

## THE COMPLEXITY OF RESOURCE GOVERNANCE IN A CONTEXT OF STATE FRAGILITY: THE CASE OF EASTERN DRC

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## **The complexity of resource governance in a context of state fragility: The case of eastern DRC**

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## List of Acronyms

<b>ADF / NALU</b>	Allied Democratic Forces – National Army for the Liberation of Uganda
<b>AGK</b>	Ashanti Goldfields Kilo
<b>ANORI</b>	Association des négociants d’or
<b>ANR</b>	Agence Nationale de Renseignements
<b>APC</b>	Action pour la Paix et la Concorde
<b>ASM</b>	Artisanal and small-scale mining
<b>BGR</b>	Bundesanstalt für Geowissenschaften und Rohstoffe
<b>BVBA</b>	Besloten Vennootschap met Beperkte Aansprakelijkheid
<b>CAMI</b>	Cadastre Minier
<b>CdC</b>	Cadre de Concertation Minière
<b>CEEC</b>	Centre d’Evaluation, d’Expertise et de Certification
<b>CNDP</b>	Congrès National pour la Défense du Peuple
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>COMIAK</b>	Coopérative Minière et Agricole de Kamole
<b>COMIKA</b>	Coopérative Minière de Kalimbi
<b>COOMBECKA</b>	Coopérative du Bien-être de Kalehe
<b>DFID</b>	UK Department for International Development
<b>DGM</b>	Direction Générale de Migration
<b>DRC</b>	Democratic Republic of Congo
<b>EAD</b>	Entités Administratives Décentralisées
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>FAR</b>	Forces Armées Rwandaises
<b>FARDC</b>	Forces Armées de la République Démocratique du Congo
<b>FDLR</b>	Forces Démocratiques pour la Libération du Rwanda
<b>GLBT</b>	Gold Link Burundi Trading
<b>GTZ</b>	Deutsche Gesellschaft für Technische Zusammenarbeit
<b>ICG</b>	International Crisis Group
<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>IRIN</b>	Integrated Regional Information Networks
<b>ITSCi</b>	ITRI Tin Supply Chain Initiative
<b>ITRI</b>	International Tin Research Initiative
<b>Kg</b>	Kilogram
<b>KBNP</b>	Kahuzi Biega National Park
<b>MONUC</b>	Mission de l’Organisation des Nations Unies en République Démocratique du Congo
<b>MONUSCO</b>	Mission de l’Organisation des Nations Unies pour la Stabilisation du Congo
<b>MSA</b>	Minerals Supply Africa
<b>NGO</b>	Non-governmental organisation
<b>OCC</b>	Office Congolais de Contrôle
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OGP</b>	Observatoire Gouvernance et Paix
<b>OKIMO</b>	Office des Mines d’Or de Kilo-Moto
<b>PARECO</b>	Patriotes Résistants Congolais
<b>PNC</b>	Police Nationale Congolaise
<b>RCD</b>	Rassemblement Congolais pour la Démocratie
<b>RN</b>	Route Nationale
<b>SAESSCAM</b>	Service d’Assistance et d’Encadrement du Small-Scale Mining
<b>SAKIMA</b>	Société Aurifère du Kivu-Maniema

<b>SARL</b>	Société à Responsabilité Limitée
<b>SEC</b>	Securities and Exchange Commission
<b>SMDG</b>	Société Minière de Goma
<b>TMK</b>	Transports et Messageries au Kivu
<b>UAE</b>	United Arab Emirates
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UPC</b>	Union des Patriotes Congolais
<b>US</b>	United States



# Introduction

By Jeroen Cuvelier

## Resource Governance and State Fragility in the DRC

Non-industrial mining, carried out by vast numbers of men, women and children working for themselves, is rising fast in resource-rich Third World countries such as the Democratic Republic of Congo. In 2003, artisanal and small-scale mining (ASM) provided direct employment to an estimated 11.5 million to 13 million people around the world<sup>1</sup>. In Sub-Saharan Africa, the processes of globalisation, economic liberalisation and political transformation have helped to generate unprecedented interest in mineral resources on the part of impoverished ordinary people, entrepreneurs, traders, rebels and badly paid army officers<sup>2</sup>. Hundreds of thousands of prospective workers have travelled to artisanal mining sites in the hope of finding a new source of income<sup>3</sup>.

In spite of its spectacular expansion, however, ASM has not shaken off its negative reputation among policymakers and development specialists. The sector is frequently presented as technologically backward and inefficient, with limited potential for poverty reduction. Moreover, these circles assume the sector is almost ungovernable due to the large number of actors involved, the lack of binding property rights for artisanal miners, the virtual absence of written contracts and the inherently ephemeral nature of artisanal digging activities. Since those attracted to artisanal mining are predominantly young people - many of them from poor backgrounds - these commentators suspect that the potential for conflict in artisanal mining areas is relatively high<sup>4</sup>.

Eager to get a firmer grip on the sector, several donor bodies and international institutions have made considerable efforts to formalise ASM activities and to improve the livelihoods of artisanal miners. The World Bank has provided financial support to countries such as Democratic Republic of Congo (DRC), Ghana, Mali, Nigeria and Tanzania, with a view to encouraging their ASM sectors to take on more formal trappings. Meanwhile, the European Union, the International Labour Organisation and the UN Industrial Development Organisation have financed projects in the fields of environmental management, labour, alternative livelihoods and technological development<sup>5</sup>.

Unfortunately, these policy interventions have not always yielded the desired results. The main explanation for this appears to be insufficient insight into what really goes on in the mining areas and the trading centres. It is vitally important that initiatives aimed at reforming the artisanal mining industry are based on a thorough knowledge and grasp of the political, economic and social dynamics at the grassroots level. As Hilson has rightly pointed out, *'a poor understanding of artisanal, mine-community dynamics and operators' needs has, in a number of cases, led to the design and implementation of inappropriate support schemes and interventions*<sup>6</sup>.

1 'Why is artisanal gold mining activity so ubiquitous in rural Ghana', Gavin Hilson & Clive Potter (2003), in: *African Development Bank*: p. 240.

2 'Artisanal gold mining at the margins of mineral resource governance: a case from Tanzania', Eleonor Fisher (2008), in: *Development Southern Africa*, vol. 25, nr. 2: p. 199.

3 'Small-scale mining, rural subsistence and poverty in West Africa', Gavin Hilson (ed.) (2006), Warwickshire: Practical Action; 'Citizens, subjects or a dual mandate? Artisanal miners, 'supporters' and the resource scramble in Sierra Leone', Sylvia Ojukutu-Macauley & Andrew K. Keili (2008), in: *Development Southern Africa*, vol. 25, nr. 5: pp. 513-530; 'Mining in Africa: regulation and development', Bonnie Campbell (ed.) (2009), Uppsala: Nordic Africa Institute.

4 'Building peace with conflict diamonds? Merging security and development in Sierra Leone', Philippe Le Billon & Estelle Levin (2009), in: *Development and Change*, vol. 40, nr. 4: pp. 698-700.

5 'What is wrong with the Global Support Facility for small-scale mining?' Gavin Hilson (2007), in: *Progress in Development Studies*, vol. 7, nr. 3: pp. 236-237.

6 'What is wrong with the Global Support Facility for small-scale mining?' Gavin Hilson (2007), in: *Progress in Development Studies*, vol. 7, nr. 3: p. 235.

The aim of this research report is to analyse the trading networks within the mining sector and their links to military, economic and political actors in eastern DRC. Although a host of publications over the last decade have highlighted the important role played by coltan, gold and cassiterite in the region's ongoing conflict, there is still little awareness of the modus operandi of the various actors involved in the exploitation and trade of these minerals. More information is needed about the ways in which people at different levels of the commodity chain operate against the backdrop of state fragility.

Contrary to common assumptions, state fragility is not synonymous with anarchy or chaos. It is not because a state is fragile that there are no forms of governance at the local level<sup>7</sup>. When formal government institutions are absent, ineffective or illegitimate, their place is frequently taken – either partly or entirely - by non-state actors such as international institutions, non-governmental organisations and even private companies<sup>8</sup>. So, even though Congo is generally considered a prototypical example of a fragile state – it has lost control over part of its territory, fails to offer decent public services to its citizens and has a malfunctioning administration<sup>9</sup> – this does not necessarily mean that natural resource governance in eastern DRC is non-existent.

In the following sections, we will discuss in more detail which geographical areas have been targeted, which research themes have been covered, and what kinds of data have been collected.

## Geographical Focus

As far as the geographical focus of this study is concerned, we have chosen to concentrate on regions in eastern DRC where artisanal mining is a significant economic activity, pushing people out of agricultural employment and offering political, economic and military players an opportunity to generate more revenue for themselves. The areas concerned are the provinces of North and South Kivu, and Ituri in Orientale Province.

Ituri deserves attention because it holds important gold deposits and has a sizeable population of artisanal miners. It has also been the scene of bloody confrontations between various armed groups in the past, an additional motive for investigation. Reports by Human Rights Watch<sup>10</sup>, Amnesty International<sup>11</sup> and International Crisis Group<sup>12</sup> have documented how Ugandan and Rwandan forces as well as local militias such as the *Union des Patriotes Congolais* (UPC) have benefited from Ituri's gold in the Second Congo War, from 1998 to 2003.

Just like Ituri, North and South Kivu are resource-rich regions with high levels of insecurity and human rights violations. While the Kivus contain significant deposits of coltan, cassiterite, wolframite (tungsten) and gold, both the ordinary population and people working in the mines suffer various types of abuse and harassment from armed groups. The fragility of the state in these two war-torn provinces makes it essential to investigate the issue of resource governance<sup>13</sup>.

7 'The power of protection: governance and transborder trade on the Congo-Ugandan frontier', Timothy Raeymaekers (2007), unpublished PhD dissertation, University of Ghent.

8 'Local governance in fragile states', Helen Maria Kyed & Lars Engberg-Pedersen (2008), DIIS policy brief (fragile situations).

9 'Public service provision in a failed state: looking beyond predation in the Democratic Republic of Congo', Theodore Trefon (2009), in: *Review of African Political Economy*, nr. 119: pp. 9-21.

10 "'Covered in blood": ethnically targeted violence in Northeastern DR Congo', Human Rights Watch (2003).

11 'On the precipice: the deepening human rights and humanitarian crisis in Ituri', Amnesty International (2003).

12 'Congo crisis: military intervention in Ituri', International Crisis Group (2003), Africa Report nr. 64.

13 'Blood minerals: the criminalization of the mining industry of eastern DRC', Pole Institute, August 2010.

## Research Themes

With regard to the main research themes in this report, we have decided to concentrate our attention on three topics: (1) the modus operandi of mineral trading networks, (2) the impact of the local political economy on the mining sector, and (3) the militarisation of the mining sector.

### The modus operandi of mineral trading networks

What do we mean by mineral trading networks and why is it important to examine their modus operandi? Readers should bear in mind that eastern DRC's mining sector cannot be adequately understood without taking into account the inherently regional nature of the mineral trade in this part of Sub-Saharan Africa. Before reaching their final destination, minerals extracted in eastern DRC have to pass through one of the country's neighbours, such as Burundi, Rwanda, Tanzania or Uganda<sup>14</sup>.

The transfer of substantial quantities of minerals from artisanal mines in the Congolese interior to the coast of the Indian Ocean (and beyond) requires the involvement of a large number of people operating along various trading routes. Since these people usually work together in a close and regular manner - that is to say, their cooperation is not limited to a single transaction - it seems fitting to conceive of them as networks.

Our motives for examining the modus operandi of the networks involved in eastern DRC's mineral trade are twofold. First of all, we believe that national and international initiatives to reform the artisanal mining business in eastern DRC can only succeed if guided by a clear idea of who is doing what and how, not only at the downstream level of the supply chain but also at the upstream level. Policymakers need a thorough understanding of the roles of the various actors involved in the mining and trading of Congolese minerals. Detailed, up-to-date knowledge of how the mining business works is absolutely essential for any future policy interventions to be effective.

Secondly, we think it is crucial to have descriptions of the mineral trading networks in the Great Lakes area of central Africa at regular intervals, because these networks are known to adapt fairly rapidly to changing political and economic conditions in the region. As time goes by, networks are likely to undergo changes, new actors become involved, new alliances are formed and new trading strategies emerge. Regular research and documentation of the mining trade in eastern DRC will help us to understand trends and developments far better.

### The impact of the local political economy on the mining sector

The second theme that we intend to explore in this report is the impact of eastern DRC's political economy on the local mining sector. It goes without saying that mining and trading minerals does not take place in a vacuum. Both activities are heavily affected by the political and economic agendas of influential actors in eastern DRC<sup>15</sup>. Taking advantage of the ongoing lack of peace and public order in the east, several members of local elites have used their involvement in the mining business to develop and sustain patron-client relationships: they have used their mining revenues to reward supporters and followers for their loyalty<sup>16</sup>. In a number of cases, leaders of armed groups have also used mineral revenues to buy military equipment on the international market or pay foot soldiers.

That being said, it is important to emphasise that the primary aim of this report is not to reveal unknown cases of illicit resource extraction financing war. Neither is our intention to unveil new cases of corruption in the mining business. Our desire is for the case studies in this report

14 'Voices from the inside: local views on mining reform in eastern DR Congo', Swedwatch & Finnwatch (2010): p. 10.

15 'Identity, space and the political economy of conflict in Central Africa', Kevin Dunn (2005), in: 'The geopolitics of resource wars: governance and violence', Philippe Le Billon (ed.) (2005), London/ New York: Frank Cass: p. 246.

16 'Democratic Republic of the Congo: undoing government by predation', Edward Rackley (2006), in: *Disasters*, vol. 30, nr. 4: pp. 417-432.

to illustrate and analyse some of the mechanisms and patterns observed in the field of resource governance in eastern DRC.

### Militarisation of the mining sector

The third and final theme of this research report is the militarisation of the mining sector in eastern DRC. In order to understand this, we must take into account the longstanding inefficiencies of the Congolese army as well as the lack of progress in reforming the country's security sector. Plans to reform the Congolese security sector were first made in 2002, towards the end of the second Congolese war. The Global and Inclusive Peace Agreement stipulated that the armed forces of all signatories automatically became soldiers of the new Congolese army FARDC (*Forces Armées de la République Démocratique du Congo*). Subsequently, they had a choice between joining the voluntary national programme for disarmament, demobilisation and reintegration - which was supposed to help them reintegrate into civilian life - or stepping into the new structure of the Congolese national army<sup>17</sup>.

The process of military integration was called *brassage* or “intermingling”. The aim of *brassage* was to bring all soldiers – not just the pro-government forces, but also those of former rebel movements and militias – together into one single army. Members of the new army were to be re-trained, re-equipped and made to comply with the new hierarchy.<sup>18</sup>

Unfortunately, *brassage* has not gone as smoothly as one would have wished. Apart from the fact that it has suffered from underfunding and slow implementation, the process has also been accused of inadequate training, under-equipment and insufficient screening of new recruits. The problems were exacerbated by the accelerated integration of two large groups of former rebels in 2009.

The militarisation of the mining sector undermines the efficiency of security sector reform because soldiers and military officers are more focused on their interests in the mineral trade than on carrying out military orders. Following the example of Zairian soldiers during the era of Joseph Désiré Mobutu, who amassed vast personal wealth during his presidency, unpaid members of the FARDC extort their “salary and benefits” from the Congolese population<sup>19</sup>. They impose illegal taxes on people working in the mining areas, subject them to forced labour and forcefully take possession of the most productive pits in the mine. Needless to say, all these practices are completely at odds with the spirit of security sector reform.

The case studies in this report contain recent data on the involvement of state and non-state armed actors in the mining trade of eastern DRC. The research shows that military officers and their subordinates continue to view the mining sector as one of their principal supplementary sources of income. In order to demilitarise the mining sector, both the Congolese government and international donors will need to do everything within their power to put security sector reform back on track.

## Methodology

In order to collect data for this research report, three research teams of two people each visited one of the three research areas (Ituri, North Kivu or South Kivu) to conduct semi-structured interviews with various stakeholders in the mining trade of eastern DRC. In the following sections, we discuss some of the methodological obstacles this research project encountered.

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17 'Security sector reform in the Congo', International Crisis Group (2006), Africa Report nr. 104.

18 'Demilitarizing mining areas in the Democratic Republic of the Congo: the case of Northern Katanga province', Ruben De Koning, SIPRI Insights on Peace and Security, nr. 2010/1: p. 8.

19 'Democratic Republic of the Congo: undoing government by predation', Edward Rackley (2006), in: *Disasters*, vol. 30, nr. 4: p. 421.

### Difficulty obtaining reliable quantitative data

One of the challenges of research in a state as fragile as the Democratic Republic of Congo is the difficulty in obtaining reliable information on economic transactions. This is not only due to the lack or absence of official data and statistics<sup>20</sup>, but also to the fraudulent practices that pervade public administration<sup>21</sup>. For instance, goods may cross the border under the cover of falsified export documents. In such cases, customs officers may either change the identity, the value or the quantity of the goods on the official forms in order to allow the exporter to evade certain taxes. Given the widespread nature of this type of fraud throughout the Great Lakes region, researchers studying cross-border trade should be aware that a substantial part of international trade flows does not show up in official statistics<sup>22</sup>.

Nevertheless, there are two reasons why the contributors to this volume have still decided to gather as much statistical material as possible. First of all, collecting Congolese statistical information can pave the way for interesting comparative research at the regional level. A comparison of Congolese import and export data with similar data from neighbouring countries provides a good impression of trade flows across the entire region<sup>23</sup>. Secondly, statistical information from various sources inside the DRC can be vitally important in detecting unofficial trade flows. When various government agencies turn out to have different figures for the same trade flow, this is a good reason to suspect fraud<sup>24</sup>.

### Security risks

It goes without saying that research on mining issues in eastern DRC is extremely risky. In the course of this project, the contributors to this volume were confronted with a volatile military situation in the Congolese interior on top of their remit to investigate a highly sensitive topic. After the publication of several reports by expert panels of the United Nations and NGOs such as Global Witness, few people are willing to talk openly about what goes on in the mining business. While some people are afraid of reprisals if they dare to denounce certain abuses, others prefer to remain silent because they do not want to jeopardise the lives of people around them.

Nonetheless, the importance of the security situation in eastern DRC for the feasibility of the research project should not be exaggerated. As Vlassenroot has rightly pointed out in an article on the challenges of doing fieldwork in the Kivu region, successful research does not only depend on the level of insecurity, but also on the researcher's contacts with local actors or partners (among other things)<sup>25</sup>. In the following sections, we explain how Congolese researchers were deployed for this research project.

### The need to work with local partners

Research on mineral trade and exploitation in eastern DRC has proved to be impossible without the assistance of local people<sup>26</sup>. It is only thanks to the help of Congolese researchers that the contributors to this volume managed to gain the confidence of informants in a wide variety of contexts, ranging from mining zones in the Congolese interior to trading houses in cities such as Goma and Bukavu. It should be noted that we prioritised partnerships with individuals who had

20 'War and social research: the limits of empirical methodologies in war-torn environments', Koen Vlassenroot (2006), in: *Civilisations*, vol. 54, nrs. 1-2: pp. 196-197.

21 'Everyday corruption and the state: citizens and public officials in Africa', Giorgio Blundo & Jean-Pierre Olivier de Sardan (eds.) (2006), London: Zed Books.

22 'Les mesures de la dissimulation: les méthodes de recherche en sciences sociales face à la falsification de l'économie congolaise', Benjamin Rubbers (2006), in: *Civilisations*, vol. 54, nrs. 1-2: p. 58.

23 'Les mesures de la dissimulation: les méthodes de recherche en sciences sociales face à la falsification de l'économie congolaise', Benjamin Rubbers (2006), in: *Civilisations*, vol. 54, nrs. 1-2: p. 59.

24 'Research on Sub-Saharan Africa's unrecorded international trade: some methodological and conceptual problems', Stephen Ellis & Janet MacGaffey (1996), in: *African Studies Review*, vol. 39, nr. 2: p. 28.

25 'War and social research: the limits of empirical methodologies in war-torn environments', Koen Vlassenroot (2006), in: *Civilisations*, vol. 54, nrs. 1-2: pp. 192-193.

26 'Research on Sub-Saharan Africa's unrecorded international trade: some methodological and conceptual problems', Stephen Ellis & Janet MacGaffey (1996), in: *African Studies Review*, vol. 39, nr. 2: p. 25.

already worked for us on previous occasions. We knew that these people could be trusted, that they had a large number of contacts in the mining sector and that they had excellent research and writing skills. We remained in close contact after our return from the field, which gave us the opportunity to fill some of the remaining gaps in our research and allowed us to keep abreast of the latest developments in the mining sector<sup>27</sup>.

## Chapter Overview

The report is divided into 11 chapters. In chapter 1, Dan Fahey presents an analysis of the gold trade in the Ituri district of the Orientale Province. He sheds interesting light on the modus operandi of gold trading networks by zooming in on the interaction between various actors at the bottom end of the supply chain. Furthermore, he suggests that the activities of these actors take place in a grey zone between legality and illegality. It is clear from Fahey's analysis that the gold trade in Ituri is still largely unofficial and unrecorded.

In chapter 2, Dan Fahey takes a look at what the Congolese government is currently doing to formalise the gold trade in the Ituri district. He shows that attempts to transform the unofficial nature of the gold trade have not yet produced the desired results. According to Fahey, the government should develop incentives to encourage traders to buy and sell gold in a more legal and transparent manner. In addition, the authorities should be prepared to deal with the consequences of a future clash between industrial and artisanal mining in Ituri. Forceful evictions of artisanal miners are likely to cause severe tensions and conflicts.

In chapter 3, Sara Geenen takes us to Butembo, an important gold trading centre in North Kivu. She reports that the "name and shame" reports of NGOs and expert panels of the United Nations have had a negative effect on the mineral trade in this part of eastern DRC: gold traders feel stigmatised and criminalised by the international community and, as a result, are not prepared to support initiatives aimed at making the trade more transparent. Geenen argues that reform initiatives by the Congolese government are not only hampered by the lack of cooperation from the gold traders, but also by the local administration's lack of capacity.

In chapter 4, Sebastien Melmoth<sup>28</sup> describes how mining and trade in cassiterite in the territory of Walikale, North Kivu, is marred by the militarisation of the mining sector and unequal power relations at the mines. The chapter provides a clear description of the complexity of resource governance at the grassroots level.

In chapter 5, Ruben de Koning analyses the modus operandi of members of gold trading networks operating along the axis of Bukavu-Uvira-Bujumbura. De Koning's findings confirm that the gold trade in eastern DRC largely escapes government control. His analysis also throws into relief the negative implications of the militarisation of the mining sector: there are indications that officers of the Congolese national army are heavily involved in illegal gold trafficking, and it also appears that non-state armed groups such as the FDLR are using the gold trade to finance their war effort. Just like in Ituri, efforts of the Congolese government to formalise the gold trade have remained fruitless so far.

In chapter 6, Ruben de Koning concentrates on the mining and trade in cassiterite along the Lulingu-Nzovu-Nzibira axis. He demonstrates that military campaigns against extremist Hutu forces have not made the mines in this area "conflict free". The militarisation of the mining sector continues to be a serious problem.

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<sup>27</sup> For a list of contacts, see the annexes to this report.

<sup>28</sup> This is a pseudonym. For security reasons, the author prefers to conceal his real identity.

In chapter 7, Jeroen Cuvelier takes the example of the mine of Nyabibwe to illustrate the complex conflict dynamics at the grassroots level. He argues that policymakers attempting to solve the problem of “conflict minerals” should look closely at the region’s history and the sociocultural context in which mining activities take place. The case study on Nyabibwe shows that the relationship between artisanal mining and conflict in eastern DRC cannot be properly understood without taking into account the issues of land, identity, legal pluralism and migration.

In chapter 8, Cuvelier examines the relationship between artisanal mining and conflict on the island of Idjwi. The chapter suggests that it is important to take into account the role of traditional customary authorities in the mining business in eastern DRC. It also shows that further research is needed on the interplay between traditional land tenure systems and artisanal mining activities in this part of the country.

Finally, chapters 9 and 10, written by Rachel Perks, Koen Vlassenroot and Jason Stearns, describe some of the implications of this report’s research findings for future policy initiatives.

# Chapter 1: The Informal Trade in Ituri's Gold

By Dan Fahey

This case study concerns the unofficial gold trade in the Ituri district, with a focus on the trade operating through Bunia. We highlight recent trends, including new actors and new destinations for Ituri's gold.

## 1.1 Gold Production in Ituri

Gold production in Ituri is mainly artisanal, with some semi-industrial production. Regulation of gold production has been shared since November 2009 between the national *Office des Mines de Kilo Moto* (OKIMO), the government of Orientale province and SAESSCAM (*Service d'Assistance et d'Encadrement du Small-scale and Artisanal Mining*, a technical service of the national mines ministry). OKIMO sells licenses for gold mining within its concession (Concession 38 in Haut-Uélé, and Concessions 39 and 40 in Ituri).

According to the provincial mines ministry, in 2009 there were approximately 123,000 artisanal miners in Ituri, working at approximately 235 sites. As the following table shows, the vast majority of these miners are in Concession 40, in western Djugu territory.

**TABLE : Estimates of Artisanal Miners, Mining Sites, and *négociants* in Ituri District, 2009<sup>29</sup>**

	Artisanal Miners	Mining Sites	Négociants
Mambasa	10,000	45	90
Irumu	6,000	30	60
Djugu	100,000	150	80
Mahagi	4,000	7	10
Aru	3,000	3	50
<b>TOTAL</b>	<b>123,000</b>	<b>235</b>	<b>290</b>

A number of semi-industrial mining operations are either planned or under way in Ituri district; many of the active sites involve dredges (alluvial mining). One of the companies using dredges is La Conmet Ltd, which a UN Panel of Experts has identified as having traded in coltan during the war<sup>30</sup>.

There are also several companies planning industrial-scale operations in Ituri. Kilo Goldmines Ltd, a Canadian mining company, is currently exploring for gold in Mambasa territory, although information on the company's website suggests it also holds the rights to explore for diamonds and gold in Irumu Territory.<sup>31</sup> Mwana Africa Plc, a South African mining company, is exploring for gold in Mahagi territory, within OKIMO's Concession 39.<sup>32</sup> Ashanti Goldfields Kilo (AGK), a joint venture between South African mining company AngloGold Ashanti (86.22 percent stake) and OKIMO (13.78 percent stake),<sup>33</sup> is planning to dig a large pit mine near Mongbwalu in

<sup>29</sup> 'Rapport Annuel, Exercice 2009', Bureau Minier Isole de District de l'Ituri', 15 January 2010: pp. 6-7.

<sup>30</sup> S/2002/1146: §109-111; 'Network war: an introduction to Congo's privatized war economy', Timothy Raeymaekers (2002), The Hague: Novib report.

<sup>31</sup> See <http://www.kilogold.net/properties/>, accessed on 5th August 2010.

