

Baseline study two: Mukungwe artisanal mine, South Kivu, Democratic Republic of Congo

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November 2014



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About this study

This baseline study is the second of five studies intended to identify and assess potential traceable “conflict-free” supply chains of artisanally-mined gold and to identify the challenges to implementation of supply chain due diligence. The study was carried out in Mukungwe, South Kivu, Democratic Republic of Congo.

This study serves as background material for the 8th ICGLR-OECD-UN GoE Forum on Responsible Mineral Supply Chains taking place in Kinshasa on 3-5 November 2014. It was prepared by Gregory Mthembu-Salter of Phuzumoya Consulting, working as a consultant for the OECD Secretariat, with research assistance from Nadine Lusi.

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Baseline study two:

**Mukungwe artisanal gold mine,
South Kivu, Democratic Republic of
Congo**

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Acronyms

ANR	Agence Nationale des Renseignements
CAMI	Cadastre Minier
CEEC	Centre d’Evaluation, d’Expertise et de Certification des substances minérales précieuses et semi-précieuses
CPS	Comité Provincial de Suivi
CTCPM	Cellule Technique de Coordination et de Planification Minière
DGDA	Direction Générale des Douanes et Accises
DGM	Direction Générale de Migration
DGRAD	Direction Générale des Recettes Administratives
FARDC	Forces Armées de la République du Congo
FAZ	Forces Armées Zaïrois
FDLR	Forces Démocratiques de Libération du Rwanda
ICGLR	International Conference on the Great Lakes Region
IOM	International Organisation for Migration
MONUSCO	Mission de l’Organisation des Nations Unies pour la Stabilisation en RD Congo
OCC	Office Congolais de Contrôle
OGP	Observatoire Gouvernance et Paix
PNC	Police Nationale Congolaise
RCD	Rassemblement Congolais pour la Démocratie
RCM	Regional Certification Mechanism
SAESSCAM	Service d’Assistance et Encadrement du Small Scale Mining
SAKIMA	Société Aurifère et Industrielle du Kivu et du Maniema
SOFEDI	Solidarité des Femmes pour le Développement Intégral
SOMICO	Société Minière du Congo
SOMINKI	Société Minière et Industrielle du Kivu
ZEA	Zones d’Exploitation Artisanale

I. Introduction and key findings

1. The contribution of gold to official tax revenues is far lower than it should be.

South Kivu Province has some of the Democratic Republic of Congo (DRC)'s richest mineral deposits and the gold mined there makes a vital contribution to the province's economy. Provincial and national tax revenues from mining have risen since industrial gold output started in 2011 from Toronto-listed Banro Corporation, the only active large-scale mining operation in the Province, and because of an increase in recorded gold exports from Bukavu-based *unités de traitement*¹. However, the contribution of gold to the government's tax take in South Kivu is limited, for two reasons. The first is that though artisanal gold production and trade in the province is subject to numerous semi-legal and illegal levies by state employees, almost none of this ends up in state coffers. The second is that so much artisanally mined gold from the province is still smuggled from the country, usually to Uganda, but also to Kenya, Rwanda and Burundi, and from there allegedly to Dubai.

2. *Unités de traitement* lack sufficient legitimate sources of gold supply and suffer from unfair competition from smugglers.

Reduced export taxes on gold have encouraged the establishment of officially registered gold *unités de traitement* in South Kivu and other provinces. But the *unités de traitement* in Bukavu have complained of a huge shortage of gold mines validated² – let alone validated 'green' – by a multi-stakeholder evaluation team from which they could therefore legally buy. The *unités de traitement* have also alleged unfair competition from gold traders who neither declare their gold purchases nor their exports.

3. There is little awareness or knowledge of the OECD Due Diligence Guidance among gold traders in Bukavu. Industrial miners are better informed and are changing their approach to artisanal miners.

Knowledge or even awareness of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas³ among gold traders in Bukavu ranges between minimal and non-existent, in contrast to the city's tin and tantalum trading houses, which have received numerous trainings on the subject. Banro representatives are well versed in the OECD Due Diligence Guidance, and the company has a range of checks and balances in place intended to maintain the integrity of its chain-of-custody.

Banro's approach to artisanal miners has evolved over the years, from a starting position of the full enforcement of the company's rights to permits to one that tries to accommodate

1 These are still often called *comptoirs*, but their official name has changed to *unités de traitement* since the introduction by the government of a requirement that all minerals be processed to some degree within the DRC prior to export.

2 Validation is the process by which teams comprised of representatives of a range of natural resource governance stakeholders audit mine sites to evaluate, *inter alia*, whether they generate conflict financing.

3 Hereafter referred to as the OECD Due Diligence Guidance. For the second edition of the OECD Due Diligence Guidance, see www.oecd.org/investment/mne/GuidanceEdition2.pdf.

the desire of artisanal miners to continue digging for a living. Casa Minerals, operating in the south of the province, has agreed to cede half its permits to artisanal diggers in return for artisans vacating the remaining portions.

4. Despite efforts at mitigation, South Kivu artisanal and small-scale gold mining is still an important source of conflict financing.

As has often been observed, artisanal gold production in South Kivu is and has at least since the 1990s been an important source of conflict financing for the Congolese armed forces and a range of non-state armed groups. South Kivu's artisanal gold mines have also feathered the nests of many of the province's politicians and senior state officials, and have benefited numerous national figures in far-away Kinshasa.

The militarisation of South Kivu's gold mines has over the years resulted in many serious abuses associated with gold's extraction, transport and trade, including killings, the driving of people from their homes, slave labour, torture and illegal detention, to the point where identifying 'green' artisanal gold mines in the province has become a major challenge.

The provincial authorities have taken steps to address conflict financing from artisanal gold and other Annex II risks⁴, including the establishment of a multi-stakeholder committee called the *Comité Provincial de Suivi* (CPS) on the artisanal mining sector. The South Kivu CPS is chaired monthly by provincial minister of mines Adalbert Murhi Mubalama, and is intended to monitor developments in the artisanal sector and deal promptly with problems as they arise.

5. Progress is possible: Initiatives taken by civil society, provincial and local authorities, for example, have led to the demilitarisation of the Munkungwe mine and have advanced the reconciliation of its warring stakeholders.

Mukungwe is a large artisanally-mined gold deposit in South Kivu on a concession of Banro Corporation. The OGP has facilitated workshops for the South Kivu Forces Armées de la République du Congo (FARDC) that have been followed by a military pull-out from Mukungwe. The OGP has further facilitated multi-stakeholder dialogues concerning Mukungwe which have gone some way towards addressing and resolving the causes of violent disputes there. (See III. Mukungwe case study).

4 Other OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas - Annex II risks include child labour, the fraudulent misrepresentation of the origin of minerals, money laundering and bribery.

- 6. The government wants artisanal diggers on industrial exploitation permits to relocate to new artisanal mines, but there has been little consideration to date of the “SOMINKI option” – leaving diggers where they are and permit holders buying from them.**

The official policy of the provincial and national authorities is that artisanal diggers working on the permits of industrial mining companies should relocate to *Zones d'Exploitation Artisanal* (ZEA) and mine there instead. This is set to happen at Banro's Namoya site, which is 225 kilometres southwest of Bukavu, just within the borders of Maniema province, where artisanal miners are supposed to relocate to nearby Matete to mine gold, and production is scheduled to start there in late 2014. Relocation to a ZEA is also the authorities' preferred solution at Mukungwe, a large artisanal gold mine with 'red' status that lies on Banro's permit 43, which is the subject of a case study in this report. Yet, as the case study shows, it is by no means certain that a suitable ZEA can be found there. One option that has not been tried, however, is for the diggers to stay put and for Banro to facilitate, supervise and support their gold production and/or possibly to buy the resulting output. This was how the old *Société Minière et Industrielle du Kivu* (SOMINKI) typically operated in South Kivu, though today this arrangement could only be considered at Mukungwe if the site were demilitarised and officially re-validated as 'green'. In addition, Banro stated that a higher level of confidence would need to have been forged around validated, well-monitored and entrenched traceability measures for gold.

II. Overview of gold mining in South Kivu Province

The province of South Kivu has been generously endowed with gold deposits. Almost all these many deposits are mined by artisanal diggers, in numbers in any given site varying from a handful to thousands. The main clusters of mined gold deposits in South Kivu are:

- Southwest of the provincial capital Bukavu, in Walungu and Mwenga territories, including Mukungwe;
- West of Baraka, in Fizi territory, including sites such as Butende and Michikachika;
- Southeast of Lubi, also in Fizi territory, including sites such as Israel and Masumu;
- Near the North Kivu border, in Kalehe territory, including sites such as Kairenge and Kitendebwa; and
- In the west of the province towards Maniema, in Shabunda territory, with sites including Kalanda and Kalutindi.

