004-2005, Argor-Heraeus SA refined almost three tons of gold ore pillaged from the Democratic Republic of the Congo by an illegal armed group whose activities were financed by the illicit sale and traffic of this gold ore. According to TRIAL, Argor-Heraeus SA knew, or at the least should have assumed, that these raw materials were the proceeds of pillage, which is a war crime. TRIAL is petitioning the Swiss criminal authorities to determine if Argor-Heraeus SA did indeed commit criminal acts.

THE INVESTIGATION

In 2004, the **UN Security Council (UNSC)** convened a group of globally recognized experts on the illegal exploitation of natural resources, and tasked them with monitoring the UN arms embargo. Known as the UN Group of Experts on the DRC (UNGE), the team included **Kathi Lynn Austin**¹ and **Rico Carisch**. During the course of their fieldwork, the UNGE documented the role of several organizations and individuals involved in the pillage and smuggling of gold from the northeast region of the DRC; these parties included the UK company **Hussar Services Limited**, the Jersey (Channel Islands) company Hussar Limited, and the Swiss refiner **Argor-Heraeus SA**.

The UNGE obtained documents demonstrating that pillaged gold, mined from Concession Area 40 in the Ituri region of northeastern DRC, had been shipped via Uganda to Switzerland to be processed into gold bars. In the UNGE reports, which were delivered to the Security Council in July 2005 and January 2006, Argor-Heraeus SA was named as the refiner of this pillaged gold.

According to the UNGE, Argor-Heraeus SA could not have been unaware that the gold in question had been pillaged from the DRC.

Following her tenure with the UNGE, **Kathi Lynn Austin** continued to investigate Hussar Limited, Hussar Services Limited, and Argor-Heraeus SA until 2012, with the support of the **Open Society Justice Initiative (OSJI)**². During this time, she gathered new evidence on the illegal sourcing of the gold refined in Switzerland.

This evidence was relayed to **TRIAL** at its request, and examined within the context of Swiss and international law. After more than a year working on the case and collecting more documentation, TRIAL decided to ask the Swiss judicial authorities to investigate the activities of Argor-Heraeus SA.



THE COMPLAINT

The principle complaint against Argor-Heraeus SA addresses suspected involvement in the laundering of the proceeds of a major crime (**blanchiment aggravé**).

According to Article 305bis³ of the Swiss penal code, money laundering is defined as the act of preventing the «identification of the origin, the discovery or the confiscation of assets when the author knows, or should know that they are the proceeds of a crime.» Laundering can involve any act that is aimed at preventing the establishment of a link between a preceding crime (in this case, the war crime of pillage) and the assets resulting from it (in this case, the Concession Area 40 gold), or keeping these assets away from the control of the relevant authorities.

By turning this illegally obtained gold into ingots, Argor-Heraeus SA made it impossible to identify the criminal origin of the gold, and, in doing so, could have perpetrated the act of disguising the identification of the gold's origin (l'entrave à l'identification), as defined in Article 305bis of the Swiss penal code.

The Swiss penal code considers pillage to be a war crime. As such, Argor-Heraeus SA's act of gold laundering should further be considered to be « aggravated », per Article 305bis, section 2 of the Swiss penal code, since it deals with significant quantities of gold (nearly 3 tons), pillaged in the context of a conflict of a particular violence and scale.

TRIAL therefore requests the judicial authorities to investigate these matters. TRIAL also asks the authorities to clarify what were the company's obligations in its capacity as a financial intermediary, subject to the Swiss law on money laundering, and in its capacity as a refiner, under the Swiss law on precious metals.

These laws appear to require a business to clarify the origin of any raw materials that are of doubtful origin, and if unable to do so, to hold them until the proper authorities establish their provenance.

In this complaint, TRIAL therefore encourages the Swiss judicial authorities to determine if Argor-Heraeus SA engaged in activities amounting to aggravated laundering of assets under Article 305bis of the Swiss penal code.

1 Kathi Lynn Austin is now the Executive Director of the Conflict Awareness Project (CAP) (www.ConflictAwareness.org), an NGO based in San Francisco, CA, US. CAP is a partner in this campaign.

2 The Open Society Justice Initiative is part of the Open Society Foundations. The organization works on human rights issues, including the issue of pillage and international law, and is a partner in this campaign.