<sup>32</sup> 'Updated gold resource estimate at Zani-Kodo', press release Mwana Africa Plc, 28th July 2010 [Source: [http://www.mwanaafrica.com/ir/press/2010/press\\_28jul10.asp](http://www.mwanaafrica.com/ir/press/2010/press_28jul10.asp), accessed on 5th August 2010.

<sup>33</sup> 'AngloGold Ashanti enters definitive joint venture with OKIMO regarding the AGK Project in the Democratic Republic of Congo', press release AngloGold Ashanti [Source: <http://www.anglogold.com/Additional/Press/2010/JV+agreement+with+Okimo.htm>, accessed on 5th August 2010].



OKIMO's Concession 40, starting perhaps in 2011. The Kibali Gold Project in Concession 39 (formerly known as the Moto Gold) is a joint venture between foreign companies AngloGold Ashanti and Randgold (90 percent combined stake), and OKIMO (10 percent stake).<sup>34</sup>

The levels of production in Ituri are difficult to ascertain. Many officials and traders mention a figure of 500 kg per month for production from both Ituri and Haut-Uélé, with approximately 60 percent (300 kg) from Ituri and 40 percent (200 kg) from Haut-Uélé; however, there is no apparent basis for this number. Time constraints prevented this report's researchers from travelling to Aru/Ariwara, so we have no current information on amounts of gold traded in those towns or estimates of how much of that originates in Ituri.

## 1.2 Structure of the Trade

Gold trading in Ituri happens in several stages. First, *négociants* acquire gold in Ituri's gold mining areas. Second, gold produced in Ituri and neighbouring Haut-Uélé district is traded in Ituri's main trading towns of Bunia and Ariwara. Third, *négociants* export gold from Ituri to Butembo (North Kivu), Kampala (Uganda), and Juba (Southern Sudan).

### 1.2.1 Mining and processing sites

Some gold is traded directly at mining and processing sites. Minor *négociants* or the representatives of major *négociants* visit mining and processing sites, particularly sites that are far from trading centres like Mongbwalu. In some cases, pit bosses or individual miners sell their gold to *négociants* who had provided financing for materials such as generators and fuel. In other cases, individual miners who process their own quartz may sell directly to *négociants* at processing sites.

### 1.2.2 Mongbwalu and other primary trading centres

The next level of trade happens in small trading centres, such as Mongbwalu. Individual miners, *sous-traitants*<sup>35</sup> and minor *négociants* travel to these centres, where they sell their gold to mid-level *négociants* or to the representatives of major *négociants* based in Bunia, Aru/Ariwara, or Butembo. In addition to Mongbwalu, other important trading centres are Kobu and Iga Barrière within the Kilo belt.

Some mid-level *négociants* in Mongbwalu and other small trading centres belong to a new, Bunia-based organisation called *L'Association des Négociants d'or* (ANORI). ANORI formed in early 2009 to organise *négociants* and to provide a focal point for them to interact with government agencies, about taxes, for example. As of July 2010, ANORI claimed to have approximately 100 members in Ituri. Many are in Bunia, but others are found in or near mining areas.

### Bunia

Approximately 50 to 60 *négociants* operate in Bunia, the main gold trading town in Ituri district. Of these, 10 are major *négociants* who buy from the smaller *négociants* and control the vast majority of gold exports from Bunia. Eight of these reportedly sell their gold in Kampala, while the other two take their gold to Butembo. Some of Bunia's major *négociants* have connections with specific buyers in Kampala; others sell their gold to whoever offers the best price. The major *négociants* transport their gold on commercial passenger flights (TMK or CETRACA) between Bunia and Butembo or Kampala; some transport gold by road through Mahagi-Paidha and on to Kampala.

<sup>34</sup> 'AngloGold/Randgold up Moto stake', Reuters, 2 November 2009, [Source: [http://www.miningmx.com/news/gold\\_and\\_silver/anglogold-randgold-up-moto-stake.htm](http://www.miningmx.com/news/gold_and_silver/anglogold-randgold-up-moto-stake.htm), accessed on 5th August 2010.

<sup>35</sup> The technical translation for *sous-traitant* is subcontractor, but the term is used locally to identify pit bosses who have legal rights to mining sites.

There are two export offices (“*comptoirs*”) operating in Bunia: COPED and OKIMO/MIKUBA. Both operate officially, that is to say, with government authorisation and paying government taxes. However, the *comptoirs* reportedly control only a small percent of the overall gold trade in Bunia.

### Aru/Ariwara

Aru and Ariwara in Aru territory are trading centres for gold originating in Haut-Uélé. Ariwara is approximately 50 km from the border with Sudan and 12 km from the border with Uganda; Aru is approximately 15 km southeast of Ariwara. In 2008 there were approximately 30 official *négociants* operating in Ariwara, plus an indeterminate number of unofficial *négociants*.<sup>36</sup> In the last few years, approximately 120 kg of gold, mainly from the Moto goldfields in Haut-Uélé district, may have flowed through Ariwara each month.<sup>37</sup> In 2010, there are four major gold traders in Aru/Ariwara. While traders reportedly export some gold from to Kampala, some traders reportedly now take gold to Juba, Sudan.

## 1.3 Conclusions

The informal gold trade remains dominant in Ituri. As in the past few years, the vast majority of the gold produced in Ituri is traded in Kampala, with a smaller amount still transiting via Butembo. However, there are also new destinations for gold traded in Ituri, including Juba, Sudan; Beirut, Lebanon; as well as Dubai, India and London.

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<sup>36</sup> Interviews with several sources in Bunia, February 2008.

<sup>37</sup> ‘Rules for sale: formal and informal cross-border trade in eastern DRC’, Dominic Johnson & Aloys Tegera (2007), Goma: Pole Institute Publication: p. 49; ‘Researching natural resources and trade flows in the Great Lakes region’, Karen Hayes et al. (2007), Pact publication: p. 32.

## Chapter 2: Government Efforts at Formalisation and Implications for Future Gold Trade

By Dan Fahey

This case study focuses on Congolese government efforts to formalise the gold trade in Ituri, and implications for the future of the gold trade, building upon information detailed in the preceding chapter.

### 2.1 Looking Forward

The gold trade in Ituri district is in transition. Since 2007, when the UN Mission in Congo (MONUC) and FARDC established a fragile peace in Ituri, the provincial and national governments have sought to exert greater control over gold production and trade. This attempt at greater formalisation has given rise to the return of *comptoirs* to Bunia and to a move towards industrial and semi-industrial mining.

#### 2.1.1 The *comptoirs*

The return of *comptoirs* to Bunia is the result of government efforts to formalise, regulate, and tax the gold trade in Ituri. This development follows a December 2008 joint decree from the DRC ministries of mines and finance, which was intended to make it easier for *comptoirs* dealing in gold, diamonds, cassiterite, wolframite, coltan, and copper to do business legally.<sup>38</sup> Changes to the law included reductions in fees and taxes. Under the new decree, a *comptoir* pays export taxes of 2.25 percent on the value of its exports, plus 1 percent of the value of mineral purchases. The problems that *comptoirs* in Bunia have experienced demonstrate the obstacles the Congolese government faces in formalising the gold trade. Furthermore, relatively low figures for the quantity of gold exported by the *comptoirs* since June 2009 suggest that the vast majority of the gold trade remains unofficial and unrecorded.

COPED, which opened in May 2009, was the first official *comptoir* to set up shop in Bunia since the mid-1990s. It operates from a storefront close to MONUSCO House in Bunia. Between June and December 2009, COPED exported 60.64 kg of gold (in ingot form), worth \$1,577,763 (current year USD); these exports went to Dubai, London, and India<sup>39</sup>.

COPED did not export any gold during the first half of 2010. During July 2010, COPED representatives were planning to re-open in August 2010. In addition, officials at OKIMO seem hostile to COPED because COPED is buying gold produced in OKIMO's concession area. One OKIMO official asserted COPED was only in business because it had political connections in Kinshasa<sup>40</sup>. This same official said that only OKIMO should be buying the gold produced in its concession; however, COPED reportedly bought gold produced both inside and outside the Kilo belt, from Mambasa, for example.

Despite opposition from OKIMO, COPED enjoys a good reputation among *négociants* interviewed for this report. COPED has a reputation for offering good prices and transparency (such as allowing the seller to see the measurement of the gold's quality). *Négociants* and non-OKIMO government officials perceive COPED's existence as good for creating a competitive environment for the gold trade, and remarked that if there were more *comptoirs* in Bunia there would be more competition and better prices.

38 'Arrêté Interministériel No. 0533/Cab.Min.Mines/01/2008 et No. 275/Cab.Min/Finances/2008', 2nd December 2008.

39 Data obtained from local mining administration in Bunia, July 2010.

40 Interview with Okimo official in Bunia, July 2010.

The OKIMO/MIKUBA *comptoir* is a joint venture between OKIMO and Mikuba Mining, which is a Lebanese-run company. MIKUBA and OKIMO signed a contract in April 2009<sup>41</sup>, and by the year's end they had offices in Bunia, Nizi, and Mongbwalu. The OKIMO *comptoir* (as it is known locally) first exported gold from Bunia in October 2009. From that time until July 2010, the *comptoir* exported 93.62 kg worth \$3,417,396 (current year USD); all exports went to Beirut, Lebanon.<sup>42</sup>

The OKIMO *comptoir* has experienced a number of problems during 2010. Many *négociants* complain that OKIMO does not offer a good price for gold, or that OKIMO's price is below what the major *négociants* offer. In order to secure business, OKIMO lends money to sub-contractors<sup>43</sup> in return for guaranteed buying rights. However, some sub-contractors complain about the strict conditions and harsh penalties imposed by OKIMO as part of these agreements. Some *négociants* stated that OKIMO was using a flawed machine to determine gold quality, understating its purity by a few percent and decreasing the price. OKIMO reportedly would not allow *négociants* to see measurement of the gold's quality, fuelling suspicions of wrongdoing<sup>44</sup>.

Officials at OKIMO are also concerned about the *comptoir*. Some officials expressed concerns that the businessmen running the operation were not reporting all of their gold purchases and exports. Furthermore, OKIMO receives only 1 percent of the export value, which OKIMO officials in Bunia do not think is enough<sup>45</sup>.

A better way for the Congolese government to formalise the gold trade would be to develop coherent policy that would encourage new *comptoirs* to set up shop in Ituri and provide incentives for *négociants* to sell to those *comptoirs*. The government could consider reducing taxes so that *comptoirs* could offer better prices and compete with gold buyers in Uganda, where there is zero tax on exports. The government also needs to find better ways of keeping tabs on the gold trade. The government issues licenses to *négociants*, but does not monitor their purchases and sales. If the government required licensed *négociants* to supply periodic reports on gold purchases and sales, which could be subject to random verification, the government could implement incentives (such as reduced fees for compliance) and penalties (such as fines for non-compliance) to encourage *négociants* to sell to official *comptoirs*. This would bring the trade into the formal economy.

### 2.1.2 Industrial and semi-industrial mining

The post-war resurgence in industrial and semi-industrial mining in Ituri district has several implications for the gold trade. Industrial mining by Ashanti Goldfields Kilo (AGK) in the Kilo belt (Concession 40) will displace many artisanal miners and potentially reduce the quantity of artisanal production in the region as artisanal miners are pushed into less productive areas. The resumption of industrial mining has the potential to cause conflict and insecurity, which could further impact the gold trade.

Semi-industrial mining (using backhoes and dredges, for example) is more productive than artisanal mining, but its increase in Ituri also threatens to reduce the amount of gold available to *négociants* because semi-industrial operators often export their gold directly. Government efforts to formalise the mining sector will therefore transform the gold trade in years to come.

AGK is a joint venture between South African mining company AngloGold Ashanti and OKIMO<sup>46</sup>. Based on the results of exploratory drilling between 2005 and 2007, AGK estimates there are

41 Interview with Okimo official in Bunia, July 2010.

42 Centre d'Evaluation, d'Expertise et de Certification (CEECE). Monthly reports covering October 2009 to July 2010.

43 The *sous-traitants* obtain contractual rights from OKIMO to operate pit mines.

44 Interviews with local *négociants* and OKIMO officials in Bunia, July 2010.

45 Interview with Okimo official in Bunia, July 2010.

46 'AngloGold Ashanti enters definitive joint venture agreement with OKIMO regarding the AGK project in the Democratic Republic of Congo', AngloGold Ashanti press release, 26th March 2010 [Source: [www.anglogold.co.za/Additional/Press/2010/JV+agreement+with+Okimo.htm](http://www.anglogold.co.za/Additional/Press/2010/JV+agreement+with+Okimo.htm), accessed on 21st December 2010].

83,000 kg of gold in the area where it will conduct its first mining operations.<sup>47</sup> The initial mining site is by the Adidi mine, close to Mongbwalu town. AGK is currently conducting environmental and social impact assessments in anticipation of exploitation starting in mid-2011.

The resumption of industrial mining has symbolic importance, as it indicates that Ituri is stable enough for foreign investment, but there are downsides. AGK will have to displace thousands of artisanal miners who are currently working in the area near Mongbwalu, potentially creating massive unemployment and social upheaval. AGK will also control the gold it produces, cutting out local businessmen, who will be competing for the reduced artisanal production.

The displacement of artisanal miners from areas of high productivity may lead to conflict. The first step in AGK's enclosure of the target area was the December 2007 closure of the productive Adidi underground mine, which had been the main source of gold traded in Mongbwalu town. Leaders of miners' organisations and members of a civil society coalition called *La Cadre de Concertation* (CdC) convinced angry miners to forgo a march on AGK headquarters, thus avoiding a potentially violent demonstration.<sup>48</sup> There are concerns in the Kilo belt that there may be violent resistance when AGK starts to displace other miners in 2011. This could disrupt all forms of mining in the area and have a negative impact on both formal and informal gold trading.

The risks of conflict are demonstrated by a May 2010 incident in the Kibali concession near Watsa in the Haut-Uélé district. The Kibali Gold Project is a joint venture between Canadian company Randgold, South African AngloGold Ashanti, and OKIMO.<sup>49</sup> In May 2010, the Kibali project sent letters to 22 sub-contractors near Watsa, telling them to vacate their mining sites by the end of June 2010<sup>50</sup>. The sub-contractors were upset and requested a meeting with Kibali project officers. According to an OKIMO source, the sub-contractors spread a rumour among the local population to the effect that the Kibali project planned to move several villages in addition to clearing the area of miners, which inflamed the local population.

During a meeting in May between the sub-contractors and Kibali project officers, the police (PNC) fired on a crowd of people who were concerned about the displacement, killing one person and wounding three.<sup>51</sup> In June, the Kibali project brought in OKIMO representatives from Bunia to help broker an agreement and calm the situation. As a result, the Kibali project agreed to allow the sub-contractors to continue their activities until August; in addition, the Kibali project paid the sub-contractors and gave them contracts for other mining sites in the area.

The May 2010 incident near Watsa highlights the dangers of government efforts to formalise gold production. Planned industrial operations in areas of extensive artisanal production run the risk of inciting conflict if relations with local communities are handled crudely, as was the case with the closure of Adidi and the vacancy order near Watsa. This is a particular concern in the Kilo belt and with AGK, as many of the miners in this area are former rebels, and many are reported to be armed. The concern is that industrial production could reignite conflict, and this in turn would perpetuate artisanal production and the informal trade.

Semi-industrial mining has also increased in the last few years. OKIMO has signed contracts with several companies engaged in alluvial mining within the Kilo belt.<sup>52</sup> Although these companies

47 This equates to 3,077,889,000 \$US based on the 9th January 2010 world price of gold (1153.06\$/oz, 37.07\$/g) [Source: 'Quarterly report', AngloGold Ashanti, December 2007: p. 14].

48 See 'The new gold rush: post-conflict mining and trading in the Kilo Belt, DR Congo', Dan Fahey (2011), in: 'Natural resources and local livelihoods in the Great Lakes region in Africa', An Ansoms & Stefaan Marysse (eds.) (2011): pp. 170-191.

49 'AngloGold/Randgold up Moto stake', 2nd November 2009 [Source: [http://www.miningmx.com/news/gold\\_and\\_silver/anglogold-randgold-up-moto-stake.htm](http://www.miningmx.com/news/gold_and_silver/anglogold-randgold-up-moto-stake.htm), accessed on 8th August 2010].

50 Interview with OKIMO official in Bunia, July 2010.

51 'Tensions à Watsa: 1 mort et 3 blessés dans un accrochage entre policiers et manifestants', Radio Okapi, 24th May 2010.

52 Kibalgoldmines veut construire sa mine d'or de Doko en juin 2011, mais...', Radio Okapi, 23rd July 2010; 'Kibalgoldmines, projet prometteur mais beaucoup de défis', Radio Okapi, 19 April 2010; 'Willy Bafoa ouvre les portes de Okimo aux investisseurs' [Source: 'actualités', [www.okimo.org](http://www.okimo.org), accessed on 23d December 2010].

pay fees to OKIMO for the right to mine, they sell the gold they produce to whomever they want; this means that although production is formalised and regulated, the companies are not required to sell their gold to official *comptoirs*. Two of the companies under contract with OKIMO (EGIREX and DKCS) reportedly export their gold directly<sup>53</sup>. For mining areas outside of OKIMO's concession area, the provincial bureau of mines issues licenses.

## 2.2 Continuing Problems Despite the Congolese Government's Formalisation Drive

Whereas various rebel groups controlled gold production during the war in Ituri, government agencies are now reasserting their authority in the district. For example, they monitor compliance with official gold mining regulations, and they levy taxes and fees on miners and sub-contractors. Unfortunately, the government's efforts to formalise gold production do not yet extend to addressing the social and environmental consequences of mining operations, including the effects of mercury use.

When it comes to attempts to formalise the actual trade in gold, the results of the Congolese government's efforts are even more disappointing. Government agencies have only limited involvement in the gold trade. They require *négociants* to register their businesses, but do little to ensure that *négociants* do not smuggle their gold out of Congo. According to *négociants* and Congolese government officials, the vast majority of gold exports are unrecorded and no export taxes are paid. This suggests that the illegal export of Congolese gold to Uganda, which started during the Second Congo War, continues unabated.

In our opinion, the Congolese authorities would do well to hold *négociants* accountable for their purchases and sales of gold. They could do this, for example, by making periodic, auditable reporting a requirement for holding a license to trade in gold.

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53 Interview with OKIMO official in Bunia, July 2010.

## Chapter 3: The Gold Trade in Butembo

By Sara Geenen

This chapter provides an analysis of the official and unofficial gold business in Butembo, an important trading city in the Grand Nord region of North Kivu province. Apart from describing Butembo's rise as a gold trading centre, it sheds light on the latest developments in gold exports and offers an explanation for the limited success of the Congolese government's attempts to formalise the gold trade.

### 3.1 Butembo as a Gold Trade Centre

The town of Butembo has been an important gold trading centre since the 1980s. In 1982, President Mobutu announced the 'liberalisation of the gold and diamond sector' in an attempt to generate more and much needed state revenues. The population, seeing this as consent for local people to exploit the mining concessions, rushed to the gold sites. Traders were also quickly attracted by the opportunities and high returns the sector offered. More importantly, gold could be used as hard currency, which protected the traders against hyperinflation and depreciation of the national currency<sup>54</sup>. Until the mid-1990s, most gold was flown from Butembo to Bujumbura, which was the central regional hub for gold exports, thanks to a free trade regime introduced by Burundi's President Pierre Buyoya, who held office between much of 1987 and 2003<sup>55</sup>. However, after a military coup, a civil war and a sanctions regime in Burundi, the centre moved to Kampala, Uganda, which is still the regional hub for gold from Ituri, Uélé and the 'Grand Nord' in North Kivu.

The following table shows the quantities of gold that were exported officially from Butembo between 2006 and the first half of 2010. The table is mainly based on export figures from the Centre d'Evaluation, d'Expertise et de Certification (CEEC), and includes the volumes officially exported by the export offices and the volumes declared to CEEC by individual traders.

**Table 1: Quantities of gold exported from Butembo (in grams)**

Quantities of gold exported (grams)	2006	2007	2008	2009	2010 (Jan-Jun)
Export offices (officially exported)	25204	11559		3056	1376
Traders (declared to CEEC)	19829	43592	18849	4134	3931
Traders (declared to Bureau Urbain des Mines et Géologie)				17163	

Source: CEEC monthly reports (January 2006-June 2010) and *Bureau Urbain des Mines et Géologie*, Butembo, 2009

According to many actors interviewed for this study in North Kivu (Butembo) and Ituri (Bunia), the gold trade system in Butembo continues to be dominated by a limited group of powerful traders<sup>56</sup>. About nine names appear on different lists and can be identified as the largest buyers.

<sup>54</sup> 'Entrepreneurs and parasites : the struggle for indigenous capitalism in Zaïre', Janet MacGaffey (1987), Cambridge: Cambridge University Press.

<sup>55</sup> 'The power of protection. Governance and transborder trade on the Congo-Ugandan frontier', Timothy Raeymaekers, Ghent: unpublished PhD dissertation of the University of Ghent: p. 82.

<sup>56</sup> Interviews with various informants in Butembo, July-August 2010; official statistics obtained from the *Bureau Urbain des Mines et de Géologie* and CEEC in July-August 2010.

CEEC data obtained in June 2010 shows that out of 17 registered traders, the four largest handled about 70 percent of the gold<sup>57</sup>. In other monthly data for 2010, 2009 and the second half of 2008, these proportions are confirmed: the four largest traders (although not always the same individuals) have traded 70 to 75 percent of total (official) exports. For the first semester of 2008, we can see that out of about 30 registered traders, the four largest traded half of all exports.

### 3.2 Recent Developments in Gold Exports

In this section we examine some recent developments in gold exports, and use this data to analyse changes in the dynamics and mechanisms of the gold trade, both official and unofficial.

In recent years, the officially registered *comptoirs* have not managed to acquire a firm grip on the Butembo gold market. This is because a few important traders, who are well established in the world of the unofficial gold trade, hold a great deal of power. As Table 1 shows, the volumes of gold exported officially through the *comptoirs* declined dramatically after 2006.

The gold sector has been subject to several important factors during this period. First, steadily rising gold prices and the fact that gold was the only commodity not affected by the international economic crisis provided major incentives to trade in gold. Secondly, the Congolese state, with support from the international community, started making an attempt to formalise the mining sector. Thirdly, gold exploitation and trade was increasingly targeted by international conflict minerals campaigners<sup>58</sup>.

The bad press for conflict minerals has not discouraged economic operators from engaging in the gold sector. It has just pushed trading operations further underground. A December 2008 report by a UN Panel of Experts reinforced the climate of insecurity and secrecy surrounding the gold sector, when it explicitly cited a number of individual traders in and around Butembo, and documented the links between certain gold traders and members of armed groups. This report also recommended enforcement of sanctions and, with respect to natural resources, due diligence on the part of exporters and consumers of Congolese mineral products<sup>59</sup>. In consequence, economic operators in the sector became very reluctant to give any information, frustrated about the gold trade's criminal image and fearing they would be named and shamed by the UN Panel.

In 2009, the Ministry of Mines hesitated about granting an exporter's license to Glory Minerals because of the trader's previous links with Kambale Kisoni, who had been a dominant figure in the local gold trade until he was murdered in 2007<sup>60</sup>. In April 2009, CEEC noted the 'despair' of Glory Minerals over of the delay.<sup>61</sup> In the same month, it noted 'the arrival of a new comptoir, Northern Goldline, which is only awaiting funding from the UK'. The following month, CEEC reported it had paid the "*redevance*" (licence fee) and the "*caution*" (guarantee) for Glory Minerals at the bank. In July 2009, Glory Minerals still had not received a permit to buy and sell gold. However, the UN Panel of Experts established clear links between Glory Minerals and Northern Goldline, which did succeed in starting activities that same month<sup>62</sup>. Northern Goldline was registered in Manchester, UK, in September 2007<sup>63</sup>. Because of financial problems, it only functioned officially in Butembo for a few months<sup>64</sup>, but during this period, it exported about 3000 grams of gold (see

57 CEEC monthly report, June 2010.

58 See for instance 'Faced with a gun, what can you do? War and the militarisation of mining in eastern Congo', Global Witness, 31st July 2009; 'Digging in: recent developments on conflict minerals', Enough Project, 5th January 2010.

59 S/2008/773: p. 52.

60 Interview with local official in Butembo, 28th June 2010.

61 CEEC monthly reports April 2009 to July 2009.

62 S/2009/603: p. 40.

63 Credit Report Northern Goldline ([www.ukdata.com/company-credit-reports/NORTHERN-GOLDLINE-LIMITED.html](http://www.ukdata.com/company-credit-reports/NORTHERN-GOLDLINE-LIMITED.html), accessed on 23rd December 2010).

64 CEEC monthly report, October 2009.



Table 2). This gold was purchased and sold by the three traders from Glory Minerals, who were still awaiting their official license<sup>65</sup>. So whereas Glory Minerals as a company has never exported any gold ingots, the three traders did buy gold on an individual basis and managed to export this through Northern Goldline<sup>66</sup>.

**Table 2: Quantities of gold officially purchased and exported in 2009**

2009	Quantity (grams)	Purchased by	Exported by	Destination
January	4333	Glory Minerals		
February	1071	Glory Minerals		
March	214	Glory Minerals		
April	NIL			
May	NIL			
June	NIL			
July	839	Northern Goldline	Northern Goldline	Northern Goldline LTD. 18, Barnett Av., Manchester, UK
August				
September	1240	Northern Goldline	Northern Goldline	Anmar-Metal Tr. Congo, Shanyah 16- Zone UAE
October				
November				
December	977	Northern Goldline	Northern Goldline	Hutton Garden n. 5, London Central, London, UK
<b>Total</b>	<b>8674</b>			

Source: CEEC, Butembo, 2009 and *Bureau Urbain des Mines et Géologie*, Butembo, 2009

In May 2010, a new *comptoir*, Jan Mangal, was registered with the provincial mining administration. It has a laboratory in Butembo and exports gold in ingots. According to CEEC, it purchased and exported more than 2.5 kg of gold in May and June 2010 (see Table 3). Yet in July 2010, it suspended operations.

**Table 3: Quantities of gold officially purchased and exported by Jan Mangal**

2010	Quantity purchased (grams)	Quantity exported (grams)
May	1376	
June	1185	2582

Source: *Bureau Urbain des Mines et Géologie*, Butembo, 2009

From the preceding account, it is clear that traders are – to a limited extent – willing to “play the game” according to the official rules. However, the huge gap between real production and official export figures suggests that large-scale operators continue to use systems outside the official trade<sup>67</sup>. Although they may put in requests for official licenses to legitimise some of their activities, they still take most of their gold out of the country through unofficial channels.

Initiatives to formalise the mining sector in eastern DRC will only succeed if complemented by new incentives for Congolese gold traders, who need to know that it is to their advantage to

<sup>65</sup> CEEC monthly reports, 2009-2010.