Figure 1. Screen shot of IPIS map showing locations of gold mines in South Kivu



During the country's colonial era, after independence and until the early 1990s, a small number of these gold deposits were exploited semi-industrially by European private companies, such as the *Minière des Grands Lacs* (MGL). These companies amalgamated with tin, wolfram and colombo tantalite (coltan) mining firms in 1976 to become SOMINKI. Private shareholders held 72% of the new company, and the Zaïrean state the remaining 28% stake. The main SOMINKI gold mine was Mobale, near Kamituga, 100 kilometres south west of Bukavu, but there were other sites too, and the company reportedly also bought gold from artisanal diggers.⁵

Available evidence suggests that there was only a limited involvement of civilian state officials and the military in artisanal gold mining in South Kivu during the Mobutu era. Several respondents interviewed for this study said that the *Forces Armées Zaïroises* (FAZ) had generally not been present at mine sites and had not systematically taxed routes between

5 Author's interviews with ex-SOMINKI employees, Kalima, 2009.

the sites and urban centres.⁶ There is anecdotal evidence, however, that some FAZ commanders had financial interests in some gold mines. Police were also reported to be absent from most South Kivu gold mines, though SOMINKI reportedly deployed a small private security force at Mobale.

There is an extensive post-independence tradition in South Kivu of rebel militia deriving financing from illicit gold trading which continues to this day. Former President Laurent Désiré Kabila smuggled South Kivu gold across Lake Tanganyika to Tanzania when he was a rebel fighter during the 1960s and 1970s⁷, and groups like *Mai Mai Yakutumba* do much the same today.⁸ Even where non-state militia have not been involved in mineral supply chains, the dominant trend in South Kivu, as in other gold producing provinces in the DRC, has been for nearly all artisanally-produced gold to leave the country unofficially and unrecorded.

Since 2006, successive UN Groups of Experts on the DRC have identified artisanal mining in South Kivu, particularly for gold, as a significant source of conflict financing. A nine month ban on artisanal mining in Maniema, North and South Kivu, imposed by President Joseph Kabila in September 2010 to tackle the issue of conflict financing, plus the decision of some international companies to stop sourcing from the DRC rather than to report on their activities, as required by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act⁹ had a significant impact on cassiterite and coltan mining in South Kivu, contributing to a marked reduction in output and trade, but barely touched the artisanal gold sector, where production and trade appear to have continued much as before.

Companies active in South Kivu Province

During the late 1980s SOMINKI began losing money and slid towards bankruptcy, principally because of a falling international tin price.¹⁰ SOMINKI's output of all metal ores shrank steadily, and as it abandoned semi-industrial mining at site after site the company's presence was replaced by growing numbers of artisanal diggers. In 1995, SOMINKI's private shareholders sold their stake to US company Cluff Mining and Toronto-listed Banro. In 1996, Banro bought out Cluff and established the *Société Aurifère et Industrielle du Kivu et du Maniema* (SAKIMA) as its Zaïrean subsidiary. SAKIMA was active in Maniema, North and South Kivu Provinces.

In 2003 Banro sold SAKIMA's tin and coltan mines to a South African company named Kivu Resources, enabling Banro to concentrate on SAKIMA's gold assets. Banro's plan was to carry out industrial mining, first at Twangiza near Bukavu in South Kivu Province, then at Namoya in Maniema Province, and subsequently at Kamituga and Lugushwa in South Kivu. In October 2011, Banro poured its first gold at Twangiza, which was the first Congolese

6 For example, author's interview with Mulikuza Mudukwe Albert Bene Bugusho bwa Naluhwinja, the *directeur du cabinet* of the South Kivu minister of mines, in Bukavu, June 2014.

7 Didier Gondola (2002), page 166.

8 Jason Stearns et al (2013), page 37.

9 Hereafter referred to as the Dodd-Frank Act. Section 1502 of the Act requires companies that are publicly listed in the US and that manufacture goods containing gold, tin, tungsten or tantalum to disclose the origin of these minerals, whether these minerals have financed conflict, and the due diligence steps they have taken to establish this.

10 Gregory Mthembu-Salter (2009), page 3.

industrially mined gold for over fifty years. Banro had previously relocated over 1,000 artisanal diggers to make way for industrial production at Twangiza, only for other artisanal miners to occupy and start working a part of the mine the company had intended to start develop in late 2016.

Banro has greatly changed its attitudes to artisanal miners over the years. As late as 2010, company officials still spoke of a full enforcement of Banro's exploitation rights on its concessions and the removal of artisanal miners, while four years later its management exhibited a much more nuanced position. The company has indicated that it is still looking to move artisanal miners out of concessions so that they can be developed industrially, but at the same time has committed to help develop alternative livelihoods for diggers, and, jointly with the DRC Government, to identify and partially prepare alternative ZEA's to which diggers could relocate.

At Namoya in Maniema Province, where Banro plans to begin gold production at the end of 2014, a scheme is underway to relocate artisanal diggers to Matete, a nearby site where deposits that could potentially be artisanally mined have been identified. The scheme is being implemented with the assistance of the International Organisation for Migration (IOM) and the UN Mission to the DRC (MONUSCO). The company is also lobbying for a pragmatic approach based on case by case exemptions from the law in respect of specific deposits where Banro, groups of artisanal miners and the Government could find a common interest to permit artisanal mining on industrial mining exploitation permits.¹¹ At Mukungwe, Banro has been an active participant in a slow process both to bring peace to the troubled mine and to create the enabling conditions for the company's eventual exploitation of the asset (see Section Three).

A little way south of the South Kivu town of Fizi, near Lake Tanganyika, Leda Mining, a subsidiary of formerly-Toronto and Australia-listed Anvil Mining (now delisted and a subsidiary of China's Minmetals), holds the title to six exploration permits, and has an option agreement to develop them with Casa Mining, a British Virgin Islands-registered gold exploration company. There are, however, several thousand artisanal diggers active on the permits, where there is also a long, ongoing history of non-state armed group activity. Despite this, Casa Mining is reported to be seeking to convert its exploration rights to mining rights at the *Cadastre Minière* (CAMI, the national mines registry) in Kinshasa. The South Kivu government has said that it is working closely with Casa Mining, and claims the company has agreed to cede half its permits to artisanal exploitation zones in the event of its permits being converted.¹²

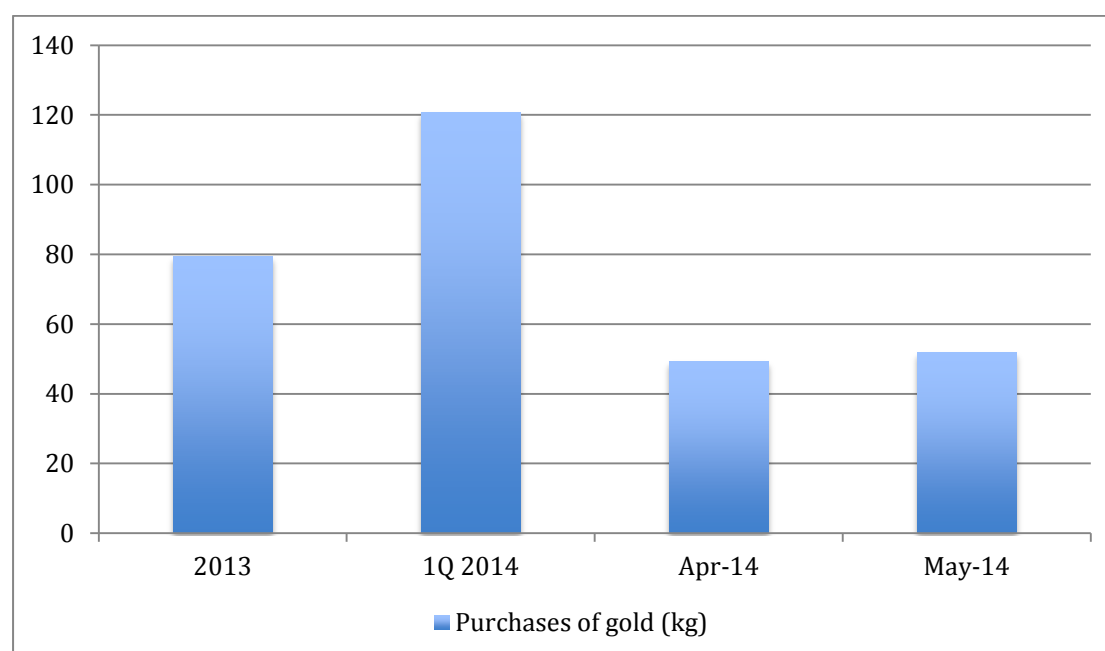
11 Author's interview with Banro officials, Bukavu, June 2014.