3 Article 305bis ([link to www.admin.ch/ch/e/rs/311_0/a305bis.html](http://www.admin.ch/ch/e/rs/311_0/a305bis.html))

2.

Summary of the Case

THE CONFLICT IN THE DEMOCRATIC REPUBLIC OF THE CONGO

Since the late 1990s, the Democratic Republic of the Congo has seen some of the world's bloodiest conflicts. By some estimates, the hostilities have resulted in almost 6 million deaths and the displacement of 350,000 people since 1997. The armed struggle for control of the country's rich natural resources — including gold, diamonds, oil, tungsten, and coltan — is one of the primary causes of these conflicts.

The northeast area of the DRC has in particular been the focus of massive and continuing human rights violations committed by combatants. These combatants include unlawful armed rebel groups, the national army, and the armed forces of bordering countries.

In particular, the Ituri region, which at 65,658 km² is one and a half times the size of Switzerland, has been the focus of gold pillaging by armed groups who have successively sought to control the gold mining areas and the proceeds from that gold in order to finance their operations.

In 2003, the **Front nationaliste et intégrationniste (FNI)**, an unlawful armed group set up with the support of neighboring Uganda, took control of the town of Mongbwalu in the northeast of the DRC. The FNI's control extended to the adjacent gold producing area known as «Concession Area 40», which covers 9,000 km². The FNI illicitly mined gold from the area and used proceeds from the sale of the gold to finance its operations and to buy arms, in breach of the arms embargo established by the UN Security Council in 2003.

THE ROUTE OF THE GOLD

A significant part of the illicit gold from Concession Area 40, under the control of the FNI, was mined in appalling conditions then processed and resold in Uganda by **Dr. Kisoni Kambale**, a Congolese gold trader and the owner of an air transport company. Dr. Kisoni resold the gold derived from the crime of pillage to the Kampala-based company **Uganda Commercial Impex Limited (UCI)**.

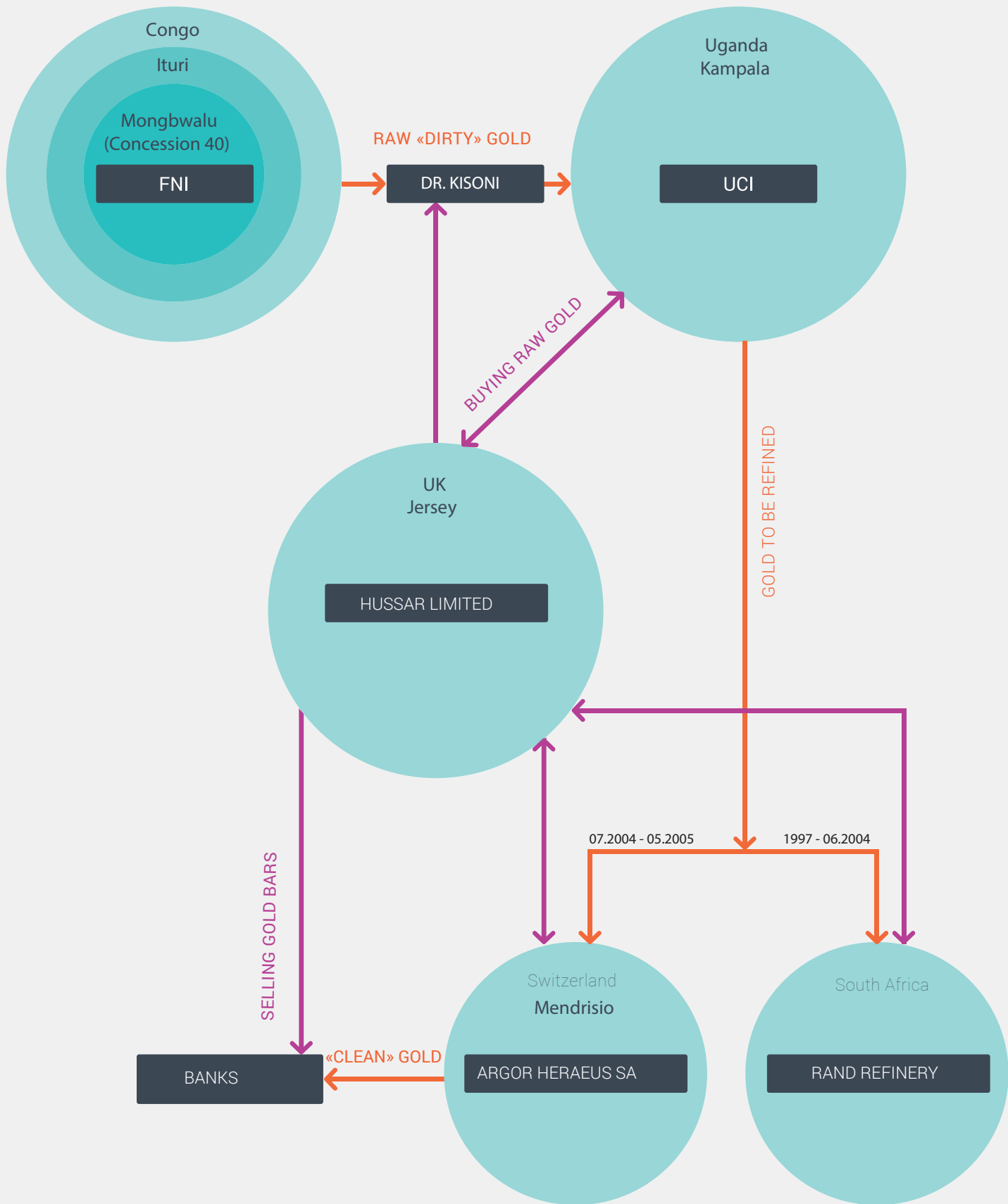
UCI resold the gold in turn to the **Hussar Limited**, based in Jersey Channel Islands.

