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# Democratic Republic of Congo

## Making a killing

### The diamond trade in government-controlled DRC

**Amnesty International:** ‘What do you do when someone is shot dead in your diamond concessions?’

**Diamond company official:** ‘Nothing.’<sup>1</sup>

## 1. Introduction

Every day blood is being spilled in the diamond fields of the Democratic Republic of Congo (DRC), and nobody in the international community is even talking about it. In the capital Kinshasa, the government is able to announce, unchallenged, its commitment to an international system aimed at breaking the links between the diamond trade and human rights violations,<sup>2</sup> while in Mbuji-Mayi, the hub of the country’s diamond industry, serious abuses directly connected to the diamond trade are occurring on a daily basis, largely unchecked.

Dozens of people are being shot dead every year in the diamond fields of Mbuji-Mayi. Still more are being shot and wounded, often seriously. Dozens, including many children, are being held without charge in appalling conditions by security forces who have no formal authority to detain them.

Most of the victims are suspected to be responsible for illegal mining in the diamond concessions. The shootings occur mainly within the concessions, where most of the victims have no legal right to be. But none of this diminishes their entitlement to their basic rights, which include the right to life, the right not to be subjected to cruel, inhuman and degrading treatment or punishment and the right to a fair trial.

In some cases, the victims may themselves be armed, or be with an armed escort, and therefore pose a genuine threat to the safety of those guarding the concessions. But in the majority of cases these suspected illegal miners are not armed and the use of firearms against them cannot be justified. Shooting them dead, in such circumstances, amounts to extrajudicially executing them.<sup>3</sup>

Despite this, to Amnesty International's knowledge, not a single state agent has ever been prosecuted for the unlawful killing of a suspected illegal miner in Mbuji-Mayi. Those who guard the diamond concessions are acting, and are killing, with utter impunity. The Congolese authorities refuse to acknowledge that these abuses are even taking place and they crack down hard on local journalists and human rights activists who denounce what is really happening.

Relatives of those wounded or killed in the diamond concessions are resigned to the fact that there is little hope of obtaining redress through the courts, which are for the most part subject either to political interference, or to corruption, or to both. It is one of the many tangible and everyday ways in which ordinary Congolese citizens experience being disenfranchised of their basic rights. It also exemplifies the broader failings of governance in the DRC, whereby those who govern are not generally accountable, and do not consider themselves to be accountable, to the population they govern.

This lack of accountability is not only a major contributor to the country's poor record in the sphere of civil and political rights, but is also a key factor in the failure of successive Congolese governments to promote the country's social and economic development more effectively. The diamonds of Mbuji-Mayi, together with the DRC's abundant reserves of cobalt, coltan<sup>4</sup>, copper, gold, timber, uranium and water,<sup>5</sup> may have led to the country being described as a geological scandal. But the true scandal is in fact a political and a human one: this vast natural potential has never been properly exploited to the benefit of the population as a whole. Unaccountable governing elites have instead become rich through the mismanagement or misappropriation of the country's national resources, while remaining apparently indifferent to the negative consequences this has had for the country's overall socio-economic development. For all the country's great potential wealth, in 2002 the DRC was ranked in 155th place out of 173 countries in a United Nations survey of development.<sup>6</sup> The price of wealth and privilege for a ruling elite has to a large extent been the impoverishment of a nation.

While this report focuses on the abuses associated with the exploitation of one particular natural resource in one specific place – the diamonds of Mbuji-Mayi – the situation described there is in many ways characteristic of the situation which prevails across the DRC. Throughout the country, state institutions such as the judiciary are failing to discharge their duties adequately; a lack of transparency and accountability is promoting institutionalised corruption and mismanagement of state resources at the expense of social and economic development; and very high levels of human rights

violations, often connected with the exploitation of natural resources or conflicts over the control of those resources, are being committed with more or less complete impunity.

## 2. A squandered heritage?

*'Natural resources are morally neutral. As such they can be a source of great good [...] or dreadful ill [...] The key element is not the resource itself, but how it is exploited – and Africa provides telling examples of both. An orderly mining regime, operating within a transparent and predictable legislative and fiscal framework, can be a major source of prosperity for governments and people. Without it, mineral wealth – especially, but not exclusively in its more accessible forms - will be a magnet for the greedy and corrupt to line their own pockets at the expense of the people [...] Once the rot has set in, it is virtually unstoppable, until the entire fabric of economic and social development has been completely eroded.'*<sup>7</sup>

The history of the Congo since the late 19th century has provided ample examples of how the unprincipled exploitation of natural resources can give rise to human rights abuses. It has also demonstrated how corruption or the mismanagement of natural resources can undermine a country's development and hence the enjoyment by its citizens of their social and economic rights. Kleptocratic administrations geared towards the personal enrichment of a ruling elite at the expense of the general population have had an enormously negative impact on the country and its citizens down the years.

The first large-scale plundering of Congolese natural resources began in the late 19th century with Belgian colonial rule and the trade in rubber and ivory. The Congolese population was treated not as the rightful owners or beneficiaries of these resources, but simply as a source of cheap or slave labour for their exploitation. King Leopold II accrued vast personal wealth without ever setting foot on Congolese soil. Horrendous human rights violations, including unlawful killings, torture and mutilations, were perpetrated in the process.<sup>8</sup>

With the accession to power of President Mobutu Sese Seko in 1965, there began a sustained period of institutionalised corruption and misappropriation of state resources. Large proportions of the revenues from state-owned companies, such as the copper and cobalt company Gécamines, went not to the state treasury but straight into

the pockets of President Mobutu and his closest allies. Meanwhile, President Mobutu's policy of 'Zairianisation', which was purportedly a drive to reassert authentic African customs and values in the face of encroaching Western values, entailed the nationalisation of foreign-owned businesses and investments. Many of these were then expropriated by President Mobutu's allies, the whole process thus amounting to a further means of illegitimately seizing wealth. Foreign aid intended to promote socio-economic development was also routinely misappropriated. While President Mobutu became notoriously rich, state institutions were neglected and the country's infrastructure steadily decayed. Just as state officials suspected of engaging in corruption were virtually never brought to book, so they were hardly ever held to account for massive violations of civil and political rights committed during President Mobutu's rule.

With the arrival of Laurent-Désiré Kabila, who proclaimed himself president of the DRC in May 1997 and remained in power until his assassination in January 2001, foreign players engaged in a renewed scramble to benefit from Congolese natural resources. A variety of lucrative deals were struck with Angolan, Namibian and Zimbabwean interests, mostly in return for their military support in the DRC's ongoing conflict.<sup>9</sup> In areas of the country under the control of the armed opposition, a similar pattern of foreign exploitation of natural resources emerged, with Rwanda and Uganda being the main beneficiaries.<sup>10</sup>

In July 1999 President Kabila signed over the exclusive rights to exploit two of the DRC's richest diamond concessions for a period of 25 years to a partly Zimbabwean-owned joint venture which later became known as Sengamines. The concessions, which comprise alluvial deposits and six kimberlite pipes,<sup>11</sup> were previously owned by MIBA, the DRC's largely state-owned diamond mining company. The exact terms and conditions of this arrangement remain opaque. No official legal decree announcing the creation of Sengamines and detailing its statutes appears to have been published, and the company is not affiliated to the *Fédération des Entreprises du Congo* (FEC), Congo Businesses Federation, which is also a usual Congolese legal requirement. This effective privatisation of largely state-owned assets does not appear to have been carried out according to any internationally recognised principles of public tendering and bidding, which might have ensured that the sale was as beneficial as possible to the Congolese state.