12 Authors interviews with senior officials in the South Kivu ministry of mines, June 2014.

Types of mining, production volumes and formalisation levels

With the important exception of industrial gold mining at Twangiza, mining in South Kivu is entirely artisanal for all minerals. The scale of the province's gold production is difficult to estimate, since provincial statistics capture only purchases and exports from official gold *unités de traitement* in South Kivu's capital Bukavu. These statistics indicate that the *unités de traitement* purchased 79.3 kg (2,797 oz) of gold during 2013, but 120.829 kg of gold during only the first quarter of 2014 (4,262 oz), 49.3 kg (1,739 oz) in April 2014 and 51.7 kg (1,823 oz) in May 2014, and exported roughly the same amount during these periods.¹³ The dramatic increase was ascribed by respondents to lower taxation rates for the buyers, which has encouraged a greater proportion of the total output of the province's artisanal gold through official channels.

Figure 2. Official gold purchases from South Kivu 2013-14



The statistics, however, capture only a portion of the gold trade; the total volume and value of gold production and trade in the province is unknown. Gold traders in Bukavu have reported that most gold in South Kivu continues to pass through unofficial channels¹⁴, while in 2011 the UN Group of Experts estimated that “the official chain is less than a percentage point of hundreds of kilogrammes of gold trade that goes on in the province”.¹⁵ One pit manager in Mukungwe, which is among the most productive gold mines in South Kivu, who co-managed a shaft employing over 300 people, reported in 2014 that production from his shaft (probably at 92-94% purity) had at times and before his water pumps broke down, reached 56 kilos a week.¹⁶

13 Chef de Division Provinciale, *Releve des Statistiques des Achats Effectues Par Les Entites de Traitement et Comptoirs Agrées Installes A Bukavu*, 2013-14, Division Provinciale des Mines, Province de Sud-Kivu.

14 Author's interviews with gold traders, Bukavu, June 2014.

15 UN Group of Experts 2011, Box 5.

16 Interview with pit manager, Mukungwe, June 2014.

Banro conducts industrial open pit mining at Twangiza. Banro has stated that at full mill capacity, Twangiza can process 1.7m tonnes of ore per year, and produce “upwards of 10,000 ounces of gold each month with an expected mine life of seven to eight years”.¹⁷ Due to technical difficulties however, Banro failed during 2012-13 to reach this target, though output picked up in the first half of 2014. In 2013, Twangiza’s total gold output was 2.812 tonnes or 99,190 oz, giving an average monthly production figure of 8,265 oz. Output during the first quarter of 2014 was recorded as 859.786 kg or 30,328.1 oz, giving a monthly average of 10,109 oz.¹⁸

Formalisation levels for artisanal gold mining in South Kivu seem to be lower than in other parts of the DRC. Nearly every pit team in the Musebe gold mine in Haut Katanga, for example, uses a metal detector to improve its gold detection rate¹⁹, but the machines appear absent from South Kivu artisanal gold mines. In addition, Musebe miners crush their ores in mechanical crushers, while in most South Kivu mines, with the exception of in Misisi, there is manual ore crushing only.

A few South Kivu artisanal gold mines use motor pumps to remove water from shafts, and some also use motors to pump fresh air into them. In some of the province’s gold mines, including Mukungwe, shafts have been created with the use of dynamite, but in the majority, diggers have hewn out shafts by manually hammering at the rock.

In some South Kivu gold mines, as in other provinces, diggers are organised into so-called ‘co-operatives’, some of which have been recognised by the state authorities. The main operating unit at most mines in South Kivu, however, appears to remain the pit team. There is in addition a diggers’ representative at many mines, reportedly elected by the artisanal miners, though this could not be verified.

The gold supply chain in South Kivu: from mine to export

Official statistics only track supply chains from South Kivu artisanal gold mines to export that pass through official *unités de traitement* in Bukavu. At the time of research, the *unités de traitement* in Bukavu were Alfa Gold, Cavichi, Namukaya, Comcam, Mining-Congo and DTA.²⁰ Of these, Alfa Gold, Cavichi and Namukaya were, according to the statistics, the most active gold purchasers during 2013-14.

Additionally, a new minerals processing plant named CRM was opened in February 2014, with the capacity to treat 300 tonnes of cassiterite and Colombo-tantalite a month, and 40 kilogrammes of gold. CRM has said it intends to begin exporting gold during the first quarter of 2015, to be sourced from green validated sites in South Kivu and Maniema.

17 www.banro.com/s/Twangiza.asp?ReportID=307249, accessed June 27th, 2014.

18 Chef de Division Provinciale, *Releve des Statistiques d’Expedition a Kinshasa Pour Analyse et Exportation de la Production d’Or de Twangiza Mining, 2013-14*, Division Provinciale des Mines, Province de Sud-Kivu.

19 Gregory Mthembu-Salter, *Baseline Study One: Musebe Artisanal Mine, Katanga, Democratic Republic of Congo*, OECD, Paris, 2014, page 7. The report can be found at www.oecd.org/daf/inv/mne/Gold-Baseline-Study-1.pdf.

20 Chef de Division Provinciale, *Releve des Statistiques des Achats Effectues Par Les Entites De Traitement et Comptoirs Agreees Installes A Bukavu Pour L’Annee 2013*, Division Provinciale des Mines, Province de Sud-Kivu, 2014.

Namukaya has been cited on numerous occasions in reports of UN Groups of Experts for allegedly trading in gold from which non-state armed groups and the FARDC have derived financial benefit.²¹ Namukaya representatives declined to be interviewed for this study. Cavichi and Alfa Gold were more cooperative, though in both cases the senior buyers were absent during the period of research, leaving behind junior employees to respond to questions.

The interviews showed that the government's reduction of taxes since 2012 on gold *unités de traitement* has encouraged them into legal trade, although in practice the imposition of a number of semi-legal or illegal taxes has significantly eroded their profit margins. Evidence also emerged that some government officials continue turning a blind eye to gold smuggling by well-connected business people, reportedly making it all the harder for *unités de traitement* playing by the rules to compete.

In addition, legally registered *unités de traitement* in Bukavu face the major problem that very few gold mines at the time of research had been validated, let alone validated as 'green', so rendering permissible to buy from. This has left the Bukavu *unités de traitement* with non-validated gold being offered to them that they are not supposed to buy, but only a tiny volume that they can legitimately purchase. Given the volumes of gold the *unités de traitement* have reported purchasing, it seems highly likely that most of it has come from mines not validated 'green'.

Another challenge for the *unités de traitement* is that, at the time of research, International Conference on the Great Lakes Region (ICGLR) certificates were not available from the provincial ministry of mines, apparently due to the failure of the national ministry to supply them. This was supposed to mean that the *unités de traitement* could not export, since these certificates are legally required for exporting gold from the DRC.²² In practice, however, *unités de traitement* have continued to export gold, using the following documentation:

- evidence of taxes paid to state agencies;
- names of *négociants* who sold gold ore to the *unité de traitement*;
- amount of gold *unités de traitement* have purchased from the *négociants*;
- percentage of gold contained in the ore bought sold;
- extraction sites, or often just the territories, from which the *négociants* themselves obtained the gold.²³