<sup>66</sup> CEEC monthly reports for 2008 and 2009.

<sup>67</sup> On the gap between real and official production, see ‘Le fleuve de l’or: the production and trade of gold from Mongbwalu’, Dan Fahey (2008), in: *L’Afrique des Grands Lacs: Annuaire 2007-2008*: pp. 357-384.

participate in the formalisation process. They need to be convinced that formalisation is the right action to take and that the trappings of officialdom – such as transparent taxes, banking services, credit facilities and warehouse protection - will be better for business. Until and unless Congolese gold traders get this assurance, they will continue operating in unofficial ways, following informal rules over which the government has no control.

Gold traders in Butembo have resisted recent government efforts to formalise and centralise the gold trade. For example, they oppose the idea of creating trading centres (*'centres de négoce'*) where trade can be centralised and minerals certified. The 2009 Annual Report of the *Bureau Urbain* says that it tried to raise awareness among traders to persuade them to accept the idea. However, it says, traders refused to participate, partly because of power dynamics and conflicts amongst themselves, and partly for fear it might make the roads to Butembo dangerous for themselves and their clients, and could scare off clients<sup>68</sup>.

In our opinion, these arguments are perfectly rational and legitimate in the context of the gold sector. First, because of the high value of gold, security is crucial in the trade. Second, trust is extremely important in the relationships among gold traders and between gold traders and their clients. Reorienting and controlling the trade could well damage these relationships.

### 3.3 Conclusions: The Trouble with Formalisation

Butembo is an important centre for the trade in gold, diamonds, and other minerals. Most of the trade takes place “informally” - that is, outside formal government regulation or monitoring – just as it did before and during the Congo wars. Two points regarding the gold trade from Butembo merit further attention.

First, international and national pressure is pushing the gold trade deeper into the informal economy. Pressure from the international community to break the link between minerals and armed groups has created a “conflict minerals” discourse that criminalises the economic actors involved. Traders fear being named and shamed, or having their international travel restricted by sanctions. They prefer to work in secret, particularly when their counterparts in Kampala are also increasingly trading in secret<sup>69</sup>. Indeed, the unofficial trade system in Butembo has been well established for decades, and has become an intrinsic part of the local and the regional economy. This poses a significant obstacle to current external and internal efforts to formalise the gold trade. In addition, the Congolese state does not effectively control its territory and is largely absent in many mining sites. The state does not provide security or other basic public services, so people have little incentive to “formalise” their activities or join initiatives by the government – in partnership with international organisations - to formalise and increase control over the sector.

Second, recent insecurity in Butembo could impact the minerals trade, pushing it towards other, more secure locations. In July 2010, a number of people in Butembo were killed, reportedly by ‘men in uniform’ - possibly PNC, FARDC, or demobilised soldiers from Mayi-Mayi militias. In protest, the citizens of Butembo closed down all economic activities (*“ville morte”*) for three days that month<sup>70</sup>. Late in July, on the night before the last of the three strike days, well-known businessman Kambale Kasongya was murdered in his house in Butembo<sup>71</sup>. Kasongya, also known as “Mokolo Diamant”, imported second-hand cars and traded in diamonds<sup>72</sup>. According to some observers,

68 *'Rapport annuel'*, Bureau Urbain des Mines et de Géologie (2009) : p. 5.

69 Interviews with informants in Kampala, July-August 2010.

70 This took place on 9<sup>th</sup>, 10<sup>th</sup> and 26<sup>th</sup> July. *'Un policier lapidé par la population de Butembo'*, Tembos Yotama, 26 July 2010 [Source: [www.benilubero.com](http://www.benilubero.com), accessed on 23rd December 2010]; *'Butembo: un mort et des biens pillés dans une embuscade d'hommes armés'*, Radio Okapi, 4th August 2010; *'Butembo: vive tension après un quatrième meurtre d'opérateur économique'*, Radio Okapi, 26th July 2010.

71 *'Butembo slachthuisstad'*, Mo Magazine, 27 July 2010 [Source: [www.mo.be](http://www.mo.be), accessed on 23rd December 2010].

72 Interview with informants in Butembo July 2010.

a struggle is being played out between an “old” class of powerful traders and a new, emerging group<sup>73</sup>. If recent insecurity is the result of local struggles for power, and not simply criminal activity, it is likely that there will be further violence and economic disruption, including interruptions or disturbances of mineral trading activities. This development calls for further research.

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73 Interviews with various traders in Butembo, September 2010.

## Chapter 4: Cassiterite Mining and Trade in the Territory of Walikale

By Sebastien Melmoth

This chapter, based on fieldwork data collected by Jan Cappelle and Sergio Finardi in August 2010, concerns one of the main cassiterite production areas in North Kivu: Walikale territory, and, more specifically, the Binakwa-Obae-Mubi trade route. This highly volatile region produces most of North Kivu's cassiterite, part of which is also sold in South Kivu.

Though not exhaustive, this chapter aims to analyse the cassiterite trade route from production sites to European and Asian importers. We examine the socioeconomic system in the mines, the chain of activities from the mines to air shipping sites and the importers of North Kivu minerals.

### 4.1 The Diggers: The Reign of Free Enterprise?

Walikale mining sites are isolated forest enclaves with their own governance systems, and economies based on barter. The only way to reach them is by plane from Goma to Walikale Centre, the territory's capital, followed by a long trek into the forest by motorbike and on foot. The difficult access means that public services are almost non-existent, except in the repressive forms of police and military.

The mining zones are domains of unregulated free enterprise. The relations between the site owners and the diggers are not based on a written contract but on an informal, verbal agreement between each digger and the mine's "owner", completely beyond labour law or any mining legislation. Each digger provides his own equipment - a spade, a crowbar, plastic bowls, half cans, for example - and the "owner" rents out access to the mine in return for a share of the production. This share generally varies between 10 percent and 20 percent, depending on the tax collected by customary chiefs from the "owner" renting the land.

Miners' earnings are determined by their output. There is no cash payment between the site owner and the miner. Most diggers work informally because they do not possess an artisanal miner's card. The card is expensive, its price varies between \$30 and \$40 depending on the location and on the services issuing it. And isolated locations prevent state services from reaching the mining sites and making cards available for the miners. Workers exploiting a site (such as the AAA group exploiting the Bukombe site in Binakwa) do not have a labour contract and are not registered as artisanal miners. Nothing holds the group together except an in-kind compensation agreement between the site owner and the miners.

There is no cash economy in the mines. Barter remains the main mode of transaction on the Binakwa-Obae route, where cassiterite replaces cash and serves as a reference for price fixing. Everything is measured in cassiterite units of measurement (kg, can or spoon), including game sold by hunters and goods sold by ambulant vendors, including manioc flour, palm oil and fish. Ambulant vendors sell on credit to villagers and come back on a fixed date to fetch the cassiterite. In Binakwa, school fees and health care are also paid for in minerals.

The security situation in Binakwa is a matter for concern. Since May 2010, armed groups have raided the area on several occasions:

- May 2010: FDLR fighters attacked and sacked Binakwa. They obtained fresh supplies, taking food and various goods (but no minerals), and abducted 20 villagers who were released a month later.

- In August 2010, Kabalo, a village 17 km from Binakwa (on the Maniema segment) was attacked by FDLR fighters. As a safety precaution, after this attack, people spent the night in the forest.
- Also in August 2010, Kanzole, a village 13 km from Binakwa on the way to South Kivu, was attacked and ransacked by FDLR fighters.

The insecurity in this area has been a growing problem since the beginning of 2010. The objective of the Congolese government's military campaigns in 2009 was to push back the armed groups – and notably the FDLR – from mining sites in the hope of weakening them both financially and militarily. The operations did push back the FDLR but did not weaken them significantly. They retreated deeper into the forest and relinquished control over some mining sites but adjusted their strategy to raid<sup>74</sup> mining areas.

The second significant result of the military operations was to effect a change in the FARDC military command at the mining site of Bisie in Walikale territory. The Mayi-Mayi-dominated 85<sup>th</sup> Brigade, run by Colonel Sammy, was replaced in 2009 by the 1st Brigade, dominated by the *Congrès National pour la Défense du Peuple* (CNDP). This replacement did not lead to a peaceful transition as Mayi-Mayi Cheka<sup>75</sup> joined forces with the FDLR and attacked Mubi several times in 2010, kidnapping several foreign pilots in the summer of 2010. It appears that the Mayi-Mayi Cheka were reinforced by deserters from the 85<sup>th</sup> Brigade who did not want to relinquish the site of Bisie.

Since the beginning of 2010, this area has been hotly disputed by FDLR-Mayi-Mayi Cheka and the ex-CNDP FARDC brigade. Frequent raids have disrupted cassiterite trade and forced traders to flee. Since the president announced a ban on artisanal exploitation in September 2010, the FARDC has started a new military operation in Walikale territory.

Artisanal miners not only have to deal with physical insecurity – caused by the presence of armed groups – but with legal insecurity too, in that they never know whether they will be able to hold on to the land where they work. The insecurity of land tenure can lead to physical violence as the mine police regularly hunt down illegal diggers (to extort minerals as “taxes”) and as there are multiple conflicts over mine ownership. For example, in Binakwa, which has 10 mining sites, there are five such conflicts, which for the most part are disputes between local chiefs' family members.

Although everyone is theoretically free to become a digger, the enclave's economic system is, in fact, very controlled. First, the geographical isolation creates a powerful socioeconomic constraint. Indeed, besides the lack of social services, all supply of basic necessities comes from outside. The local economy is therefore wholly dependent on the outside world: supply depends on the overall security situation (after the FDLR raided Binakwa, traders left the town) and prices are imposed by the traders. This is a typically supply-driven economy. As far as working conditions are concerned, the lack of roads means that the minerals are transported from the sites by porters carrying 50-kg bags for many kilometres. Though physically exhausting and unhealthy, it is one of the few lucrative jobs available for young men in the region.

Moreover, the military interferes in this trade by taking a cut of 8 to 15 kg per mining pit and not paying certain taxes. The military is therefore able to sell minerals at a lower price than others, a competitive advantage which accounts for the persistence of a military commercial chain. Ongoing military involvement in the trade is also explained by the fact that military personnel can use force to confiscate diggers' production and can make a fairly good living without working, by forcing people to dig for them at gunpoint.

<sup>74</sup> Interview with ICG in Nairobi, September 2010.

<sup>75</sup> The Mayi-Mayi Cheka, a group of rural bandits operating in the Walikale territory, are part of the numerous Mayi-Mayi militia groups in North Kivu. They have no known specific claims or ethnic affiliation and presently are mostly made of fighters who left the 85th Brigade run by Colonel Sammy in the Bisie area.

## 4.2 Understanding the Value Chain: An Attempt to Untangle the Profits

North Kivu is a major producer of coltan and cassiterite because deposits are near the surface or coming through the soil. In Walikale, on the Binakwa-Obae segment/route, alluvial cassiterite deposits are black (they are known locally as “ma-noirée”) whereas on the Bisie segment, deposits are red (and known locally as “ma-rougée”).

The exploitation and trade in minerals form a pyramid structure, topped locally by the *comptoirs* in Goma. They provide the traders on the ground with the necessary funds to buy minerals in the province’s countless, hard-to-access quarries. This dual flow system – of cash flowing to miners who pass minerals up the chain - forms a value chain. Analysing this value chain enables us to estimate local profits and the real amount of taxation on this commercial activity. This tax system is at the heart of controversy between the private sector and the administration.

The following table indicates the monthly production of “ma-noirée” and tracks the mineral’s rising value as it travels from the mines to the buying offices of Goma.

Month	Cassiterite in kg	Binakwa \$5/kg	Obae \$5.50/kg	Mubi \$6.80/kg	Goma \$10/kg
November 2009	6000 kg	\$30 000	\$33 000	\$40 800	\$60 000
December 2009	6500 kg	\$32 500	\$35 750	\$44 200	\$65 000
January 2010	6000 kg	\$30 000	\$33 000	\$40 800	\$60 000
February 2010	5800 kg	\$29 000	\$31 900	\$39 400	\$58 000
March 2010	5800 kg	\$29 000	\$31 900	\$39 400	\$58 000
April 2010	7600 kg	\$38 000	\$41 800	\$51 680	\$76 000
May 2010	6000 kg	\$30 000	\$33 000	\$40 800	\$60 000
June 2010	7000 kg	\$35 000	\$38 500	\$47 600	\$70 000
<b>Total</b>	<b>50700 kg</b>	<b>\$253 500</b>	<b>\$278850</b>	<b>\$344 680</b>	<b>\$507 000</b>

Source : Fieldwork report written by a Congolese partner in August 2010<sup>76</sup>

The cassiterite’s purchase price doubles between the production site and the buying office in Goma. The exploitation and trade of minerals are subject to a whole array of taxes with varying degrees of legality. The producers and traders are subject to two types of taxation: in-kind taxes (mainly for miners) and monetary taxes (mainly for traders).

Since Mubi is the town from where cassiterite is air-lifted to Goma, it is also the place where most of the taxes are levied <sup>77</sup> (see table on the next page):

<sup>76</sup> For security reasons, this Congolese partner prefers to remain anonymous.

<sup>77</sup> The quantity of minerals chosen as reference value to analyse the weight of taxation is 1800 kg because this is the usual maximum load for the small airplanes landing in Mubi .

Taxes in Mubi	Taxes (\$)
Civil aviation	21.50
General tax office	50
EAD tax (province)	270
EAD tax Wanyanga sector	170
SAESSCAM tax	90
SAESSCAM inspector	20
ANEMNKI tax	10
ANR	20
Mine police	10
DGR	20
Authorisation to transfer minerals	10
Mining administration	20
Visa for Mubalaka barrier	25
<b>Total</b>	<b>756.50</b>

Source: fieldwork report written by a Congolese partner in August 2010<sup>78</sup>

When we did our fieldwork in August 2010, taxes levied in Mubi represented 6.1 percent of the value of an 1800 kg cargo of cassiterite worth \$12,240. The total taxation on the Binakwa-Mubi segment represented 11 percent of the value of an 1800 kg cargo of cassiterite.

The analysis of the taxation system in place on the Binakwa-Mubi route shows that:

- The weight of taxes remains reasonable. The 11 percent taxation on the Binakwa-Mubi segment is a long way off the heavy tax burden that *comptoirs* usually denounce (30 to 40 percent, according to them).
- Transport costs are limited : \$1,250 for handling in Mubi and transport to Goma and \$1,440 for the journey from Binakwa to Mubi.
- The profit made by economic actors is handsome but not excessive: around \$300 for each 1800 kg cargo that reaches Goma.

However, it is clear that:

- Most of those taxes are variable, and repetitive. That is, the same service taxes mineral cargos several times and in various places. And they are often illegal for several reasons: the service is not mandated to collect tax on minerals, the taxation personnel are sometimes not legally from the civil service, and the tax amount does not always have a legal basis). More than its actual value, it is the multiplication and duplication of taxes that translate into permanent negotiations with each service.
- Mubi state and local services live solely from levying cassiterite cargo taxes.
- The multiplication of taxation points translates into an excess (and not a deficit as some believe) of administrative and statistical data about the mining trade. Indeed, each new taxation gives rise to the emergence of new data and statistics: there is no lack of administrative trail for the production and trading of minerals. Numerous public and para-public services (such as the mine police, SAESSCAM and Sakima<sup>79</sup>) register and gather data on minerals movement from

<sup>78</sup> For security reasons, this Congolese partner prefers to remain anonymous.

<sup>79</sup> Sakima or *Société Aurifère du Kivu-Maniema* is a public-private partnership between the Canadian company Banro and the Congolese state. Sakima took over Sominki's business after its bankruptcy and legal dissolution in 1997 [Source: 'The coltan phenomenon: how a rare mineral has changed the life of the population of war-torn North Kivu province in the east of the Democratic Republic of Congo', Pole Institute (2002)].

the extraction sites to Mubi airport. The problem lies in the unreliability of this multi-layered statistical trail, due primarily to the corruption endemic in the various registering services.

- Those who profit from this trade are, in decreasing order of value: 1) the economic actors, 2) the civil servants and 3) the producers (local chiefs and diggers).
- It is unclear how much money stays in the pockets of civil servants, and how much reaches the various administrations' budgets.

### 4.3 A Global Business

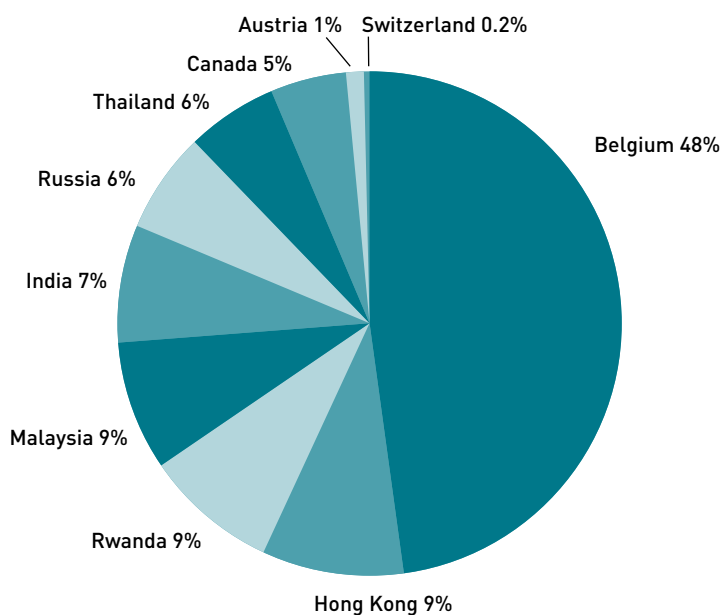
According to the provincial mining division, there were 23 operating trading posts and two exploitation companies (Mwangachuchu Hizi International and Somikivu) in North Kivu in August 2010. These buying offices are either Congolese firms (effectively created and headed by Congolese businessmen) or foreign firms (created and funded by foreign businessmen). For example, in Goma, there are three Chinese buying offices (TTT Mining, Huaying and Donson International), a South African buying office (MPC), a Russian buying office (Panafrican Business Group), and an Indian one (Afromet)..

In 2009, the Chinese buying office Huaying was the second cassiterite exporter after AMUR and, apart from MHI, the three Chinese buying offices exported most of the coltan.<sup>80</sup> As for the destination countries, the following graphs based upon data from the provincial mining administration show clearly that most importers are based in Europe and the Far East. However, there are marked differences: most of the coltan is destined for China while the wolframite is bought by European firms and the cassiterite mainly by Belgium (48 percent of exports). The case of pyrochlore is special, as it is a monopoly, with only one production site (Lueshe) and just one firm exploiting and exporting it (Somikivu) to a single destination: Russia.

Mineral trade in North Kivu is thus completely globalised, at a local level in Goma (where there are Congolese, Rwandan, European and Asian economic operators) as well as in its outlets.

#### Countries importing North Kivu minerals

Graph: Countries importing cassiterite in 2009 (percent by volume)

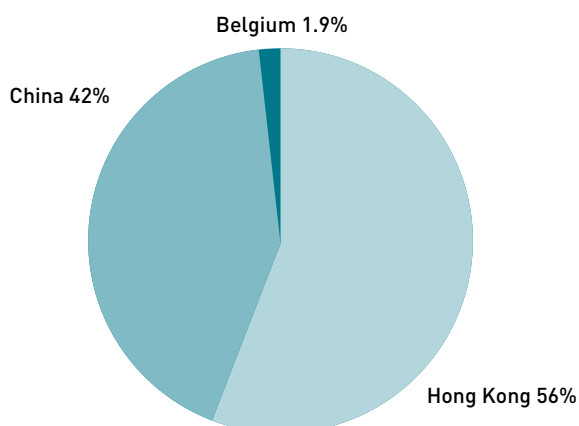


Source : *Direction Provinciale des Mines et Géologie*, North Kivu

80 2009 exports statistics obtained from the *Direction Provinciale des Mines et Géologie* of North Kivu in Goma, August 2010.

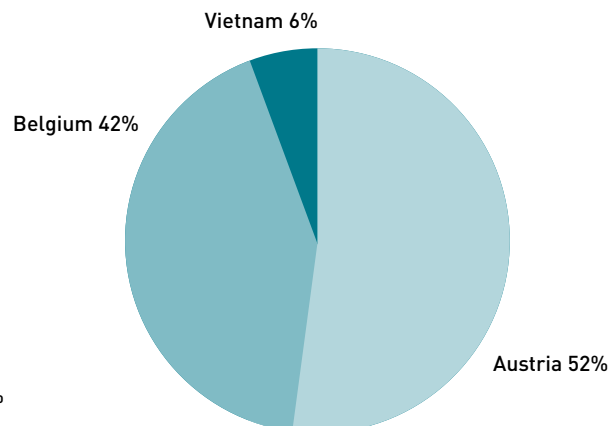


Graph: Countries importing coltan in 2009



Source: *Direction Provinciale des Mines et Géologie*, North Kivu.

Graph: Countries importing wolframite in 2009



Source: *Direction Provinciale des Mines et Géologie*, North Kivu.

## 4.4 Conclusions

This study of the Binakwa-Obae-Mubi trade route was carried out in August 2010, at a time when several parties were struggling to gain control over the Bisie area. The fighting took a new twist in September 2010, when Congo's President Joseph Kabila suspended mining in the Kivu and Maniema provinces and additional troops were sent to Walikale.

More damaging for the Congolese army, the international press and the United Nations reported that mass rapes committed in July 2010, which triggered international outcry, were connected to mining activities. First, according to UN sources, the FARDC soldiers tasked with civilian protection instead vacated their positions to participate in "lucrative military operations in Omate and Bisie mining area" in Walikale in July<sup>81</sup>. The absence of soldiers left civilians more vulnerable to the attacks, which were carried out by several rebel groups. Second, the rebels concerned were from Mayi-Mayi Cheka, a militia that had been fighting for control of the Bisie area for several months. In early October, Lieutenant-Colonel Mayele, one of the Mayi-Mayi Cheka leaders, was handed over to the UN and the Congolese army and indicted for the mass rapes.

This incident demonstrates the strong connection between unregulated artisanal mining and insecurity in the territory of Walikale. Armed groups and the army compete for control over mining sites and this fighting will carry on - the population of the area suffering as a result - as long as none of them is able to impose its control. Mining in this forest is a violent business which benefits both local and international actors.

81 'Congo's army left posts to mine gold and tin -UN', Reuters, 8 October 2010; S/2010/596: p. 53.

## Chapter 5: The Bukavu-Uvira-Bujumbura Gold Triangle

### By Ruben de Koning

#### 5.1 Introduction

This chapter on gold trade in South Kivu does not focus on one specific production area or trade axis, but rather on business actors in the commodity chain that operate in or through the frontier towns of Bukavu, Uvira and Bujumbura. The chapter also describes the governance conditions in some of the main mining areas where gold transacted in the triangle is sourced. There are several reasons to focus on gold trade in and out of South Kivu. It is the most valued export commodity of the province, but it can escape formal government control, since it is easy to conceal and smuggle. Gold is the conflict commodity *par excellence*, enriching military and political players and financing illicit weapons purchases.

Because of the hidden nature of the gold trade, much of the evidence presented in the chapter is anecdotal. Evidence is bound to miss out some key players, and does not provide us with any estimates of the quantities of gold produced in certain mine locations or transacted on the different trading routes. However, information obtained from multiple sources in local administrations and in the private sector demonstrates some important patterns of trade, types of military and political involvement, and developments in both.

The chapter is organised in five parts. The first part provides production estimates and export statistics to demonstrate how trade operates underground. The second part examines the few licensed exporters in South Kivu and Burundi whose formal transactions are alleged to represent only part of their real operations. The third part presents anecdotal evidence about actual business transactions along different trading routes. This evidence is alternated with case descriptions of mine locations where transacted gold is derived or likely to have derived. The fourth part discusses the government's plan to create *centres de négoce* for gold in the province. The fifth and final part of the chapter draws conclusions and provides tentative recommendations.

#### 5.2 Production and Exports

According to a 2007 report by the Pole Institute, local sources in the industry estimate the gold production of South Kivu at around 200 kg a month, an annual total of 4,800 kg.<sup>82</sup> There is no indication that the level of production has fallen in recent years. On the contrary, production is likely to have increased as a result of the rapid rise in gold prices on world markets following economic slowdown at the end of 2008. The estimated annual quantity of (unrefined) gold produced in South Kivu is worth \$160 million on the world market.<sup>83</sup>

Only a small and ever-decreasing portion of estimated gold production is exported through formal channels. According to official data, almost 2,950 kg was exported in 2001, down to 600 kg in 2005<sup>84</sup> and just 40 kg in 2009.<sup>85</sup> In 2010, the *Service d'Assistance et d'Encadrement du Small Scale Artisanal Mining* (SAESSCAM) started to collect some data on the basis of its presence at

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82 'Rules for sale: formal and informal cross-border trade in eastern DRC', Aloys Tegera & Dominic Johnson (2007), Goma: Pole Institute Publication.

83 This estimate is based on the export value of one kg of unrefined gold of \$ 33,500 that the *Office Congolais de Contrôle* (OCC) used in June 2010 to calculate taxes over recorded gold exports.

84 Information from the *Office des Douanes et Accises* (OFIDA) in Bukavu, cited in 'Rules for sale : formal and informal cross-border trade in eastern DRC', Aloys Tegera and Dominic Johnson (2007) : p. 40.

85 Information obtained from the *Office Congolais de Contrôle* (OCC) in Bukavu, July 2010.

mines and markets in three areas in Mwenga territory<sup>86</sup>, but quantities registered in the field do not even reach the official export level: 13 kg against 32 kg officially exported in the first half of 2010.<sup>87</sup> The limited presence of mining authorities in gold mines and at gold markets means that statistics capture just a small fraction of real production.

The decline of official exports from South Kivu between 2001 and 2006 coincided with a rapid increase in official exports from nearby Burundi. It has long been known that Burundi was the main transit country for gold mined in South Kivu. In 2007, the UN Group of Experts estimated that Burundi's exports consisted of about 2,000 kg of fraudulently imported Congolese gold and 500 to 1,000 kg of gold from Burundi itself.<sup>88</sup> But official exports from Burundi have also declined rapidly during the past three years. Exports for 2010 are likely to drop below even the estimated domestic production capacity. Just 142 kg was declared for export during the first six months, according to statistics from the Burundi Ministry of Mines.<sup>89</sup>

The extra-legal nature of exports from DRC means that it is only possible to speculate on what is happening. It may be that Burundi-based traders declare exports less often, but it could also be that traders in the region prefer other countries of transit besides Burundi, such as Tanzania, or that they directly export to destinations in Europe and Asia without officially re-exporting gold through any other country in the region. Official export statistics from Tanzania, Rwanda and Uganda do not show any dramatic increase in the 2005-2008 period to suggest increased re-exportation of Congolese gold.<sup>90</sup>

**Table 1: Production and exports from South Kivu and Burundi in kg, 2001-2010<sup>91</sup>**

Year	Estimated production South Kivu	Official exports South Kivu	Registered production South Kivu	Official exports Burundi
2001	-	2,950	-	415
2002	-	1,952	-	438
2003	-	754	-	2,855
2004	-	605	-	3,229
2005	-	600	-	3,905
2006	-	189	-	4,313
2007	-	106	-	2,422
2008	4,800	65	-	2,107
2009	-	40	-	971
2010 (Jan-Jun)	-	32	13	142

86 *Service d'Assistance et d'Encadrement du Small Scale Mining (SAESSCAM), Tableau Récapitulatif de Suivi de la Production Journalière, Mois Janvier-Juin 2010.* Unpublished government document, obtained during fieldwork in Bukavu, July 2010.