Instead, the Sengamines arrangement appears to be one of the latest in a long line of deals involving the DRC's natural resources to benefit a small, elite minority at the expense of the general population. The principle beneficiaries of the deal, through their shareholdings, are thought to have included President Kabila himself, a number

of Congolese government ministers and high-ranking members of the Zimbabwean military.<sup>12</sup> The benefit to the DRC state itself, however, is unclear. Observers interviewed by a United Nations investigation team estimated the value of the concessions ceded to Sengamines at several billion US dollars and considered that their loss was likely to irreparably weaken MIBA.<sup>13</sup> In addition, Sengamines is thought to enjoy the special privilege of not paying any taxes to the DRC state, thereby further depriving the state of revenues which might have been used to achieve relevant development goals and promote the social and economic rights of the population.<sup>14</sup>

During peace talks held in early 2002 aimed at ending the conflict in the DRC, all parties, including the DRC government, agreed upon the need to review all commercial contracts concluded since the start of the conflict in August 1998 in order to ascertain their validity.<sup>15</sup> This was a response to widespread allegations that many, if not all, of the warring parties have been engaged in the illegitimate exploitation of the DRC's natural resources. A comprehensive review of the Sengamines contract would be in keeping with the commitment the DRC government has expressed in this respect. The basic principle underpinning such a review should be that commercial contracts involving national resources should contribute to the progressive realisation of the population's social and economic rights and not deprive them of the benefits to be gained from their country's natural resources.<sup>16</sup> Ensuring that all future such contracts are negotiated transparently and according to internationally recognised tendering principles for privatisation would also afford greater guarantees that the state and its citizens obtain the maximum possible benefit from such arrangements.<sup>17</sup>

Accountability in the commercial sphere is as crucial to promoting human rights, including social and economic rights, as accountability in the political sphere is. Just as the DRC government must bring an end to impunity for perpetrators of human rights abuses, so it must address the endemic problems of corruption and financial mismanagement in order to ensure that the country's huge potential wealth is exploited as effectively as possible to the tangible benefit of the population as a whole.<sup>18</sup>

### 3. MIBA

The *Société minière de Bakwanga*<sup>19</sup>, known most commonly by its acronym MIBA, was founded in 1961 and is today the DRC's main diamond mining company, with an official annual turnover in the region of \$US70 million.<sup>20</sup> Its main operations are

centred in and around the government-controlled town of Mbuji-Mayi, which is located in the province of Kasai Oriental, some 950km east of the capital Kinshasa.

80% of MIBA's shares are owned by the Congolese state and the remaining 20% by an umbrella group called SIBEKA, which consists of the mining company De Beers, with a 19.56% stake, and a Belgian company called Umicore, which owns the other 80.44% of SIBEKA shares. MIBA officially describes itself as a limited company<sup>21</sup> and it does indeed function as a corporate entity. But at the same time it is also effectively a state actor, with the DRC government exercising direct political and operational control over the company. The selling-off of two key MIBA concessions to the Sengamines joint venture in 1999, for example, was orchestrated directly by President Kabila and it is unlikely that MIBA officials would have been in any position to influence this decision, even if they had considered that it went against the best interests of the company. MIBA's current management committee, including the company's managing director (*Président directeur général, PDG*), was also appointed by the government.

Photo caption: A MIBA diamond-processing plant in the *polygone* concession.

Despite the loss of the two valuable concessions to Sengamines, MIBA is thought to remain the largest single contributor to the DRC treasury. Several Congolese government authorities and MIBA officials interviewed by Amnesty International stressed that MIBA is a key part of the war effort. MIBA is also easily the largest employer in the Kasai region, employing some 6,000 workers and around 1,300 security guards. In an effort to address the glaring disparity between the riches associated with the diamond business and the poverty experienced by most of the local population, MIBA has over the years allocated a proportion of its revenues to community welfare projects. The company provides Mbuji-Mayi with electricity and with clean drinking water and contributed to the establishment of Mbuji-Mayi's university. It has built housing, principally for MIBA employees, a hospital and some schools. It has also set up a body called the *Fondation MIBA*, known by the acronym FOMI, which has the stated aim of providing drinking water, health centres and schools to populations in the rural areas surrounding Mbuji-Mayi.<sup>22</sup>

Notwithstanding MIBA's contributions to local development and to the local economy, the overall socio-economic situation in Mbuji-Mayi is somewhat bleak. Beyond MIBA, employment opportunities are limited, and even where people manage to secure jobs, the wages can be extremely low. Civil servants are sometimes unpaid

altogether. For many poor or unemployed Congolese, the lure of MIBA's diamonds proves too great to resist and many hundreds opt to make an illegal living by trying to steal from the diamond concessions. In so doing, they are taking an enormous personal risk and many pay the ultimate price: dozens of illegal miners are shot dead in MIBA's diamond concessions every year.

#### 4. Guarding the diamond concessions

Protecting its concessions from theft has always been one of MIBA's biggest challenges. The sheer number of people who seek to enter the concessions illegally, estimated to number well over a thousand every night, coupled with the absence of secure perimeter fences and indeed a certain ambiguity as to the exact boundaries of the concessions,<sup>23</sup> makes the task of guarding the concessions a virtually impossible one. At best, MIBA can only hope to limit the numbers of illegal miners who gain access. Only a small proportion of those who do gain access are ever arrested.

The scale of the challenge was clear during a day-time visit to a MIBA diamond concession known as the *polygone* (polygon) in October 2001. Amnesty International delegates observed a group of some 150 apparently illegal miners (known locally as *creuseurs*, or diggers), who were standing in the shallows of the River Lubilanji, at a point where a canal flows out into the river from one of the MIBA processing installations. Most appeared to be between about 12 and 25 years of age and were carrying buckets and sifting pans in order to sift the water in the hope of finding fragments of diamond in the shallows of the river. In the presence of Amnesty International delegates, MIBA guards managed to arrest four of these suspected illegal miners, using their own tops to tie their arms behind their backs before transporting them to a cell within the MIBA concession (see the section entitled Rough Justice below). The youngest of those arrested was 14 years old. Amnesty International observed dozens of other suspected illegal miners throughout the *polygone* concession. This was in the middle of the day -- far greater numbers enter the concessions under the cover of darkness.

Photo caption: Suspected illegal miners, known locally as *creuseurs*, sifting the bed of the River Lubilanji for diamonds, Mbuji-Mayi, October 2001

The security arrangements which have been put in place to address the

problem of illegal miners are both complex and highly problematic. In the past, the security department was a comparatively well-structured service falling under the responsibility of the Britmond arm of De Beers. But by the late 1990s, the guarding of the concessions had ceased to operate under a single chain of command and had become increasingly militarised, largely as a consequence of the armed conflicts of 1996-1997 and of August 1998 to the present day which have made control of the Mbuji-Mayi diamond fields a key strategic imperative.<sup>24</sup>

In addition to the Congolese military, soldiers belonging to the Zimbabwe Defence Forces (ZDF) have been charged with guarding the concessions.<sup>25</sup> They are answerable to their army superiors, not to MIBA officials, and they do not appear to have been integrated into any joint chain of command with their Congolese counterparts. It is unclear what legal framework, if any, they are operating within. The main contingent of Congolese guards, numbering around 1,000 in the *polygone* concession, are known as the *blondos*, who take their name from the person who set them up.

Photo caption: Suspected illegal miners arrested by *blondos*, Mbuji-Mayi, October 2001

The *blondos* are civilians and do not officially carry firearms, although some carry catapults, sticks and other such weapons. They receive no formal training in law enforcement, despite being specifically charged with the task of arresting illegal miners. The *blondos* are supervised and regularly accompanied by *officiers de police judiciaire* (OPJs), Judicial Police Officers, who, unlike the *blondos*, do carry firearms. Normally the status of OPJ denotes a member of the Congolese security forces with powers of arrest, but a senior official in the Mbuji-Mayi judiciary told Amnesty International that the OPJs guarding the diamond concessions fall into a special category of OPJs '*à compétence restreinte*' (with restricted powers), who are employed directly by MIBA and are supposedly answerable to MIBA's head of security, rather than to police superiors. It is unclear what training in law enforcement, if any, these OPJs receive. Finally, MIBA also uses the services of private security firms; such contracts are believed to be negotiated by the government rather than by MIBA officials, but the exact terms and conditions of these arrangements are opaque.<sup>26</sup>

None of those currently responsible for guarding the concessions are believed to have received thorough training in the basic principles of law enforcement. In any case, there appears to be little or no attempt on the part of MIBA management or the local state authorities to ensure that MIBA guards adhere to such principles or that they are held to account for actions which violate those principles.<sup>27</sup>

These security arrangements are failing in another respect too -- their effectiveness, in terms of keeping out or apprehending suspected illegal miners, is seriously compromised by widespread corruption among the very guards who are supposed to be protecting the concessions against illegal activities. While some illegal miners enter the concessions without assistance, many illegal miners consider it more prudent, or perhaps potentially more lucrative, to enter into deals with the *blondos*, OPJs or soldiers.<sup>28</sup> Guards will often give a group of illegal miners a password which they must use in order to be allowed to leave the concession at the end of their clandestine shift; in October 2001 the price of a password was said to be the equivalent of about \$7 US dollars. Sometimes the miners are also charged per head, and the guards frequently also insist upon a share of the diamonds gathered. Given that on any particular night there are likely to be over a thousand illegal miners within the *polygone*, it is easy to see that guards working in complicity with these miners stand to add significantly to their official wages, which are understood to be around \$10 a day.