21 E.g. Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004), United Nations, New York, 2011, paragraphs 179, 201.

22 Author's interview with Thierry Sikumbili Boliki, chef d'Antenne de Bukavu CEEC, Bukavu, May 2014.

23 CEEC documentation, viewed by the author in Bukavu, June 2014.

Banro's gold supply chain

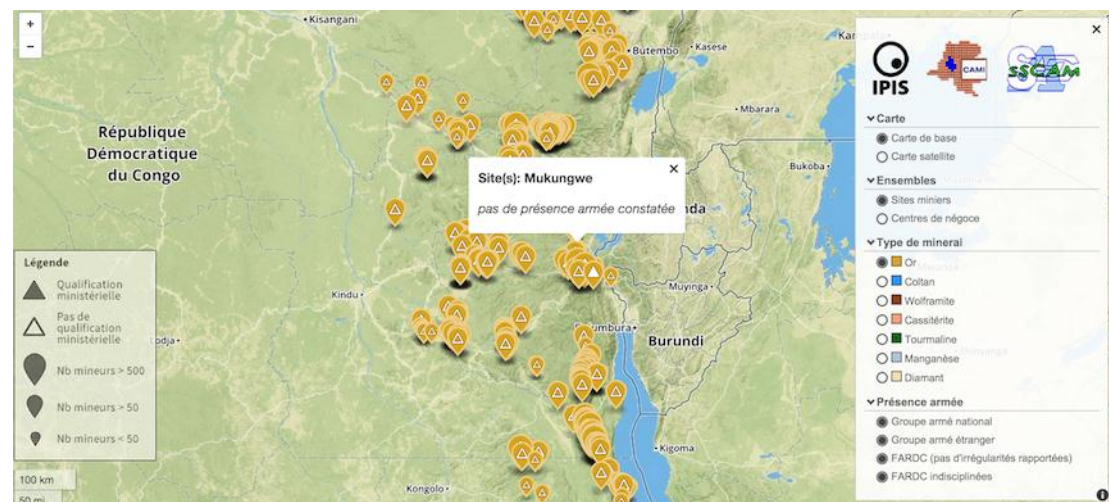
Banro's gold output from Twangiza is not traded in South Kivu. Banro refines its Twangiza gold onsite to 92% purity, and the resulting bullion is flown out to Rand Refinery in Johannesburg (South Africa). According to Banro, the gold export process is triggered by a provincial mines ministry representative at Twangiza, who signs a document making up part of the pack of export documents. After this, officials from the *Office Congolais de Controle* (OCC) and from the *Centre d'Expertise d'Evaluation et de Certification des substances minérales précieuses et semi- précieuses* (CEEC) participate in an assay procedure at the Twangiza mine, in which each bullion bar is drilled three times, and then one sample analysed by the company and the other two by the OCC and CEEC. Once these agencies' assay reports are completed, the *Direction Générale des Douanes et Accises* (DGDA) signs an export clearance, which is also signed by the mine's clearing agent. After this, each individual gold bullion bar is jointly sealed by DGDA and Banro representatives. At this point, a private security company retained by Rand Refinery takes physical custody of the bullion, and issues a receipt for this to Banro. The gold is then flown to Kinshasa, and custody is transferred to the CEEC. Once Banro has paid its export taxes, and provided proof of payment to the CEEC, the CEEC advises the national minister of mines to sign an export certificate of origin. Once the CEEC receives the signed certificate from the minister, it transfers custody of the gold back to the security company, which accompanies the gold to Johannesburg. After this, the gold is cleared by the South African Revenue Services (SARS), and then transferred to the Rand Refinery.¹

Evidence from respondents during the fieldwork and a range of secondary sources, including reports of the UN Group of Experts on the DRC, was consistent that much, and perhaps most of the gold produced artisanally in South Kivu passes through the provincial capital Bukavu, where some is purchased officially by *unités de traitement* but most is traded and exported covertly and without record. The secondary sources reckon that gold passing through Bukavu mostly heads to Dubai, sometimes via Bujumbura (Burundi), Kigali (Rwanda), Kampala (Uganda) or Nairobi (Kenya). UN Group of Experts reports have also identified the movement of gold from South Kivu directly to Bujumbura and to Tanzania.

III. Mukungwe case study

Mukungwe is situated in South Kivu's Walungu territory, in the Mushinga *groupement* of the Ngweshe *collectivité*.

Figure 3. Mukungwe mine, South Kivu



The mine lies within Banro's industrial exploitation permit 43. Banro has expressed interest in exploiting Mukungwe's rich resources industrially but at the time of research had not yet commenced a full evaluation of the orebody to confirm its viability for industrial mining due to its focus on higher ranking exploration targets at other deposits and to reduced exploration activities based on the current depressed gold price. In addition to its artisanal mining population, which numbers up to 10,000, Mukungwe is also one of the most fought over gold mines in South Kivu. The mine was validated in 2012 and certified 'red', because of the presence of FARDC and FDLR.

As such, Mukungwe may seem an odd choice for a case study of a mine where the OECD Due Diligence Guidance could be implemented. Yet Mukungwe has also been the focus over the past two years of intense efforts by the national and provincial governments and the Congolese NGO *Observatoire Gouvernance et Paix* (OGP) to address its problems and mediate between the parties to the conflict. These efforts have achieved significant results, though reconciliation between all the parties to its conflict has not yet been achieved. In addition, an important disagreement that must still be resolved at Mukungwe is that while Banro and the national and provincial governments want artisanal diggers to vacate the site and relocate to an as yet unidentified ZEA, the diggers want to stay on the mine. Banro states that vacation of the site by diggers would be done following prior consultation with all stakeholders as per the company's practice.

Type of mining, production volume and formalisation levels

There are no precise statistics for the number of artisanal diggers in Mukungwe; a validation mission that visited the site in 2012 estimated that there were between 1000 and 4000 active diggers. Diggers' representatives interviewed for this study in 2014 estimated there to be approximately 5000 artisanal miners. The representatives added that there were 205 pits at Mukungwe, of which they estimated 100 were then functional.

In addition to the diggers, at least as many people again work in Mukungwe as rock crushers and sorters, and traders of a wide range of goods from fresh produce to manufactured goods, or are employed in services including restaurants, bars, nightclubs and brothels. There is in addition a large but thus far entirely uncounted population of children, including many who are under 15 and work either as miners or as rock crushers (see picture).

As in so many artisanal mines, living conditions are extremely difficult, sanitation is an enormous challenge and basic services including schools and clinics are entirely absent, with the nearest a long walk away.

Mukungwe's gold production is unrecorded. The estimate of a joint validation mission of 2012 was 22.5 kilos/month, by far the highest amount of any South Kivu gold mine assessed thus far by the mission. Yet even this estimate might be too low, since the manager of one of Mukungwe's largest pits reported that production at his pit alone had at times reached 56 kilos/week.

Figure 4. Rock crushers at Mukungwe, including a child (in yellow trousers)



Figure 5. Miners' houses, perched precariously on a hillside



Figure 4. One of the most productive pits in Mukungwe



Mukungwe's diggers pan the river that flows through the mine and have also bored shafts into the hills on either side of it. One pit manager reported that his shaft, apparently one of the longest, travelled over 100 metres horizontally and then dropped vertically another 100 metres (see photo). Dynamite was used in the construction of the shaft, but most of the work was done manually with picks and shovels. The pit manager said that he was one of four managers who were in charge of a total workforce of over 300 diggers. The shaft, like

many in Mukungwe, requires motorised pumps to evacuate water, but the manager

reported that the shaft pumps no longer worked. As a result, production had slumped from an alleged peak of 56 kilos per week to a “very small” amount. The manager said that he and his colleagues are reluctant to invest in new equipment for as long as the artisanal miners’ long term presence on the mine remained uncertain.²⁴

The water pumps appeared to be the only mechanised feature of production at Mukungwe. Rock crushing was performed by hand, and there were no mechanical crushers evident on site. All panning, washing and sieving was also performed manually.

Three government agencies were present in Mukungwe during the fieldwork: the territorial division of the *Police Nationale Congolaise* (PNC), the specialised mining police division of the PNC, and the *Agence Nationale des Renseignements* (ANR). Sources close to the family of the chief of the Mushinga groupement alleged that the ANR worked closely with one of the rival land-title holders at Mukungwe and defended its interests (see Annex A).²⁵ Unlike in many artisanal mines, there were no agents of SAESSCAM, the *Division des Mines* or the *Direction Générale de Migration* (DGM) in Mukungwe. The departure of SAESSCAM and the *Division des Mines* was on the orders of the national ministry of mines, once it was officially confirmed that the mine was on Banro’s permit 43 (see below). Uniformed soldiers of the FARDC had been present at Mukungwe until they were withdrawn on the orders of Commander Masunzu of the 10th military region during 2013 (see Conflict links and other Annex II risks, below).

Respondents at Mukungwe during the fieldwork indicated that there were at least 100 *négociants* purchasing gold from the mine. The *négociants*, who have not formed an association, declined to be interviewed for this study. Other respondents, including diggers’ representatives and government officials, all said that they believed that the main *unité de traitement* purchasing the mine’s output was the Bukavu-based Namukaya. However, none of Namukaya’s official declarations to the South Kivu ministry of mines during 2013-14 indicated purchases from Mukungwe.

Figure 7. Washing gold ore in Mukungwe



24 Author’s interview with pit co-manager, Mukungwe, June 2014.

25 Author’s interview with ‘exiled’ pit managers from Mukungwe, Bukavu, 2014.

History of the mine

Gold is said to have been discovered in Mukungwe in 1978. SOMINKI never operated the deposit but thousands of artisanal miners flocked to the mine from the late 1970s onwards. Production was said to be high, and diggers were obliged to pay taxes to the chief of the *groupement*, Pasteur Kurengamuzimu. Two families, the Rubangos and the Chunos, were deemed land title holders at Mukungwe and the Rubangos were running the mine in 1996 when Laurent Kabila's *Alliance des Forces Démocratiques pour la Libération du Congo* (AFDL) swept through South Kivu, with the FAZ fleeing before them. The AFDL came through Mukungwe but did not linger or become involved in mining activities, though there were sporadic, armed tax collection exercises at Mukungwe during the same period by the FDLR.