In order to be able to market the illicitly obtained gold, Hussar Limited needed to send it to a refinery. Until the summer of 2004, the gold was refined by South Africa's **Rand Refinery**, which has since confirmed that it stopped working with Hussar Limited because it suspected the gold had been acquired illegally. In July 2004, the Swiss company **Argor-Heraeus SA** took over the refining and thereupon refined almost three tons of gold up until May 2005. The gold, in the form of ingots, was then apparently sold to banking institutions. Argor-Heraeus SA maintains that it ceased to refine gold for Hussar Ltd in June 2005, after becoming aware, in its words, of «disorders in the region». But several pieces of evidence show that the company could not have been ignorant of either the scale of the conflict nor the source of this gold

The war and the illegal commerce in gold had been going on for years in the Great Lakes region of Africa and had been the subject of intense media coverage. A business such as Argor-Heraeus SA, with its own compliance department, could not have been unaware of this fact. It was also well known that gold passing through Uganda could not have been mined in Uganda itself, which produces negligible quantities of the metal. Finally, Argor-Heraeus SA continued to refine gold from Hussar Limited after January 2005, despite the fact that Hussar Limited, Hussar Services Limited, and UCI had been identified for their role in the pillage of DRC gold in report published by the UN and extensively covered in the media.

The UN report had indeed recommended that Argor-Heraeus SA, in addition to a number of other parties, be sanctioned for its role in violating the UN embargo, since its refining of the gold constituted support for the FNI. Despite this recommendation, the sanctions committee of the UN Security Council declined to sanction Argor-Heraeus SA (defended by the Swiss authorities before the UN), as well as all other European companies that had participated in the buying or refining of gold of dubious provenance. By contrast, African businesses including both UCI and those of Dr. Kisoni Kambale, were subject to heavy sanctions.

THE ROUTE OF GOLD



THE EVIDENCE

The allegations in this case are supported by extensive evidence, including:

- **Accounting documents** from Hussar, covering gold purchases between 21 May 2003, and 1 April 2005. These documents include codes that refer to the sources, among them Dr. Kisoni Kambale, the business partner of the FNI armed group.
- **Permits for the import of gold** into Uganda, and export from Uganda, of gold, indicating its origin as the Democratic Republic of the Congo.
- **Data from the Ugandan Ministry of Energy and Mineral Development** indicating that Ugandan production represented only a tiny proportion of its gold exports.
- **Reports from the UNGE.**
- **Reports and testimony from Kathi Lynn Austin in 2012.**

- **NGO reports**, including the Human Rights Watch report «The Curse of Gold».