Illegal miners have often found to their cost, however, that being in complicity with one set of guards does not necessarily protect them from the attentions of other guards who are not party to a particular arrangement. On occasions, there have been shoot-outs between different contingents of guards, who are respectively escorting illegal miners or trying to prevent them from stealing from the concessions. On other occasions, the guards with whom illegal miners have struck deals will renege on those deals, demanding a larger share than originally agreed or simply taking everything at gunpoint. In some cases, guards have opened fire without warning on the very people they had earlier taken bribes from and allowed into the concessions. In these various ways, corruption is giving rise directly to situations in which individuals are being put at risk of serious human rights violations.

## 5. Shootings in the concessions

*'We all know that they [the illegal miners] don't do it for the sake of doing it. There is no alternative to that. And when we see bodies floating in the river, or survivors hiding their injuries for fear of reprisals by the authorities, you just have the feeling that these young people are being killed like dogs. They don't have any rights. And no one takes any action to address the issue. Everything is calm and life goes on.'*<sup>29</sup>

The combination of a lack of formal training for those guarding the MIBA

concessions, the failure of the MIBA management or the local police authorities to insist upon adherence by the guards to even the most basic principles of law enforcement and widespread corruption among the guards has created an anarchic situation in the diamond concessions. Throughout the hours of darkness, shots ring out from the diamond concessions. A local resident told Amnesty International that one night he thought the war had finally come to Mbuji-Mayi, so intense was the gunfire. A senior MIBA official admitted to Amnesty International that he would not venture into the concessions at night out of fear for his own personal safety. The proximity of residential houses to the concessions has even resulted in several cases of local residents being injured outside the concessions by stray bullets. For example, **Nkombo Kamanga** was hit in the leg by a stray bullet as she slept in her bed at night. She now walks with a limp as a result of the injury and her family is understood to be seeking compensation from MIBA.

That many shots are fired within the diamond concessions is not in doubt. Amnesty International observed hundreds of spent bullet cartridges on the ground in just one small area on the bank of the River Lubilanji. The Congolese authorities and MIBA officials maintain that the shots are mostly fired by illegal miners in order to disperse MIBA guards and thereby gain entry to the concessions. They further maintain that the OPJs and soldiers on duty at the concessions only ever use their arms in self-defence. In some cases, illegal miners are indeed armed, or are accompanied by corrupt MIBA guards or other state officials who are armed. On occasions, this has led to shoot-outs in the concessions. In one such shoot-out on 8 September 2002, for example, a police officer called **Muamba Mukuna** was shot dead by MIBA guards in the *polygone* concession after a heavy exchange of gunfire. He was reportedly in civilian clothing but was armed, and was reportedly accompanying a large group of illegal miners.

Photo caption: Nkombo Kamanga, hit by a stray bullet from the *polygone* concession as she slept.

However, it appears that the majority of illegal miners are not armed. For instance, not a single one of the roughly 250 apparently illegal miners spotted by Amnesty International delegates in the course of their three-hour visit to the *polygone* concession in October 2001 appeared to be carrying a firearm. The hundreds of spent cartridges Amnesty International observed on the bank of the River Lubilanji not only appeared to match the type of rifle the soldiers in the concessions were carrying, but were also lying directly next to a MIBA guard-tower, strongly suggesting that the

rounds were in fact fired by MIBA guards, not by illegal miners.

Photo caption: Mukeba Muchuba

Photo caption: Mulumba Tshitamba

On the basis of all the available information, including eye-witness accounts, and despite official attempts to deny or to play down the scale of the problem, it is clear that it is the MIBA guards, not the illegal miners, who are doing most of the shooting in the diamond concessions. It is also clear that suspected illegal miners are being shot on a daily basis. No precise statistics have been compiled on the numbers of those wounded or killed, but Amnesty International conservatively estimates that several dozen, but possibly significantly more, are shot dead every year by MIBA guards. Many more, probably numbering several hundred a year, sustain gunshot wounds of some kind, which are often serious. In the majority of cases, the guards cannot claim legitimate self-defence, since the victims are unarmed and pose no genuine threat to their safety. The reality is that MIBA guards are frequently opening fire without warning on unarmed civilians as a first rather than as a last resort, thereby violating some of the most fundamental principles of law enforcement.<sup>30</sup> The majority of the killings which result in these circumstances amount to extrajudicial executions.

Eighteen-year-old **Mukeba Muchuba** was part of a group of ten illegal miners, including his brother, who sought to gain access to the *polygone* on 16 September 2001. MIBA guards discovered their presence on the banks of the River Lubilanji and opened fire. While the others in his group managed to escape unharmed, Mukeba Muchuba was shot in the head by a MIBA guard. He immediately lost consciousness and spent the next three weeks in hospital. His power of speech was impaired by the injury he sustained.

Like most illegal miners, Mukeba Muchuba had risked going to the *polygone* despite being well aware of the potential dangers. A friend of his, **Kabongo**, had been killed there in early 2001 after he had been caught by a MIBA guard climbing out of one of the mines. The guard reportedly announced that he was going to kill Kabongo, who was unarmed, and then proceeded to shoot him dead in cold blood. He then asked two of Kabongo's friends to go over and confirm that he was dead. The guard then said to them: *'That is the fate reserved for all of you.'*

In late August 2001 27-year-old **Mulumba Tshitamba** entered into an arrangement with some MIBA guards to form a group of 15 people to go and work in the *polygone*. They worked at night near a plant called *Massif 5*, where industrial waste is pumped into a canal and small diamonds can be found amid the gravel. The group gathered gravel and then took it down to the River Lubilanji to sift through it for diamonds. While they were by the river, the guards with whom they had made the arrangement appeared and signalled them with a torch. Four of the miners went towards the guards and when they were within about 50 metres of them, the guards opened fire on the miners without warning. Mulumba Tshitamba fled and hid near a pile of sand but he was discovered and shot twice in the right leg -- once near the knee and once in the calf. Amnesty International has no information on what happened to the other three miners who had been with him.

On 29 June 2001 24-year-old **Mukenyi Kalala** was on the far side of the River Lubilanji, when he was approached by a group of guards who suggested he form a group of diggers to go into the *polygone*. He organised a group of ten diggers and, having paid 10,500FC (roughly \$35 at the then exchange rate) to the guards, they entered the *polygone*. At about 3pm, as they were leaving the *polygone*, another group of guards appeared and immediately opened fire on them. Mukenyi Kalala was shot in the right shoulder, the bullet passing right through him, and he lost consciousness.

He believes that eight of the other illegal miners in his group were shot dead, but Amnesty International has not been able to confirm this information or obtain the names of those who may have died.

While some illegal miners like Mukenyi Kalala risk going into the mining concessions in broad daylight, the majority of illegal miners gain access under the cover of darkness. 39-year-old **Jean-André Shambuyi** and four others gained illegal access to the *polygone* on 19 April 2001, without entering into any arrangement with MIBA guards. At around 3am at a location in the heart of the *polygone* called *la route de 20 mètres*, a group of armed guards suddenly appeared and opened fire on them without warning. Jean-André Shambuyi was shot from behind in the base of the back, causing his intestines to spill out. Three of the other illegal miners fled and managed to escape, but the fourth person in their group came to his assistance and managed to ensure that he was taken to hospital for treatment. Jean-André Shambuyi later expressed his gratitude by naming his next child after this person, who, he believes, saved his life. He has been left with severe scarring from the bullet wound and suffers from pains in his leg and from bad circulation of the blood.

Photo caption: Mukenyi Kalala

On 16 October 2001, the day that Amnesty International delegates visited the village of Luamuella, located on the outskirts of the *polygone* on the far side of the River Lubilanji, one of the villagers, **Dibua Brinch**, was being buried. He had been shot dead on 12 October, reportedly by a Zimbabwean soldier who had crossed to the Luamuella side of the River Lubilanji apparently with the express purpose of killing him. Dibua Brinch left behind eight children and a pregnant wife.<sup>31</sup> Another Luamuella resident, **Kalala Wakala**, was shot dead around 12 October, also reportedly by a Zimbabwean soldier. Luamuella villagers claim that people are being shot on a daily basis by MIBA guards.

During their visit to the *polygone* concession in October 2001, an Amnesty International delegation, accompanied by senior MIBA officials, experienced at first-hand the readiness of Zimbabwean soldiers to resort to firearms. As the delegation approached one of the exits to the concession in their vehicles, they were stopped at gunpoint by ZDF soldiers. A senior ZDF officer repeatedly shouted 'get out or I shoot, get out or I shoot' while brandishing a gun at the vehicles' occupants. One of the Amnesty International delegates had a pistol pressed into his collarbone and was forcefully dragged from the vehicle. A MIBA employee was slapped in the face by a ZDF soldier and photographic equipment belonging both to Amnesty International and to MIBA was temporarily confiscated. The ZDF soldiers claimed to be unaware of the Amnesty International visit and appeared to be under the impression that any such visit required ZDF authorisation. The delegation was detained for around half an hour, until a more senior-ranking ZDF officer arrived and apologised for what he described as a 'misunderstanding'.