The 1998-2002 war had a much greater impact on mining at Mukungwe. The *Rassemblement Congolais pour la Démocratie* (RCD) and its Rwandan backers took a keen interest in artisanal mines, including Mukungwe, where the Rubangos have admitted paying a percentage of their takings to RCD military commanders in return for being allowed to retain day-to-day control of the mine. The Rubangos report that they were later obliged to permit RCD military commanders to take direct 'ownership' of specific pits in Mukungwe.²⁶ From that period until 2013 there was a near continuous presence of uniformed, armed troops at Mukungwe, who in addition to supervising their commanders' pits, also operated illegal detention centres. The Rubangos have furthermore confirmed that there were also often FDLR combatants present in and around the mine, and combatants of another militia, Mudundu 40.

Banro began operations in South Kivu in 2003, after the civil war was largely over. Banro discovered early on that Mukungwe lay within its permit, but could not establish a presence there for as long as the mine remained both militarised and populated with thousands of artisanal miners refusing to leave. In addition, at that time, the site was not yet a high ranking target for the company. Adding to Banro's difficulties, the Rubangos and Chunos both vehemently denied that Mukungwe lay within the company's permit, and insisted on their rights to its production.

An increasingly bitter feud had developed between the Rubangos and the Chunos, which has continued until the present time (See Annex A for more detail), and to enforce their rival claims, the two families enlisted competing FARDC commanders who supplied firepower in return for payments and pit 'ownership'. The results on the ground were often bloody, with periods of calm interspersed with episodes of intense violence and destruction, as FARDC soldiers under the command of the families' military backers rampaged against diggers identified with the opposite camp.

For several years, Chunos' main backer was the infamous General Bosco Ntaganda, who in mid-2014 awaited trial at the International Criminal Court in The Hague for war crimes and crimes against humanity. On the Rubangos' side, according to the UN Group of Experts in 2011, were a selection of FARDC commanders who included Lieutenant Captain John

26 Author's interview with members of the Rubango family, *op cit*.

Cinyabuguma, Major Kitenge and Major Bahati.²⁷ In March 2012, a validation mission visited Mukungwe and classified the mine 'red', citing the presence of the FARDC and FDLR.

Beginning in July 2012, the OGP organised a series of workshops to kick-start the process of reconciling the Rubangos, Chunos, Kurhengamuzimus, the diggers and Banro. The meetings re-established communication between all the contending parties, but disagreement persisted about whether or not Mukungwe lay within Banro's permit. All parties, however, accepted that a definitive ruling was required from the state on this vital issue. A definitive ruling was thus issued by the national Minister of Mines which verified that the deposit falls within Banro's permit 43, and stipulated that the area be stabilised through the launching of the multi-stakeholder consultative "road map" process facilitated by OGP and the provincial Government. It was also agreed that all the informal detention centres operated by armed troops on the mine should be closed down.²⁸

An ambitious roadmap was developed during the workshops, to be followed for six months, which, *inter alia*, called for:

- The installation of 'non-partisan' police at Mukungwe;
- The denunciation by all stakeholders of any military presence;
- The development of detailed alternative employment plans for artisanal miners;
- The return of the Chunu family to Mukungwe;
- The establishment of a permanent platform for discussions between Mukungwe stakeholders;
- Compensation for the Chunos and Rubangos by Banro. The exact nature of this compensation will be discussed based on consultations around alternative livelihood options and repositioning in other livelihoods or in legitimate artisanal mining ventures;
- Identification of all artisanal diggers at Mukungwe;
- Banro to leave diggers in place at Mukungwe while it continued with its exploration work there.

Since then, Banro has indicated that it will explore for gold around Mukungwe for three years, during which it hopes to identify other gold deposits that would be sufficiently attractive to establish a ZEA to entice the diggers away from Mukungwe. Banro has indicated it may offer access to selected deposits on its permits for artisanal mining cooperatives, provided the DRC Government authorises and facilitates this.

27 Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo, *op cit*. Paragraphs 529 and 530.

28 Observatoire Gouvernance et Paix, *Rapport de L'Atelier d'Harmonisation des Points de Vue Des Parties En Conflits, Pour Une Paix Durable à Mukungwe*, OGP, Bukuvu, 2012.

IV. Conflict links and other Annex II risks

Direct or indirect support to the FARDC and non-state armed groups

Many gold mines in South Kivu Province have historically provided, and in numerous cases continue to provide significant levels of finance to the armed forces, and to non-state armed groups, including Mai Mai Yakutumba, Raia Mutomboki, Mudundu 40 and FDLR. An online map created by Belgian research outfit IPIS provides a regularly updated guide to which mines endure a presence of armed groups and/or the FARDC.

Figure 5. IPIS map indicating presence of FARDC and armed group



The FARDC and non-state armed groups have principally profited from artisanal gold mining by taxing diggers, traders and transporters. FARDC commanders have also made money by ‘owning’ specific pits in mines. Non-state armed groups and the FARDC have in addition generated income by selling goods and services to artisanal mining communities, and more generally by imposing taxes on local economies in which artisanal gold mining plays a role.

In its 2011 report, the UN Group of Experts reported that Mai Mai militia in Misisi, which is just inside the borders of neighbouring Maniema Province, were taxing gold diggers from the Kingizi, Kaboga and Katchoka mines and that military involvement in other Misisi mines “had never been more blatant”.²⁹ The Group also reported on profiteering by Colonel Rugo

²⁹ Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004), United Nations, New York, 2011, paragraph 508.

Heshima at the Kamituga gold mines³⁰ and by “FARDC elements loyal to 10th military region commander General (Patrick) Masunzu” in Lugushwa.³¹ The Group’s 2012 and 2013 reports both stated that Colonel Heshima was taxing gold production in Misisi.³²

The UN Group’s 2013 report further indicated that Raia Mutomboki “controlled most of the gold mines in Shabunda territory”³³ and that during March and April of 2013, “Yakutumba had collected taxes for his “war effort” in the Misisi area”.³⁴ During 2014, heavy fighting was reported between the FARDC and Raia Mutomboki in the Shabunda area, and between the FARDC and Yakutumba in Misisi, but the impacts on gold mining in these territories is not yet clear.

In view of recent debate about the value of international efforts to mitigate the risk of conflict financing from mineral supply chains, it is worth stressing that the argument is not being made here is not that these armed groups or FARDC elements have solely been motivated by a desire for gold, and nor is it claimed that the armed groups and FARDC would find themselves unable to profit from local economies if there was improved OECD due diligence implementation on the gold sector. The premise behind this report and research is simply that those trading and consuming gold should want to, and be obliged to take reasonable steps to ensure that their activities do not provide direct or indirect support to non-state armed groups or the FARDC.

Mukungwe

The joint validation mission rated Mukungwe as ‘red’ in 2012 for good reason; FARDC commanders had been taxing the mine for years and some had ‘owned’ pits too. There is also evidence that the FDLR and Mudundu 40 have extracted rents from Mukungwe, and less certain allegations that M23 has done so too.

The logic of the OECD’s Due Diligence Guidance, however, is forward looking, and the key questions are whether the links between the mine and conflict financing are weakening, and whether and how in the future they could be weakened further. In this regard, the 2013 departure of uniformed troops from Mukungwe, after a fifteen-year presence, was clearly an important positive step. Also hugely positive is the reconciliation process still being directed by OGP, which holds out the prospect of further demilitarising Mukungwe, by lessening the motivation of stakeholders to use force to defend their claims. In addition, the

30 Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo (op cit), paragraphs 522-3

31 Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo (op cit), paragraph 533.

32 Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of Congo addressed to the President of the Security Council, United Nations, New York, 2012, paragraph 185; and Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1433 (2004) concerning the Democratic Republic of Congo, United Nations, New York, 2013, paragraph 162.

33 Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo (op cit), paragraph 168.

34 Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo (op cit), paragraph 169.

FDLR's presence around Mukungwe has greatly reduced and at the time of writing there were no recent reports of the presence of other militia, such as the Mudundu 40.

On the other hand, many well-informed respondents have alleged that military commanders, including Masunzu himself, have retained covert financial stakes in Mukungwe, and that senior provincial politicians have done so too. In addition, some FARDC soldiers are reported by well-placed respondents to have stayed on in Mukungwe but to have changed into civilian clothes, and respondents have also reported a residual presence of militia combatants. The soldiers are apparently in Mukungwe to protect the pits of their commanders, while the militia combatants are diggers, working for their own day-to-day sustenance.³⁵

Serious abuses associated with extraction, transport, and trade of minerals

The UN Group of Experts, international and Congolese researchers, and NGOs have all found evidence of multiple instances of serious abuses associated with the extraction, transport and trade of gold in South Kivu. The abuses include torture, armed extortion and theft, rape, arbitrary detention and murder. The main perpetrators of these abuses have been non-state armed groups and the FARDC, but there is also evidence of abuse by the mining police, *Division des Mines, Service d'Assistance et Encadrement du Small Scale Mining* (SAESSCAM) and the *Agence Nationale des Renseignements* (ANR).

Mukungwe

FARDC soldiers for years ran illegal detention centres in Mukungwe, where it has been alleged by respondents³⁶ that they meted out cruel, inhuman and degrading treatment, including torture. There are in addition multiple testimonies and secondary literature documenting instances of the military's violence and intimidation. Artisanal diggers at Mukungwe reported in mid-2014, however, that incidents of torture and other cruel and degrading treatment had declined significantly since the departure in 2013 of armed FARDC troops.

Forced and compulsory labour was reportedly common during the period when armed groups occupied Mukungwe. Diggers have reported that incidents of forced labour had greatly declined since their departure.

The worst forms of child labour remain prevalent in Mukungwe. During the fieldwork, children were much in evidence and were witnessed to be involved in several stages of mining, from tunnelling to crushing and washing ores.

Solidarite des Femmes pour le Developpement Integral (SOFEDI), a Bukavu-based NGO, is working with women in Mukungwe, with a particular focus on sex-workers and HIV/Aids. SOFEDI has reported that rape and other forms of sexual violence were "a reality" in

³⁵ Author's interviews, Bukavu and Mukungwe, June 2014.

³⁶ Author's interviews in Mukungwe and Bukavu, June 2014.

Mukungwe.³⁷ Women respondents at the mine site said rape was very common, with one describing sexual violence as “common currency” among artisanal miners there.³⁸

The FARDC and non-state armed groups have repeatedly committed serious crimes in Mukungwe and it is possible that some of these might be classified as war crimes, other serious violations of international humanitarian law, crimes against humanity, or genocide. General Bosco Ntaganda, who for a time backed the Chunos at Mukungwe, has been charged with war crimes and crimes against humanity at the International Criminal Court in The Hague. There have, however, been no reported instances of these crimes at Mukungwe since the departure of the FARDC in 2013.

Bribery and fraudulent misrepresentation of the origins of minerals

There continue to be multiple allegations of bribery and the fraudulent misrepresentation of the origins of artisanally mined gold in South Kivu. Regarding the former, a senior provincial official provided a telling example from 2013 in which he had personally confiscated a consignment of gold on suspicion that it had provided conflict financing. The official claimed that the gold disappeared from his office while he was away at a conference, apparently because an unregistered gold trader had bribed a colleague to release it. The official reported the incident to his superiors, but there was no follow-up, leading him to suspect that his superiors were also involved.³⁹

Traders do not, of course, misrepresent the origin of gold they smuggle out of South Kivu, since such exports are unrecorded. Fraudulent misrepresentation is an important issue, however, for gold purchased and exported by official *unités de traitement*. Provincial statistics, for example, indicate no purchases of gold from Mukungwe during 2012-14, despite the fact that it is said to be the most productive gold mine in the province. Yet numerous respondents interviewed for this study alleged that Mukungwe’s gold was mostly sold to the Namukaya *unité de traitement*. Namukaya declined to comment.

For as long as the supply of gold from mine sites validated as ‘green’ continues to be minimal, fraudulent misrepresentation will continue, particularly if *unités de traitement* are not required to furnish any proof beyond the declarations of the *négociants* they have bought from of the origins of the gold they purchase.

37 Author’s interview with Viviane Sebahire Maramuke, Co-ordinator, SOFEDI, Bukavu, June 2014.

38 Author’s interview with women living in Mukungwe, June 2014.

39 Author’s interview with senior South Kivu government official, Bukavu, June 2014.

Mukungwe

At Mukungwe, artisanal diggers have for many years been required to pay 50% of the estimated value of their output to representatives of the Rubango family. The Rubangos have claimed that this percentage is “traditional”, adding that for years the family was forced to pay half of its income from the mine to military commanders. Several respondents reported that the Rubangos were also obliged to make significant payments to their political backers, allegedly including senior members of the South Kivu provincial government.⁴⁰

The available evidence suggests that gold production at Mukungwe is at least 22 kilos/month, and maybe much higher. Respondents have indicated that most of Mukungwe’s gold is traded in Bukavu, where it is either unrecorded or misrecorded as the output of somewhere else. The regular, unhindered and unrecorded export from Bukavu of the volumes of gold that Mukungwe produces indicates a strong likelihood that state officials are being bribed either to turn a blind eye or actively to facilitate the process.

Money laundering, payment of taxes, fees and royalties

Legally exported gold from South Kivu incurs a range of taxes, payable to several government agencies. Payment is due to the OCC, CEEC, DGDA, the *Direction Générale des Recettes Administratives* (DGRAD), SAESSCAM and the province’s *Cellule Technique de Coordination et de Planification Minière* (CTCPM).

In 2012, the government reduced gold export taxes and the fees payable by registered *unités de traitement*, which appears to be the main reason that legal exports of artisanally mined gold have since risen. Yet the combination of official taxes and the many other semi-legal or illegal levies imposed on official *unités de traitement* by state officials and armed groups has continued to make smuggling gold from South Kivu a more profitable activity, even when taking into account the bribes to officials that traders often need to make to protect their gold smuggling businesses.

No evidence was collected during the research regarding money laundering. Allegations, however, abound that one reason some buyers of South Kivu artisanal gold can offer such high prices to sellers is that they are laundering funds, and are consequently more concerned to convert their money into gold than to obtain it for the lowest possible price.

Mukungwe

No official taxes, fees or royalties are paid on gold production at Mukungwe, apart from the percentage discussed above that diggers must pay to the Rubangos. Nor are official taxes paid on the smuggled export of Mukungwe’s gold. However, official taxes are likely being paid on gold from Mukungwe that has been fraudulently recorded as coming from elsewhere, and is exported officially from Bukavu.

40 Author’s interview with ‘exiled’ Mukungwe pit managers, Bukavu, June 2014.

V. Awareness and levels of implementation of the OECD Due Diligence Guidance

Awareness of the OECD Due Diligence Guidance has grown substantially within the South Kivu ministry of mines, SAESSCAM and CEEC, and so too have their implementation efforts. Additionally, due to an OGP training initiative there is also some awareness of the OECD Due Diligence Guidance within the 10th military region of the FARDC (see above). However, the persistence, albeit covertly, of the private financial interests of many of the province's state officials, politicians and military commanders in South Kivu's artisanal gold mines remains a formidable obstacle to further implementation of the Guidance in the gold sector.

In marked contrast to South Kivu *unités de traitement* trading in tin, tungsten and tantalum (3Ts), most of which have received training in the OECD Guidance, awareness of the Guidance is low-to-absent among Bukavu's gold *unités de traitement*, though some respondents working for them reported having heard "something about it" in workshops. The Namukaya *unité de traitement* has repeatedly been made aware of the Guidance through its engagement with successive UN Group of Experts, and because of their reports, which have repeatedly castigated the company for its alleged failure to implement due diligence. There is little evidence, however, that this has resulted in significant changes in Namukaya's behaviour, except perhaps for the increased reluctance of its staff to engage with researchers on the topic.

Banro staff exhibit a thorough knowledge of the OECD Guidance, and through its chain of custody arrangements (described above) and reporting procedures the company strives to ensure that it implements the Guidance. Banro has pointed out, however, that the requirements of the US Dodd Frank Act do not apply to its output, since its industrial production is not sold on to manufacturers but to a refiner which has to comply with stipulations regarding the sourcing of what it purchases.

Initiatives to mitigate Annex II risks

South Kivu Province

There are initiatives underway by a variety of stakeholders that intended to mitigate Annex II risks in South Kivu's artisanal gold sector, and to implement the Appendix of the Due Diligence Guidance that outlines suggested measures to create economic and development opportunities for artisanal and small-scale miners. The initiatives are principally:

The joint **Mine Site Validation programme** in South Kivu and other Congolese provinces, in which multi-stakeholder groups consisting of government officials, ICGLR and MONUSCO representatives, representatives from international development agencies, Congolese civil society, and industry members visit and assess artisanal mining sites, and then report on whether the mines are 'red', 'orange' or 'green'. 'Red' means the security and social situation at the mine is problematic because of the presence of armed groups, 'uncontrolled' security forces, or pregnant women or children under the age of 15 mining. 'Orange' means the security and social situation is 'partially satisfactory' but could improve if

reforms were implemented. 'Green' means the social and security situation is 'entirely satisfactory', implying that the site is under the control of the mines ministry and there is no presence of armed groups, nor 'uncontrolled' members of the security forces, and no pregnant women or children under the age of 15 are mining.⁴¹ As of June 2014, ten South Kivu gold mines had been validated, of which four mines, including Mukungwe, were rated as 'red', three as 'orange' and three as 'green'.⁴²

A second, related initiative is the **ICGLR Regional Certification Mechanism (RCM)**. Under the RCM, output from mines that are classified 'green' by the joint mine site validation teams will be entitled to receive ICGLR certificates from the provincial *Division des Mines*, thereby permitting export from the DRC. Once the scheme is fully rolled out, it has the potential to regularise and simplify buyers' due diligence implementation, since – in theory at least – all mining output with ICGLR certificates will be 'conflict free'. As indicated earlier, however, until the scheme is fully rolled out there is the risk that it will create a new bottleneck, because too little mining production will be certified. An additional concern is of certificates being issued before the evaluation and auditing components are operational, which risks compromising the credibility of the certification process.