- **Numerous articles** in the Swiss and international press, published at the time of Argor-Heraeus SA's activities (as outlined in the above Complaint section), indicating that the extent of the problem of pillage in DRC was a publicly known fact.

FORM XXXVII.
Reg. 71(3), 74(3).

**THE MINING ACT
THE MINING REGULATIONS
EXPORT PERMIT**

Permission is hereby granted to * Uganda Commercial Impex Ltd. on behalf of Self to export¹ one (1) packages of gold containing² Five (5) kg produced from D.R. Congo and marked³ not marked on which royalty has been paid or secured to the satisfaction of the Commissioner for the Geological Survey and Mines Department.

Dated this 21st day of April, year 2005.

No. **0159**

22 APR 2005

[Signature]
COMMISSIONER
GEOLOGICAL SURVEY & MINES DEPARTMENT
P. O. BOX 9 ENTebbe-UGANDA

UGANDA REVENUE AUTHORITY
DOMESTIC INDIRECT TAX DEPT
17 MAY 2005

INPUT TAX ALLOWED

* Name of applicant
† Name of holder of licence
1 The number of packages
2 Mineral
3 Quantity
4 The district and country of origin
5 Identification marks of the packages provided by the applicant

Printed by Uganda Printing and Publishing Corporation

3.

Company

ARGOR – HERAEUS SA

Founded in 1951 in Chiasso (Switzerland), Argor-Heraeus SA is a private company («société anonyme»), which specializes in refining precious metals. The corporation is now based in Mendrisio (Ticino, Switzerland).

SHAREHOLDERS

Bought by UBS in 1973, Argor merged with the German group Heraeus in 1986. In 1999, Heraeus acquired UBS' share of the company. Commerzbank International and Austrian Mint acquired shares in the company in 2002.

KEY DATA

190 employees
(Switzerland, Germany, Italy, Latin America)

Revenue in 2006:
CHF 26,9 million.

Share capital in 2011 :
CHF 6'389'000.- distributed as follows:
26,5 % Heraeus Holding SA, Hanau (Germany)
26,5% Commerzbank Int. SA, Luxembourg
24,3% Austrian Mint SA, Vienna
22,7% Management

PRODUCTS

Refining gold, silver, platinum and palladium. Production of ingots, coins, and medals as well as other partly finished products for the watch and jewelry industries.

CLIENTS

Central banks, commercial banks, mining companies, raw material trading companies, and the watch and jewelry industries.

4.

Context: The Pillage of Natural Resources

A GLOBAL PHENOMENON

Since the end of the Cold War, the illegal exploitation of natural resources has become one of the principal means of financing armed conflicts. In Afghanistan, Angola, the Democratic Republic of the Congo, Colombia, Sierra Leone and East Timor, the trade in pillaged natural resources has provided perpetrators with the financial means to support some of the most brutal conflicts in recent history.

The exploitation of natural resources requires commercial involvement in buying, transporting, and eventually commercialising resources that have been illegally acquired. To put an end to this predatory economic behaviour, it is necessary to recognize the complicity of businesses in the supply chain, and to prosecute the companies that engage in illegal actions.

A WAR CRIME UNDER INTERNATIONAL LAW

Pillage of natural resources in the context of a war, and the illegal removal of these natural resources from their nation of origin, constitutes a war crime under international law.

Following World War II, several business executives from Nazi Germany were prosecuted for pillage. Most recently Charles Taylor, the former president of Liberia, and Jean Pierre Bemba, the former vice president of the DRC, have faced charges before international tribunals for having perpetrated the crime of pillage during war. The conviction of Charles Taylor for complicity in pillage was recently confirmed by the Appeals Chamber of the Special court for Sierra Leone on 26 September 2013.

Despite the clear prohibition on pillage in international law, the practice continues in numerous places around the world.

Middlemen play a central role in the illicit chain of transactions that delivers natural resources from conflict zones to global markets. Pillage cannot effectively be addressed until those middlemen face accountability.

5.

Contact

TRIAL (TRACK IMPUNITY ALWAYS)

TRIAL is a tax-exempt association under Swiss law based in Geneva. It is apolitical and non-confessional and has consultative status before the United Nations Economic and Social Council.

Comprising lawyers, NGO leaders and victims, the association was founded in 2002, right at the moment when the Rome Statute establishing the International Criminal Court entered into force and four years after the arrest of General Pinochet in London, which had inspired the founders of the NGO.