87 Information obtained from the *Office Congolais de Contrôle (OCC)* in Bukavu, July 2010

88 *S/2007/423*: p.22

89 *'Situation du commerce des minerais et des produits de carrières au 30 juin 2010'*, unpublished document of the Burundian Ministry of Mines, obtained during fieldwork in Bujumbura, August 2010.

90 *'Minerals Yearbook 2008: Rwanda'*, U.S. Geological Survey, July 2010; *'Minerals Yearbook 2008: Uganda'*, U.S. Geological Survey, December 2009; *'Minerals Yearbook 2008: Tanzania'*, U.S. Geological Survey, April 2010.

91 This table is based on the following sources: *'Rules for sale: formal and informal cross-border trade in eastern DRC'*, Aloys Tegera & Dominic Johnson (2007), Goma: Pole Institute Publication; data from the Bukavu branch of the *Office Congolais de Contrôle (OCC)*, data from the Bukavu branch of the *Service d'Assistance et d'Encadrement du Small-Scale Mining (SAESSCAM)*; data from the Bukavu branch of the *Direction des Mines*.

### 5.3 Licensed Operators

Just a handful of traders officially export from the triangle.<sup>92</sup> They purchase from a number of licensed *négociants*, but presumably also from licensed intermediary traders (*commissionnaires*) and from artisanal miners (*creuseurs*), since many of their suppliers cannot be found on the list of *négociants* issued licences by the Provincial Ministry of Mines in 2010.<sup>93</sup> Quantities range between 100 and 500 grams per transaction<sup>94</sup>. Purchasing records are vague about gold origins. They often detail little more than the largest town in the vicinity from where gold is transported. Companies frequent many of the towns that recur on purchasing records - such as Kama, Namoya, Lugushwa, Kampene, Lulingu and Shabunda - from where the gold is presumably flown out by air. Other towns named on purchasing documents are Uvira and Mwenga, from where gold is presumably taken out by road.

Between 2003 and 2007, two *comptoirs* dominated the gold export market in Bujumbura: Machacha Ltd. and Farrell Trade and Investment Corporation. These companies ceased operations in 2008. This did not lead to an immediate decline of exports in 2008 because Gold Link Burundi Trading (GLBT) was able to take advantage of their departure and raise its exports from 543 kg in 2007 to 1,970 kg in 2008<sup>95</sup>. While solely dominating the market, GLBT, which became Berkenrode BVBA in 2009, saw its exports drop to 970 kg in 2009<sup>96</sup>. The downward trend seems to continue in 2010, with only 75 kg of exports by the company in the first six months. Two new exporters arrived on the scene in 2010 but their exports remain limited. S.E.C.M exported 33 kg in the first half of 2010 and Alpha CD Technology, exported 32 kg in the same period.<sup>97</sup>

When we look at the destination of gold exported from Burundi, customs documents for 2009 show that Berkenrode BVBA exported its gold to the United Arab Emirates (UAE) that year. Data from the Burundi Ministry of Mines and from Burundi customs for 2010 does not specify the destination of Burundian gold exports. According to a November 2009 UN Group of Experts report, the agents for Mr. Mutoka Ruganyira, owner of Berkenrode BVBA, declare small packages of less than a kilogram of gold at customs in Dubai before selling it at the Dubai Multi Commodity Centre (DMCC).<sup>98</sup> To obtain a certificate of origin, exporters simply have to sign to say that their gold originated in Burundi, with no checks of any kind to verify the statement<sup>99</sup>.

### 5.4 Trafficking Networks and Military Involvement along the Commodity Chain

The irregular nature of the gold trade means we need to examine anecdotal evidence to identify some of the key players operating on different trading routes within the triangle. Information about actual transactions is alternated with information about likely or demonstrated mines of origin, focussing on the role of state and non-state military actors.

92 In 2009, the government cut the costs of opening a gold *comptoir* in 10, bringing the yearly licence cost and one-time deposit down from \$25,000 to \$2,500. Overall, and also in South Kivu, the number of *comptoirs* increased, but many have failed to export legally [Source: 'La RDC perd 70 millions \$US à cause de la fraude du métal jaune', La Prospérité, 15th July 2009].

93 The list of 38 distinguishes between category A and category B traders. Category A, or resident traders, are supposed to pay \$1,500 for their *carte de négociant*. Category B, or ambulant traders, pay \$250. [Source: 'Liste des négociants de l'or', Division des Mines in Bukavu, obtained during fieldwork in Bukavu, July 2010].

94 Daily reports of the *Division des Mines* concerning the Namukaya gold *comptoir*, obtained during fieldwork in Bukavu, July 2010.

95 Source: statistics from the Burundi Customs Authority.

96 Source: statistics from the Burundi Ministry of Water, Energy and Mines, obtained during fieldwork in Bujumbura, July 2010.

97 'Situation du commerce des minerais et des produits carrières au 30 juin 2010', Unpublished document of the Burundian Ministry of Mines, obtained during fieldwork in Bujumbura, August 2010.

98 S/2009/603: p. 39.

99 Interview with Damien Mbonicuye (Burundi Ministry of Water, Energy and Mines), Bujumbura, 15th July 2010.

### 5.4.1 Mwenga-Uvira-Burundi

One non-licensed Congolese trader, active in Kamituga and the High Plateaux area (Itombwe forest), explained that part of the gold he sells in Bujumbura comes from the area of Lubumba, which is an FDLR-controlled mine in the Itombwe forest at about 30 km from the town of Miki<sup>100</sup>. He claimed that, in December 2009, he sold 460 grams of gold directly to the main gold *comptoir* in Bujumbura. The reason for going to Burundi himself was that gold prices in Bukavu and Uvira were low at the time. Normally he would sell to two traders in Uvira, who would then take the gold to Bujumbura. The trader interviewed further explained that he is partly financed by a Bukavu-based trader, whom he pays back in gold or in cash in case he sells elsewhere. He was not aware whether this man held a *carte de négociant* or to whom he sold his gold.

The trader admitted that part of the gold he transacts with the above-mentioned people he purchases from the area of Lubumba, which is an FDLR-controlled mine in the Itombwe forest, about 30 km from the town of Miki. Rebels are alleged to tax about 5 grams per week from each site foreman in the twenty or so quarries in the area. According to the trader, FDLR soldiers do not disturb traders when they bring in food supplies and commercialise the production from which they derive taxes.

While some smaller mines in Mwenga territory, such as Lubamba, are under some degree of control by rebel and militia groups, the major gold mines around Kamituga and Lugushwa are FARDC-controlled. Lugushwa, in particular, has attracted a range of security services to seek a profit from rapidly growing artisanal mining operations that accommodate several thousand artisanal miners, who use intermediate traders to supply major Bukavu- and Goma-based traders and trading houses such as Namukaya, Mange, Kajangu, Kulimushi, Sulee and Agefreco.

State mining services are present in Lugushwa, as are the national police, the military intelligence service (T2), the 10<sup>th</sup> Military Region – based in South Kivu – and FARDC units involved in the Amani Leo military campaign.<sup>101</sup> A number of pits are under the control of high-ranking military officers who are usually posted elsewhere. This generally means that the *chef de colline*, otherwise called PDG (*Président-Directeur Général* or Chief Executive Officer), of one or more pits receives money from a military officer to buy gold for him wherever available, and/or employ or supply workers in individual pits in return for the larger part of the production. PDGs may also have a few soldiers at their disposal to guard these individual pits and fend off other traders. In addition to controlling individuals' pits, some senior officers have their soldiers on-site to collect taxes of \$5 per pit. PDGs operating under the cover of any military officer are exempt from paying these military taxes, just as they are exempt from all other customary and official taxes<sup>102</sup>.

### 5.4.2 Walungu-Bukavu-Bujumbura

Evidence of an illegal transaction in July 2010 links Bujumbura-based traders with Bukavu-based traders buying from Walungu territory. According to border officials, several kilograms of gold were seized from a female trafficker at Ruzizi I border post, near Bukavu.<sup>103</sup> The officials had recognised the trafficker as one of the agents of a well-established gold trader in Bukavu as she tried to cross the border just before it closed for the night. According to her testimony, she was supposed to meet an agent of a Bujumbura-based trader in a hotel in the Rwandan border town of Cyangugu that evening to make the transaction. She also said that an intermediary trader had purchased the gold from artisanal sites in Mukungwe, Nindja and Nzibira, all in Walungu, and sold it to her patron.

Eventually she was released and able to continue on her way, after paying a small fine. This happened after the intervention that night of a high-ranking and recently integrated military officer involved in Amani Leo operations.<sup>104</sup>

<sup>100</sup> Interview with a Congolese gold trader in South Kivu, July 2010.

<sup>101</sup> Interview with confidential source within MONUSCO, 29th July, 2010.

<sup>102</sup> Ibidem.

<sup>103</sup> Interview with a Congolese intelligence officer in Bukavu, 28th July 2010.

<sup>104</sup> Interview with a Congolese intelligence officer in Bukavu, 28th July 2010.

The Mukungwe mine, from which part of the gold involved in the transaction was allegedly sourced, is intensely disputed. For several years, two families claimed ownership of the mine. According to UK-based advocacy organisation Global Witness, each side used demobilised or dissident fighters to enforce its claim, including former elements of Mudundu 40.<sup>105</sup> In March 2008, FARDC soldiers were sent in to restore order. However, tensions did not subside and soldiers of various units gained an interest in mining, much of which was allegedly overseen by the deputy commander of the 10th Military Region, based in Bukavu.<sup>106</sup>

Although the author of the present chapter could not confirm this last claim, a SAESSCAM official in Burhale who mapped the ownership of mine shafts in June 2010 was able to identify three military officers of the 10<sup>th</sup> Military Region as shaft owners. The official explained that locally positioned soldiers collect part of the production from these shafts for these owners. There does not appear to be a generalised military-controlled taxation system.

### 5.4.3 Miki-Uvira-Bujumbura

Besides gold, some cassiterite and coltan is also trafficked between DRC and Burundi through the town of Uvira. Cassiterite derives from sites such as Miki, Makenda, and Kitopu, in the Itombwe forest region (Mwenga/Uvira territory). According to UN experts, the FDLR exercises a degree of control over these sites and taxes the trade that is mostly oriented to Lemera market, from where traders take the material to Bukavu<sup>107</sup>. A local source in Uvira interviewed a number of some small-scale traders who said they carried cassiterite from these locations to Uvira. In addition traders, bring coltan from the sites of Kitindi (Mwenga territory) and Lulimba (Fizi Territory) to Uvira.<sup>108</sup> An alliance of FDLR and Mayi-Mayi (Kapopo) elements holds a degree of control over these coltan production areas<sup>109</sup>.

Small-scale traders sell cassiterite and coltan to a number of buying houses and independent traders in Uvira. These Uvira-based traders are alleged to carry minerals by car to Burundi, using a small border post at Kavinvira, north of the main crossing at Gatumba.

### 5.4.4 Uvira-Kigoma

As indicated earlier, Tanzania is also an important destination for Congolese gold from South Kivu. One example of gold trafficking concerns a shipment of gold across Lake Tanganyika between Uvira and Kigoma. According to a Congolese intelligence officer, parcels containing 9 kg of gold were transported between the two towns in March 2010 and delivered to a Tanzanian gold trader.<sup>110</sup> The disturbing aspect of this transaction is that it allegedly concerns gold previously in the possession of FDLR elements and trafficked with the assistance of a high level FARDC commander of the 10<sup>th</sup> Military Region.

## 5.5 Formalising Trade, Securing Markets

The government's inability to capture gold exports and levy taxes at this level is a consequence of its inability to control transactions internally. Bukavu- and Uvira-based traders buy in secrecy or send agents directly to mines to purchase for them. As a result, the quantity of gold licensed and unlicensed traders possess is unknown, making it impossible to follow active traders and keep track of the discrepancy between their recorded purchases and exports. Despite the government cutting the cost of acquiring an export licence in 10, active traders

105 'Faced with a gun, what can you do? War and the militarisation of mining in eastern DRC', Global Witness, July 2009.

106 Ibidem.

107 S/2009/603: p. 42.

108 From both areas porters who carry head loads of 30-50 kg evacuate cassiterite. They are paid around \$1.30 per kilo (Interview with traders in Uvira, 28th July 2010).

109 Interview with traders in Uvira, 28th July 2010.

110 Interview with a confidential Congolese intelligence officer in Bukavu, 28th July 2010.

prefer to traffic gold out of the country to avoid export duties which amount to 4.75 percent of the export value.<sup>111</sup>

One way of bringing traffic out into the open and tracing gold as it moves along the supply chain would be to make it advantageous for traders to sell at markets where buyer and sellers come together to trade gold openly. There are several markets in the province that are authorised by local authorities and where gold trade is formalised to a certain extent. This means that traders are organised in a committee that keeps records of traders' documents and registers transactions. For example, this is the case in Mugogo market, 25 km from Bukavu, as well as other markets in the vicinity such as Kankinda, Tubimbi and Kilungutwe.<sup>112</sup>

The quantity of gold traded in these markets is rather small. According to the president of the traders' committee in Mugogo, about 100-150 grams is traded every market day (each market operates once or twice a week), involving about 20 transactions.<sup>113</sup> Mugogo brings together diggers from mines in the vicinity, such as Mukungwe, and agents that buy for *négociants* in Bukavu. Most of the agents present at the market possess a *carte de commissionnaire* and buy for licensed *négociants*. Mining authorities have not made any attempt so far to centralise recording of market transactions and add up the quantities purchased by the different licensed *négociants*.

Open markets fail to attract intermediate traders, who rotate between Bukavu/Uvira and interior mines and deal with larger quantities of several hundreds of grams per rotation. These traders are usually pre-financed and have to deliver gold directly to their sponsor. Preferably they send their parcels by *colis valeur* (parcel of value) on planes to Bukavu, which mining authorities are not authorised to open for inspection because of the confidentiality of the mail. But even when they go by road and have a decent amount of gold to sell independently, they are unlikely to be able to sell it in the market, simply because there are no *négociants* present. *Négociants* are not willing to take the risk of transporting gold to town after having bought it with the knowledge of potential robbers and authorities.

In Mugogo, the author of this chapter spoke with one trader who was carrying 1 kg of gold, purchased in several locations in Mwenga territory. He was on his way to Bukavu and stopped in Mugogo to see whether a *négociant* was present who would have the means to buy such a large quantity and take him to Bukavu safely to make the deal there. The trader seemed desperate to board a private vehicle. Even on the 25 km stretch between Mugogo and Bukavu there was apparently still a chance of being apprehended by authorities or robbed by bandits.

Although little gold is transacted in open markets like Mugogo, this anecdote illustrates that once markets and access roads are secured, there may be opportunities to attract sellers and buyers of larger volumes and thus ensure that a good part of the gold transacted in the province is exported legally. In fact, securing markets is one of the aims of a UN-sponsored project to establish two so-called *centres de négoce* for gold in the province, one of which is planned in Mugogo.<sup>114</sup> Besides investment in posting mining police to provide security, the project encompasses the deployment of mining authorities to register transactions and levy taxes, as well as the provision of stocking facilities.<sup>115</sup>

If Mugogo acquires a reputation as a safe environment where gold can be stored in a secure manner, it is likely to attract a large number of gold sellers. It remains to be seen, however,

111 'Rules for sale: formal and informal cross-border trade in eastern DRC', Aloys Tegera & Dominic Johnson (2007): p. 42.

112 Mwugogo is located at the junction of several roads that lead to Bukavu and therefore has historically been important in linking the provincial capital to the Kivu hinterland. There has been gold trading in Mugogo for more than 30 years, but the war led to a sharp decline in trading activities, which have only very recently picked up again (Source: interview with UNICEF employee in Bukavu, 23rd June 2010).

113 Interviews with traders in Mugogo market, 21st July 2010.

114 The other *centre de négoce* was first planned in Baraka in Fizi territory, but may also be established in Numbi in Kalehe territory (Source: interview with UN representative in Bukavu, July 2010).

115 UN Development Programme (UNDP), Multi-Donor Trust Fund, 'Centres de Négoce Est' Project fact sheet.

whether Bukavu- and Uvira-based gold buyers will also visit the market regularly. There are two reasons why the latter are hesitant about going to Mugogo: first, they are scared of being faced with enormous taxes, and, secondly, they feel intimidated by the prospect of having to subject themselves to a higher level of government control. Gold buyers are afraid that, if they choose to purchase their gold directly in Mugogo, it will be easier for local mining authorities to monitor their transactions and prevent them from exporting their gold illegally. In order to stimulate Bukavu- and Uvira-based gold buyers to conduct their buying operations in Mugogo, Congolese authorities should provide them with special incentives. It may be a good idea, for instance, to offer temporary tax exemptions or reductions. Measures like these are absolutely essential for Mugogo to become a success. In the absence of special stimuli for gold buyers, Mugogo's gold trading volume is likely to remain rather low and insignificant compared to the total amount of gold traded in the province of South Kivu.

Another aim of the *centres de négoce* project is to extend security to mining areas in the vicinity. This goal seems hard to reach in Mugogo. The nearest gold mining area where military interference is rampant is that of Mukungwe, 30 km from Mugogo and reachable only by foot after a steep 3 km climb. A UN representative in Goma admitted to us that this security aspect is difficult to achieve from Mugogo and that the centre has more of a development objective, as it would allow small-scale traders to sell at a decent price and in a secure environment. The second *centre de négoce* for gold in the province, should, however be located in a place where this security aspect can be developed<sup>116</sup>. For this reason, the UN is considering substituting the intended location of Baraka - which is in Fizi territory and far away from active gold mines - for Numbi in Kalehe territory where there are militarised mines in the vicinity.

## 5.6 Conclusions

Gold trade in the Uvira-Bukavu-Burundi triangle has gone almost completely underground. Gold is smuggled to neighbouring countries and from there to the rest of the world. A few major traders transport gold out of the triangle using intermediary agents. Very little is known about downstream markets and clients in Asia, Europe and the Middle East, a subject which merits further research.

Gold trade benefits and may even solidify relationships between the units and commanders belonging to the 10<sup>th</sup> Military Region and those involved in the Amani Leo campaign. The 10<sup>th</sup> Military Region may control mining areas, while Amani Leo commanders control the trade emanating from these, as in the case of Mukungwe. Alternatively, commanders of both units can control mining pits in the same area and share illicit taxes. The amounts of gold purchased or produced for military officers are transacted through established (informal) exporters, but there may be other exporters and channels. More research is needed to expose any links.

Government initiatives to formalise the gold trade have not had any significant effect so far. Lower license fees have not stimulated the establishment of new *comptoirs* for gold. Meanwhile, established *comptoirs* are involved in smuggling or decline to renew their licences. It can be argued that the tax burden discourages *comptoirs* from declaring their exports and that lower licensing fees does not counterbalance high export taxes. Attracting traders to open markets may improve traceability of gold, both up- and downstream from markets. The *centres de négoce* initiative holds considerable potential, but traders are unlikely to transact gold here if they are obliged to pay taxes there.

Rather than aiming mainly to improve the government's revenue base, *centres de négoce* need to focus on the security needs of traders and diggers. This means providing safe areas for storing and

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<sup>116</sup> Interview with a UN representative in Goma, 3rd January 2011.



trading gold, securing routes to and from markets and extending security to mining areas in the vicinity of markets. This is the only way to make sure that markets such as the one at Mugogo capture a substantial portion of domestic gold trade. It would also allow greater control at the export level.

## Chapter 6: The Lulingu-Nzovu-Nzibira Cassiterite Axis

### By Ruben de Koning

#### 6.1 Introduction

This chapter focuses on mineral trade along the Lulingu-Nzovu-Nzibira axis, where most of South Kivu's cassiterite production takes place. Traders sourcing cassiterite along the axis have in the past been accused of supporting armed groups, notably the FDLR, which controlled large areas where some key production sites are located. Recent military operations against the FDLR have scattered the movement and dislodged its soldiers from some significant mining locations. Drawing on local reports, this chapter shows that despite some military successes against the FDLR, mines along the axis cannot be labelled "conflict free".

The chapter is organised in four parts. The first part provides available production and trade statistics, which demonstrate that cassiterite trade from the axis has declined in recent months, despite favourable prices on the world market. This trend is in line with trade from South Kivu as a whole. The second part analyses the changing patterns of control over mining areas, particularly near Lulingu, and describes episodes of violence near mine locations. The third part examines dominant trading and transporting companies at the level of domestic trade and at the export level, highlighting malpractices of otherwise legal operators. The fourth and final part draws conclusions and provides tentative recommendations.

It should be noted that, like the other chapters in this volume, this chapter was written on the basis of information collected during fieldwork in July and August 2010. Consequently, it does not discuss the consequences of the embargo imposed by President Kabila in September 2010.

#### 6.2 Production and Transport

Cassiterite mines on the axis in question are concentrated in three areas, following the southern boundary of Kahuzi Biega National Park (KBNP). The area furthest away from Bukavu is Lulingu (Shabunda territory) from where mine locations extend to the west into the park. Most minerals taken from the area are transported by air. The airstrip is located in Tshonka, about 10 km from Lulingu. Small quantities of cassiterite from the area are also airlifted from the airstrip in Shabunda. A second area is located in the southeastern corner of KBNP, east of the villages of Kigulube and Nzovu (Shabunda territory). Today, minerals are transported either by road towards Bukavu or towards Lulingu. A third cassiterite-rich area is that of Nzibira and Luntukulu (Walungu territory, Ngweshe *collectivité*) about 80 km from Bukavu. Minerals from these locations are transported by road. The road that runs from Bukavu eastwards to Lulingu via Kigulube has been rehabilitated as far as Nzibira. Adjacent to Ngweshe is the *collectivité* of Nindja (Kabare territory) where some cassiterite mines are also located, with their trade oriented to Nzibira.

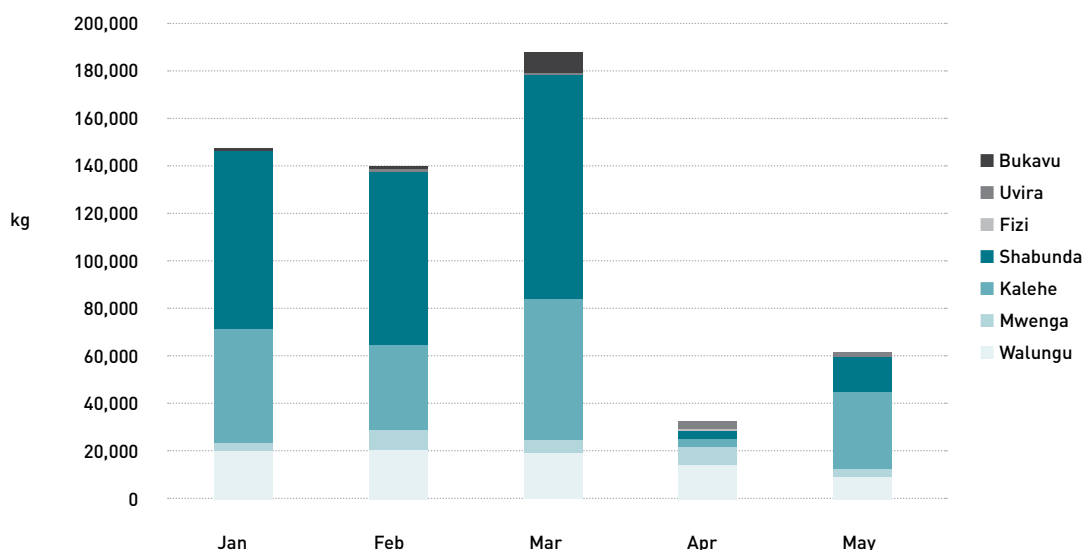
Mineral deposits along the Lulingu-Nzovu-Nzibira axis are primarily cassiterite, with the most important mines located in Shabunda territory. In 2009, the *Service des Mines* in Shabunda registered over 766 tonnes of cassiterite leaving the territory, of which 566 tonnes went by air and 200 tonnes by road. The registered production of Shabunda represents 16 percent of total official exports from Bukavu that year.<sup>117</sup> Data collected by SAESSCAM in the first quarter of

<sup>117</sup> According to export statistics from the *Office Congolais de Contrôle* (OCC) of 4,741 tonnes in the calendar year 2009. This figure includes cassiterite produced in Maniema, which is mainly exported through Bukavu.

2010 suggests an increase in production with an average of 80 tonnes leaving the territory per month, against a calculated average of 64 tonnes per month in 2009. Figures for April and May 2010, however, show a dramatic decrease in production: 3.5 and 15 tonnes respectively. Figures for April seem erroneous, considering that the *Division des Mines* registers 34 tonnes of cassiterite leaving the territory by plane in the same month. Assuming that the division between road and air transport has remained the same, this figure suggests a decrease in production compared to the beginning of 2010, as well as compared to the whole of 2009.

SAESSCAM production figures for Nzibira and Luntukulu are less erratic and show a steady but certain decline during the course of 2010: From 7.5 and 5 tonnes respectively in January 2010, to 3 and 1 tonnes in May 2010. Minerals from the Nzovu and Nindja areas are not registered, because traded quantities only enter the formal trading sphere either in Lulingu or in Nzibira and Burhale. In Burhale, the road from Nzibira merges with the one that goes down to Kamituga and continues to Bukavu. Cassiterite trade which is registered for the first time in Burhale in Walungu (between 3 and 7 tonnes in the first months of 2010) can come from any mine in Mwenga, Shabunda or Kabare territories.