A third initiative is the South Kivu Province **Comité Provincial de Suivi (CPS)**, chaired monthly by the South Kivu minister of mines, Adalbert Murhi Mubalama during the time of research and writing. The CPS brings together government officials, representatives of the FARDC and police, mining companies, mining cooperatives, and civil society to discuss and if necessary resolve issues in the provincial mining sector. The deliberations of the CPS are supposed to be informed by input from *Comités Locales de Suivi* (CLS), though few of these had been established in the province at the time of writing.

An interesting initiative was launched in 2013 to **train the FARDC's 10th military region** (which covers South Kivu) in minerals traceability and due diligence, directed by the Bukavu-based OGP. Largely because of this initiative, 10th military region commander Patrick Masunzu agreed in mid-2013 to vacate his troops from the Mukungwe mine. This is an important step forward, though the initiative needs to be sustained to be effective, and particularly if it is to address the vital, but thorny issue of continued covert military financial interests in mines, including Mukungwe.

The official policy of the national and provincial government is for the artisanal miners to vacate permits held by mining companies and to relocate to *Zones d'Exploitation Artisanal* (ZEA). The authorities have appealed to the companies to help identify these ZEA. Banro says it wants the ZEA on permits whose users have not made use of their rights⁴³, while the government's preference is for the ZEA to be located on 'unused' parts of the industrial miners' permits.⁴⁴ This is despite the fact that Congolese law does not allow artisanal mining

41 Ministère des Mines, *Arrete Ministeriel No. 0058/Cab.Min/Mines/01/2012 Du 29 Feb 2012, Fixant les Procedures de Qualification et de Validation des Sites Miniers Des Filieres Aurifere et Stannifere dans les Provinces du Katanga, du Maniema, Du Nord Kivu, du Sud Kivu et de la Province Orientale*, Ministry of Mines, Kinshasa, 2012.

42 Joint validation team documentation, seen by the author in June 2014.

43 Author's interview with Banro representatives, Bukavu, June 2014.

44 Author's interview with South Kivu minister of mines Adalbert Murhi Mubalama, June 2014.

on industrial mining exploitation permits. Banro is currently lobbying to propose a more pragmatic approach is adopted to this issue.

In Maniema Province, Banro has identified a possible ZEA called Matete which lies on state land some 25 km from Banro's Namoya permit. The state declared the Matete deposit as a ZEA following a request by Banro to do so in order to create a relocation opportunity for artisanal miners operating on the Namoya permit.

According to the company, progress has been made towards the design and validation of a traceability regime under which the artisanal mining cooperative made up of former diggers on Banro's permit can mine and export gold. The OIM - MONUSCO teams are involved in setting up a capacity-building intervention to support the artisanal mining Cooperative COMICA, and provide local SAESSCAM officials with the skills to operate in a business-oriented manner. The company has said it expects artisanal gold production to begin there before the end of 2014.⁴⁵ Additionally, Casa Mining has agreed to facilitate the establishment of a ZEA on its permits in Fizi, once it has managed to convert these permits from exploration to industrial mining permits.⁴⁶

Initiatives at Mukungwe

This report has already detailed a number of important initiatives to mitigate Annex II risks and promote the Appendix of the Due Diligence Guidance at Mukungwe. The initiatives include Mukungwe being classified as 'red' by a joint validation team; the official ruling that the mine lies within Banro's permit 43 (which has since been accepted by all stakeholders); the mediation process organised by OGP including efforts to remove armed FARDC soldiers from Mukungwe; SOFERDI's work with women in Mukungwe; and Banro's public decision to permit artisanal miners to remain at Mukungwe, at least until it completes exploration work there, and to look for an alternative ZEA for the diggers to move to.

One option that has been little explored thus far is the SOMINKI model, in which the company holding the mining permit leaves the diggers where they are and buys their output. Banro staff have said that it would be premature to comment on this option until geological exploration is complete, and Mukungwe is validated 'green', but have highlighted a number of risks this option would pose to the company. The prime concern for the company would be the risk of Banro's clean industrial production stream being contaminated by gold production from other sources as gold traceability for artisanal mining production is in its infancy. In addition, other risks are that Banro could be obliged to take responsibility for the myriad of health and safety issues at Mukungwe, and the company's being held responsible in the event of continued conflict financing.

The Chunos, Rubangos and other diggers' representatives, by contrast, all said the best option for them would be for the diggers to stay put and for Banro to purchase their output. Asked whether they would accept that purchasing would have to be conditional on

45 Author's interview with Banro representatives, *op cit*.

46 Author's interview with Mulikuza Mudukwe Albert Bene Bugusho bwa Naluhwinja, *directeur du cabinet* of the South Kivu minister of mines, Bukavu, June 2014. This was confirmed by Casa in a public statement in October 2014.

Mukungwe being validated green, and on demonstrable implementation of the OECD Due Diligence Guidance, verified by an independent third party, all replied that they would accept. Some also appealed for Banro's help in the due diligence implementation at Mukungwe and in securing a 'green' validation, and also appealed for Banro's assistance in gold production, including the provision of mechanical drills, crushers and pumps. Asked whether if Banro agreed to purchase gold from Mukungwe on condition that the mine was re-validated green, and there was evidence of implementation of the OECD Guidance, that would create new incentives to demilitarise and de-criminalise Mukungwe, the Chunos, Rubangos and other diggers' representatives all said that it would. They also said that if Banro gave this commitment, this would help to defuse the conflict between themselves.

VI. Conclusion and recommendations: Industrial and artisanal gold mining in eastern DRC – conflict, co-habitation or cooperation?

As of mid-2014, industrial gold mining in South Kivu was only three years old. Its arrival in the province has brought fresh tax revenues to the administration, some much-needed new infrastructure, and an injection of liquidity into the struggling domestic economy. But industrial gold mining has also increased anxiety among the province's large populations of artisanal miners, who have for years worked gold concessions on the industrial miners' permits, and fear they will be evicted to make way for the permit holders. Diggers in Mukungwe have reported the experiences of former artisanal miners from Twangiza greatly worried them, claiming that most were much poorer than before, despite Banro's efforts to create alternative employment.⁴⁷

The compromise advocated by the national and provincial authorities is the establishment of new ZEAs to which artisanal diggers can relocate. One such ZEA, at Matete in Namoya, south west of Bukavu, is due to begin operations by the end of 2014. If Matete works well, this could create momentum to extend the model elsewhere. Yet the experience of copper and cobalt ZEAs in Katanga province is instructive. ZEAs were, for example, created near Kolwezi in the early 2000s for artisanal diggers displaced from newly privatised industrial copper and cobalt mines. But the Katangan ZEAs proved harder and less lucrative to mine than the industrial sites they had recently vacated, and diggers frequently left once geological conditions became too challenging, with many re-invading their former places of work. The same could happen in South Kivu.

And for as long as established gold trading networks remain untransformed, so too will the risk that artisanal output from the industrial miners' permits will continue to fund conflict. To mitigate this risk, at least in artisanally mined sites situated on the permits of industrial miners, such as Mukungwe, one option that has been little explored is the "SOMINKI option", where the artisans stay put and the permit holders buy their output, subject to clear evidence that due diligence in line with the OECD Due Diligence Guidance was being implemented.

Under the SOMINKI option, the new buyers would have to suspend or cease buying artisanally produced gold on their permits if their due diligence showed them that the risk of conflict financing had re-emerged. The risk here would be that a purchase suspension could itself trigger a return to conflict financing, as the old gold buying networks moved back in to fill the purchasing vacuum. This risk would need to be mitigated by thorough, multi-stakeholder discussion and agreement about the process by which decisions to suspend purchasing were taken, implemented and then reviewed.

A further risk to the SOMINKI option would be deliberate derailment by those financially disadvantaged by it, including military commanders and politicians who stood to lose lucrative sources of income. Mitigating this risk would require determined political will from

⁴⁷ Author's interviews with artisanal diggers and their representatives, Mukungwe and Bukavu, June 2014.

the provincial and national authorities, assisted by careful on-the-ground evidence gathering and analysis by credible third parties. Well-designed donor agency and civil society and industry support for the SOMINKI option could also play an important role in this risk mitigation.

Recommendations

The national and South Kivu provincial governments should continue their efforts, along with Congolese civil society, to broker “win-win” resolutions of conflicts between mining permit holders and artisanal gold miners, and should be assisted in doing so by international donors and agencies.

The Congolese authorities are keen for ZEAs to be an important part of the solution, but should be mindful of the challenges presented by ZEAs and not imagine that they are a panacea to conflicts of interest between artisanal and industrial mining companies.