The main objective of TRIAL is to put the law at the service of the victims of international crimes (genocide, crimes against humanity, war crimes, torture and forced disappearances).

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6.

Campaign Partners

OPEN SOCIETY JUSTICE INITIATIVE (OSJI)

The Open Society Justice Initiative, part of the Open Society Foundations, uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Its efforts focus on accountability for international crimes, racial discrimination and statelessness, criminal justice reform, abuses related to national security and counterterrorism, freedom of information and expression, and natural resource corruption. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, Santo Domingo and Washington, D.C.

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CONFLICT AWARENESS PROJECT (CAP)

The Conflict Awareness Project (CAP) is an international non-profit organization dedicated to investigating, documenting and bringing to justice major arms traffickers, war profiteering networks, and transnational criminal operations that fuel war and conflict around the world.

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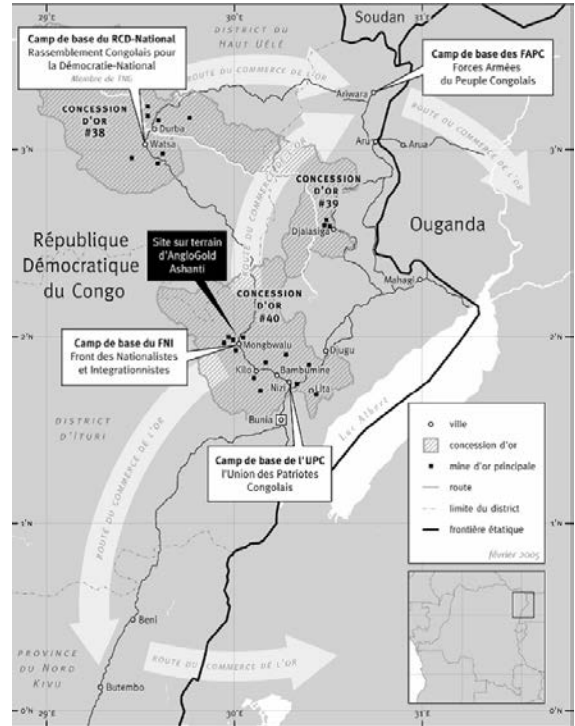
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References maps

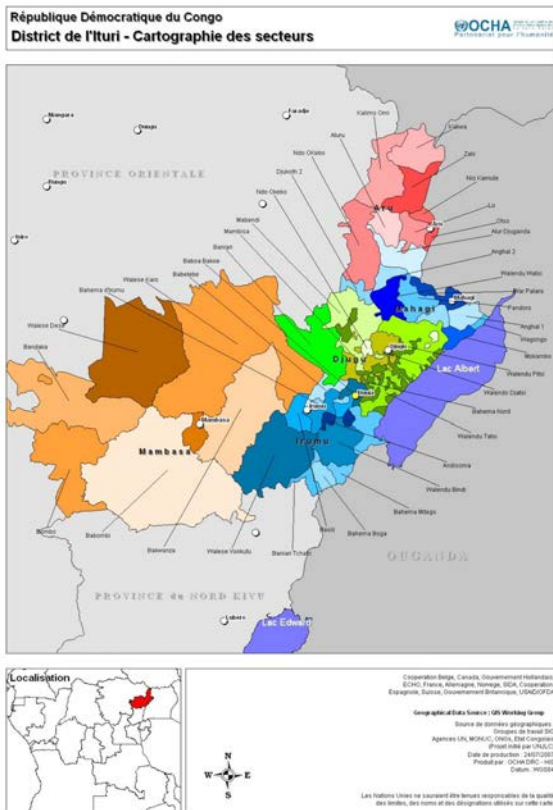
MAP 1 : DEMOCRATIC REPUBLIC OF THE CONGO COUNTRY MAP



MAP 3 : DEMOCRATIC REPUBLIC OF THE CONGO - CONCESSION AREA 40



MAP 2 : DEMOCRATIC REPUBLIC OF THE CONGO - ITURI REGION



Source : www.liberationafrique.org/IMG/pdf/drc0505fr-3.pdf#page=7&zoom=auto,0,704

Source : www.refworld.org/docid/491940ae2.html



www.stop-pillage.org