This incident demonstrated not only the readiness of ZDF soldiers to brandish firearms at unarmed civilians and to use excessive force, but also the extent to which the ZDF is acting independently of any Congolese command structures, be they civilian or military. It is remarkable that Zimbabwean troops should wield such power in a mining concession within the DRC which, unlike the Sengamines concessions, is still owned and run by a Congolese, largely state-owned company.

Finally, in addition to the shootings, some illegal miners are also seriously injured or killed when mines collapse. There are areas in diamond concessions, including the *mine rouge* (red mine) within the *polygone* concession, where illegal

miners dig holes some 20 to 30 metres deep, lower each other down by rope, and then tunnel out horizontally from the bottom of the holes in search of diamonds. Amnesty International witnessed a group of some 70 illegal miners engaged in this kind of mining at the *mine rouge*. MIBA says that they regularly bulldoze over these holes but that the illegal miners simply dig new holes. Amnesty International received disturbing reports, however, that MIBA officials were sometimes guilty of bulldozing over the holes without properly checking whether there were miners down the holes at the time. For example, five illegal miners, including **Mandefu Tshivo Kabeya**, who was just nine years old at the time, were reportedly buried alive in April 2000.

Photo caption: A suspected illegal miner emerging from a makeshift mine-shaft, Mbuji-Mayi, October 2001

## 6. Rough justice

According to MIBA officials, around 10 to 15 suspected illegal miners are arrested every day at the *polygone* concession. There are makeshift cells within the buildings that stand at the two main entrances to the *polygone*, where suspected illegal miners are initially detained. Amnesty International delegates saw one of these cells from the exterior during their visit to the *polygone* -- it appeared to be around four metres square in size and at least four detainees were being held there at the time, all of whom appeared to be children. There did not appear to be provisions for detaining children separately from adult detainees.

MIBA officials assert that suspected illegal miners are held in these cells for a maximum of one day, before being transferred to detention centres run by the Procuracy (*le parquet*). In practice, however, it appears that most detainees arrested by the *blondos* are transferred to another, unofficial detention centre on the edge of the concession, which is also run by MIBA.<sup>32</sup> This detention centre houses six cells, which are around four metres square in size, covered by a metal trellis rather than a solid roof. There are no toilets or showers and no food is provided -- detainees rely wholly on their relatives to bring them food. Detainees who are injured in the course of being arrested or who become ill in custody have no access to medical care.

Because of the absence of toilets, the detainees, who in April 2002 numbered some 180, relieve themselves in the cells, rendering them virtually uninhabitable. Detainees therefore spend almost all of their time outdoors in a small, fenced-in enclosure which surrounds the detention centre. Their constant exposure to the

elements renders them highly vulnerable to disease. The average age of the detainees in April 2002 was around 15, but there are no provisions for detaining minors separately from adult detainees.<sup>33</sup> Some of them had been detained in these appalling conditions, which amount to cruel, inhuman and degrading treatment, for at least two weeks. Appeals from the detainees to be transferred to the Procuracy appear to be routinely ignored.

Relatives are able to visit detainees, and indeed such visits are encouraged by MIBA guards, since relatives are informally required to pay them 100FC to gain access. Relatives can also pay what are called *amendes transactionnelles* (compromise fines) to secure the release of detainees. These so-called fines were reportedly in the region of 5,000FC (roughly \$17 at the exchange rate in October 2001) -- a significant sum for many Congolese families.

In the event that the requisite *amendes transactionnelles* are not paid, some suspected illegal miners may face trial before a military tribunal called the *Cour d'ordre militaire* (COM), Military Order Court, which was established in 1997 by the late president Laurent-Désiré Kabila. The COM does not meet international standards for fair trial and, according to its own statutes, has no jurisdiction in cases involving civilians. However, this has not stopped it from trying and imprisoning dozens of political activists, journalists, and human rights defenders in manifestly unfair and politically-influenced trials. There can be no justification for trying suspected illegal miners, most of whom are civilians and many of whom are children, before a military tribunal.<sup>34</sup> If they are to be put on trial, they should be tried before an ordinary civilian court of law and enjoy their full legal rights, including proper legal representation and the right to appeal against their sentence.

## 7. Silencing the critics

The Mbuji-Mayi authorities have been quick to seek to silence local activists who speak out against the abuses being committed within the diamond concessions. **Crispin Kalala Mpotoyi**, the owner of a local radio and television station called *Radio-Télévision Debout Kasai*, is one of the few local journalists to have publicly denounced the shootings at the diamond concessions. On 2 October 2001 he was arrested by police and held in custody until around 10pm that evening. While the immediate motive for his arrest is thought to have been a radio program broadcast earlier that same day in which he had criticised the governor of Mbuji-Mayi, his denunciations of the abuses at the MIBA concessions were also a factor. While in custody, he was reportedly made to draft and sign a document, dictated to him by

police officers, in which he pledged to cease covering certain subjects during his radio and television broadcasts. These subjects included the shootings at the MIBA concessions.

On 10 October he was rearrested and held until late the following night. During this time, he was again questioned about his radio and television broadcasts. Following his release, he was ordered to report to the Procuracy twice a week. In addition, two programs, one on radio and one on television, which he had been presenting every week were banned. He was later charged with *incitation à la révolte et à la haine tribale* (inciting revolt and ethnic hatred), supposedly on the basis of previous broadcasts on his radio station. The charge was manifestly contrived in an attempt to silence an outspoken critic.

Amnesty International delegates witnessed at first-hand the ongoing harassment of Crispin Kakala. A private meeting between Amnesty International and the journalist in October 2001 was interrupted by the arrival of Mbuji-Mayi's head of police, who proceeded to ask a series of questions about the purpose of the meeting. It was this same police officer who had personally arrested Crispin Kalala the previous week. On this occasion, he was accompanied by an OPJ employed by MIBA.

Other local human rights activists have also found themselves targeted by the authorities for speaking out. **Charles Mfwamba Mukendi**, head of a local human rights group called the *Centres d'études et de formation populaires pour les droits de l'homme*, (CEFOP), Centre of Grassroots Studies and Training in Human Rights, has long campaigned against the abuses at the MIBA concessions. At 6am on 22 October 1999 he was arrested for publishing supposedly seditious documents, which was apparently a reference to a report which CEFOP had released on killings at the MIBA concessions. He was transferred to the capital Kinshasa where he was held for nine months in an unofficial security service detention centre without ever being formally charged. Amnesty International considers that he was a prisoner of conscience, arbitrarily detained because of his denunciations of human rights violations at the MIBA concessions. Despite the personal risks involved, Charles Mfwamba Mukendi continues to work actively as a human rights defender in Mbuji-Mayi. He is kept under sporadic surveillance by the security services as he goes about his work.

## 8. Turning a blind eye

MIBA and local justice officials, for their part, consistently play down the number of people killed in the diamond concessions and deny that any of the killings are deliberate or unlawful. A senior MIBA official asserted to Amnesty International that

perhaps a maximum of four people a year die in the concessions and that such deaths tended to occur only when MIBA guards are forced to fire back when shot at by illegal miners. He dismissed as propaganda reports that large numbers of miners were being killed and wounded in the concessions and claimed that such propaganda was intended to force MIBA to reduce its deployment of guards, thereby making it easier for illegal miners to gain access to the concessions.

Another senior MIBA official interviewed by Amnesty International in October 2001 conceded that there was occasionally what he described as an 'accident', in which illegal miners were shot. He claimed to know of only two such 'accidents' having occurred since the beginning of 2001. Disturbingly, he also conceded that when illegal miners were killed within the diamond concessions, MIBA took no steps to investigate the circumstances of the death. In answer to a question on what was done by MIBA in such situations, the official simply replied: '*Rien.*' ('Nothing.')