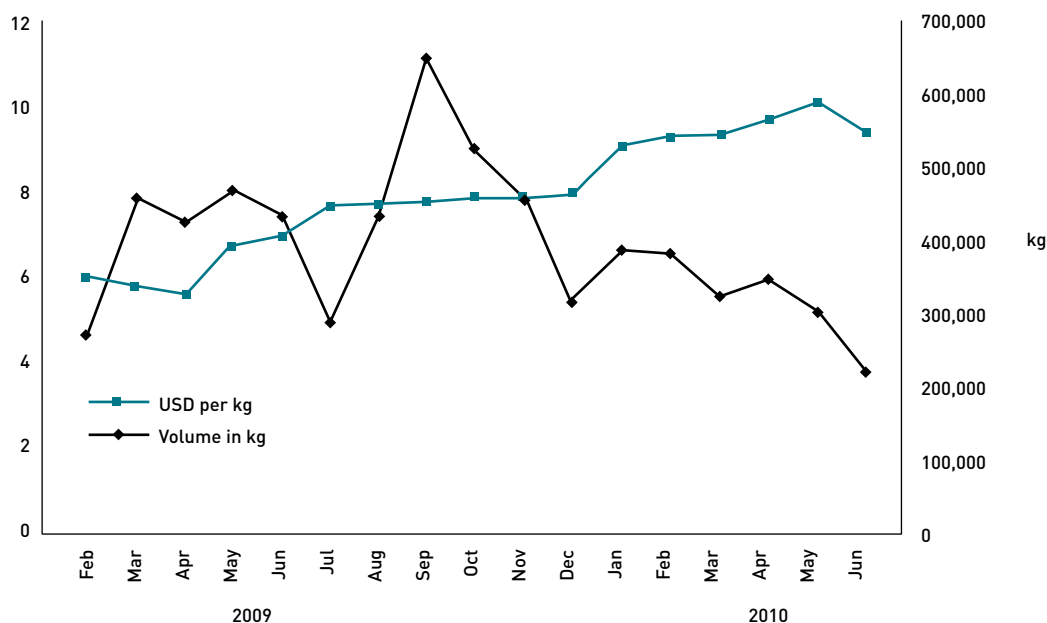
#### Cassiterite production in South Kivu per territory Jan–May 2010



Source: Service D'Assistance et d'Encadrement du Small Scale Mining, Bukavu

The decline of registered production along the axis, and for South Kivu as a whole, does not appear to be related to the cassiterite export price, which largely follows international price developments of tin on the London Metal Exchange. After a dramatic fall in international prices at the end of 2008, tin prices have progressively recovered since the beginning of 2009, despite ongoing worldwide economic recession. The observed decline in production is more likely the result of international buyers pulling out of the DRC in 2010 after being criticised for purchasing minerals from rebel-held areas. Although one dominant international buyer (Malaysia Smelting Company) continued to import from South Kivu during the first half of 2010, it undoubtedly does not fully make up for the fall in demand from other international importers.

### Price fluctuations and cassiterite exports from Bukavu Feb 2009–Jun 2010



Source: Office Congolais de Controle, Bukavu, S. Kivu

Due to the remoteness and insecurity of many mining areas, it is hard to estimate the number of operational quarries and active miners along the axis. Near Lulingu, nine quarries are mapped by International Peace Information Service (IPIS) but without indicating the number of workers.<sup>118</sup> The same amount of quarries is listed around Nzibira and Luntukulu with numbers of workers varying between 10 and 100.<sup>119</sup> A document obtained at the Chief's office of Ngweshe in Walungu town shows 15 mines in the *collectivité* where customary taxes are levied.<sup>120</sup> All but two names (Luntukulu and Zolazola) fail to correspond to the IPIS mapping. This is probably because they include gold mines and because some quarries have been exhausted since the IPIS mapping, while others have been opened. In the area near Nzovu, within the park, there were up to 40 active quarries in 2004, with an estimated 3,600 miners.<sup>121</sup> Many of these have been abandoned as they yielded mainly coltan, which has had a steadily declining price since 2002. For all areas, it must be noted that quarries are relatively small compared, for example, to the quarries in Bisie in North Kivu, where each accommodates several hundred diggers.

## 6.3 Mining and Conflict Dynamics

The security situation is precarious in all three mining areas along the axis. Particularly in the mines that are located far from the road and towards or inside the park, there is a high degree of interference by FDLR elements. FARDC units involved in the Amani Leo operation have taken partial control over most major towns along the road - including Kigulube, Burhale, Nindja, Shabunda and Lulingu - thereby driving FDLR units into more remote forest areas, often inside the park. MONUSCO efforts to repatriate the FDLR are ongoing but progress is slow.

<sup>118</sup> The quarries involved are Bionga, Tchonka, Nyabesi, Namery, Nkubu, Nietubu, Nyabembe, Kanzuzu, Swiza.

<sup>119</sup> The quarries involved are Muhinga, Namwerwe, Mushangi Zolazola, Maziba Katanga, Maziba, Mushangi, Luntukulu, Kilima Kwale, Bushushu tete Luntukulu.

<sup>120</sup> For example, the mines of Namurhale, Luntukulu, Zolazola, Kalongo, Kadji, Irambo, and Gisheshe.

<sup>121</sup> 'News from the Kahuzi Biega National Park', Gorilla Journal 28, June 2004.

The removal of the FDLR does not lead to full demilitarisation of mines, because FARDC units (Amani Leo Command and/or 10<sup>th</sup> Military Region) take over a degree of control over mining operations and trading activities. West of Nzibira, roadside attacks and extortion by FDLR rebels or other bandits are frequent, making road transport of minerals beyond this point a highly risky undertaking. Fighting along the axis between the FARDC Amani Leo units, the FDLR and associated Mayi-Mayi groups is sporadic. The population suffers on the one hand from FDLR revenge attacks on villages, and, on the other hand, from clashes between FDLR and FARDC units holding the aforementioned villages.

The cassiterite mine of Nyambembe — on the outskirts of KBNP, 30 km from Lulingu — illustrates how army officers benefit from mining and the role minerals play in current conflict dynamics in the area. According to a local source, the mine is currently under the control of an Amani Leo battalion. Local miners and members of the *Service des Mines* in Shabunda informed us that the cassiterite is being transported under the supervision of soldiers to Tshonka airstrip and then sold to a *comptoir* in Bukavu. Such *comptoirs* are said to prefinance mining activities in return for the right to purchase the cassiterite produced. Since only licensed *négociants* and their commissionaires are able to send and receive minerals on airplanes, the *comptoirs* would have to work through an associated trader who is licensed to do this.

Case study evidence from elsewhere suggests that FARDC beneficiation usually relies on a combination of haphazard and more regular forms of coerced taxation (in money or in kind), as well as on individual ownership of mine shafts.<sup>122</sup> The latter means that soldiers are permanently present in mines and have teams of diggers working for them, by force but also in exchange for some supplies and protection.

A violent incident reported near the village of Nduma, not far from Nyambembe, suggests that soldiers control certain shafts, and operate side by side with other so-called *managers* who supply teams of diggers and carry minerals to trading hubs to sell to *négociants*. According to a local source, FDLR elements - the dominant force in the area for most of 2009 - appeared at the mining site in March 2010 after receiving information that FARDC soldiers had taken some degree of control over mining operations.<sup>123</sup> Asking *managers* for their mining permits (*cartes de creuseurs*), 14 Amani Leo soldiers showed their military authorisation for travelling, thinking this would exempt them from illicit taxation and protect them from any other harm. Instead, they were all killed on the spot. The *managers* who were able to show their miner's permits were left unharmed but much of their material was confiscated. The attack was reported on Radio Maendeleo, but without mentioning the killings.<sup>124</sup> The radio station did mention that a number of people had been taken hostage from the areas of Nduma and Nyambembe, including many diggers and displaced people from Walikale in North Kivu.

The reason for taking hostages and the destiny of the victims in this attack remains uncertain, but in other cases the FDLR have been known to use local populations to transport minerals from the mines they attack and pillage (rather than control on a more permanent basis). For instance, Radio Okapi reported that in February 2010 FDLR and Mayi-Mayi Cheka elements pillaged a cassiterite pit near the village of Nkumwa, inside KBNP. Two unidentified FARDC soldiers were killed during the attack, according to Radio Okapi. It seems likely that they also controlled mining operations.<sup>125</sup> According to a local source, the mine had, like that of Nyambembe, come under the control of an Amani Leo commander.<sup>126</sup> Following the attack, the FDLR took several dozen people hostage

122 See 'Demilitarizing mining areas in the Democratic Republic of the Congo: the case of northern Katanga province', Ruben De Koning (2010), Stockholm: SIPRI Insights on Peace and Security.

123 Radio Maendeleo, a local station in Shabunda, reported that in mid-February the village came under attack for the first time by FDLR elements operating from their base in Ndugu, inside KBNP, east of Luyuyu [Source: 'Shabunda: les Fdlr attaquent les villages de Bamuguba nord', 15th February 2010].

124 'Shabunda : les Fdlr ont enlevé 150 personnes à la fin février', Radio Maendeleo, 12th March 2010.

125 'Kindu : 2 militaires FARDC tués, 50 personnes déportées, bilan d'une attaque des FDLR à Nkumwa', Radio Okapi, 10th February 2010.

126 Organisation Chart Operations Kimia II South Kivu, unpublished government document obtained during fieldwork in South Kivu, July 2010. .

to carry one tonne of cassiterite from the mine (in Punia in Maniema Province) to Shabembe (in Shabunda) and towards Lulingu. Radio Mandeleo reported that the FDLR elements involved in Nkumwa were the same ones that attacked Nyambembe a month later.

Researchers have not obtained any details about armed clashes occurring around mining areas in the Nvozu area. It is remarkable, though, that both FARDC commanders and FDLR elements that are or were based in this area now seem to operate in mining areas more than 100 km away in the northern sector of the park. It is possible that with the closure of Nvozu airstrip, mines near to Lulingu are more feasible to exploit and therefore worth controlling and fighting over. In addition, Nvozu is better known for its coltan, the price of which has not increased like that of cassiterite, potentially drawing people to cassiterite-rich parts of the park.

In summary, recent military operations (Kimia II and Amani Leo) in Shabunda have led to the FARDC extending its influence over mineral-rich areas that were previously under partial or complete FDLR control. This has sparked violent counterattacks. Rather than seeking to (re) establish long-term control, FDLR elements pillage the mines in order to generate income. How the FDLR inserts itself in mining activities deeper into Kahuzi Biega National Park in areas under more stable military control is a question that deserves further attention.

There have not been any violent confrontations over mines around Nzibira in recent months, but there are still some cassiterite (and coltan) mines in areas that are FDLR-controlled. These are located near the villages of Lukoma (Groupement Luago) and Chirambo, both in the *collectivité* of Nindja. Local (mining) authorities in Nzibira state that the FARDC battalion based in Nzibira stops *négociants* accessing FDLR-controlled areas. According to a local civil society representative, it is, however, difficult to prevent local small-scale traders from these areas trading minerals at the markets of Nzibira and Kankinda. They claim that production derives from mines near Nzibira such as Zolazola and Muhinga. In addition, traders can easily bypass local mining authorities by declaring their minerals only in Burhale, halfway towards Bukavu. SAESSCAM agents say that each week about a one tonne of cassiterite arrives at their post in Burhale that has not been registered upon transport before. At this level there is no capacity to verify traders' claims of origin of minerals.

Despite the fact that, in several mining areas, units involved in the Amani Leo campaign have replaced units belonging to the 10<sup>th</sup> Military Region, there have been no reports of hostilities between different FARDC units. For example, Amani Leo forces replaced elements of the 14<sup>th</sup> Brigade in Nzibira at the end of 2009. The latter returned to their barracks in Walungu town. According to SAESSCAM agents in Burhale, the 14<sup>th</sup> Brigade now concentrates its economic activities in gold mining areas near the town. Because both Amani Leo and 14<sup>th</sup> Brigade elements have economic interests in mining, they do not confront or accuse each other of wrongdoing. Instead, a pattern of peaceful cohabitation has emerged, whereby autonomous units belonging to the 10<sup>th</sup> Military Region oversee some key mineral-rich zones very close to areas that have come under Amani Leo command.

## 6.4 Economic Operators

As we have already said, most minerals produced along the axis are taken out of the area by plane. According to statistics obtained from the provincial *Division des Mines*, three air cargo companies operate flights to Lulingu and Shabunda: Agefreco, New Congocom Air (NCCA), and Hirondelle.<sup>127</sup> Planes that touch down in these locations also load minerals elsewhere, notably in Maniema (Kasese, Kalima, Punia) but also in North Kivu (Lubutu), as well as in other areas in South Kivu (Lugushwa) where small quantities of minerals are loaded. Daily reports from *Division des Mines* agents posted

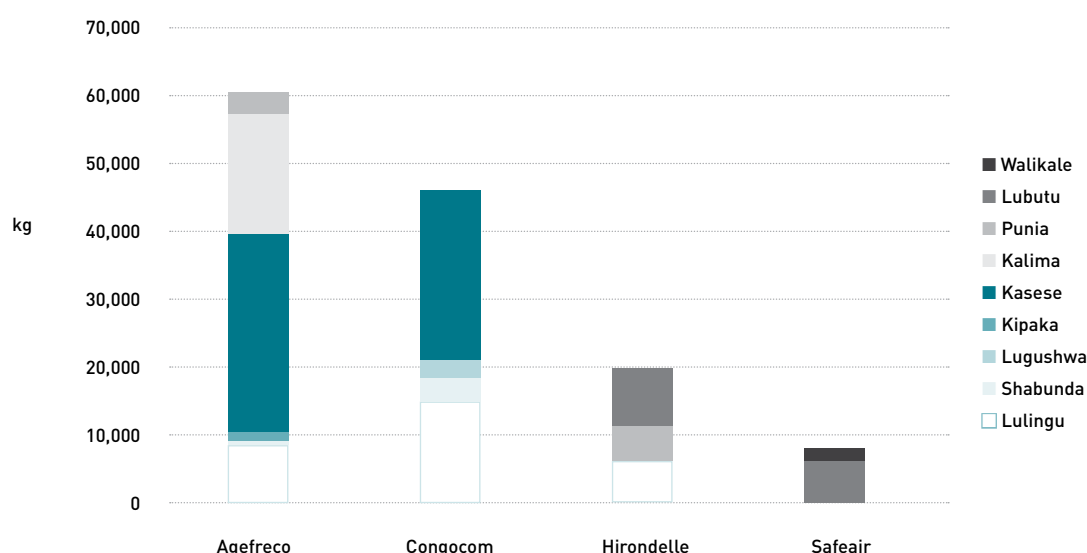
<sup>127</sup> Data obtained from the *Division des Mines* in Bukavu, July 2010.

at air cargo companies' premises for January and April 2010 show that around 35 percent of minerals transported to Bukavu by air originate from Lulingu/Shabunda. Much of the remaining 65 percent comes from Kasese/Kalima in Maniema. Flights stock 1.5-6,000 tonnes of cassiterite per rotation. The number of rotations per week is highly variable, depending on the price of cassiterite, the availability of aircraft and petrol, and the level of insecurity.

**Table 1: Air cargo companies' mineral transports in South Kivu, January-July 2010<sup>128</sup>**

Month	NCCA	Agefreco	Hirondelle
Jan	38,618 kg	54,402 kg	N/A
Feb	41,580 kg	67,192 kg	N/A
Mar	65,037 kg	78,891 kg	N/A
Apr	63,950 kg	40,642 kg	18,546 kg
May	40,488 kg	37,107 kg	27,107 kg
June	25,764 kg	15,709 kg	N/A
July	34,143 kg	22,943 kg	N/A

**Source of origin of cassiterite arriving in Bukavu by air Jan 2010**



Source: Division des Mines, Bukavu, South Kivu

According to a representative from Agefreco, the air cargo companies operating from Bukavu do not actually own any planes but rely on aircraft rented from the aviation companies SWALA Aviation, African Air Service and TRACEP Congo Aviation. However, since in September 2007 the national Ministry of Transport banned the circulation of Antonov aircrafts that do not meet safety standards, only SWALA has planes available for mineral transports: two Skyvans and one LET-410, according to a 2010 inventory of the state transport authority Transcom in South Kivu.

The company's virtual monopoly in the province drives up the cost of renting planes to \$2,500-3,900 per rotation, depending on the distance and number of landings, according to an Agefreco representative. Increasing rental costs are, in turn, reflected in high transport prices and passed on to traders. At NCCA, traders currently pay \$1 per kilo transported from major mineral-rich areas such as Lulingu and Kasese, compared to \$1.50-\$2 per kilo from minor areas such as Lugushwa and Kipaka.

<sup>128</sup> Data obtained from the *Division des Mines* in Bukavu, July 2010.

Air cargo companies transport minerals for *négociants* in Bukavu. These usually have their agents, or *commissionnaires*, on-site to make mineral purchases and organise transport to the airstrip. These agents usually possess a *carte de commissionnaire* issued by the *Division des Mines* in Bukavu. This licence costs \$200 per calendar year, contrasted with \$500 for the *carte de négociant*. Although *commissionnaire* status is not in the mining code, it provides a minimal level of legality for traders to purchase, hold and transport minerals. Minerals are shipped in the name of the *négociant*, or the *comptoir* that will collect in Bukavu and pay for transport. Lulingu statistics, collected by the *Division des Mines* upon arrival of goods at the premises of air cargo companies, show that some 30 *négociants* are active in the zone, representing two-thirds of all licensed *négociants* in South Kivu. In addition, the above-mentioned statistics make reference to the *comptoirs* Afromet and Panju as direct buyers from Lulingu.

One of the most important freight carriers, Agefreco, is also directly involved in the commercialisation of minerals. Agefreco's owner, Patrice Bashengezi, holds a *carte de négociant*.<sup>129</sup> In his daily reports for April 2010, the inspector of the *division des mines* posted at Agefreco accuses the owner of the company of obstructing his investigations into the legal compliance of traders making use of the company's services. Furthermore, in January 2010 the inspector observed two cases of tax evasion resulting from under-declaration of goods by traders, and the stocking of minerals in the depot of Agefreco.<sup>130</sup> This information leads us to conclude that some businesses can use their capacity as carrier-cum-trader to circumvent taxes and to help non-authorised traders sell their minerals.

According to South Kivu customs data, five *comptoirs* officially exported cassiterite from the province in 2010 - Panju, WMC, T.T.T, Bakulikira and BERACHA.<sup>131</sup> Data shows that Panju, WMC and T.T.T. sell predominantly to Malaysia (Malaysia Smelting Company). Bakulikira sells to MSA in Rwanda, and BERACHA sells a very small quantity to an unknown US importer. The main road transport company that all exporters use is AGETRAF, a subsidiary of the French company Bolloré. Other companies are XL-TRACO (also to Dar es Salaam) and Arc en Ciel (to Rwanda).

Besides official road and water transport, cassiterite from the axis is said to be transported illegally by boat between Bukavu (Muhumba) and Kamembe, in Rwanda. According to traffickers interviewed, cross-border deliveries take place during the night and require about 30 minutes and a few dollars to bribe the Congolese soldiers that patrol the waters of Lake Kivu at the source of the river Ruzizi<sup>132</sup>. Once they reach the Rwandan side, minerals are loaded on to trucks and transported to Kigali without any control or interference by Rwandan authorities. When cassiterite prices are low in Bukavu, the extra margin on cassiterite sales in Rwanda can be more than \$1.50 per kilo, making smuggling highly profitable. During these periods many *négociants* refuse to sell to official *comptoirs* and sell instead to the traders who can arrange illegal transport<sup>133</sup>.

One of the traffickers in Bukavu showed the *carte de commissionnaire* he acquired in order to avoid trouble with the authorities. He claims to smuggle about 10-20 tonnes per month and purchases cassiterite and wolframite in Bukavu with money received from *comptoirs* in Kigali. Sums of money ranging between \$50,000 and \$200,000 are transferred to his account at a Rwandan bank in Cyangugu, just across the border from Bukavu<sup>134</sup>. Traffickers defend this way of conducting their business by arguing that major exporters are equally guilty of fraud by grossly under-declaring the quantities of minerals they export<sup>135</sup>.

129 In 2006, Mr Bashengezi was a candidate for the provincial assembly but did not receive enough votes to become a deputy [Source: Election results published by the Independent Electoral Commission, [http://www.cei-rcd.cd/provinciale/resultats/bukavu\\_exp.pdf](http://www.cei-rcd.cd/provinciale/resultats/bukavu_exp.pdf)].

130 SAESSCAM taxes 0.1 percent of the value of transported minerals (*frais de rémunération*), which is retroceded to other government services [Source: Interview with SAESSCAM representative in Bukavu, 23rd July 2010].

131 Export statistics for the period between January and May 2010, OFIDA warehouse in Bukavu.

132 Interview with mineral traders in Bukavu, 26th July 2010.

133 Interview with mineral traders in Bukavu, 26th July 2010.

134 Interview with mineral traders in Bukavu, 26th July 2010.

135 Interview with mineral traders in Bukavu, 26th July 2010.



## 6.5 Conclusions

Many cassiterite mines along the Lulingu-Nzovu-Nzibira axis are subject to armed conflict. The open or hidden involvement of FARDC military elements in mining has triggered attacks by the FDLR. The FDLR has resorted to a strategy of looting and kidnapping members of local communities to transport minerals. An alliance between FDLR and Mayi-Mayi Cheka operates in both North and South Kivu, profiting from the remoteness of Kahuzi Biega National Park. The presence of Amani Leo units in mineral-rich areas needs to focus on providing real protection to mining communities rather than provoking looting attacks. Sufficient payment and disciplinary measures are essential but difficult, partly as a result of the accelerated integration of former rebels and militia members into Amani Leo units.

Companies that knowingly buy from and finance mining operations by military actors are complicit with fuelling violence at the local level. But there is a loophole in the UN approach to such situations through its Sanctions Committee. Security Council Resolution 1857 of December 2008 calls for sanctions on 'individuals or entities supporting the illegal armed Groups in the eastern part of the DRC through the illicit trade of natural resources'. Amani Leo units are not illegal but part of the regular armed forces of the DRC. Therefore, sanctions do not apply where their involvement is alleged.

There is no evidence that the agents of transport and trading companies operating on the axis engage directly with military players on the ground, be they state or non-state. There are, however, other illegalities that state authorities need to be more vigilant on, such as tax evasion, illegal purchases, and subsequent whitewashing. These illegalities not only deprive the state of official revenues but could also allow (unlicensed) traders that *do* directly collaborate with military actors to commercialise their minerals.

## Chapter 7: The Complex Conflict Dynamics in Kalehe's Nyabibwe Mine

By Jeroen Cuvelier

### 7.1 Introduction

This chapter aims to provide a detailed analysis of the relationship between artisanal mining and conflict in the territory of Kalehe, a heavily militarised area in South Kivu. We will focus on Nyabibwe, a cassiterite mine that is important not just in terms of production and numbers of artisanal miners, but also in terms of international policy attention. The International Tin Research Institute (ITRI), an organisation representing the interests of companies working in the worldwide tin industry, has decided to use Nyabibwe as a pilot site for a newly developed traceability mechanism, which is supposed to help solve the problem of conflict minerals in eastern DRC.

This chapter argues that, although the traceability mechanism may indeed contribute to increased transparency in the artisanal mining sector, it is also likely to create the erroneous impression that the issue of conflict minerals is a purely technical problem with a purely technical solution. The situation in Nyabibwe highlights the complexity of the relationship between artisanal mining and conflict in eastern DRC and illustrates that artisanal mining should not be studied in isolation, but should always be looked at in relation to the whole set of factors which cause and perpetuate the conflict.

The first part of the chapter provides a short historical overview of the conflict in Kalehe. It shows that, in order to understand the continuing violence in the region, it is important to pay close attention to the intimate relationship between land and identity. This has become increasingly complex in the last few decades, as a result of processes of migration and regional instability, and the presence of state and non-state armed groups. The second part describes how mining activities in Nyabibwe have been affected by the ongoing conflict in Kalehe and shows how the relationship between land and identity also plays an important role in the artisanal mining industry. The third and final part of the discussion will be dedicated to a description of one trader involved in the buying and selling of cassiterite originating from the Nyabibwe mine, which illustrates how traders are more and more concerned about the potential damage to their reputations as a result of involvement with conflict minerals. While they continue to be largely unaware of what is going on in the mining areas, they do seem to be prepared to support transparency initiatives such as the one developed by ITRI.

### 7.2 Land and Identity in the Territory of Kalehe

Kalehe, which has an estimated surface of 4082.25 km<sup>2</sup>, is one of the eight territories of the province of South Kivu. It is bordered by the territories of Walikale and Masisi in the north, by Lake Kivu in the east, by the territory of Shabunda in the west, and by the territory of Kabare in the south. In 2008, it had a population of approximately 1 million inhabitants<sup>136</sup>. Kalehe is somewhat isolated, since the two roads running through the territory – the RN 2 and 3 – are in very bad condition<sup>137</sup>.

Roughly speaking, there are two longstanding conflicts in Kalehe: one between Havu and Tembo, and another one between Havu/Tembo and Banyarwanda communities. The first conflict revolves

<sup>136</sup> 'Preliminary assessment and technical report for the Kalehe project of Shamika Resources Inc.', Geodem Inc., November 2008: p. 3.

<sup>137</sup> 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: pp. 6-8.

around the creation of a new territory called Bunyakiri. Whereas members of the Tembo and Barongeronge communities are in favour of establishing the new administrative unit, members of the Havu community and of the local administration have always rejected this demand<sup>138</sup>. During the rebellion of the *Rassemblement Congolais pour la Démocratie (RCD)*, it seemed as if the Tembo and Barongeronge would get what they wanted. In September 1999, the RCD decided to separate Bunyakiri from Kalehe with the aim of turning it into a new territory. However, in 2008, Bunyakiri lost its newly acquired status and became part of the territory of Kalehe again<sup>139</sup>.

The second conflict in Kalehe, which pits Banyarwanda against members of the Havu and Tembo communities, dates back to the 1950s. The influx of Banyarwanda in the decade before independence was due to Belgian colonists' demand for foreign labour to run tea, coffee and cinchona plantations in the territory of Kalehe. Little by little, these Banyarwanda migrants – who either came from Rwanda or from Masisi – started making arrangements with local Havu and Tembo chiefs to work unoccupied plots of land on the High Plateaux. Initially, they respected the authority of the local customary chiefs who had given them their land, but during the 1980s, they started asking for more autonomy<sup>140</sup>.

During the Second Congo War, between August 1998 and July 2003, the RCD responded to the Banyarwanda call for more autonomy by creating a new *groupement* called Mianzi<sup>141</sup>. For the Banyarwanda, the advantage of creating Mianzi was that they no longer depended on the goodwill of Havu and Tembo chiefs to access land. Once they had their own customary chiefs, they had no obligation to submit to the authority of other ethnic groups' traditional chiefs<sup>142</sup>.

We should emphasise that the land issue is not the only factor to cause tension between Banyarwanda and members of communities that see themselves as “indigenous”. Another issue straining the relationship between the two communities is the nationality debate. In the context of the *Conférence Nationale Souveraine*, which took place in the early the 1990s, the government decided to organise a census. The Kinshasa government's decision to only grant Zairian nationality to people who could prove that their ancestors had arrived in the country before 1908 meant that a large group of Banyarwanda migrants were denied citizenship of the country that would become Democratic Republic of Congo<sup>143</sup>.

