

SUMMARY

The Legal Complaint against Argor-Heraeus S.A.

NOVEMBER 2013

The Open Society Justice Initiative is supporting a criminal complaint brought in Switzerland against the gold refiner, Argor-Heraeus. The complaint, filed by TRIAL, a Swiss NGO, accuses the company of illegally processing almost three tons of gold pillaged from the Democratic Republic of Congo.

I. The Complaint

TRIAL, a Swiss NGO focused on fighting impunity for grave crimes, believes Argor-Heraeus S.A. to be guilty of the crime of money-laundering, in its handling of goods pillaged during an armed conflict. On November 1, 2013, TRIAL filed a criminal complaint to this effect with the Swiss federal prosecutor's office.

During the period 2004-2005, Argor-Heraeus refined almost three tons of gold ore pillaged from the Democratic Republic of Congo by an armed group whose activities were financed by the traffic in this gold ore. According to TRIAL, Argor-Heraeus knew, or at the least should have assumed, that this raw material was the proceeds of pillage, which is a war crime. TRIAL is asking that the Swiss prosecutors investigate the complaint.

II. Origins of the Case

In 2004 the UN Security Council set up UN Group of Experts for the Democratic Republic of Congo to evaluate the effectiveness of the UN arms embargo on the DRC put in place the previous year. In its reports, the Group of Experts identified several entities involved in illegal appropriation and smuggling of gold from the northeast of the DRC. These included the British, Jersey Channel Island company Hussar Ltd. and Argor-Heraeus S.A., a Swiss precious metals refiner.

Documents showed that pillaged gold, mined in an area called Concession 40 in the Ituri region, had been shipped via Uganda to Switzerland to be processed into ingots by Argor-Heraeus. According to the Group of Experts, the Swiss company could not have been unaware that the gold in question had been pillaged from the DRC.

Kathi Lynn Austin, a member of the UN Group of Experts specialized in arms trafficking, continued to investigate Hussar and Argor-Heraeus after leaving the Group of Experts, until 2012. With the support of the Open Society Justice Initiative, Ms. Austin gathered new evidence demonstrating that the gold refined in Switzerland had been sourced illegally.

The evidence was relayed to TRIAL at its request, which worked on the case for a year, before deciding to ask the Swiss judicial authorities to investigate Argor-Heraeus.

The principle complaint against Argor-Heraeus addresses suspected involvement

in laundering the proceeds of a major crime (*blanchiment aggravé*).

III. Background

Beginning at the end of the 1990s, the Ituri region was the focus of gold pillaging by armed groups that successively sought to control it. In 2003, the *Front Nationaliste Intégrationniste* (FNI), a group set up with the support of neighboring Uganda, took control of Concession Area 40 and used gold from this area to finance its operations and to buy arms, in breach of the UN arms embargo.

A significant part of this gold was sold in Uganda by Dr. Kisoni Kambale, a Congolese gold trader, to a Kampala-based company, Uganda Commercial Impex Ltd. (UCI). UCI resold the gold in turn to the Jersey-based British company Hussar.

To market the gold, Hussar needed to send the tainted ore for refining. Until the summer of 2004 the gold was refined by South Africa's Rand Refinery, which has confirmed that it stopped working with Hussar because it suspected the gold had been acquired illegally. Argor-Heraeus took over from Rand beginning in July 2004, and refined almost three tons of gold up to May 2005.

Argor-Heraeus maintains that it ceased to refine gold for Hussar's account in June 2005, after "learning from the press regarding the disorders in the region of the DRC with potential implication for the gold trade." But, according to TRIAL, several pieces of evidence show that the refinery could not have been ignorant of either the scale of the conflict nor of the source of this gold.

The war and the illegal commerce in gold that had been going on for several years in the Great Lakes region had been the subject of intense media coverage. Argor-Heraeus, with its own compliance department, could not have been unaware of this fact. It was also well known that gold exported from Uganda could not have been produced in Uganda itself, which produced negligible quantities of the metal. Finally, Argor-Heraeus continued to refine gold from Hussar after January 2005, despite the fact that Hussar and UCI had been identified for their role in gold pillage by the UN Group of Experts on DRC in a report that was extensively covered in the media.

The UN Group of Experts recommended that both Hussar Ltd. and Argor-Heraeus be sanctioned for violating the UN arms embargo on the DRC, since purchasing and refining this gold both constituted support for the FNI. But the sanctions committee of the Security Council took no action against Argor-Heraeus, or any other European company involved in this illicit trade. African businesses and

individuals, including both UCI and Dr. Kisoni Kambale, were subject to heavy sanctions.

IV. The Evidence

The allegations in this case depend on extensive evidence, including:

- Accounting documents from Hussar, covering gold purchases between May 21, 2003, and April 1, 2005, including codes that refer to the sources, including Dr. Kisoni Kambale, the business associate of the FNI armed group.
- Permits for the import into Uganda, and export from Uganda of gold, indicating its origin as the Democratic Republic of Congo.
- Data from the Ugandan ministry of mines and other official sources indicating that Ugandan production represented only a tiny proportion of its gold exports.
- Reports from the UN Group of Experts on the DRC.
- Reports and testimony from Kathi Lynn Austin in 2012.
- NGO reports on the situation in the Ituri region.
- Media reports in Switzerland and internationally indicating that the extent of the problem of pillage in DRC was a publicly-known fact at the time of these events.

V. What Happens Next?

Under Swiss law, a criminal complaint, or *dénonciation pénale*, can be filed with the federal prosecutor's office by any private citizen who has knowledge of or

suspects a criminal act. The federal prosecutor assigned to the case then reviews the allegations and evidence presented, and decides whether or not to launch an official investigation, which may result in criminal charges.

The complaint also alleges the direct involvement in the pillage of Hussar Ltd. and of Jonathan Graff, the director of Hussar's London service affiliate, Hussar Services Ltd.(and also the settlor and a discretionary beneficiary of the trust that owns Hussar Ltd.). Jurisdiction could lie in the UK, in Jersey and potentially other jurisdictions.

www.justiceinitiative.org



The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.

OPEN SOCIETY JUSTICE INITIATIVE