A senior judicial official, also interviewed in October 2001, asserted that during the previous two months he knew of five deaths having occurred at the *polygone* concession. In only one of these cases, the killing of an individual called **Mulongo**, was an investigation by the judiciary said to be in progress. The official could not explain why no investigations were underway into the circumstances of the other four deaths or indicate what concrete steps had so far been taken in investigating Mulongo's death. He was also unable to give any official figures regarding other investigations which might have taken place in recent months or years, or to cite a single case in which a MIBA guard was known to have been brought to justice in connection with the death of an illegal miner within the diamond concessions. This is not surprising -- to Amnesty International's knowledge, not a single MIBA guard has ever been put on trial for the killing of a suspected illegal miner, let alone convicted.<sup>35</sup>

By denying that extrajudicial executions and serious gunshot injuries are occurring within the diamond concessions, and by failing to properly investigate the few deaths which are officially acknowledged, the authorities are ensuring that these abuses can continue to be committed with complete impunity. Such inaction amounts to a tacit endorsement and encouragement of these abuses. Under international law, senior officials may be held accountable for extrajudicial executions which take place under their jurisdiction, if it is reasonable to assume that they knew, or should have known, about the risk of such executions taking place and were in a position to prevent them.<sup>36</sup> Given that in the course of just four days spent in Mbuji-Mayi Amnesty International researchers were able to gather detailed and extensive evidence

of extrajudicial executions and non-fatal shootings having occurred within the diamond concessions, it seems reasonable to assume that the Mbuji-Mayi authorities are in a position to do likewise if they so wished. Their failure to do so is, at the very least, a dereliction of their duties under international law to initiate proper investigations into suspected cases of unlawful killings.<sup>37</sup> At worst, it is a deliberate refusal to act on the evidence available and to prevent further abuses.

The patent inadequacy of the judiciary's existing investigative procedures, which have so far failed to bring a single perpetrator to justice despite the existence of a clear pattern of abuse, points strongly to the need to establish an independent commission of inquiry in order to redress the human rights situation in the diamond concessions.<sup>38</sup> Where sufficient evidence emerges of human rights violations having been committed, every necessary step needs to be taken to bring the perpetrators to justice, as well as anyone in authority who is considered complicit in those violations.<sup>39</sup>

## **9. Training MIBA's guards<sup>40</sup>**

Dismantling Mbuji-Mayi's culture of impunity is crucial to putting an end to the lawlessness which currently reigns in the diamond concessions and the human rights violations to which this gives rise. MIBA guards need to know that they will be held accountable for any human rights violations which they commit in the course of their duties, as well as for any acts of corruption.<sup>41</sup> As well as ensuring that they are properly supervised and that all incidents involving the use of firearms are properly investigated, it is essential that MIBA guards receive thorough training in law enforcement principles and techniques. Basic principles of human rights and policing ethics should form the core of this training, with the primary focus being on avoiding the use of force or firearms wherever possible.<sup>42</sup>

The two basic principles of international law which govern the use of force by law enforcement officials<sup>43</sup> are necessity and proportionality. Force should be used in dealing with criminal suspects only if other means prove ineffective. Where the use of force is considered to be unavoidable, law enforcement officials must act with restraint and in proportion to the seriousness of the offence or to the threat posed, and every effort should be made to minimise injury.<sup>44</sup> Where injuries do occur, medical treatment should be made available as soon as is possible. The guidelines relating to the use of firearms are even stricter. Law enforcement officials who are expected to carry firearms in the course of their duties should receive adequate training in their use before being authorized to carry them.<sup>45</sup> Firearms should only be used in self-defence or in the defence of others against the imminent threat of death or serious

injury. Intentional lethal force may only be used when strictly unavoidable in order to protect life.<sup>46</sup> Wherever possible, law enforcement officials are required to identify themselves as such, give a clear warning that they are armed and give adequate time for a criminal suspect to respond to that warning.

The systems in operation within the MIBA concessions, and the practice of the MIBA guards, clearly fall far short of all of these basic principles. Those carrying firearms receive little or no training in their proper use for law enforcement purposes. Eye-witness accounts, including those of individuals who have themselves been shot, consistently report MIBA guards opening fire without warning and as a first resort, without apparently giving any consideration to alternative means of apprehending suspected illegal miners. Moreover, most of those who are shot are unarmed and pose no immediate threat to the lives of the guards or of others. The use of firearms against them in such circumstances is both unnecessary and wholly disproportionate. Individuals who are shot appear to be entirely reliant on other illegal miners for assistance in getting medical treatment, with MIBA guards taking no steps to assist.<sup>47</sup> And there are no effective reporting mechanisms in place to ensure that the relevant authorities are notified of any shootings in the concessions.<sup>48</sup>

The role played by both Zimbabwean and Congolese soldiers in guarding the concessions is a cause for particular concern. While Amnesty International acknowledges the right of the government to deploy troops to defend a key strategic location against attacks by its armed political opponents,<sup>49</sup> the soldiers deployed within Mbuji-Mayi's diamond concessions are in practice acting as law enforcement officials with a responsibility for protecting the concessions against illegal civilian miners, not opposing military forces. Any military training which these soldiers may have received would not be applicable to a civilian context in which they are required to apprehend criminal suspects without the excessive use of force. If they are to act as law enforcement officials, these soldiers should receive the same training in civilian law enforcement techniques as other MIBA guards, they should be integrated within the same civilian chain of command<sup>50</sup> and they should be held accountable for any human rights violations they are suspected of having committed. If these conditions cannot be met, Amnesty International considers that soldiers should not be permitted to play a law enforcement role within the diamond concessions.

## **10. Making human rights everyone's business<sup>51</sup>**

Although the primary responsibility for addressing the human rights violations associated with MIBA's diamond concessions lies with the DRC state authorities,

MIBA itself also has a role to play in promoting respect for human rights within its sphere of influence. Considered as a state actor, MIBA is bound by the provisions of international human rights law, but as a business entity it is also expected to meet the same ethical standards of corporate practice required of all businesses.<sup>52</sup> This applies equally to the minority shareholders in MIBA, De Beers and Umicore.

One way in which MIBA can seek to minimise the risk of contributing to human rights violations is to develop and enforce an explicit code of ethical corporate practice, founded on basic human rights principles.<sup>53</sup> This would complement other measures being taken, such as training in law enforcement for MIBA guards. De Beers has itself developed a series of best practice principles for the gem diamond industry, part of the objective of which is to ensure that the diamond trade is not associated with, or complicit in, abuses against local populations. For example, under the heading ‘*Consumer confidence*’, De Beers’ principles state that:

*‘the injury and hardship suffered by local populations (and the potential for it) when conflicts arise in diamond producing areas are unacceptable, as is seeking to profit from such conflicts’.*

Under the heading ‘*Business Practices*’, the text continues:

*‘We are committed to operating our businesses in such a way that we neither engage in, nor encourage in any manner, the following practices which are regarded as unacceptable and against the public interest and that of the diamond industry: [...] [the] buying and trading of rough diamonds from areas where this would encourage or support conflict and human suffering.’<sup>54</sup>*

Amnesty International welcomes the commitment to human rights expressed by De Beers in these principles and considers it important that both De Beers and Umicore, as minority shareholders in MIBA, demonstrate that they are themselves upholding and implementing these principles in the DRC. In 1999 De Beers took a decision to close all of its diamond buying offices in the DRC as part of its broader stated policy of addressing the problem of so-called conflict diamonds:

*‘In October 1999, De Beers announced an embargo on the purchase of all diamonds from Angola [...] and that we would close our buying operations there and in other west and central African countries. This was motivated by concern for the suffering of the people of these countries, where conflict is in part sustained by the proceeds of illicitly obtained diamonds. De Beers now has no buying offices in Angola, the Democratic Republic of Congo or*

*Guinea.*<sup>55</sup>

Under the current definitions being used by the diamond trade, the term conflict diamond is only applied to diamonds being traded by armed political groups, not by national governments. However, De Beers and Umicore should also give consideration to the extent to which their involvement in the largely state-run diamond trade in the DRC is currently consistent with their stated concern for the welfare of local populations and with their human rights obligations. As shareholders, De Beers and Umicore are in a uniquely privileged position to use their influence in a positive way to improve MIBA's human rights record and to contribute to bringing an end to the abuses being committed in the diamond concessions.