The Congolese authorities and other stakeholders should, where appropriate, consider the “SOMINKI option”, where artisanal miners remain active on permit holders’ concessions and sell their output to them, subject to the validation of the mines as ‘green’, and demonstrable efforts by key stakeholders to implement the OECD Due Diligence Guidance.

The DRC authorities’ capacity to broker the resolution of conflicts between mining permit holders and artisans is compromised by the covert financial interests of politicians and military commanders in mines, and continued illegal rent seeking by a wide range of officials in the sector. Necessary, though not sufficient, to tackle this is strong political will from senior levels of the provincial and national administration.

The international community should support projects that tackle conflict issues in artisanal gold mines, and projects that seek to demilitarise them, such as the work by OGP on Mukungwe, which has already yielded the FARDC’s official withdrawal from Mukungwe (though the covert financial interests of senior FARDC commanders appear to have remained intact).

The international community should also support and assist the roll-out of the ICGLR certification system in South Kivu and elsewhere in the region, not least by funding an accelerated and increased programme of mine site validations. More mine site validations would increase the number of validated sources of supply for *unités de traitement*, mitigating, at least to a degree, the risk of illegal gold purchasing and export.

The OECD should perform dedicated Due Diligence Guidance training for South Kivu gold *unités de traitement*.

Annex: Recent conflict and conflict resolution at Mukungwe

Family feuding began at Mukungwe soon after the discovery of gold there in 1978. According to one of the Mukungwe land-title holders, the Rubango family, they and the Chunos – the other land-title holders - became increasingly unhappy at the alleged unwillingness of the *groupement* chief, Pasteur Kurhengamuzimu to share gold mining proceeds with them. In the first of many legal actions, the Rubangos said that they and the Chunos brought a joint legal suit against Kurhengamuzimu, and allegedly received a favourable judgement against him in 1983.⁴⁸

Around 1993, Kurhengamuzimu had Ntabala Chunu, a senior member of the Chunu family, evicted from the Mushinga *groupement*. According to Chunu, he has never since returned to Mukungwe. Chunu said that after his eviction, he requested the Rubangos to manage his interests there, and the Rubangos maintain that they duly did so. Chunu, however, has alleged that the Rubangos have been endeavouring to push him out of Mukungwe.

The Rubangos in 2008 and the Chunos in 2009 both succeeded in obtaining official documentation that cited them as the land title-holders at Mukungwe, and both claimed that their land titles entitled them to operate the mine.⁴⁹ The DRC's mining code stipulates, however, that only mining permit holders are legally allowed to operate mines.

In April 2013, Pasteur Kurhengamuzimu was murdered and was succeeded as chief of the Mushinga *groupement* by his son, Tito Obwih'oyunva Kurhengamuzimu. The Kurhengamuzimu family later publicly accused the Rubango family of being behind the killing. The family has denied this. In the same month, Chunu secured a court order against Alexis Rubango, forbidding him from travelling to Mukungwe, which remained in force during the fieldwork. Rubango had not visited the mine since the court order was issued, but has remained in close contact with his supporters at Mukungwe, who have retained *de facto* control on site.⁵⁰

Following a decision by a multi-stakeholder workshop organised by OGP that the issue of whether Mukungwe lay within Banro's permit should be settled once and for all (see Mukungwe case study: History of the mine), a team from the national ministry of mines travelled to South Kivu in May 2013 to examine the issue. The team held meetings in Bukavu, including with Banro, Chunu and Rubango, but decided against visiting Mukungwe, in light of M23 and Mudundu 40 militia activity.

Chunu had once been backed by the infamous warlord General Bosco Ntaganda, and the government team's report stated its belief that Chunu was this time in league with M23.

48 Author's interviews with members of the Rubango family and with Ntabala Chunu, Bukavu, June 2014. See Appendix A for more detail on the feuds and contestations at the mine.

49 *Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004)*, United Nations, New York, 2011, paragraph 528.

50 The author was only able to visit Mukungwe after obtaining Alexis Rubango's permission. On arrival at the site, he was told by people identifying themselves as Rubango's representatives that he was only being granted access because Rubango had approved the visit.

Chunu denied it, but reportedly told the team that he could not vouch for its safety if it visited the mine. Kurhengamuzimu's family also weighed in, saying it would not be correct to have an important meeting at Mukungwe while they were still in mourning.⁵¹

In May 2013, thanks to another initiative by OGP, this time focusing on mines militarisation, Commander Patrick Masunzu of the 10th military region agreed to order all uniformed troops under his command out of Mukungwe. The subsequent departure of all uniformed and armed FARDC troops from the mine was confirmed by a number of respondents during the fieldwork, though many respondents alleged that the financial stakes of senior military commanders in gold production in Mukungwe had nonetheless remained firmly in place.

Meanwhile, the national mines ministry team reported back to mines minister Martin Kabwelulu, who in August 2013 wrote a letter to the provincial government of South Kivu, (copied to many others including president Joseph Kabila), stating unequivocally that Mukungwe was wholly situated within Banro's permit 43. The letter added that the Rubangos' and Chunos' land titles gave them no right to Mukungwe's minerals, ordered all artisanal mining on Mukungwe to cease on the grounds that the site had been validated 'red', and also ordered all SAESSCAM agents to leave. The letter further requested Banro to compensate the Rubangos, Chunos and Kurhengamuzimu.⁵²

However, Banro wishes to emphasise that compensation per se is unlikely to happen outside of Banro's statutory obligation to compensate the holders of surface rights for the disturbance of structures and agricultural livelihoods, pursuant to the establishment of an industrial mining operation. Banro cannot set a precedent of buying its own deposit from an illegally present party. However, Banro does invest resources including the provision of seed capital, initial technical and planning assistance, and once legal permission can be obtained to allow ZEAs on parts of industrial permits, Banro will provide access to selected gold deposits.

In October 2013, Banro met with Tito Kurhengamuzimu, where the chief said that he accepted that Mukungwe was on the company's permit. Kurhengamuzimu also said that the Mushinga groupement was "planning to welcome" Banro.⁵³ In April 2014, OGP held another workshop on Mukungwe attended by Kurhengamuzimu, Rubango, Chunu, Banro, representatives of diggers, provincial government officials, the Walungu territorial administrator and civil society representatives. Everyone present publicly conceded that Mukungwe did indeed lie in Banro's permit, and everyone signed an *Acte d'Engagement* which included commitments:

- By Banro to help create alternative employment for artisanal miners;
- By Banro to compensate the Chunu and Rubango families;
- By Banro to leave Mukungwe's diggers active on site while the company carried out exploration work;

51 Ministry of Mines, *Rapport de Mission Effectuee A Bukavu/Sud-Kivu du 03 au 25 Mai 2013, suivant l'ordre de mission collectif no.046/Cab.Min/Mines/01/2013*.

52 Minister of Mines, No.Cab.Min/Mines/01/1062/2013.

53 Banro reports of the meeting, seen by the author.

- By the artisanal diggers' representative to speed up the removal of pregnant women and children from the mine, and to denounce the presence of any soldiers; and
- By the Chunos, Rubangos and Kurhengamuzimus to find an end to their conflict, to allow freedom of movement for diggers, to create the conditions for the Chunos' return, and to keep meeting with each other.

At the time of research, in mid-2014, respondents reported that it was still too early to tell whether the *Acte d'Engagement* was being effectively implemented.

Bibliography

Shawn Blore, *Responsible Sourcing of Artisanal Gold in Eastern DRC, Pilot Status and Planning*, Partnership Africa Canada, Ottawa, 2013.

Gabriel Kamundala Byemba, *Exploitation minière industrielle et artisanale au Sud-Kivu: Possibilités d'une cohabitation pacifique*, IPIS, Antwerp, 2012.

Didier Gondola, *The History of Congo*, Greenwood Press, Westport, 2002.

Gregory Mthembu-Salter, *Social and Economic Dynamics of Mining in Kalima, DRC*, Institute for Security Studies, Johannesburg, 2009.

Jason Stearns et al, *Mai-Mai Yakutumba: Resistance and Racketeering in Fizi, South Kivu*, Rift Valley Institute, Nairobi and London, 2013.

UN Group of Experts of the Democratic Republic of Congo, *Letter dated 18 October 2011 from the Group of Experts of the Democratic Republic of Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1533 (2004)*, United Nations, New York, 2011.

UN Group of Experts of the Democratic Republic of Congo, *Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of Congo addressed to the President of the Security Council*, United Nations, New York, 2012.

UN Group of Experts of the Democratic Republic of Congo, *Letter dated 12 December 2013 from the Group of Experts on the Democratic Republic of Congo addressed to the Chair of the Security Council Committee established pursuant to resolution 1433 (2004) concerning the Democratic Republic of Congo*, United Nations, New York, 2013.



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