As could be expected, the Rwandan genocide and its aftermath have had a strong impact on the relationship between the different population groups in Kalehe. Large groups of Rwandan refugees arrived in the area and a big Rwandan refugee camp was built 4 km south of the centre of Kalehe. There was a considerable degree of interaction between the newcomers and the Rwandophones already present in the area. While, on the one hand, Hutu refugees established contacts with other Hutu living on the High Plateaux, on the other hand, some Tutsi were so scared of the presence of Interahamwe Hutu *génocidaires* among the refugees that they fled to Rwanda. All in all, the Rwandan genocide and the subsequent influx of Rwandan refugees - amongst whom were armed militia or ex-FAR - gave rise to increasing tension between Hutu and Tutsi on the High Plateaux<sup>144</sup>.

Since the peace accords of 2003, several armed groups have operated in the territory of Kalehe. The most important ones have been the FDLR, the Congolese army (FARDC), PARECO and various Mayi-Mayi groups. In 2007, the number of FDLR fighters was estimated at 6,000 to 7,000 for the two Kivu provinces. No less than 2,000 of these men were believed to be operating in Kalehe. The FDLR is composed of former members of the Rwandan army (ex-FAR), members of extremist Hutu

138 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 10.

139 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 14.

140 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 16.

141 Mianzi was composed of pieces of land previously belonging to the *groupements* of Ziralo and Buzi. Ziralo and Buzi themselves were transformed into chieftaincies (*chefferies*) ('Analyse de contexte du territoire de Kalehe', APC/Life & Peace Institute, April 2009: p. 21.

142 'Analyse de contexte du territoire de Kalehe', APC/Life & Peace Institute, April 2009: p. 21.

143 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 18.

144 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 19.

militias (Interahamwe), Congolese and Rwandese civilians and refugees. Until recently, the four main FDLR strongholds in Kalehe were Ekingi (*groupement de Kalima*), Ngokwe (*groupement de Mubugu*), Bugaru (*groupement de Kalonge*) and Chambombo (*groupement de Ziralo*)<sup>145</sup>.

The presence of the Congolese national army in the territory of Kalehe can be explained by the threats posed by rebel leader Laurent Nkunda's forces (until January 2009<sup>146</sup>) and by FDLR forces. The two most recent confrontations between the FARDC and the FDLR took place in December 2009 and August 2010. The first confrontation occurred in Nyamukubi, which is 15 km from the mining centre of Nyabibwe. After having looted the villages of Kamikonzi, Bukungi, Uguli, Etungi and Bushebere, FDLR forces attempted to attack positions of FARDC troops of the 23<sup>rd</sup> Sector of the Kimya II operations, but they failed<sup>147</sup>. The second clash is said to have taken place in the High Plateaux of Kalehe, in the area near Nyawaronga, Katasomwa, Lijiwe and Chabangi. Radio Okapi reported that the fighting left two people dead and one wounded<sup>148</sup>.

PARECO – *Patriotes Résistants Congolais* - was formed in the territory of Masisi in March 2007 as an umbrella group uniting various armed groups of Hutu, Tembo, Hunde and Nande originating from Masisi, Rutshuru and Walikale. In Kalehe, it quickly became the most powerful and important armed group. Since, on the High Plateaux, PARECO was made up almost exclusively of Hutu combatants, most communities in Kalehe considered it to be a militia aiming to defend Hutu interests. For a long time, PARECO's main objective was to stop the advance of Laurent Nkunda's forces, which it believed to be a threat to the interests of the "indigenous" communities of the southern part of the province of North Kivu and the northern part of the territory of Kalehe<sup>149</sup>.

The most prominent Mayi-Mayi group in Kalehe is that of Kirikicho. It is mainly composed of Tembo fighters from the *groupements* Ziralo and Ufamundu. Kirikicho is a former captain of the Mayi-Mayi group led by Padiri<sup>150</sup>. Dissatisfied with the rank of major he was promised at the time of the integration of Congo's armed forces in 2003, Kirikicho decided to continue his armed struggle against the FARDC. In 2007, he was finally prepared to integrate his forces into the Congolese national army and was assigned the rank of lieutenant-colonel in the 10<sup>th</sup> Military region. Eventually, however, he resolved to return to the bush, disgruntled at the way things were arranged. He had wanted guarantees concerning the protection of Ziralo by FARDC troops; he was not pleased with the way his men were paid; and he was disappointed about the army rank he had been given<sup>151</sup>.

### 7.3 Mining and Conflict in Nyabibwe

Traditionally, Kalehe's most important economic activities are agriculture, fishing, cattle breeding and petty trade. During the past two or three decades, however, the area has also witnessed a growth of artisanal mining activities. The artisanal exploitation of minerals such as cassiterite, gold and coltan occurs at various places around the region, and the largest concentration of these sites is on the High Plateaux<sup>152</sup>.

145 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 25.

146 The National Congress for the Defence of the People (CNDP) was formed in order to avenge the war crimes of the FDLR [Source: 'CNDP leader Laurent Nkunda seized by Rwandan army', United Nations Radio, 23rd January 2009].

147 'Kalehe: des attaques attribuées aux FDLR contre les FARDC signalées à Nyabibwe', Radio Okapi, 11th December 2009.

148 'Kalehe: affrontements entre FARDC et FDLR, deux morts et un blessé', Radio Okapi, 16th August 2010.

149 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 28.

150 During the Second Congo War, Padiri led a Mayi-Mayi group in South Kivu which claimed to fight against the invasion of the DRC by soldiers of the RCD rebel movement and the Rwandan national army. At the time of writing, Padiri is a high-ranking general in the FARDC [Source: 'The dynamics of transnational violence in the Great Lakes region: state transformation and social crisis in Kivu (Democratic Republic of Congo)', Denis Tull (2004), in: 'Social spaces of African societies: applications and critique about transnational social spaces', Jürgen Ossenbrügge & Mechteld Reh (eds.), Münster: Lit Verlag: pp. 213-214.

151 'Analyse de contexte du territoire de Kalehe', APC / Life & Peace Institute, April 2009: p. 29.

152 'Analyse de contexte du territoire de Kalehe', APC/Life & Peace Institute, April 2009: p. 8.

Nyabibwe is situated in the Buhavu chieftaincy of the territory of Kalehe, where there are substantial deposits of cassiterite<sup>153</sup>. Between 1980 and 1984, the *Société Minière de Goma* (SMDG) worked there on an industrial scale<sup>154</sup>. After the departure of SMDG, all its mining assets were taken over by Jules Chirimwami, a Havu who held the position of *chef de groupement* of Mpinga and who was also related to the *mwami* of the Buhavu chieftaincy in Kalehe. When Jules Chirimwami died, his brother Placide - who until then had been making a career for himself as a trader of coffee and cinchona - stepped forward and presented himself as the new owner of Kalimbi. Because he failed to evict the artisanal miners who had started working in the mine, he tried to win their sympathy by setting up an organisation called COOMBECKA (*Coopérative du Bien-être de Kalehe*), of which the majority of members were of Havu origin<sup>155</sup>. In 1993, the provincial authorities of South Kivu officially recognised COOMBECKA as a cooperative. At the same time, they authorised it to manage the abandoned assets of SMDG for a period of 30 years<sup>156</sup>.

According to a research report published by GTZ-Burundi and OGP-Bukavu in February 2010, Placide Chirimwami has succeeded in strengthening his control over the Kalimbi mine by concluding strategic alliances with a wide range of political, civil and military authorities in the region<sup>157</sup>. The following case study provides a good illustration of the techniques needed to assert and maintain control over major economic assets such as mines.

#### The court case between COOMBECKA and a group of independent artisanal miners<sup>158</sup>.

On 2nd October 2009, the justice of the court (*tribunal de paix*) of Kalehe heard a case between the mining cooperative COOMBECKA and a group of independent miners living and working in the mine of Kalimbi. COOMBECKA accused the miners of having violated its rights in several respects. It formulated its complaint in the following manner:

*'Having no title or right, and taking advantage of the war of 1996, the defendants have authorized themselves to exploit the pits of the plaintiff and to dig for cassiterite ores; (they have authorized themselves) to live in the defendant's four houses and to grow food crops to the detriment of the local community [...].'*

COOMBECKA claimed to possess several documents demonstrating the legitimacy of its claim. It gave the court a series of papers to prove its status as a legally recognised mining cooperative, and came up with a number of documents meant to demonstrate its ownership of the concession in which the Kalimbi mine was situated. The file submitted by COOMBECKA included a letter signed on 3rd June 2009 by the head of the provincial mining division of South Kivu who had provisionally authorised the mining cooperative to engage in artisanal mining in Kalimbi, and an application form for the Congolese mining register (*cadastre minier*) dated 1st December 2004 that had been submitted by the mining cooperative with a view to acquiring exploitation rights for Kalimbi.

The defendants countered that the plaintiff's accusations were baseless. They said that, in their view, COOMBECKA did not have the right to present itself as the heir of the properties left behind by the French mining company. Baudouin Musafiri, one of those who had been taken to court by COOMBECKA, argued that the law allowed him to work as an artisanal miner because he was in the possession of a so-called *carte de creuseur* or a digger permit. Furthermore, he told the judge he had serious doubts about COOMBECKA's ownership of the mine:

153 'L'économie des groupes armés au Sud-Kivu, RD Congo', GTZ Burundi / OGP, February 2010: pp. 54-55.

154 'Preliminary assessment and technical report for the Kalehe project of Shamika Resources Inc.', Geodem Inc. (2008): p. 12.

155 Interview with Placide Chirimwami, 25th August 2010.

156 'L'économie des groupes armés au Sud-Kivu, RD Congo', GTZ / Burundi & OGP, February 2010: pp. 54-55.

157 'L'économie des groupes armés au Sud-Kivu, RD Congo', GTZ-Burundi & OGP-Bukavu, February 2010, pp. 54-55.

158 Source: several official documents pertaining to the court case between COOMBECKA and a group of independent artisanal miners (public hearing on 2nd October 2009).

*'The defendant Musafiri Baudouin (...) declared before the court that the concession did not belong to him, but that he defended the interests of the population that exploited it; moreover, he argued he had the right to work in the concession because he had a digger permit (carte de creuseur) and because he was in the possession of administrative letters questioning the plaintiff's status as owner of the mine.'*

In the end, the judge ruled in favour of COOMBECKA, stating that only COOMBECKA had been able to present documents issued by what he considered to be the proper authorities. He found the defendants guilty of occupying the concession illegally and sentenced them to payment of US\$5,000 in damages. The judge referred in his ruling to the land law of July 1973 and an amendment to that law in July 1980:

*'All the lands occupied by local communities are public lands (terres domaniales). (...) the land law confirms the sacred principle of the public nature of land, that is to say, (the principle according to which) the soil and the subsoil belong to the state. In order to make this principle concrete, the state has left the task of granting rights over the soil and subsoil in the care of specialized services: at the local level to provincial ministers and heads of provincial mining divisions, and at the national level to the minister responsible for the mines and for the mining registry. The defendants occupy the Kalimbi concession in an illegal manner because they do not have any title given to them by the competent authorities (...).'*

There are several reasons why this court case deserves close attention. First of all, it throws an interesting light on the complex relationship between artisanal mining and land claims in the territory of Kalehe. In many parts of the DRC, artisanal miners find themselves in a weak position because they lack strong ownership rights. Since they do not own the land where they work, they run the risk of being chased off and losing their production as soon as the legal owner shows up to claim his property. In Kalimbi, some miners (mostly of Havu origin) have tried to insure themselves against such forced evictions by joining the mining cooperative created by Chirimwami. Thanks to their membership of COOMBECKA, they have received protection from a local strongman who is able to combine different registers of power: Chirimwami is not only a successful businessman owning large stretches of land in the area of concern to this report, but he also has kinship ties with the head of the Buhavu-chieftaincy, and he has good connections with politicians and administrators in South Kivu thanks to his longstanding involvement in local and regional politics. Capitalising on his thorough knowledge of the system, Chirimwami has been able to obtain a series of documents to back up his ownership claim.

The second reason why this case deserves close attention is that it illustrates the disadvantages as well as the advantages of a system of patronage. While diggers who are prepared to obey the rules of COOMBECKA can count on Chirimwami's support, those who are unwilling to follow the rules are likely to find themselves excluded and marginalised. From this court case, it is obvious that independent artisanal miners – those who refuse to become members of COOMBECKA – run the serious risk of being treated as illegal outsiders and usurpers. The reference by COOMBECKA's lawyers to the war of 1996 is highly significant. It is meant to imply that the defendants belong to a group of immigrants who have taken advantage of the offensive launched by Laurent Désiré Kabila's AFDL forces to steal land from the Tembo and Havu population in Kalehe. By portraying his adversaries as foreigners who work to "the detriment of the local community", Chirimwami plays the identity card: he wants to create the impression that the defendants belong to the category of "invasive immigrants", while he himself tries to defend the interests of the local population.

The third reason why the court case is worth studying in detail is that it tells us something about the coexistence of traditional and modern land tenure systems in Kalehe. According to the land law of 1973 – also known as the Bakajika law – all land is the property of the state<sup>159</sup>. This means that any

159 'Land and conflict: the case of Masisi', Koen Vlassenroot in: 'Conflict and social transformation in Eastern DR Congo', Koen Vlassenroot & Timothy Raeymaekers (eds.) (2004), Ghent: Academia Press.

land, whether it is vacant or occupied, can be appropriated by the authorities to sell it to a private buyer<sup>160</sup>. The law mentions a presidential decree which was supposed to regulate land rights for customary land areas, but this decree was never issued, leaving customary allocation of land in a legal vacuum and destroying the land access security of customary land ownership mechanisms. People can no longer be sure that they will be able to continue working the land granted to them by their traditional chief, because it may one day be bought by a large landowner<sup>161</sup>. The judge in the above-mentioned court case reminds the defendants of this important implication of the Bakajika law: they should be well aware of the fact that even customary land areas may be sold to private buyers.

As the following case will show, the issue of land management in Kalimbi has become even more complex since an international mining company arrived on the scene in 2007.

### Small-scale mining versus large-scale mining: the dispute between local artisanal miners and Shamika Resources

Despite the fact that the security situation in Kalehe has been very unstable over the past few years, the Canadian mining company Shamika Resources has taken the risk of performing exploration activities in the area. In 2007, its subsidiary, Shamika Congo Kalehe SPRL, was granted four exploration permits in the Kalehe region, which together covered an area of 169 km<sup>2</sup>. Interestingly, permit 7647 contained the quarry of Kalimbi<sup>162</sup>.

When artisanal miners in the Kalimbi quarry were informed that Shamika Congo Kalehe SPRL had obtained an exploration permit, they feared they would soon be prevented from entering the mine and continuing their digging activities<sup>163</sup>. According to Robert Vivian, the president and CEO of Shamika Resources, Placide Chirimwami presented himself as the owner of the land on which the Kalimbi quarry was located. He also told the company that he was the head of the cooperative working in Kalimbi. Since the Shamika management was eager to be on good terms with all local stakeholders, they did their best to come to an agreement with Chirimwami. They promised to give him a form of financial compensation if he could prove that he was really the landowner<sup>164</sup>.

This was not the end of Shamika's problems, however. In an interview published on Radio Okapi's website in July 2007, South Kivu's Minister of Mines Crispin Mutuedu claimed that Shamika was illegally exploiting cassiterite from the mine at Kalimbi. According to Mutuedu, Shamika did not have an exploitation permit and therefore did not have the right to undertake any excavation activities. Rejecting Mutuedu's accusation as unfounded, Robert Muongo, the director-general of Shamika Congo, argued that his company was only carrying out exploration activities in the area, which was perfectly in line with the exploration permit it had received from the Congolese mining authorities<sup>165</sup>.

In May 2010, Robert Muongo wrote to the head of the provincial mining division of South Kivu to make it clear to him that Shamika's exploration permit in Kalehe was completely legal and well-founded. He emphasised - contrary to the COOMBECKA leadership's claim - that Shamika's permit did not overlap with any of the zones earmarked for artisanal mining (the so-called *Zones d'Exploitation Artisanale*)<sup>166</sup>.

160 'Emergency in Ituri: political complexity, land and other challenges in restoring food security', Johan Pottier (2003), FAO International Workshop in Tivoli, 23rd-25th September 2003: p. 4.

161 'Where did all the land go? Enclosure and social struggle in Kivu', Frank Van Acker, in: *Review of African Political Economy*, vol. 32, nr. 103: p. 84. It may also be taken away from them by traditional chiefs themselves who, in many areas, have used the state law to register customary lands in their own name, without informing their communities.

162 In accordance with regulation 43-101 respecting standards of disclosure for mineral projects, which was approved by the Minister of Finance of Québec in November 2005, Shamika Resources asked the consultancy firm Geodem Inc. to produce a report on the Kalehe project with a summary of the available geoscientific information and a presentation of the results of a field visit to Kalehe carried out in May 2008. Robert Vivian, CEO of Shamika Resources, was kind enough to provide the author of this chapter with a copy of this report. It is entitled '*Preliminary assessment and technical report for the Kalehe project of Shamika Resources Inc.*', Geodem Inc. (2008).

163 'Rebels cash in on Congo's riches', The National, 12th August 2008.

164 E-mail message from Robert Vivian to the author of this chapter, 13th December 2010.

165 'Bukavu: exploitation illégale des minerais, le ministre provincial dénonce', Radio Okapi, 13th July 2007.

166 Letter from Robert Muongo to the head of the provincial mining division of South Kivu, 18th May 2010.

From this case study, it is clear that the international mining company had trouble convincing the local population that its operations were legal. The mining cooperative COOMBECKA made skilful use of the fact that, among artisanal miners, there is a lot of suspicion towards foreign entrepreneurs and mining companies claiming to have obtained mining permits in Kinshasa.

According to the information presented on its website, the company Shamika Resources was incorporated in Canada in 2006. In January 2007, a Congolese subsidiary was created under the name of Shamika Congo Kalehe Sprl. It was put under the directorship of Robert Muongo and given an office in Goma. People to whom we spoke in the course of our research told us that the company was very well connected with powerful political and economic actors in the DRC<sup>167</sup>. Focusing its attention on the western edge of what geologists describe as the Kibara Metallogenic Belt, Shamika has acquired prospecting permits for research in several Congolese provinces, including South Kivu, Maniema, Katanga and Orientale. The company is interested in a wide variety of minerals, and is exploring deposits of cassiterite, tantalite, wolframite, gold and diamonds<sup>168</sup>.

The Shamika incident does not appear to have weakened Placide Chirimwami's control over the Kalimbi mine. Apparently, he continues to be surrounded by military actors who help him uphold his authority in an unstable sociopolitical environment. A research report of GTZ-Burundi and OGP-Bukavu argues that Chirimwami constantly has a group of approximately 20 soldiers at his disposal, whose primary task is to protect him. The report states that the soldiers used to be affiliated with the CNDP, but are now officially integrated in the FARDC. Another indication of Chirimwami's heavy reliance on people with a military background is the appointment of a former member of the CNDP as manager of the site of Kalimbi<sup>169</sup>.

Having said this, there are some indications that Chirimwami's position at the local level is increasingly being challenged. The following case will show that a considerable number of artisanal miners have grown tired of COOMBECKA's domination over the mining business in Kalimbi.

#### **In-fighting between two groups of artisanal miners: COOMBECKA versus COMIKA (Coopérative Minière de Kalimbi)**

On 28th July 2010, a SAESSCAM delegation from Bukavu convened a meeting between representatives of the COOMBECKA and COMIKA cooperatives and representatives of several other interest groups in Nyabibwe. Opinions were divided on the meeting's goals. While some participants thought they were just going to discuss various pieces of legislation, others were convinced that the aim was to reinstate COOMBECKA, in accordance with a circular note from the former Provincial Minister of Mines. Eventually, it turned out that the aim of the meeting was to inform people in Nyabibwe that none of the parties claiming the right to manage the mine of Kalimbi fulfilled the conditions to do so<sup>170</sup>.

Heavily disappointed about the message communicated during the SAESSCAM meeting, some artisanal miners went to Kalimbi on the following evening with the aim of occupying some of the most productive pits in the mine. When they were prevented from entering the mine by diggers from the rival cooperative COMIKA, this gave rise to an explosion of violence. On 30th July 2010, a violent confrontation between COOMBECKA and COMIKA left one person dead and 17 others wounded. Following instructions from the administrator of the territory of Kalehe, the police and the army intervened to put an end to the violence<sup>171</sup>.

On 31st July 2010, the administrator of the territory of Kalehe arrived on the scene. He told the population of Nyabibwe that COMIKA would be given the right to manage Kalimbi on a temporary basis - in other words, until a neutral committee was ready to take over the mine's management<sup>172</sup>.

167 Personal communication with source close to Shamika Resources, 24th August 2010; personal communication with conflict analyst specialised in the Great Lakes region, 18th August 2010.

168 Information obtained from the website of Shamika Resources ([www.shamikaresources.com](http://www.shamikaresources.com)), accessed on 30th August 2010.

169 'L'économie des groupes armés au Sud-Kivu, RD Congo', GTZ-Burundi & OGP-Bukavu, February 2010: pp. 54-55.

170 'Rapport d'étude sur l'exploitation et la commercialisation de minerais du carré minier de Kalimbi', ACP, August 2010: p. 13.

171 'Bukavu: un conflit meurtrier dans un carré à Nyabibwe', Radio Okapi, 31st July 2010.

172 'Rapport d'étude sur l'exploitation et la commercialisation de minerais du carré minier de Kalimbi', ACP, August 2010: p. 13.



The clash between COOMBECKA and COMIKA shows that the situation in and around Nyabibwe is unstable. Public services such as SAESSCAM, the police and the army appear to have a hard time keeping control. Looked at from this perspective, one could question whether they are really capable of helping to implement transparency initiatives such as the one put forward by ITRI.

## 7.4 Trading Minerals in a Conflict Zone

Faced with criticism from a UN Panel of Experts<sup>173</sup> and from several international NGOs working on natural resource issues<sup>174</sup>, members of ITRI – an organisation representing the tin industry in general, and tin miners and smelters in particular – have come up with the idea of developing their own due diligence mechanism for tin minerals originating from the eastern part of the DRC. The mechanism has been created by an ITRI working group<sup>175</sup> and has been labelled the ITRI Tin Supply Chain Initiative (iTSCi).

Interestingly, ITRI has selected Nyabibwe as a pilot site for its traceability project. From the end of June 2010 onwards, employees of the iTSCi initiative have been working together with agents of SAESSCAM and the Congolese Mining Division (*Division des Mines*) to tag mineral bags originating from the Kalimbi mine. Each load of minerals is supposed to be accompanied by a set of documents detailing every single step in the trading process<sup>176</sup>.

One of the companies strongly supporting ITRI's traceability initiative is Minerals Supply Africa (MSA). According to an article published in the specialised newsletter Africa Confidential on 6th August 2010, MSA is currently the biggest buyer of minerals from eastern DRC. The newsletter reports that MSA 'buys from more than a third of the comptoirs and scoops up just over a quarter of the product by volume'<sup>177</sup>.

Nyabibwe is one of the mines MSA has been sourcing minerals from. In one case, dating from July 2010 and for which we have seen documents, MSA bought a load of 64 drums of cassiterite, of which at least 1,450 kg (or 29 bags of 50 kg) out of a total of 46,496 kg originated from Nyabibwe. The minerals were transported to Kigali by truck<sup>178</sup>.

David Bensusan, a British businessman and director of MSA, told us that his company was registered in Rwanda, and was 100 percent beneficially owned by Cronimet Central Africa AG, a stock corporation incorporated under Swiss law with its legal seat and offices in Steinhausen, Switzerland<sup>179</sup>. Bensusan combines his directorship of MSA with a position as member of the board of directors of Cronimet Central Africa AG<sup>180</sup>. Cronimet Central Africa AG is owned by Cronimet Mining GmbH, which is part of the Cronimet Group. The latter group of companies was founded in 1980, with headquarters in the German city of Karlsruhe, and employs 4670 people. On its website, it presents itself as a 'worldwide specialist for stainless steel scrap, ferroalloys and primary metals'<sup>181</sup>.

173 S/2008/773 Final report of the group of experts on the Democratic Republic of Congo.

174 'Under-mining peace: the explosive trade in cassiterite in Eastern DRC', Global Witness, June 2005; 'Faced with a gun what can you do? War and the militarisation of mining in Eastern Congo', Global Witness, July 2009; 'Culprits or scapegoats? Revisiting the role of Belgian mineral traders in Eastern DRC', International Peace Information Service, May 2009; 'Artisanal mining and post-conflict reconstruction in the Democratic Republic of Congo', Ruben De Koning, October 2009, SIPRI Background paper; 'Digging in: recent developments on conflict minerals', The Enough Project, January 2010.

175 The working group included the Thailand Smelting & Refining Co Ltd and the Malaysia Smelting Corporation Berhad (MSC). It asked the Belgian company Traxys to serve as an expert adviser [Source: 'DRC Tin Supply Chain Initiative, ITRI press release, 10th July 2009].

176 iTSCi News Bulletin, 6th August 2010.

177 'New pressure on the war-minerals link', Africa Confidential, vol. 51, nr. 16.

178 Documents accompanying a specific load of minerals exported by Bakulikira Nguma, obtained from a confidential source in Bukavu.

179 E-mail message from Mr. Bensusan, 24th August 2010.

180 Data obtained from the commercial register of Canton Zug, Switzerland.

181 Data obtained from the Cronimet website ([www.cronimet.de](http://www.cronimet.de)), accessed on 26th August 2010.

Until the start of 2007, Bensusan worked through another company in Kigali called Eurotrade International SARL. In those days, Eurotrade had a close relationship with the Ichikowitz group of companies<sup>182</sup>. Ivor Ichikowitz, who presents himself as the head of this group, is a prominent South African businessman with interests in the defence, oil and mining industries.

Both Bensusan and Ichikowitz maintain that their business relationship ended in the course of 2007. In addition to this, they emphasise that they collaborate fully with ITRI's traceability initiative for the Great Lakes region and that Eurotrade International is no longer trading minerals from eastern DRC<sup>183</sup>.

Ichikowitz's decision to abandon the mineral trade in eastern DRC appears to be due to his growing concern over reputational damage. In a letter to the author of this report, he wrote: '(...) since the publication of your report<sup>184</sup> with the revelations contained therein, I have, personally, forbidden any of our organisations, both directly held, as well as associated, companies to have any active involvement in the tin mining environment in the Democratic Republic of Congo. To the best of our knowledge, none of our employees have visited the DRC since March, 2007 and, in fact, certain of our equipment remains stranded there uncovered'<sup>185</sup>.

The careful attitude adopted by businessmen such as Bensusan and Ichikowitz shows that international mineral traders are increasingly aware of the damage their reputations could suffer as a result of involvement in opaque mineral deals in eastern DRC. It is encouraging that they are willing to participate in initiatives aimed at making the Congolese mining business more transparent.

## 7.5 Conclusions

The aim of this chapter was to illustrate the complexity of conflict dynamics in a mine such as Nyabibwe. We have argued that research into the relationship between artisanal mining and armed conflict should be based on a thorough understanding of the history of the region as well as the sociocultural context in which mining activities take place. Policy-makers should be well aware of the fact that the issue of conflict minerals cannot be solved in a purely technical manner since the exploitation of minerals interacts with multiple other conflict factors - land, identity, local power struggles. It is of vital importance that those seeking to "clean up" the mining sector in eastern DRC do not consider their reform projects as a series of technical interventions that can be carried out in an apolitical manner, but that they take into account its possible impact on local power struggles, and vice versa.

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182 Letter from Ivor Ichikowitz to the author of this report, 26th August 2010.

183 Interview with David Bensusan, 17th August 2010; Interview with Ivor Ichikowitz, 24th August 2010; Letter from Ivor Ichikowitz to the author of this report, 26th August 2010.

184 Ichikowitz refers to a report that was published on the IPIS website on 3rd November 2003: 'Trackstar tricked by the RCD: a new episode in the scramble for the Sominki concessions'.

185 Letter from Ivor Ichikowitz to the author of this report, 26th August 2010.

## Chapter 8: Artisanal Mining and Conflict on Idjwi Island: The Case of Kamole

By Jeroen Cuvelier

### 8.1 Introduction

This chapter will be dedicated to a description and analysis of the dynamics of artisanal mining in Kamole, located in the northern part of Idjwi Island. Idjwi lies in the middle of Lake Kivu, equidistant from Rwanda and the Democratic Republic of Congo. Idjwi's mining business merits close attention for several reasons. Firstly, the artisanal mining industry on Idjwi Island has remained largely undocumented until now. There is almost no information on the way mining activities are influenced by the region's political economy. Secondly, Idjwi is unique in that, unlike the rest of eastern DRC, it has not been plagued by the presence of armed groups, large-scale violence or human rights abuses. Consequently, the power dynamics in and around Idjwi's mines are quite different from those in the rest of the region. Finally, Idjwi deserves close attention because its local systems of land tenure appear to have a strong impact on the way the mining process is organised.

The chapter starts with a short overview of Idjwi's political and economic history. The aim of this overview is to demonstrate the persistence of traditional authorities on the island. The next part of the chapter will focus on the organisation of mining-related activities in and around the Kamole mine. It will show that both the customary chief or *mwami* and members of the local economic elite have a strong influence in the mine, that the local system of land tenure affects the mining process, and that Idjwi has recently witnessed a confrontation between small-scale and large-scale mining.

### 8.2 The Recent Political and Economic History of Idjwi

Idjwi is one of the eight territories of the province of South Kivu. It has a surface of 310 km<sup>2</sup> and a population of approximately 197,600 inhabitants<sup>186</sup>. Geographically speaking, the island is divided in two by a heavily forested mountain belt across its centre<sup>187</sup>. There are two so-called "collectivity-chieftaincies" (*collectivités-chefferies*). The first chieftaincy is called Rubenga and is situated in the northern part of Idjwi (*Idjwi Nord*). Rubenga is composed of the *groupements* Bugarula, Bunyakiri and Kihumba. The second chieftaincy, Ntambuka, is situated in the southern part of Idjwi (*Idjwi Sud*), and is composed of the *groupements* Mpene, Mugote and Nyakalongwa<sup>188</sup>.

During the two recent Congo wars, Idjwi remained largely unaffected by what was going on in the rest of the country. Nevertheless, the island served occasionally as a platform for secret troop movements and smuggling by some of the belligerents. In July 2002, there were reports of thousands of Rwandan troops being sent to the DRC via Idjwi. Apparently, the troops had been transported by boat, first from Rwanda to an unknown location in Idjwi, and then from Idjwi to a site near Bukavu<sup>189</sup>. In December 2004, a report by the British All Parliamentary Group on the Great Lakes region stated that Idjwi played a pivotal role in arms trafficking operations. The

186 Idjwi is known to be the largest island in Lake Kivu. While its north-south length is estimated at 40 km, its maximum width is estimated at 12km [Source: 'Promotion of birth spacing on Idjwi Island, Zaire', M. Carael & John Stanbury (1983), in: *Studies in Family Planning*, vol. 14, nr. 5: p. 135.

187 'King and chief: colonial politics on Idjwi Island' [Zaire], David Newbury & Catharine Newbury (1982), in: *The International Journal of African Historical Studies*, vol. 15, nr. 2: p. 224.

188 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 4.

189 'Rwanda plans to replace Congolese currency in Eastern DRC', IRIN News, 18th July 2002.

report asserted that the island was used to stockpile weapons and ammunition that were then shipped to various rebel groups in eastern DRC by boat<sup>190</sup>.

In the aftermath of the Rwandan genocide in 1994, Idjwi received thousands of refugees. In some places, this has led to the destruction of the island's forests, where refugees cut wood to make fires and build temporary shelters<sup>191</sup>.

With regard to Idjwi's role during the Congo wars, it is important to mention that both Gervais Rubenga, the *mwami* of Idjwi-Nord, and Roger Ntambuka, the *mwami* of Idjwi-Sud, were among a small group of customary chiefs who collaborated with the RCD-Goma rebel movement. In appreciation of their support, the RCD gave Rubenga and Ntambuka the opportunity to serve as senators in the national parliament during the period of political transition<sup>192</sup>.

The following sections will show that Rubenga, the *mwami* of Idjwi-Nord, has been influential in the island's artisanal mining industry.

## 8.3 Mining and Conflict on Idjwi

### 8.3.1 A short history of artisanal mining on Idjwi Island

Most people on Idjwi Island live from livestock, agriculture and fishing<sup>193</sup>. The number of people involved in artisanal mining is limited, especially in comparison with other places in the province of South Kivu. The first mining activities on Idjwi probably date back to the beginning of the 1970s. An expatriate businessman from the territory of Masisi is said to have exploited a mining concession adjacent to the parish of Kamole<sup>194</sup>. Subsequently, between 1980 and 1982, Mwami Rubenga II, the father of the current head of the Rubenga chieftaincy, contracted a Rwandan labour force with the aim of starting mining activities in Kamole centre and Buhesi. The Rwandan diggers sold their minerals to buyers of Havu origin, who then crossed the border in order to resell them to Rwandan buyers<sup>195</sup>. Finally, in 1998, René Shamba and Kasidika started a project of artisanal mining in the Nepo mine, selling to buying houses in Goma<sup>196</sup>.

Idjwi's artisanal mining business slowly gained momentum in the first decade of the new millennium. Between 2002 and 2006, the most important buyer of Idjwi's minerals was Etablissement Muyeye, one of the leading buying houses for minerals in Bukavu. The British NGO Global Witness reported that, in 2007, Byaboshi Muyeye sold cassiterite and wolframite to the British company Afrimex and coltan to the Belgian company Traxys<sup>197</sup>.

Having obtained a five-year contract for the sale of wolframite (tungsten) to a company in Europe, Muyeye had his *négociants* buy substantial quantities of minerals in the mine of Nepo, where the daily pit production amounted to 500 kg<sup>198</sup>. Idjwi's mining business was at its height in 2007. Many people even sold their houses and cows in order to be able to buy a mine pit in Kamole<sup>199</sup>.

190 'Arms flows in Eastern DR Congo', report of the All Party Parliamentary Group on the Great Lakes Region, December 2004: p. 26.

191 'Preliminary assessment and technical report on the Idjwi project for Shamika Resources', Geodem Inc. (2008): p. 12.

192 'Le pouvoir traditionnel au Sud-Kivu de 1998-2003: rôle et perspectives', Paul-Robain Namegabe, in: *L'Afrique des Grands Lacs, annuaire 2004-2005*, Paris: L'Harmattan, pp. 213-215.

193 'Preliminary assessment and technical report on the Idjwi project for Shamika Resources', Geodem Inc. (2008): p. 11.

194 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 6.

195 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 6.

196 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 6.

197 'Faced with a gun, what can you do? War and the militarisation of mining in eastern Congo', Global Witness, July 2009: p. 55; p. 97. According to two reports of the UN Panel of Experts, which were published in December 2008 and November 2009 respectively, Muyeye sometimes bought minerals from FDLR controlled areas. The Panel even adduced evidence that he had made money transfers to FDLR representatives in Germany at some point.

198 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 6.

199 Interview with Apropedep representative in Kamole, 23rd July 2010.

During the last third of 2009, large groups of artisanal miners and mineral buyers left Idjwi and moved to the territories of Kalehe and Walikale in order to dig for cassiterite ore<sup>200</sup>. They had three reasons for moving: they felt discouraged by the heavy rains (and the difficult working conditions resulting from it); by the declining level of production in mines such as Kamole; and by the decline in world market prices of tungsten. Whereas, at the start of 2009, one kilogram of wolframite was still traded at US\$8 at the level of the mine in Idjwi, by the first third of 2010, the price for one kilogram of wolframite had dropped to US\$3<sup>201</sup>.

### 8.3.2 Working and living conditions at the bottom of the commodity chain

Artisanal mining is a seasonal activity<sup>202</sup>, which only takes place in certain parts of the island. As opposed to their colleagues in other parts of eastern DRC, Idjwi-based artisanal miners do not live in mining camps close to the mine. Instead, they rent houses among the rest of the population<sup>203</sup>.

Mine pits are usually circular in shape. Diggers tend to digging vertically, sometimes reaching a depth of 30-50 metres<sup>204</sup>. They use bags or buckets to evacuate waste material and minerals. The bags and buckets are tied to a rope connected to a horizontally placed beam at the entrance of the pit. Since most of the pits are very deep, artisanal mining is extremely dangerous. Diggers run the risk of the sudden collapse of their pit or running out of oxygen at any moment. Pits continue to claim victims even after they have been abandoned due to declining production. In 2010 alone, 12 people died after falling into a deserted mine pit<sup>205</sup>.

Apart from the artisanal miners, two other categories of actors operate in Idjwi's mining sector, namely the *négociants* (mineral buyers) and the *managers* or *PDGs* (pit owners). While *négociants* serve as intermediaries between diggers and buying houses based in Goma and Bukavu, managers have the task of "taking care" (*encadrer*) of the *creuseurs*: they are expected to supply them with food and materials during the excavation works. According to one *manager* in Butonyi/Chuve (*groupement* of Kihumba, northern part of Idjwi), the revenues from minerals sales are generally divided into three parts: the first part for the *manager*, the second part goes to the diggers and the third part is used to cover diggers' expenses during the preparatory phase (the phase preceding the phase of production). One *manager* working in the mine of *Kamole centre* informed us that the *mwami* of the Rubenga chieftaincy in the northern part of the island claimed part of the profits as well. He said that 10 percent of the value of a load of minerals was usually transmitted to the *mwami*<sup>206</sup>.

The following table gives an overview of the different taxes that artisanal miners paid in the northern part of the Island of Idjwi during the boom period (2006-2007)<sup>207</sup>.

200 For more information about the Kalimbi mine, see the case study on Nyabibwe in this report.

201 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 8.

202 No mining activities take place during the rainy season [Source: interview with police commander in Bugarula, 22nd July 2010].

203 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 7.

204 The main reason for digging vertically appears to be its speed. Diggers want to reach the ore vein as quickly as possible and therefore they do not want to go to the trouble of constructing stairs on one side of the pit [Source: Interview with Apropedep representative in Kamole, 23rd July 2010].

205 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 7.

206 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 7.

207 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 8.

Beneficiary	Description	Official amount	Amount paid
Division des Mines	Carte de creuseur (digger permit)	US\$25	US\$30
SAESSCAM	Pit money for ordinary creuseurs	-----	US\$2 per pit / month
SAESSCAM	Pit money for pit owners	-----	US\$55
Bureau du Territoire	-----	-----	Amount unknown
Mwami	Customary tax for ordinary creuseurs	-----	US\$1 per week
Mwami	Customary tax for pit owners	-----	10% of production
DGM	-----	-----	Amount unknown

It appears that Idjwi-based artisanal miners now only pay the customary tax to the *mwami* (10 percent of the value of their production). They no longer pay taxes to the above-mentioned state services<sup>208</sup>.

### 8.3.3 The relationship between artisanal mining and customary land ownership systems

In many parts of eastern DRC, access to land used to depend on an initial payment of tribute to the chief, a tax system known as *kalinzi* in the Havu language. After this initial payment, the farmer in question acquired user rights over a piece of customary land, though he continued to pay tribute to the chief at frequent intervals. While the farmer did not have complete property rights – the land remained customary at all times – he did have the possibility of leasing portions of his land to other people who, in their turn, would be obliged to pay him tribute for it. In this manner, a complex structure of rights came into existence. Producers paid tribute to the person who had given them access to land, and the latter transferred part of this tribute to a higher level in the hierarchy<sup>209</sup>.

Interestingly, land tenure on Idjwi Island is still largely based on this *kalinzi* system. As the following sections will show, this has a significant impact on the artisanal mining industry. Artisanal miners who want to dig a pit have to reach an agreement with whoever has user rights over the land where the pit is situated.

#### Large-scale landowners and small-scale miners

One of our informants tried to capitalise on the development of artisanal mining on Idjwi Island, where he was born and raised. Working as a commercial representative of a large national company in Goma, he wanted to obtain a concession on Idjwi where he and his family could relax during the weekend. He went to see Mwami Rubenga III, who he knew was responsible for distributing land in the northern part of the Island. The *mwami* told him that he would have to pay him the annual *kalinzi* tax<sup>210</sup>.

After acquiring a concession of 20 hectares in the *groupement* of Kihumba, our informant wanted to build a house for his family and a private beach for his children. It was not until a couple of months later that he was contacted by a *négociant* interested in buying minerals from his concession. The person in question had already been buying minerals since 2008, operating in mines such as Nyabibwe, Numbi and Walikale. Our informant reached a verbal agreement with him, in exchange for an initial payment of US\$60 per 5 m<sup>2</sup>. Once production got going, however, the mineral buyer started making payments of US\$40 per month<sup>211</sup>.

208 Interview with Apropedep representative in Kamole, 22nd July 2010.

209 'Land, migration and conflict in eastern DRC', Koen Vlassenroot & Chris Huggins (2005): pp. 124-125, in: 'From the ground up: land rights, conflict and peace in Sub-Saharan Africa', Chris Huggins & Jenny Clover (eds.) (2005), Pretoria: Institute for Security Studies.

210 Interview with confidential source in Kihumba, 23rd July 2010.

211 Interview with mineral buyer in Kihumba, 23rd July 2010.

The case presented above shows that even members of the economic elite on Idjwi Island feel obliged to comply with the rules of the traditional system of land tenure. Even though our informant had a high-level position with a large national company and even though he was probably capable of buying a large piece of land through official procedures - in accordance with the Bakajika Law - he realised that, if he wanted to make life easy for himself, he had to respect the authority of *mwami* Rubenga, the man traditionally responsible for the allocation of land-use rights. By acknowledging Rubenga's powerful position and by following the "traditional" procedure for acquiring land rights, our informant inserted himself into the local system of patronage. While, on the one hand, he confirmed his respect for the supremacy of Rubenga, on the other hand, he knew that this gave him the right to rent out parcels of land to (and thus exercise power over) people in the artisanal mining industry.

That being said, the case presented below will make it clear that not everyone has been prepared to respect the authority of traditional authorities on Idjwi Island. While *mwami* Rubenga has done his best to control the trade in minerals originating from his chieftaincy, the Canadian mining company Shamika Resources has tried to start exploration activities on the island, after acquiring a number of official permits from the mining registry in Kinshasa.

### Small-scale versus large-scale mining: the dispute between COMIAK and Shamika Resources

*Coopérative Minière et Agricole de Kamole* (COMIAK) presents itself as a cooperative promoting local development and defending the interests of people involved in Kamole's mining and agricultural sectors. Established in 2007, the organisation has not yet officially been registered, according to the head of the mining division of South Kivu.<sup>212</sup> COMIAK has the backing of traditional authorities in the area. Mwami Gervais Ntawenderundi Nkirinayo Rubenga III – the head of the Rubenga chieftaincy – and Prince Lubambo – the head of the Bunyakiri *groupement* – are both represented in the cooperative. The two authorities are said to have used their involvement in COMIAK to monitor the payment of customary taxes - in other words, to make sure that everyone working in the mine pays them their dues<sup>213</sup>.

Artisanal miners told IPIS that, in the boom period of mineral exploitation on Idjwi, COMIAK imposed itself as the sole buyer of minerals from Kamole. As a result, anyone digging for wolframite in the mine was forced to accept the price set by the mining cooperative, which was very low. The price was kept low deliberately in order to allow a small group of mineral buyers – who maintained close relationships with the COMIAK leadership and with Mwami Rubenga III – to maximise their benefits<sup>214</sup>.

COMIAK's most important buyers were two members of Idjwi Island's economic elite, Antoine Bizimana Rutenga and Teke Maisha Issa. While the former was widely known as the owner of the Goma-based buying house Amur/Mugote, North Kivu's biggest mineral exporter in 2008<sup>215</sup>, the latter came into the public eye as a result of his chairmanship of a local organisation for ship owners (*chef des armateurs*). As a member of the Bayande clan, Teke was reputed to be a close ally of Mwami Rubenga III<sup>216</sup>. He lived in the Kihumba *groupement*, which was part of the Rubenga chieftaincy<sup>217</sup>.

In 2007, Shamika Congo Kalehe SPRL - a subsidiary of the Canadian mining company Shamika Resources Inc. - started making moves to acquire eight exploration permits on Idjwi. Combined, they covered 70

212 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 13. According to his own account, Mwami Rubenga III tried to obtain an official recognition of COMIAK from the former governor of South Kivu [Source: Interview with Mwami Rubenga III in Bugarula, 24th July 2010].

213 Mwami Rubenga III's representatives in COMIAK are Elie Barbonera and Mongelo [Source: 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 8].

214 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 10.

215 Interview with Bizimana (comptoir Amur) in Goma, 28th July 2010.

216 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 11.

217 Interview with police commander in Bugarula, 22nd July 2010.

percent (or 185 km<sup>2</sup>) of the island's total surface area<sup>218</sup>. Shamika's arrival on the scene caused concern among the top players in the mining sector on Idjwi Island. The mining cooperative COMIAK played a leading role in the protest against Shamika<sup>219</sup>. When a Shamika delegation - accompanied by a political advisor to the governor of South Kivu as well as by the provincial inspector - came to northern Idjwi on a preparatory mission, COMIAK stopped them from completing their tour of the Island<sup>220</sup>.

In an attempt to deal with the Shamika affair once and for all, Mwami Rubenga III went to see a number of players at the regional and at the national level. First, he paid a visit to the Goma-based office of Robert Muongo, the director-general of Shamika Kalehe. After that, he asked Bertin Kaproso, the president of Idjwi's mineral buyers and one of the leading figures in the mining cooperative COMIAK, to accompany him on a trip to Kinshasa, in order to verify the legality of Shamika's permits. According to his own account, Mwami Rubenga III found out at the Geographical Institute (*Institut Géographique à Kinshasa*) that the coordinates on one of Shamika's permits were wrong. Apparently, the permit pertained to an area in the middle of Lake Kivu, next to the territory of Kalehe<sup>221</sup>. Shamika management, however, maintained that all the company's permits were valid. In December 2007, the Canadian law firm Heenan Blaikie confirmed the validity of the exploration permits as part of a due diligence verification exercise commissioned by Shamika Resources<sup>222</sup>.

This case suggests that the local *mwami* has taken advantage of his key position in the *kalinzi* system to dominate the local mining business. Apart from imposing taxes on most of those involved in mining and mining-related activities, he has also used a mining cooperative as a vehicle to channel minerals to businessmen within his personal entourage. So, in the period before Shamika's arrival, the artisanal mining business appears to have allowed the *mwami* to consolidate and strengthen an existing system of patronage.

The case also throws an interesting light on the dynamics of the conflict between small-scale and large-scale mining. Interestingly, *mwami* Rubenga is very much aware of the need to protect his clients. Being at the apex of the *kalinzi* system in the Rubenga chieftaincy, he knows he has a moral obligation to shield his clients (COMIAK's members) from external threats such as the exploration activities of the mining company Shamika Resources. Rubenga realises that, in order to be able to offer the necessary protection to the people depending on him, he has to mobilise all the resources at his disposal, not only at the local level, but also at the provincial and national levels. This explains why he would ask for a meeting with the mining company and why he would travel all the way to Kinshasa to look for support at the Ministry of Mines.

### 8.3.4 Military involvement in the mining sector

Compared to other territories in South Kivu, Idjwi has an extremely limited number of security services. Security is provided by the Naval Forces (*forces navales*), the Border Police (*police des frontières*) and the Lake Police (*police lacustre*). Furthermore, the island has a detachment of the 10<sup>th</sup> Military Region, which is composed of only 26 soldiers<sup>223</sup>. They are based in the centre of Bunyakiri, a couple of kilometres from the mine of Kamole<sup>224</sup>.

Although no soldiers are present at the mining sites, some members of the military and of certain police forces do appear to have concluded unofficial mining deals in the past. During the boom period (cfr. supra), low-level soldiers were sent to certain mines to supervise pits owned by their superiors<sup>225</sup>.

218 'Preliminary assessment and technical report on the Idjwi project for Shamika Resources', Geodem Inc. (2008): p. 5.

219 Interview with Aproped representative in Kamole, 22nd July 2010.

220 Interview with Mwami Rubenga III in Bugarula, 24th July 2010.

221 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi-Nord', Justice pour Tous, August 2010: p. 14.

222 'Preliminary assessment and technical report on the Idjwi project for Shamika Resources', Geodem Inc. (2008): p. 4.

223 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 5.

224 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 9.

225 'Rapport sur l'étude menée dans la mine de Kamole à Idjwi Nord', Justice pour Tous, August 2010: p. 9.



There have also been reports of soldiers being involved in Idjwi's illegal charcoal trade. Although there has been a ban on logging and timber trading for a couple of years now – to put a stop to deforestation – members of the naval forces and their wives are said to have been buying charcoal from Pygmy woodcutters since 2003. Soldiers' spouses have been accused of outmanoeuvring their competitors in Bukavu by selling their charcoal far below the normal market prices. In 2006, six members of the FARDC were killed in a gunfight in Kintama, in the southern part of Idjwi, after getting involved in an argument over the local charcoal trade<sup>226</sup>.

## 8.4 Conclusions

This chapter on artisanal mining on Idjwi Island has highlighted the important intricacies of local power dynamics. Unlike most of the other mining areas in eastern DRC, Idjwi has not been plagued by the presence of state and non-state armed groups. Consequently, its mining sector is not militarised and there is little risk of mining revenues ending up in the pockets of warlords. Having said that, it is important to bear in mind that the absence of armed actors does not automatically imply the absence of asymmetrical power relations. The data presented in this chapter shows that relationships of patronage and clientelism associated with the *kalinzi* system have an important impact on Idjwi's artisanal mining business. Idjwi would be an interesting case study for future research on the complex relationship between artisanal mining and access to land.

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226 'Sud-Kivu: les militaires se muent en vendeurs de braise', Journal du Citoyen, 17th May 2008; 'Un sac de braise double de prix à Bukavu', ACP, 12th November 2006.

## Chapter 9: From Discourse to Practice: A Sharper Perspective on the Relationship between Minerals and Violence in DR Congo

By Rachel Perks and Koen Vlassenroot

### 9.1 Changing Views on DRC's Mineral Sector

Control over natural resources has taken centre stage in analysing the conflict dynamics in eastern DR Congo since the start of the *Rassemblement Congolais pour la Democratie (RCD)* rebellion in 1998. UN Panels of Experts, advocacy groups and civil society organisations have all widely documented the involvement of state and non-state armed actors in the exploitation and trade of Congo's natural resources and have called for policy responses, including sanctions on actors involved in illegal resource exploitation<sup>227</sup>. Until 2008-2009, these calls were met with limited political support and donor responses. Only recently, almost ten years after the first calls for an embargo on the mineral trade, can some policy shifts be observed. Several initiatives promoting transparency and traceability of mineral exploitation and trade have been launched and calls have been made for legal frameworks prohibiting the import of conflict-related resources.

An interesting example is the Conflict Minerals Trade Act introduced in the US House of Representatives in November 2009. In July 2010, the US Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which includes a section on "conflict minerals"<sup>228</sup>. This new act, which has had a considerable impact on current efforts to make the mineral trade more transparent, has provoked heated debate between advocacy groups, observers and academic researchers. Several advocacy groups have come up with rather simplistic and problematic messages, overstating the share of Congo's resources in the global economy and even suggesting a direct link between mining and sexual violence. Another problematic issue with this discourse is that it gives the impression that (sexual) violence and conflict are prevailing conditions of all mining activities in the DRC, even if many resource-rich regions of the country have been peaceful for quite some time.

The campaigns by these advocacy groups, however, have also helped international policymakers to deal with Congo's mining sector more actively. Even if calls for sanctions have been the dominant recommendation, recent donor policy shifts have also engendered a number of local and regional initiatives aimed at engaging constructively with the complexity of the mining sector, both as part of peace-building strategies and the promotion of economic development. There is a growing recognition amongst donors, civil society groups and experts that an embargo would have far more damaging effects on the social, political and economic landscape of the country than strategies to increase transparency, accountability and the formalisation of the mineral trade<sup>229</sup>. The Congolese government has also made some effort and is trying to play a more active role in coordinating various initiatives and improving governance conditions in the mining sector, even if progress so far is limited<sup>230</sup>. Equally, there is growing awareness within some levels of the

227 Significant reports documenting the involvement of armed actors in resource exploitation include: the reports by the UN Panel (2001, 2002 and 2003) and UN Group of Experts (2008, 2009); the Porter Commission report on Ugandan stakes in DRC war economy (2002); 'The curse of gold', Human Rights Watch (2005); 'Under-mining peace: tin – the explosive trade in cassiterite in eastern DRC', Global Witness (2005)

228 According to this act, companies reporting to the Securities and Exchange Commission (SEC) - that is, companies with more than US\$10 million in assets and more than 500 owners - will have to file periodic reports disclosing their use of what is defined as "conflict minerals" (gold, coltan, cassiterite and wolframite as well as their derivatives) in the production or functionality of any products originated in the DRC or an adjoining country (Resource Consulting Services, Private sector guidance on the Dodd-Frank Act section 1502, September 2010). The SEC has to publish regulations about this reporting requirement by April 2011.

229 See BSR: <http://blogs.reuters.com/environment/2010/08/private-sectors-role-in-reducing-the-use-of-conflict-minerals/>; the US State Department: <http://www.state.gov/e/rls/rmk/2010/143784.htm> and Pole Institute: <http://www.pole-institute.org/site%20web/echos/echo114.htm>

230 In September 2010, President Kabila announced a temporary suspension of mineral exports from the Kivu provinces.

mining industry, demonstrated by the development of a number of strategies aimed at promoting traceability of minerals exploited in eastern DRC.

These dynamics are all aimed at improving governance of the mining sector, demilitarising the largely artisanal mineral trade and bringing it into the formal economy. In order to be successful, observers and participants need to adopt a more nuanced perspective on the relationship between mineral resource extraction and conflict than the dominant view of what is generally understood as “conflict resources”<sup>231</sup>. This stance does not adequately explain the current artisanal mining landscape and tends to emphasise security issues. This chapter illustrates some of the current misperceptions about the larger context of mineral exploitation and trade, and evaluates how these perceptions impact international and national engagements in DR Congo’s mineral sector.

## 9.2 Minerals Drive DRC’s Violent Conflicts: Reality or Myth?

From the start of the second Congolese war in 1998, natural resources assumed centre stage in the debate and analysis on violence and war in the DRC. Several advocacy groups published reports on armed actors’ involvement in the extraction of minerals in eastern DR Congo, but the issue was first documented for the wider world with the publication of the UN Panel of Experts’ reports in March and November 2001.

Since then, numerous reports have been published in which economic incentives have consistently been put forward as a dominant cause of the protracted Congolese conflict and its fragmented military landscape. Some have claimed that the self-financing nature of the Congolese wars has led to a mutation in the character of violence but simultaneously engendered criminalisation of warfare, as rebel movements have increasingly engaged in illegal economic activities and linked up with informal transnational networks to export locally generated resources. Others have tried to demonstrate that international competition for scarce resources - such as coltan, gold and timber - was one of the main primary causes for the lack of state stability and prolonged violence in eastern DRC.<sup>232</sup>

Although the involvement of armed actors (and their proxies) in mining activities both during the war and the post-conflict period cannot be neglected, the prevailing perception of this issue lacks a nuanced understanding of the complex interaction between resources and conflict. This is partly the result of a lack of empirical data on conditions in the mining centres and local trading networks (only a limited number of cases have been publicly well-documented so far) but also of the different advocacy strategies that have provided influential yet simplistic views on the direct links between violence and resources. When analysing predominant views of Congo’s mining sector, several misperceptions can be identified.

Firstly, even if in DRC natural resources have tended to influence armed actors’ strategies, it is seldom recognised that military control over the exploitation and trading of natural resources is an outcome, rather than a cause, of the conflict. In relation to this, there is a tendency to generalise the different strategies behind armed actors’ involvement in resource exploitation. Also, distinctions should be made between activities that relate to the production, mobilisation and allocation of economic resources aimed at waging and sustaining war, and activities that are conducted outside state-regulated frameworks but are not necessarily directly linked to

<sup>231</sup> Global Witness defines conflict resources as ‘natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law’. The new US legislation defines conflict minerals as either (A) coltan, cassiterite, gold, wolframite, or their derivatives; or (B) any other mineral or its derivatives that is ‘financing conflict in the Democratic Republic of the Congo or an adjoining country’.

<sup>232</sup> ‘Negotiated peace for extortion: the case of Walikale territory in eastern DR Congo’, Nicholas Garrett & Sylvia Sergiou & Koen Vlassenroot, in: *Journal of Eastern African Studies*, vol. 3, nr. 1: pp. 1-21.

armed strategies. Each economy offers different incentive systems and has its own quirks and logic, which are important to understand when developing appropriate policy responses. So a distinction needs to be made between the position and strategies of a digger, who depends on the exploitation and commercialisation of mineral resources for his subsistence; an unlicensed buyer, who smuggles his commodities to neighbouring countries in order to circumvent export charges; and an armed actor using force to gain control over local resources as part of a strategy to wield political and economic power (and who is able to do so partly because of the way the local economy is structured around patronage networks and informal systems, with little formal involvement of the Congolese state).

Secondly, there is a lack of understanding of the different grades of relationship between armed actors and minerals. Empirical data reveals that a wide spectrum of resource extraction scenarios have been functioning with varying degrees of influence on conflict dynamics in eastern DRC. Not all these scenarios involve armed actors nor do they all engender conflict. The dominant perception, however, is that in most cases, there is direct military control over mining sites. This is despite the fact that the implication of armed groups is usually limited to predatory behaviour or the imposition of taxes at exit points or trading routes. Documented cases - such as the cassiterite trade in Bisie (Walikale), where armed actors are directly involved in exploitation activities - tend to be generalised to eastern DRC's entire mining sector, even if the case studies provided in this report suggest a more sophisticated and less direct link between minerals and conflict dynamics. It is not possible to adequately unravel the role of the mineral trade in armed actors' strategies and power positions in eastern Congo without more systematic documentation of local conditions and trading mechanisms in the mining centres.

Thirdly, it is important to document and understand the particular mechanisms of the trade at the lower levels of the commodity chain as well as the sociopolitical dynamics that govern artisanal mining sites in eastern Congo. Several reports and studies have documented organisational patterns of artisanal and small-scale production, but far less is known about governance and the power structures that condition the position of middlemen and miners. This would include agreements between miners and security forces, for example. Different interests are at play and attract a wide variety of actors, not just armed groups. It is important to acknowledge that governance vacuums to the advantage of parallel structures under the control of armed actors have not come about merely because of the existence of armed groups as such, also because of the marginal presence and weak performance of official governance structures on mining sites. A widely illustrated case at hand is the cassiterite sector in Walikale. Here, FARDC units have imposed their own predatory mechanisms. But in other cases, too, where state representatives remain largely absent, armed actors have been able to institute their own mechanisms of control and exploitation.

### 9.3 Donor Responses: A Brief Description and Observations

Growing awareness of the sector's complexities (as mentioned in the introduction) is slowly leading to a paradigm shift by donors and some international development agencies. Whilst focus on economic incentives for armed actors and the consequences on security conditions continue to preoccupy policy perspectives and approaches, mineral resources are no longer viewed merely as a security concern but also as an opportunity for peace and development. This can be observed in major donors' changing country strategies and project rationales<sup>233</sup>. In summary, these strategies and rationales argue that responsible resource management can contribute to peacebuilding and economic stability in DRC. In response, some donors, regional organisations and the private sector have initiated new projects to favour the promotion of legal resource exploitation and trade by strengthening state capacity, implementing transparency mechanisms and certification schemes, and promoting regional inter-governmental cooperation.

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<sup>233</sup> See the British, German, Belgian, and United States DRC country strategies in particular.

Within this widening range of donor initiatives in eastern Congo, interventions focus broadly on the following themes:

*Traceability and certification* aiming to address sourcing transparency for industry actors and Governments. Initiatives by and large respond to increased advocacy pressure regarding armed/illicit mineral extraction with most project development and implementation not starting until 2009. Donors, along with industry players, are piloting various traceability schemes to improve transparency of the extraction and trade chain from “mine to market”. Examples include the *Centres de Négoce* project under joint management of the Ministry of Mines and MONUC/MONUSCO that forms part of the eastern DRC Stabilisation and Reconstruction Plan (STAREC); the regional certification mechanism being proposed by the International Conference on the Great Lakes Region (ICGLR) whereby the Organisation for Economic Cooperation and Development (OECD) is seeking to pilot due diligence criteria<sup>234</sup>; the Global e-Sustainability Initiative; the industry-led ITRI initiative on due diligence with pilot projects; and the GTZ-funded BGR project for “finger printing” to identify a mineral’s geographic origin.

Several observations can be made about these pilot projects. First, there is a low level of consultation with some of the most important actors in the supply chain: traders and artisanal miners. Both play a crucial role in the artisanal mining sector: the former constituting the bridge between producers (artisanal miners) and industry buyers (both national and international) and the latter constituting the production workforce and those most economically and socially affected by current practices and new proposed transparency standards. Each needs to play a major reform role in contextualising, implementing and monitoring proposed standards and criteria, though few initiatives to date have sought comprehensive contributions from these groups. Secondly, investment in skills development for local organisations to play an implementing and monitoring role for these various initiatives has not yet been done adequately. Thirdly, these traceability and certification schemes rely heavily on government presence and capacity to perform functions. There is an inherent assumption made by most donors that DRC government officials already have the capacity, resources and incentives needed to perform their role. This, by and large, is not the case, especially in the outlying mine areas where most of these initiatives occur. Fourthly, whilst most initiatives have a security remit, they focus only on disassociating mining from armed groups other than the FARDC, which has not been included in their efforts. The OECD’s due diligence criteria may be the first step in widening the definition of conflict and armed group behaviour at mine sites, though they are yet to be finalised<sup>235</sup>.

*Mine sector reform* with a focus on government capacity. Some donors are implementing institutional capacity-building programmes with different government ministries concerned with fiscal and technical monitoring of the mining sector. Examples include technical support from GTZ to the Congolese government for EITI implementation, and Promines, an overall mining sector reform programme with support from the World Bank and UK Department for International Development (DFID). GTZ support to the Ministry of Finance - an essential ministry for managing revenue from both the large-scale and small-scale mine industry – is particularly noteworthy. Equally noteworthy is the breadth and scope of Promines and its recognition of the artisanal mining sector as an important area of focus.

*Regional cooperation* with a view to improving cross-border trade controls. Although this has received less attention than the initiatives detailed above, a few projects have been developed to deal with the regional dimension of the mineral trade. Economic conditions in most of eastern DRC are determined by regional dynamics, since the informal mining sector is largely oriented

234 The ‘Due Diligence Guidelines for Responsible Supply Chain Management of Minerals from Conflict-Affected and High Risk Areas’.

235 At the end of September 2010 a range of actors discussed in Nairobi the proposed criteria and the feasibility of their implementation in complex mining areas such as eastern Congo.

towards East African markets<sup>236</sup> and regional actors have considerable stakes in this sector. COMESA, in partnership with DFID, has worked in the past with border officials and their trade offices to improve the efficiency of these important border posts. Other initiatives have a more political mandate and aim to promote peace and security through enhanced regional cooperation. In October 2006, the ICGLR initiated its 'regional initiative against illegal exploitation of natural resources', to strengthen regional capacity for increased transparency in trade in natural resources. A number of instruments are currently being developed as part of this initiative, including the one on traceability and certification mentioned above. At a Nairobi meeting in September 2010, the 11 ICGLR member states discussed the adoption of a certification system.

*Community security and risk mitigation* to put environmental conditions in place for the benefits of mining to be properly harnessed for the country's long-term economic development. The US State Department recently revealed its intention to back implementation of the Voluntary Principles on Security and Human Rights<sup>237</sup> (VPSHR) in artisanal mining sites in eastern Congo, with a view to improving army and police behaviour, and increasing risk and conflict mitigation for local community actors at mine sites<sup>238</sup>. These principles focus on three main areas of human rights vulnerability in the extractive industry: 1) managing private security relations; 2) managing public security relations; and 3) conflict and risk assessment. The latter stresses the role of community groups and representatives in analysing potential risks and conflicts resulting from extractive activities in their local environment. VPSHR implementation in DRC has traditionally focused on large-scale mining company implementation. This programme would be a first for artisanal mining communities in the country.

The potential support for reforming mine site security practice, and broadening its conception to include community involvement, would constitute an important step towards more peaceful mine practice. Representatives of various public security bodies often operate on sites, competing for legitimacy and mandate. This competition generally causes confusion, and breeds an environment in which informal taxation and other corrupt practices flourish. Furthermore, conflict dynamics, are often specific to each environment, but this is rarely considered by outside actors designing interventions. Thus, efforts to improve local conflict analysis and risk mitigation involving active community participation could facilitate more transparent information-sharing, and ultimately, generate greater trust amongst everyone involved in the mining industry.

Two final overall observations are worth making on this changing landscape of donor interventions. Firstly, a considerable level of coordination is evident amongst donors and the DRC government on resource issues at the national level. As mentioned above, Promines is one framework addressing a range of reform issues and is encouraging other donors to contribute towards its broad objectives rather than establishing parallel initiatives. The DRC government is also actively managing the *Groupe Thematique* on mining, bringing all interested donors together on one common platform.

These national level coordination efforts, however, are largely absent in most of the outlying provinces where project implementation occurs. This has several potential impacts for work on the ground: duplication of similar projects by different donors and partners, leading to inefficient use of financial and human resources; confusion amongst local and international stakeholders about who is doing what and with which mandate; and pockets of impact that may not contribute towards a wider overall objective.

Secondly, a key piece of the overall peace-building and economic recovery agenda is largely being overlooked. While most donors have chosen to focus on the link between conflict, security and

236 Vast deposits of minerals exploited in North Kivu, South Kivu, Orientale, Northern Katanga and Maniema are transited or traded in Rwanda, Burundi, Uganda or Tanzania.

237 See <http://www.voluntaryprinciples.org/>

238 See <http://www.state.gov/e/rls/rmk/2010/143784.htm>

mining in eastern Congo, this scenario represents a tiny percentage of actual mining practice. In fact, by and large, the mining sector of DRC operates in relative peace. Not enough research, documentation and work has been done to understand the conditions under which peaceful mining has occurred. Nor have significant efforts been made to support peaceful mine environments to improve working conditions, the social impact of mining, and economic revenues. These fundamental improvements to the sector would undoubtedly have an important impact on the lives of millions of people who depend on this economic activity, and thus promote local development across the eastern provinces of DRC.

## Chapter 10: General Conclusions

By Jason Stearns

### 10.1 Introduction

The various case studies in this report paint a nuanced picture of mineral supply chains in the Kivus and Ituri. They should inform our analysis of the trade, as well as policy initiatives aimed at reforming the sector to promote transparency and boost livelihoods. Below, we outline several thematic challenges raised by the case studies, in particular, land tenure arrangements, the links between conflict and mining, and the difficulty of implementing due diligence initiatives.

In general, the case studies demonstrate that any reform of the mining sector needs to consider its location within the political and social context of eastern Congo. If reform initiatives do not take these complexities into account, they may fail to achieve their objectives. Some of the main challenges highlighted by these case studies are:

- The difficulty of implementing due diligence initiatives, such as those mandated by recent US legislation, given the relative absence of documentation for mineral origin in the Kivus and the weakness of state institutions in general;
- The particular elusiveness of the gold trade, which could well be much larger in value than the more reported cassiterite trade, but is much harder to regulate, given how easy it is to smuggle gold across borders and evade regulation;
- The overlapping civil and customary jurisdictions with regards to both land and mining, which is a symptom of the weakness of state capacity. Reform efforts, however, need to bear in mind that customary chiefs have vested interests in their own right and are also representatives of local communities, who are suspicious of state efforts to regulate artisanal mining;

### 10.2 Land Tenure and Administrative Capacity

One of the most important questions raised by these case studies is: Who manages mining in the eastern Congo? In theory, industrial mining is regulated at the national level by the Ministry of Mines and the Mining Registry (*cadastre minier*) in Kinshasa. Artisanal mining permits are granted at the provincial level by the Mining Ministry's local representatives and the sector is regulated by SAESSCAM, a state agency. The *Centre d'Evaluation, d'Expertise et de Certification* (CEEC) is involved in assessing the quality of the minerals and certifying their origin.

The reality, as these case studies spell out, is very different. The case studies on Idjwi, Nyabibwe and Bisie show clearly that customary authorities still play a significant role in managing land tenure and mining rights. Even where civil authorities have been able to assert their control, corruption and bureaucratic inefficiency has undermined the artisanal mining sector. This has rendered the trade opaque and has contributed to conflict by allowing competing interest groups to use bribery and intimidation to secure their claims.

Some of this confusion is due to the bifurcated administration of land in which customary and civil authorities vie for dominance. A brief history of Congo's land tenure laws is instructive. During the pre-colonial period, different systems of customary tenure dominated, often – but not always – giving the customary chief ultimate power over allocating land. During the colonial period, the Belgian government deemed that all “vacant” land could be expropriated by the state, thereby allowing the colonial government to claim up to 12 million hectares of the most fertile and valuable land.



Six years after independence, the Bakajika Law gave ownership of all wealth above and below the ground to the state, thus ensuring that the government could claim all public mineral rights. In December 1971, a constitutional amendment and a new law empowered the state to repossess all rights to the land. In July 1973, the General Property Law was enacted to organise the country's new land law system. The 1971 and 1973 laws gave the state the rights over all land, with individual land rights derived either from concessions by the state or through indigenous customary law.

The new laws did not abrogate pre-existing customary land rights, but they left the future concessionary status of these lands unclear. President Mobutu was supposed to issue a decree clarifying the status of customary rulers and land tenure, never did. As a result, while most of the land in the eastern Congo is governed by customary tenure - although in some areas which became plantation economies during the colonial era (like the highlands of Masisi) much of the land has been officially registered to large landowners - their claims to land are tenuous and they can be expropriated by the state at will. It is important also to note that customary tenure can be just as contentious and open to abuse as the civil system, especially given the contested rule of many customary chiefs.

The case of the Kihumba mine on Idjwi shows that large concessions of land can be purchased from the state, but the owner will still have to pay tribute to the local customary chief if s/he wants to avoid trouble. Confusing matters further, the property owner holds the lease for the land, but - according to the Bakajika law - should not be able to control or earn revenues from the minerals in the soil, which belong to the Congolese state. Similarly, customary authorities have influenced power struggles over mines in Nyabibwe and Bisie, rallying artisanal miners and administrative officials behind their cause with violent consequences.

The Shabunda case study illustrates the erratic and contradictory nature of local regulation of the mineral trade. Even basic information, such as where mines are located and what kind of minerals they produce, is sometimes missing from provincial records. Minerals often only show up on official records at transit point, which makes it easy to mask the origin of the minerals. Frequently, minerals do not show up at all, as they are smuggled across the border into neighbouring countries. The case of gold is the most egregious: Up to \$160 million in gold could be smuggled out of South Kivu each year.

It is obvious that this lack of contractual security discourages investors, but the problems are more far-reaching. Administrative weakness has rendered the sector opaque, as different state agencies report different amounts of mineral exports. This undermines revenue collection, makes it difficult to understand the dynamics of the trade and challenges any supply chain due diligence efforts.

In addition, the lack of clarity over mining rights can lead to violent conflict, illustrated by the case in the Bisie mine in Walikale and to a lesser degree by that of the Nyabibwe mine. The involvement of individuals with close past connections to armed groups could also be a liability to the mineral trade. If the east opens up to industrial mining, they could be cut out of the business but retain their links to mining cooperatives and armed groups. The Bisie case also highlights the involvement of Congolese army officers in mining and suggests that it is not enough to exclude rebel groups from the minerals trade - efforts must extend to Congolese army units too especially abusive ones.<sup>239</sup>

A solution to this nebulous management of the mining sector is in part to strengthen the administration apparatus, including through better training, more staff, data management and

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239 According to the Congolese military penal code, soldiers are not permitted to benefit from the mineral trade and should therefore never be present in mines. However, in exceptional cases where rebel groups are close, national army units may be required to protect the mine, although special care should be taken to prevent any profiteering.

internal audits and oversight mechanisms. In particular, as the UN Group of Experts suggested, a special cell should be set up within the military prosecutor's office to investigate officers guilty of profiting from the minerals trade.

As these institutional reforms will take time, it is important for the Congolese state to provide incentives for traders to formalise their trade. First and foremost, this means drastically reducing export taxes on cassiterite and gold in order to give traders an incentive not to smuggle their goods out to Rwanda and Uganda, from where they do not pay any export taxes. Specific tax breaks and security incentives should also be provided for traders to register their goods as close to the original mine as possible, which would make the supply chain more transparent. At the same time, donors should help the Congolese government strengthen customs agreements with its neighbours to clamp down on smuggling and fraud.

The gold trade provides a particularly difficult challenge. Gold can be smuggled out of the country in a suitcase, evading customs control and any certification. While the *centre de négoce* might provide some incentive to traders to formalise this trade, they are still located far from the mining sites and, according to testimonies provided in this report, have not provided enough incentives for traders to declare their gold. Strong monitoring mechanisms will ultimately be the only way to prevent fraud and abuse in this sector. The case study on South Kivu and Burundi provided here, as well as UN Group of Experts reports, show that it is possible to uncover the hidden gold economy and target fraudulent traders.

### 10.3 De-linking Conflict and Mining

Not all mines in the Kivus are militarised, as the Idjwi and Nyabibwe examples demonstrate. However, armed groups – especially the Congolese army – tax the vast majority of minerals in the Kivus at some point in the supply chain. Military involvement is complex and often relatively sophisticated. Soldiers can “rent” out mining pits, tax minerals along trade routes and help smuggle them across the border in return for a pay-off. In some cases, armed groups and army officers have helped set up trading companies and benefited in a more corporate fashion from the trade, using their military influence to secure valuable concessions and facilitate exports.

The link between conflict and mining is not always obvious. When military control over an area is stable, observers will see taxation but rarely conflict, as there are no other armed groups to challenge the incumbent's control. However, the revenues from mining provide a steady stream of revenues to non-state armed groups, which makes them harder to eradicate and encourages unemployed youth to join their ranks. For the national army, patronage linked to mining areas can lead to infighting and corrodes the already fragile discipline among soldiers and officers. In addition, taxation of miners and traders can be a brutal protection racket and is often accompanied by intimidation and violence. Finally, there have been obvious cases where two or more armed groups have battled over mining areas, leading to civilian casualties.

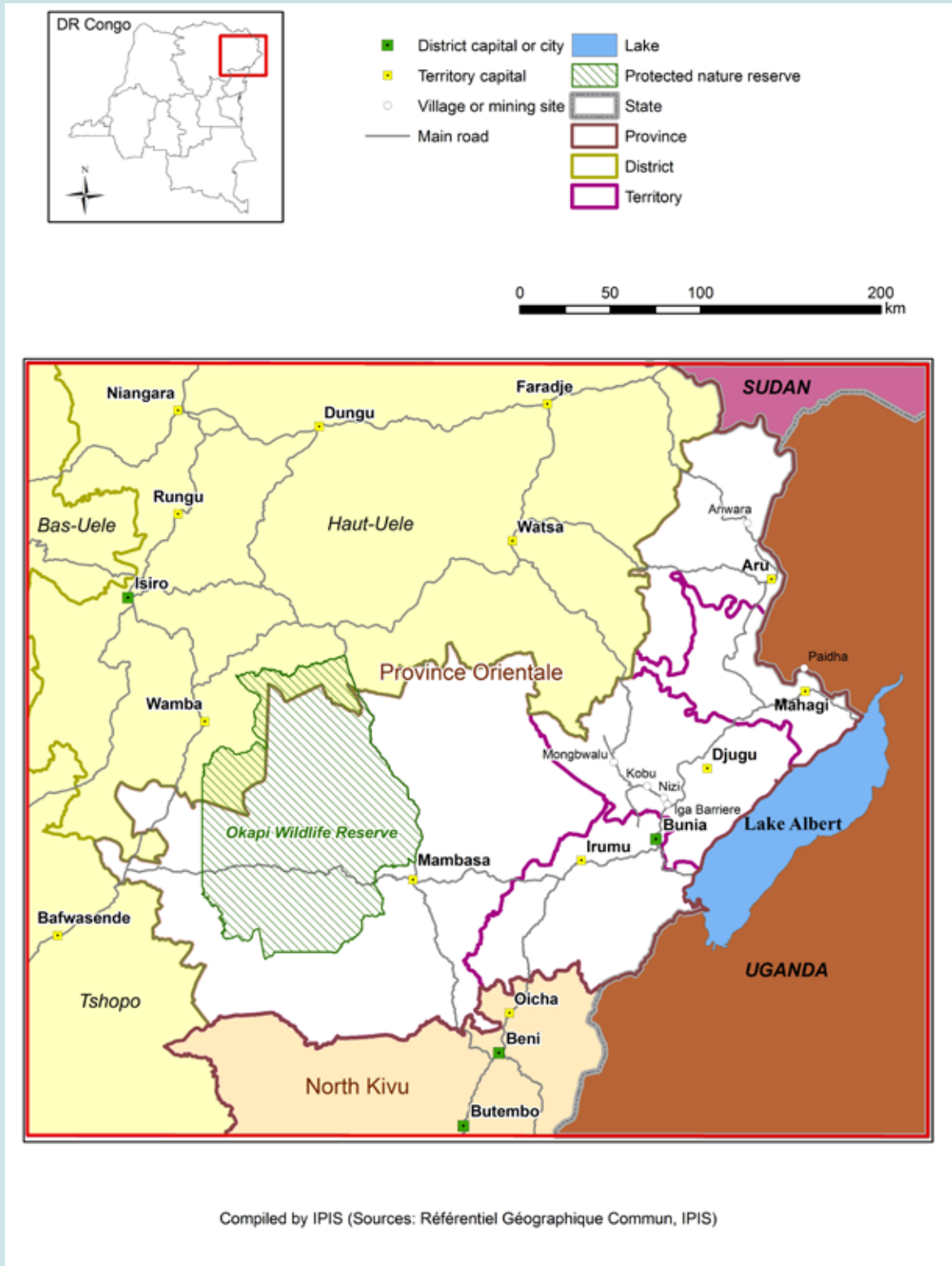
Any successful efforts to de-link armed groups from the mineral trade need to be just as sophisticated as the military's involvement. As the case studies indicate, many mining pits in eastern Congo are not under the transparent control of government agents. Minerals from hundreds of mining pits in Shabunda and Fizi, for example, are not registered until they reach commercial centres, often dozens of kilometres from the mines. ITRI and the Congolese government and their partners have begun to set up a pilot certification scheme in a few select mines in North and South Kivu, but this still leaves much of the mineral trade unregulated. Even in those mines where certification is being carried out, the current scheme will not record influence of soldiers either at the mine or along the trade route. Congolese organisations have also expressed concern that fraudulent traders could bribe or coerce their way into having their minerals certified as “conflict-free.”

As due diligence hinges on knowing the source of minerals, and that hinges on some sort of certification or transparent recordkeeping, there are serious doubts whether either process will yield significant fruits in the near future if there is no radical reform of the mining sector in eastern Congo. Investigative mechanisms to detect and prosecute illegal activities, such as knowingly buying from rebel-controlled areas, could help in this regard, as they would not seek to certify every single bag of minerals – an impossible task – but only to police the sector and catch offenders. This would provide incentives for traders to stop buying “tainted” minerals.

A healthy dose of scepticism should, however, accompany this approach. The complicity between armed groups and traders is already fairly well documented - by IPIS, the UN Group of Experts, Pole Institute, OGP and Global Witness - but no action has been taken by either the Congolese government or the UN Security Council to sanction those involved.

There is still space for optimism, however. Pressure is mounting on companies in Europe and the United States to stop buying “conflict minerals” from the Congo. Even though it is difficult at the moment for any trader to know which minerals have contributed to conflict, several companies have simply decided not to take the risk and to stop buying. In addition, banks have suspended lines of credit to major tin traders to prevent damage to their reputations. This has led to a decrease in tin exports from eastern Congo. While this has had a negative impact on the livelihoods of miners and traders, and transferred some of the trade to countries that care less about reputational damage, there are some initial signs that it is also prompting the business sector to ask for demilitarisation of the sector.

# Ituri



## South Kivu



Compiled by IPIS (Sources: Référentiel Géographique Commun, IPIS)

## North Kivu





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