By introducing and implementing coherent and transparent human rights policies, MIBA, De Beers and Umicore would be signalling their commitment to breaking the existing link between diamond-mining operations and human rights violations in Mbuji-Mayi. These policies should be seen not merely as an adjunct to MIBA's commercial activities but as a core element of its corporate strategy. Many companies have come to realise the beneficial effects which a good human rights record can have on a company's image and thus its commercial performance. As Mary Robinson, the former UN High Commissioner for Human Rights, has pointed out:

*'Twenty years ago few companies had environmental policies. Today the environment is unquestionably a mainstream business issue. So it should be with human rights. Having a strong human rights policy and a sound implementation strategy is about risk management and reputation assurance. Human rights is a bottom-line issue.'*

## 11. Conclusion

*'Diamonds are the inheritance of the people of Sierra Leone, Angola and Congo and should be used to provide development and prosperity [...].'*<sup>56</sup>

The equitable harnessing of the DRC's vast natural resources, including its diamonds, is essential to promoting the future prosperity of the nation and the welfare of its people. In the current situation, in which large sections of the country are under the

control of armed forces opposed to the government of Joseph Kabila, it is clearly impossible for one central authority to properly exploit all of these resources, while the enormous costs of prosecuting a war inevitably diminish the resources available for development. Nevertheless, over the longer term, it is incumbent upon the DRC government to do everything within its power to ensure that the country's natural resources, including the diamonds of Mbuji-Mayi, are exploited in such a way as to promote as effectively as possible the development of the country and the progressive realization of the population's economic and social rights.

An integral part of this process has to be bringing an end to the decades of financial mismanagement and outright corruption which have contributed directly to the DRC's current socio-economic crisis, as well as being at the root of major human rights abuses. The opaque contracts involving foreign interests that have been signed in the course of the current armed conflict in the DRC, including the Sengamines deal, are merely the latest in a long line of arrangements which appear to have benefited a small elite to the detriment of the vast majority of the population. There is clearly a need to review all such existing contracts to determine the extent to which they are consistent with appropriate development goals and to ensure that all future such contracts are negotiated transparently and in accordance with internationally recognized principles for public tendering and bidding.

In the more immediate term, the DRC government must take urgent and effective steps to bring an end to the human rights violations being perpetrated in the diamond fields of Mbuji-Mayi and to bring those suspected of responsibility to justice. The international community, from national governments to individual consumers, also has an important role to play in encouraging the DRC government to end these abuses and to clean up its diamond trade. Until now, the main focus of the international community has been on so-called conflict diamonds traded by armed political groups, such as the Revolutionary United Front in Sierra Leone or UNITA in Angola, but the situation in Mbuji-Mayi points clearly to the need to submit the commercial activities of national governments to similar international scrutiny. In order to be effective and consistent, the international system of diamond certification agreed by governments through the Kimberley Process needs to take account of the fact that human rights abuses directly related to the diamond trade are also taking place beyond the context of armed conflict and in areas under the control of national governments. The words of a former British government minister are just as applicable to the DRC's official diamond trade as they are to the commercial activities of armed political groups:

*'You want to make sure that the diamond you are putting on your loved one's*

*finger did not help cut off the finger or a hand of a child in Sierra Leone, Angola or Congo.*<sup>57</sup>

In the DRC, suspected illegal miners in Mbuji-Mayi may not be having their limbs amputated like the civilians of Sierra Leone.<sup>58</sup> But they are being shot at, they are being seriously wounded and they are being killed. While for many people throughout the world diamonds may be a symbol of love, for the families of Dibua Brinch, Kalala Wakala and of all the other mostly young men who have lost their lives in the diamond fields of Mbuji-Mayi, diamonds will forever be associated with irreparable loss and death.

## 12. RECOMMENDATIONS

### To the DRC government

#### **Bring an end to extrajudicial executions and intentional woundings in the MIBA diamond concessions by:**

- publicly acknowledging and condemning the serious human rights violations, including extrajudicial executions, which are being perpetrated in the diamond concessions of Mbuji-Mayi;
- immediately establishing an independent commission of inquiry which has adequate resources<sup>59</sup> to properly investigate all cases of suspected extrajudicial executions and intentional woundings in the diamond concessions with a view to:
  - ensuring that suspected perpetrators, and those complicit in human rights violations, are brought to justice without delay and in conformity with international standards for fair trial;
  - determining, and ensuring the payment of, appropriate compensation to victims or their relatives;
  - tackling the problem of corruption, as a contributor to human rights abuses, and ensuring that officials suspected of corruption are immediately suspended from their duties, pending legal proceedings against them;
  - playing a role in monitoring the DRC's compliance with the spirit of the international diamond certification system agreed through the Kimberley Process, to which the DRC has signed up and whose purpose is to prevent the trade in diamonds from contributing to human rights abuses;
- establishing proper reporting mechanisms to facilitate the work of the independent commission and to ensure that all shooting incidents within the concessions are properly documented;
- introducing without delay adequate training in civilian law enforcement for all those guarding the diamond concessions, including any Congolese and Zimbabwean soldiers charged with guarding the concessions, and ensuring that no-one is permitted to act as a law enforcement official in the concessions if they have not received this training. The training should include explicit guidelines on the use of force and firearms, as well as first aid training, and be

- 
- based upon relevant principles of international human rights law;
  - making public the terms of all contracts entered into with private security firms and ensuring that any companies contracted to provide security at the MIBA concessions have a demonstrably sound human rights track record;
  - ending the harassment, including the imprisonment, of journalists, human rights activists and others for speaking out against the human rights violations being committed in the MIBA concessions;

**Ensure fair treatment of suspected illegal miners by:**

- ensuring that any individuals who are shot or otherwise injured in the diamond concessions receive immediate medical treatment and, where necessary, are transferred without delay to a medical centre where they can receive appropriate treatment;
- taking immediate steps to close down all unofficial detention centres being run in the MIBA concessions and ensuring that anyone arrested on suspicion of illegal mining is transferred without delay to an officially recognised detention centre where the detainee has access to relatives, legal assistance and any medical attention which might be required;
- ensuring that, wherever possible, minors are detained separately from adults and their cases are handled with the highest priority to reduce to a minimum the time they spend in pre-trial detention;
- ensuring that if detainees are to be charged with a criminal offence, they are brought promptly before a competent civilian court of law to answer the charges against them;
- ending the practice of trying suspected illegal miners and other civilians before the *Cour d'ordre militaire*.

**Promote accountability and transparency by:**

- making public and reviewing, in line with the government's commitments at the Inter-Congolese Dialogue held in South Africa in March and April 2002, the terms of the contract concluded between the DRC government and the Sengamines joint venture in 1999;
- ensuring that all commercial contracts involving national resources are negotiated transparently and according to internationally recognised principles of public tendering and bidding, with a view to ensuring that the Congolese people obtain the maximum possible benefit from such contracts, including in

terms of promoting the country's overall social and economic development.

## To the Zimbabwean government

- publicly acknowledge and condemn the extrajudicial executions and other serious violations being perpetrated in the diamond concessions of Mbuji-Mayi, including by members of the Zimbabwe Defence Forces (ZDF);
- fully cooperate with any investigations into suspected extrajudicial executions, including the shootings of Dibua Brinch and Kalala Wakala, and intentional woundings in the diamond concessions and ensure that any ZDF soldiers suspected of responsibility are brought to justice in accordance with international standards for fair trial;
- ensure that ZDF soldiers are only permitted to act as law enforcement officials in the diamond concessions if they receive proper training in civilian law enforcement, including in principles relating to the use of force and firearms as well as first aid training, and that they are integrated into a single chain of command with all other personnel acting as law enforcement officials in the concessions;
- make public the terms of the contract entered into by the DRC government and the Sengamines joint venture in 1999, in the interests of transparency and accountability.

## To MIBA

- ensure that any MIBA employee, including *blondos* and *officiers de police judiciaire*, who is suspected of human rights violations is immediately suspended from their duties, pending further investigations and any legal proceedings against them;
- cooperate fully with any commission of inquiry set up to investigate human rights violations and corruption committed within the diamond concessions, including by establishing effective reporting mechanisms to ensure that all cases where firearms are used are reported to the commission of inquiry;
- ensure that any individuals shot or otherwise injured in the diamond concessions receive immediate medical treatment and, where necessary, are transferred without delay to a medical centre where they can receive appropriate treatment;
- immediately close the unofficial detention centres being operated within the

MIBA concessions and ensure that when suspected illegal miners are apprehended they are immediately transferred to the jurisdiction of the appropriate state institutions;

- provide resources for training in law enforcement for all personnel acting as law enforcement officials with the diamond concessions;
- develop and enforce an explicit code of corporate practice, based on the principles of international human rights law;
- make public the terms of all contracts entered into with private security firms and establish effective screening procedures to ensure that MIBA does not employ anyone in its diamond concessions who has committed, or is suspected of having committed, human rights abuses in the past, or have dealings with any companies which have a poor human rights track record;
- enter into a constructive dialogue with local civil society on questions of social investment, in keeping with MIBA's stated commitment to promoting local development, and publish periodic studies into the social impact of MIBA's activities.

## **To the minority shareholders in MIBA**

- take every step to ensure that their involvement in the DRC's diamond trade is consistent with their obligations under international law to promote and respect human rights within their sphere of influence, as well as conforming to the spirit of the system of international diamond certification agreed through the Kimberley Process, which aims to ensure that the diamond trade does not contribute to human rights abuses;
- raise their concerns with the MIBA management and the Congolese state authorities over the extrajudicial executions and other human rights violations which are being perpetrated in the diamond concessions of Mbuji-Mayi;
- use their influence to press MIBA to cooperate fully with any commission of inquiry which is set up, to introduce rigorous law enforcement training for all MIBA guards, and to introduce effective screening procedures to ensure that MIBA does not employ anyone in its diamond concessions who has committed, or is suspected of having committed, human rights abuses in the past, or have dealings with any companies which have a poor human rights track record;
- contribute expertise and experience to the formulation and enforcement of a code of corporate practice for MIBA, based on the principles of international

human rights law;

- encourage and participate in a constructive dialogue between MIBA and local civil society on questions of social investment and encourage MIBA to publish periodic studies into the social impact of its activities.

## **To the international community**

- publicly condemn the serious human rights violations, including extrajudicial executions, which are being perpetrated in the diamond concessions of Mbuji-Mayi and pressure the DRC government to take all necessary steps to bring an end to these violations;
- lobby for the international system of diamond certification agreed through the Kimberley Process to become an effective mechanism by which to monitor the human rights record of all actors in the international diamond trade;
- the diamond industry, including Belgium's Diamond High Council (Hoge Raad voor Diamant), should take steps to ensure that diamonds from MIBA which enter international markets have not been mined in a manner which has contributed to human rights violations ;
- contribute resources and expertise to ensure adequate training for law enforcement officials in the DRC.

## 13. Footnotes

<sup>1</sup> Amnesty International interview with an official from the DRC's main diamond-mining company, MIBA, in October 2001.

<sup>2</sup> In April 2002 the DRC government signed up to an international system of diamond certification agreed by governments through the Kimberley Process. The system is intended to stem the international trade in conflict diamonds, which are defined by the Kimberley Process as rough diamonds traded by armed political groups to help finance their armed opposition to recognized governments. For further information, see the official website, [www.kimberleyprocess.com](http://www.kimberleyprocess.com)

<sup>3</sup> Extrajudicial executions are unlawful and deliberate killings carried out by order of a government or with its complicity or acquiescence. Instruments of international human rights law which pertain to this issue include the International Covenant on Civil and Political Rights (ICCPR), Article 6 of which asserts every human being's inherent right to life, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the United Nations in 1989.

<sup>4</sup> Coltan is an abbreviation of colombo-tantalite, an ore consisting of two rare metals called columbium (also known as niobium) and tantalum. The latter is refined for use as a component in electronic chips and is hence present in a wide-range of common appliances, including cell phones, play stations and laptop computers.

<sup>5</sup> The many waterways of the DRC, including the River Congo, offer a great potential source of hydroelectric power, estimated at some 100,000 MW. On the African continent this potential is rivaled only by Cameroon.

<sup>6</sup> See the Human Development Report of 2002 produced by United Nations Development Programme (UNDP), available at UNDP's website: [www.undp.org](http://www.undp.org) The DRC was ranked 155<sup>th</sup> on the report's human development index, which is based on the criteria of life expectancy, educational attainment and adjusted real income.

<sup>7</sup> Nicky Oppenheimer, De Beers Chairman, addressing the Commonwealth Business Forum, Johannesburg, South Africa, 11 November 1999.

<sup>8</sup> These violations have been well documented elsewhere. See for instance *King Leopold's Ghost* by Adam Hochschild, MacMillan, 1999.

<sup>9</sup> Since August 1998, the DRC government has been at war with Congolese armed groups in the north and the east of the country who are supported by Rwanda, Uganda and, to a lesser extent, Burundi. The DRC government has received military support principally from Angola, Namibia and Zimbabwe. Following peace accords signed by the Congolese government with Rwanda on 30 July 2002 and with Uganda on 6 September 2002, foreign troops on both sides have begun to withdraw from the DRC.

<sup>10</sup> Human rights abuses associated with economic exploitation taking place in areas under the control of the armed opposition and their foreign backers are the subject of a forthcoming, separate Amnesty International report.

<sup>11</sup> Diamonds are the product of carbon which has been subjected to intense heat and pressure deep underground. They were brought close to the earth's surface during eruptions of molten magma which solidified into rock called kimberlite. Millions of years of rain and erosion have freed the diamonds closest to the earth's surface and washed them away across the landscape and into the gravel of riverbeds or into the ocean. These secondary deposits are called alluvial deposits.

<sup>12</sup> Sengamines was formed by a company called Cosleg – the result of a merger of Osleg (Operation Sovereign Legitimacy) and Comiex (Générale de commerce d'import/export au Congo) – in collaboration with Oryx Zimcon. The latter is itself a joint venture between the Zimbabwean Defence Forces (ZDF) and Oryx Natural Resources, a company registered in the Cayman Islands which was reportedly given the exclusive rights to explore for and exploit diamonds and other minerals in these concessions for a period of 25 years starting from 16 July 1999, or until the reserves are exhausted. The majority stakeholder in Comiex was reportedly previously Laurent-Désiré Kabila; it is unclear to whom his shareholding may have passed after his death. The commander-in-chief of the ZDF and the permanent secretary in the Zimbabwean Ministry of Defence are reportedly two of the major shareholders in Osleg. Some former Congolese government were reportedly shareholders in Cosleg. The exact shareholdings of these various players in Sengamines are unclear, but it appears that Oryx is the largest single shareholder, although not a majority shareholder.

<sup>13</sup> The UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth, mandated by the UN Security Council, published its initial report on economic exploitation in the DRC in April 2001, followed by an Addendum in November 2001. The panel is due to produce a further report by the end of 2002.

<sup>14</sup> The impression that Sengamines is benefiting from a tax exemption is strengthened by documentation produced in 2000 by a company which at the time was considering acquiring Oryx Natural Resources (see footnote 12). In a section detailing the commercial structure of Oryx, the documentation reads: *'Mining operations developed on the Concession [the same concessions now run by Sengamines] benefit from the complete exemption from all import duties and corporate taxes for a period of six years commencing on the development of each production facility undertaken on a project by project basis.'* President Laurent-Désiré Kabila authorised a similar, five-year exemption from taxes for the Hewa Bora airline, which was also set up in 1999. President Kabila and members of his family were reportedly the major shareholders in Hewa Bora.

<sup>15</sup> The peace talks, known as the Inter-Congolese Dialogue, were held in Sun City, South Africa, between February and April 2002.

<sup>16</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR), to both of which the DRC is a

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state party, both contain provisions of relevance to this issue:

*‘All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.’ ICESCR, Article 1 (2)*

*‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’ ICESCR, Article 2 (1).*

*‘All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.’ ACHPR, Article 21 (1)*

*‘States Parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.’ ACHPR, Article 21 (5)*

In a communication (ref: ACHPR/COMM/A044/1) of 27 May 2002, the African Commission on Human and Peoples’ Rights found the government of Nigeria to be in breach of Article 21 of the ACHPR in connection with oil exploitation in Ogoniland. The Commission concluded, *inter alia*, that the *‘destructive and selfish role played by oil development in Ogoniland, closely tied with repressive tactics of the Nigerian government, **and the lack of material benefits accruing to the local population**, may well be said to constitute a violation of Article 21’*. [Emphasis in bold added.] For further information, see [www.cesr.org](http://www.cesr.org)

<sup>17</sup> See, for instance, the World Bank’s principles for international competitive bidding, which the World Bank generally recommends as best practice for the procurement of goods or services – [www.worldbank.org](http://www.worldbank.org)

<sup>18</sup> See, for example, Nihal Jayawickrama in *Corruption – A Violation of Human Rights?* at <http://www.transparency.org>. In this working paper, which was presented at a conference in Sofia in June 1998, he writes: *‘This commitment [under Article 2 of the ICESCR] comprises both an "obligation of conduct" and an "obligation of result". The obligation of conduct is "to take steps". While the full realization of the relevant rights may be achieved progressively, over a period of time, deliberate, concrete and targeted steps towards that goal must be taken by the government. The obligation of result is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the covenant. The concept of progressive realization [of economic, social and cultural rights], while being sufficiently flexible to reflect the realities of the real world and the difficulties involved for any country in ensuring the full realization of all the rights in the shortest possible time, nevertheless*

*imposes a clear obligation to move as expeditiously and effectively as possible towards that goal, utilizing the maximum resources available to that country. Corruption runs counter to both obligations.'*

<sup>19</sup> The Bakwanga Mining Company -- Bakwanga is the former name of the town of Mbuji-Mayi.

<sup>20</sup> This was the figure given by a senior MIBA official interviewed by Amnesty International in October 2001.

<sup>21</sup> *Société congolaise d'Economie Mixte par Action à Responsabilité Limitée.*

<sup>22</sup> In an advertisement for MIBA carried in a supplement of *Jeune Afrique L'intelligent* in March 2002, MIBA claim credit for '*l'organisation de l'enseignement maternel, primaire et secondaire technique de qualité qui attirent autant les parents que les élèves*' (the organisation of quality nursery, primary and secondary education which attracts parents just as much as pupils). However, some local residents claim that insufficient funds are made available to ensure the proper daily functioning of these institutions. In Mbuji-Mayi it is estimated that only 13% of girls attend school, while up to 600,000 children in the Mbuji-Mayi basin are estimated to be illiterate.

<sup>23</sup> The River Lubilanji flows through part of the *polygone* concession, a few hundred metres within the official perimeter of the *polygone*. However, the river itself appears to be generally regarded by the illegal miners, and indeed often by the MIBA guards themselves, as forming one of the *de facto* boundaries of the concession. Miners therefore consider that they do not put themselves in an illegal position until they have crossed this river and generally MIBA guards do not patrol the far side of the river, although there have been instances when guards have pursued illegal miners across the river and shot at them. The boundaries of the concessions are further blurred by the fact that some small villages are actually located wholly or partially within the concessions. During their visit to the *polygone* Amnesty International delegates saw several local villagers making their way through parts of the concession; some were also tending to crops there.

<sup>24</sup> However, with the frontlines in the conflict currently some distance away from Mbuji-Mayi, the immediate threat to the security of the MIBA concessions comes not from the armed opposition, but from illegal civilian miners.

<sup>25</sup> On 13 September 2002 a ceremony was held at Mbuji-Mayi's airport to mark the supposedly imminent withdrawal of Zimbabwean troops from the DRC, following the signing of accords between the DRC government and the governments of Rwanda and Uganda as part of an ongoing peace process. However, at the end of September 2002 there continued to be a Zimbabwean military presence in Mbuji-Mayi.

<sup>26</sup> A South African company called Intervid is reportedly assisting MIBA in developing and expanding its electronic surveillance systems. Another contract to assist in the guarding of MIBA's concessions has reportedly been signed with a Belgian company, but the name of the company is not currently known to Amnesty International.

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<sup>27</sup> These principles of law enforcement are discussed in more detail in the section entitled *Training MIBA's guards* beginning on page 20 below.

<sup>28</sup> These illegal forays into the concessions are not generally conducted in haste. Illegal miners will often spend several hours at a time in the concessions, particularly at night, to maximize their gains as much as possible. It would be more difficult for them to spend so much time in the concessions without being detected, if they did not come to an arrangement with the guards. In this way, these illegal forays can take on something of the character of official mining shifts.

<sup>29</sup> Interview with a church official, October 2001

<sup>30</sup> See the section beginning on page 20 below entitled *Training MIBA's guards* for a fuller discussion of relevant law enforcement standards.

<sup>31</sup> Villagers report that other miners have also been shot, like Dibua Brinch, on the Luamuella side of the River Lubilanji, which the villagers consider to be outside the MIBA concessions and where they consider they have every right to bathe, draw water and engage in artisanal mining.

<sup>32</sup> In a further example of the absence of a single chain of command at MIBA, suspected illegal miners who are apprehended in the concessions by soldiers rather than *blondos* are taken instead to a military camp known as Lufualanga, located on the outskirts of the *polygone*. Amnesty International has no information on the number of detainees held at this camp or on their conditions of detention.

<sup>33</sup> International standards recommend that children detained pending trial should be segregated from adults, except where this would not be in the best interests of the child. See Article 10(2)(b) of the International Covenant on Civil and Political Rights (ICCPR) and Article 37(c) of the Convention on the Rights of the Child (CRC). These instruments also discourage the pre-detention trial of juveniles and recommend that in cases where juveniles are detained, their cases are to be given the highest priority and handled as quickly as possible to minimize the period of pre-trial detention.

<sup>34</sup> MIBA employees suspected of theft or embezzlement have also been tried before the COM, sometimes on charges of treason. The authorities have sought to justify the charge of treason on the grounds that MIBA is a key contributor to the war effort and that criminal actions against the company therefore amount to sabotaging the war effort.

<sup>35</sup> The legal obligations on the authorities under international law to prevent and to investigate suspected unlawful killings and to bring perpetrators to justice are quite explicit. In addition to the International Covenant on Civil and Political Rights, to which the DRC is a state party, other instruments of international law relevant to this context include the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>36</sup> ‘Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts [...].’ Article 19, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

‘Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.’ Article 24, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>37</sup> ‘There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions [...] Governments shall maintain investigative offices and procedures to undertake such enquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death [...].’ Article 9, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

<sup>38</sup> ‘In cases in which established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies of other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry [...].’ Article 11, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

<sup>39</sup> ‘Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice [...].’ Article 18, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

<sup>40</sup> Many of the issues raised in this section, as well as other issues relating to law enforcement, are covered in Amnesty International’s *10 Basic Human Rights Standards for Law Enforcement Officials* (AI Index: POL 30/04/98), December 1998. Instruments of international law which are directly relevant in this context include the United Nations (UN) Code of Conduct for Law Enforcement Officials, the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. More generally, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which the DRC is a state party, set out the fundamental human rights of an individual which states are obliged to uphold. These include the right to life. On 20 December 2000 a relevant set of guidelines called the *Voluntary Principles on Security and Human Rights* was published following consultations between a coalition of non-

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governmental organisations, including Amnesty International, and the UK and US governments – see [www.state.gov/g/drl/rls/2931.htm](http://www.state.gov/g/drl/rls/2931.htm)

<sup>41</sup> As the commentary on Article 7 of the Code of Conduct for Law Enforcement Officials points out: *‘The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.’*

<sup>42</sup> *‘In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms [...] with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.’* Article 20, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>43</sup> *‘The term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.’* Commentary (a) on Article 1 of the Code of Conduct for Law Enforcement Officials. All of those responsible for guarding MIBA’s concessions exercise these powers and so should be regarded as law enforcement officials.

<sup>44</sup> *‘Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.’* Article 4, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>45</sup> *‘Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.’* Article 19, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>46</sup> *‘Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the immediate threat of death or serious injury [...] In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.’* Article 9, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>47</sup> *‘Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...] Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;’* Article 5(c), UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>48</sup> *‘Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.’* Article 6, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

*‘Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). [...] In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.’* Article 22, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<sup>49</sup> It should be stressed that even in the context of armed conflict many provisions of international law remain absolutely binding: *‘[...] extra-legal, arbitrary and summary executions [...] shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity [...]’* Article 1, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

<sup>50</sup> *‘In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorised by law to use force and carry firearms.’* Article 2, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

<sup>51</sup> For a fuller discussion of the human rights obligations of businesses, please refer to Amnesty International’s *Human Rights Principles for Companies* (AI Index: ACT 70/01/98), January 1998.

<sup>52</sup> The Universal Declaration of Human Rights calls on *‘every individual and every organ of society’* to play its part in securing universal observance of human rights.

<sup>53</sup> Relevant instruments of international law on which MIBA might base its own code of corporate practice include the Universal Declaration of Human Rights, Conventions of the International Labour Organisation (ILO), the UN Basic Principles on the Use of Force and Firearms, the UN Code of Conduct for Law Enforcement Officials, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>54</sup> The best practice principles of the Diamond Trading Company, which is the rough diamond marketing arm of De Beers, can be viewed in full at the De Beers website: [www.debeersgroup.com/dtc/dtcBPPprinciples.asp](http://www.debeersgroup.com/dtc/dtcBPPprinciples.asp)

<sup>55</sup> See De Beers’ 1999 annual report.

<sup>56</sup> Quoted from a speech by Gary Ralfe, the Managing Director of De Beers Group, to the World Diamond Council in January 2001.

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<sup>57</sup> Peter Hain, former United Kingdom Minister for Africa, in a speech given at a conference on the global diamond trade, London, June 2000.

<sup>58</sup> The Revolutionary United Front (RUF) used profits from the sale of diamonds to sustain a bloody military campaign in Sierra Leone, which was notorious for the practice of RUF combatants deliberately amputating the limbs of defenceless civilians, including children and babies.

<sup>59</sup> *‘[...] Those persons conducting the investigation shall have at their disposal the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify [...].’* Article 10, UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions