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Baseline study three: Production, trade and export of gold in Orientale Province, Democratic Republic of Congo

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It is one of the only international frameworks available to help companies meet their due diligence reporting requirements.

About this study

This baseline study is the third 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 gives an overview of provincial gold production, trade and export in Orientale Province, Democratic Republic of Congo

This study serves as background material for the 9th ICGLR-OECD-UN GoE Forum on Responsible Mineral Supply Chains taking place in Paris on 4-6 May 2015. It was prepared by Gregory Mthembu-Salter of Phuzumoya Consulting, working as a consultant for the OECD Secretariat, with research assistance in Ituri from Eric Mongo, Muhindo Mbuyirahi Benizeth and Bandoni Bau Schadrac of Réseau Haki Na Amani.

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Acronyms

AGK	Ashanti Goldfields Kilo
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
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 Zaïroises
ICGLR	International Conference on the Great Lakes Region
KIMIN	Kilo-Moto Mining International
MONUSCO	Mission de l’Organisation des Nations Unies pour la Stabilisation en RD Congo
OCC	Office Congolais de Contrôle
OKIMO	Office des Mines d’Or de Kilo-Moto
PDG	Président Directeur Général
PNC	Police Nationale Congolaise
RCM	Regional Certification Mechanism
SAESSCAM	Service d’Assistance et Encadrement du Small Scale Mining
SOKIMO	Société des Mines d’Or de Kilo-Moto
ZEA	Zones d’Exploitation Artisanale

I. Introduction and key findings

This is the third of five baseline studies on the gold supply chains of the Democratic Republic of Congo (DRC). The studies, which are based on fieldwork in the DRC, Uganda and the United Arab Emirates, are intended to assess awareness and implementation of the Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (OECD 2013: 7), explain the constraints and challenges to implementation and; make recommendations that could enable further progress.

Previous studies have focused on the DRC's Katanga and South Kivu provinces. This study is focused on Orientale Province, a huge area in the DRC's northeast where the country's industrial gold mining began over a century ago. Gold mining in the province's Ituri district was until not long ago a major source of conflict financing. While both the conflict and the conflict-financing from gold have subsided in the province in recent years, most artisanal gold mining and trade in Orientale remains as opaque as ever.

Government policy is for artisanal gold mines in Orientale to be validated by multi-stakeholder teams, and for the production of mines validated 'green'¹ to be eligible for International Conference on the Great Lakes Region (ICGLR) certificates issued by the Centre d'Evaluation, d'Expertise et de Certification des substances minérales précieuses et semi-précieuses (CEEC). Only gold with ICGLR certificates may legally be exported from the DRC. So far, however, no artisanal gold mines in Orientale have been inspected or validated, so ICGLR certificates from the province cannot be properly issued, posing a fundamental challenge to legally registered gold unités de traitement in Orientale.

Industrial gold mining resumed in Orientale in 2013 at Kibali in the north east after a long hiatus. Kibali Goldmines, whose aim was to produce 550,000 ounces (15.6 tonnes) of gold in 2014, is owned by South Africa's AngloGold Ashanti, Randgold and the Société des Mines d'Or de Kilo-Moto (SOKIMO), a Congolese state-owned company. AngloGold Ashanti was also until early 2015 in a joint venture with SOKIMO in 'Concession 40', which consists of 18 permits around Mongbwalu in the Djugu territory of Orientale's Ituri district (see Figure 1). AngloGold Ashanti has since disposed of its shares in the joint venture, which have been acquired by Mongbwalu Gold Investments. Concession 40 used to be notorious for its conflict minerals but times have changed and the area is now free of militia and has a much-reduced military presence. Concession 40 was of particular focus for this study.

¹ 'Green', according to a ministerial decree of February 2012, means the social and security situation at the mine 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 who are mining. Mines can be validated green, yellow or red.

A. Key findings

- 1. Conflict financing from the gold sector in Province Orientale has considerably reduced from previously high levels, but still persists. There was no evidence of conflict financing for non-state armed groups in Concession 40.**

Violence and conflict perpetrated by non-state armed groups and the armed forces, which once plagued Orientale Province, has ceased in most places, but has not disappeared entirely. There was no evidence during the fieldwork (August 2014) of conflict financing for non-state armed groups in Concession 40, and no clear indication that officers of the *Forces Armées de la République du Congo* (FARDC) controlled pits. Further dedicated research is required before a definite conclusion on whether FARDC officers control pits can be reached, however, since it was clear during the fieldwork that FARDC troops were extorting money from travellers on the roads within Concession 40, particularly after dusk (see Section III.A).

- 2. An increasing amount of gold is being mined in the province semi-industrially, often by foreign nationals and frequently illegally. Yet even though the activities of these semi-industrial operations are known to the authorities, very little of the production and export of gold is officially recorded.**

In some cases, these semi-industrial miners have been working legally under contract with SOKIMO. In other cases, however, the miners appear to have been working illegally and without consent on other permit holders' concessions, bribing local and sometimes national officials to gain and retain access. Subsequently to the fieldwork for this study, in February 2015, Orientale Governor Bamanisa Saïdi Jean announced a ban of this mining activity. According to a well-placed industry source, Bamanisa's ban was extremely unpopular with some government officials in Kinshasa, who even summoned the governor to account for taking the measure in the capital. Local NGO activists have reported that the ban resulted in a temporary halt to semi-industrial mining, but that it has restarted in some places, albeit on a smaller scale.

- 3. Legally operating *unités de traitement* in Orientale cannot operate profitably, despite benefiting from a steep reduction in tax rates and licence fees since 2012.**

Industrial gold miners in the DRC have expressed suspicions about *unités de traitement*, alleging much of the material the *unités* buy is stolen from their mines. The *unités de traitement* insist they buy legally but that when they do, their two big problems are:

- Artisanally-mined gold from Orientale officially remains ineligible for ICGLR certification because none of the sites have been validated by the government and gold can hence not legally be exported. However, there are allegations that CEEC officials issue ICGLR certificates naming other provinces for gold production from Orientale Province; if confirmed, this would seriously undermine the credibility of the ICGLR certification system.
- Gold smugglers and people trading gold for other commodities offer much better prices than the *unités de traitement* and the authorities compound the problem by not acting against smugglers.

4. The trading route along which Orientale’s artisanally-mined gold reaches international markets is mostly unchanged, despite ongoing reform initiatives and UN sanctions.

Most smuggled gold from Orientale is brought to Uganda, either by road or by air. The gold typically travels via Kisangani, Bunia or Ariwara (Orientale), or Butembo and Beni (North Kivu). The authorities in Kinshasa require the Kisangani-based company Emeko to export its gold via Kinshasa, a practice that the Orientale Province Governor has said he wants changed. The governor’s policy is for all gold produced in the province to be exported from Kisangani. In Ituri, though, traders have argued that superior logistical links between the district and Uganda, compared to those with Kisangani, mean gold should continue to be exported directly to Uganda. Industrial miner Kibali Goldmines, meanwhile, exports its gold to Johannesburg via Nairobi.

5. Concession 40, or a part of it, could be a source of traceable, OECD Due Diligence-compliant, responsible artisanally-mined gold, provided agreement can be reached between artisanal miners and the permit holders on how this is to be achieved. A further challenge is the current legal framework, which does not allow industrial permit holders to facilitate artisanal mining on their properties.

Artisanal diggers and their managers (called *Présidents Directeur Général*, or PDG) on the Concession interviewed for this study wanted to sell gold to the permit holders (hereafter referred to as the ‘SOMINKI Option’). Now that a new, unlisted company has acquired AngloGold’s shares in the joint venture, there is renewed interest in either the ‘SOMINKI Option’, which is strongly supported by Governor Bamanisa, or the new owners allowing or facilitating artisanal miners to sell to a third party, at least for a pilot phase on part of the Concession. This would be on condition that the miners were verified by a third party to have adhered to OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) standards.

This would require a change in legislation, which currently prohibits this, or a special exemption for the pilot study, allowing the company to come to an arrangement with artisanal diggers without assuming full responsibility for the diggers’ compliance with mine standards, particularly concerning the environment, health and safety.

6. The provincial governor has called for the gold sector to be traceable, tax-compliant and conflict-free, and the message has been filtering down to lower administrative tiers. Private sector due diligence awareness for gold, however, particularly outside the *unités de traitement* remains low.

Better awareness and implementation of the OECD Due Diligence Guidance, and in particular its Gold Supplement, can not only reduce conflict financing but also help improve overall governance in the gold sector.

Governor Bamanisa has appealed for mine site validations to begin as soon as possible in the province. Encouragingly, all relevant departments of the provincial administration have an awareness of the OECD Due Diligence Guidance and ICGLR certification, as do some Orientale-based companies working in the gold sector.

Within the private sector, legal *unités de traitement* exhibit a high degree of awareness of international due diligence requirements, while awareness among *négociants* buying directly from diggers is low to non-existent. Government policy is for diggers to be organised in mining co-operatives, with the assistance of the *Service d’Assistance et Encadrement du Small Scale Mining* (SAESSCAM). Despite

lengthy discussion, there is still no agreement in place between SAESSCAM and SOKIMO enabling the agency to work on SOKIMO's permits and in the province there has generally been little progress to date in forming gold mining co-operatives.

Similarly, the CEEC has thus far been unable to roll out its proposed bag-and-tag traceability scheme for artisanal gold in the province. Industry sources in the province meanwhile have alleged that systematic bribery and corruption are the reason why no action has been taken by the Orientale authorities against known gold smugglers.

7. Civil society in Orientale Province, and particularly in Ituri district, is well informed and active on issues of natural resource governance.

Civil society organisations engage frequently with government departments in Ituri on natural resource governance issues, but have found it more challenging to engage with provincial structures in Kisangani.

DRAFT

II. Overview of gold mining in Orientale Province

Orientale Province is the historic home of gold mining in the DRC (please refer to Annex A for a more detailed history of mining in the province). Local residents of the northeast of the province in particular have known about and artisanally exploited the bountiful gold deposits there for centuries. Following in their wake, geologists identified gold in the Agola River near Mongbwalu in 1903, and went on to chart a semi-continuous greenstone belt that runs roughly from Moto in the province's Haut-Uele district to Kilo at Mongbwalu, in Djugu territory, in Ituri district.

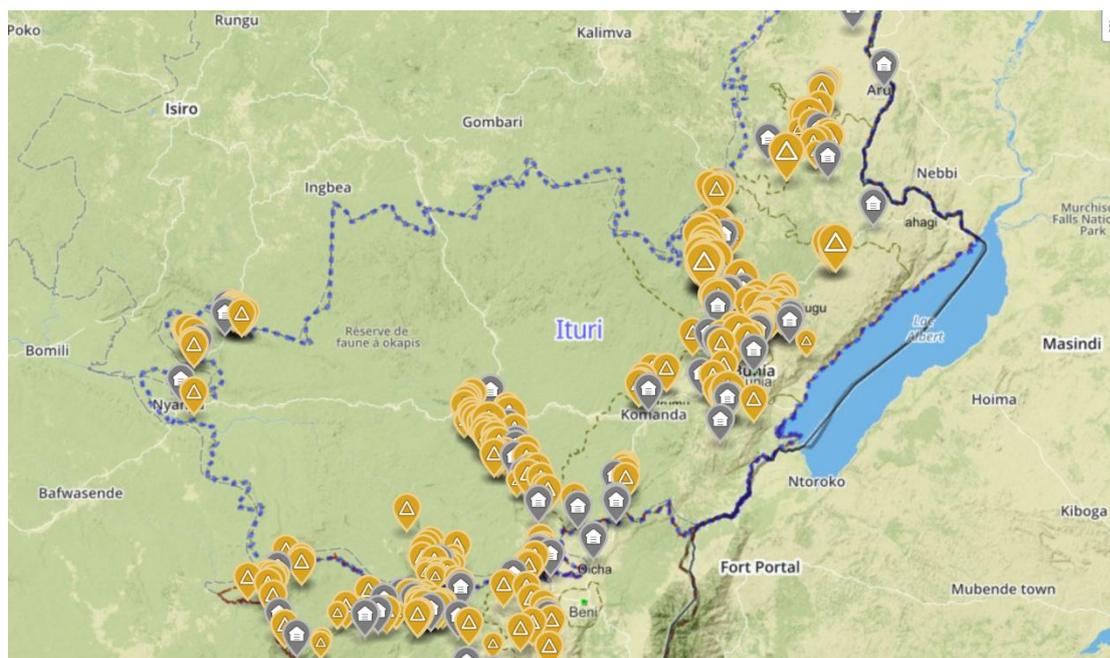


Figure 1: Artisanal gold mines (yellow) and gold trading centres (grey) in Orientale Province (Source: IPIS, 2014)

IPIS, an Antwerp-based research group, reported that in Ituri during 2013, around 28,000 people were working in artisanal mining in Djugu territory, more than 8,000 in Mambasa and around 6,300 in Irumu. Mahagi and Aru territories between them had around 5,300 artisanal diggers.² However, other studies and the testimonies of numerous respondents interviewed for this study suggest that up to 150,000 artisanal miners are active in Djugu. The IPIS report confirmed a finding of this study, that gold from Djugu is mostly traded through Bunia. The report found that gold from Mahagi and Aru territories is traded through Djalasiga and Aru, and leaves the country via Ariwara. IPIS reported that Ariwara is also an important point for the export of gold from Haut-Uele.³

² Ibid, page 20.

³ Ibid, page 20.

A. Companies active in Orientale Province

AngloGold Ashanti and Randgold Resources

Mobutu's liberalisation decree of 1981 opened the way not only for local entrepreneurs (known as *encadreurs*) but also for foreign investment in gold mining in Orientale. But the risks were high, and for nearly a decade no listed international companies were prepared to entertain them. Finally, in 1990, OKIMO formed a joint venture with a company named Mindev & Associates to form Kilo-Moto Mining International (KIMIN), to mine an area of 2,000 km² within Concession 40, around Mongbwalu in Djugu territory. In April 1996, Ashanti Goldfields Corporation, which had recently listed on the New York Stock Exchange, purchased half of Mindev's stake in KIMIN.

Ashanti, which merged in the meantime with AngloGold to form AngloGold Ashanti, remained in a joint venture with SOKIMO⁴ in Concession 40 for eighteen years, though it has never mined there. In February 2015, AngloGold Ashanti disposed of its shares in the joint venture, and the shares were acquired by Mongbwalu Gold Investments.

Anglogold Ashanti is also a shareholder in Kibali Goldmines, alongside SOKIMO and Johannesburg Stock Exchange-listed Randgold Resources. Kibali Goldmines holds the permits to Concession 38, around Durba and Watsa, and is operated by Randgold. Kibali, which poured its first gold in 2013, is the only active industrial gold mine in the province and produced over 500,000 ounces of gold there during 2014. Please consult Annex A and B for more historical information on mining in the Province and Concession 38.

As of late 2014, Randgold and AngloGold had invested around US\$1.7bn in Kibali Goldmines and were intending to invest US\$700m more over the next three years. As during the colonial era, much of the investment has been in hydroelectric power. Four turbines are planned, with installed capacity of 48MW and so far, one is in place, with installed capacity of 22MW. Kibali says it has relocated 25,000 people who had previously been working artisanally on the concession, and built 4,200 houses for them outside the concession area. The company has sought to substitute diggers' lost livelihoods with new job opportunities, including supplying the new mine with labour, goods and services. A company source has admitted that there is a problem of reinvasion of its permits by disgruntled artisanal diggers but says this has not disrupted industrial mining.⁵

Fleurette

Just to the west of Kibali Goldmines permits lie six other industrial exploitation permits, which are held by Moku-Beverendi. Moku-Beverendi is a joint venture between SOKIMO and Moku Goldmines, which is itself 97% owned by Israeli mining magnate Dan Gertler's Fleurette Group. Moku Goldmines holds 65% of Moku-Beverendi and SOKIMO 35%. Fleurette announced in December 2013 that exploration on the permits to date indicated reserves of 5 million ounces.⁶

⁴ OKIMO reverted to being SOKIMO as a result of a 2010 measure to 'commercialise' state owned enterprises. The companies have remained 100% state owned, but have been empowered to make commercial decisions without gaining the permission of line ministries.

⁵ Interview with Louis Watum, then the Director General of Randgold Resources, Kinshasa, November 2014. Watum left the company in early 2015.

⁶ Michael Kavanagh, Billionaire Gertler's Congo Gold Deposit May Be World Class, Bloomberg, December 4th, 2014. <http://www.bloomberg.com/news/2013-12-04/billionaire-gertler-s-congo-gold-deposit-may-be-world-class-.html>

Burey Gold / Giro Goldfields

Next to Moku-Beverendi's permits are two industrial exploitation permits – 5046 and 5049 – both held by Giro Goldfields. Giro Goldfields is a joint venture between SOKIMO and Australia Stock Exchange-listed Burey Gold. Burey Gold's chairman Klaus Eckoff founded Moto Goldmines, which sold Kibali to AngloGold and Randgold (see above). According to the company's website, neither of the two permits has been professionally explored for fifty years while significant numbers of artisanal miners are active in both.⁷

Mineral Invest / Wanga Mining Company

Adjacent to and northwest of Giro Goldfields' permits are two industrial exploitation permits held by Wanga Mining Company. Wanga Mining Company is a joint venture between SOKIMO and Stockholm Stock Exchange-listed Mineral Invest. According to the company website, the two permits are being artisanally mined but Wanga Mining has to date conducted only limited exploration work.⁸

Mwana Africa

Further east of Kibali, London Stock Exchange Alternative Investment Market (AIM)-listed Mwana Africa is in a joint venture with SOKIMO called *La Minière de Zani-Kodo*, which holds two industrial exploitation permits that together constitute most of the old Concession 39. Zani-Kodo has held the permits, in which extensive artisanal mining activity is taking place since 2005. Mwana Africa began exploration in 2007 but stopped during 2014, apparently owing to the falling price of gold.⁹

Other Companies

Field research in Concession 40 in August 2014 revealed that several Chinese-owned companies were working there, mainly operating small and medium-scale drag machinery in rivers. Representatives of these companies all declined to answer questions about their operations, though some indicated that they were operating under contracts with SOKIMO that had been agreed in Kinshasa.¹⁰

A SOKIMO official in charge of the company's joint ventures said:

Ashanti Goldfields Kilo (AGK)¹¹ ceded us back three permits in Concession 40. That is where the Chinese companies are supposed to be. We have agreed to subcontract parts of our permits to them. The Chinese do not pay much, but that is how we survive at SOKIMO. We live hand-to-mouth.¹²

According to a well-placed industry source:

Some of the Chinese companies might be on SOKIMO's permits, but others are on AGK's permits. It is completely illegal. AGK took the matter to the courts and it stopped for a bit, but then it re-started. People think illegal mining is artisanal but the profile is changing.

⁷ <http://www.bureygold.com/pages/giro-gold-project>, accessed November 18th, 2014.

⁸ http://www.mineralinvest.com/wanga_license_area.asp, accessed November 18th, 2014.

⁹ <http://www.mwanaafrica.com/operations-and-exploration/drc/zani-kodo-project>, accessed November 18th, 2014.

¹⁰ Interviews in Concession 40, August 2014.

¹¹ Ashanti Goldfields Kilo (See: History of the Concession).

¹² Interview with Augustin Mpela wa Kindombe, SOKIMO, Kinshasa, November 2014.

Increasingly, as with the Chinese with their excavators, it is now semi-industrial and being carried out by non-Congolese.¹³

In February 2015, Governor Bamanisa issued a directive banning semi-industrial mining in Ituri, following which these semi-industrial miners ceased activities. According to Ituri NGO activists, however, some of the companies have since discreetly restarted operations.

There are also many international and Congolese companies that hold exploration permits in Orientale Province. The names of these companies and the location of their permits are detailed on the CAMI website.¹⁴ The other main companies active in Orientale's mining sector are gold traders, including Emeko of Belgium, which purchase artisanally mined gold (see The Gold Supply Chain in Orientale Province below).

B. Types of mining, production volumes and formalisation levels

Kibali Goldmines poured its first gold in 2013, the first time in decades that the metal had been mined industrially in Orientale Province. In 2014 Kibali Goldmines began underground mining, though by year-end output was low and was scheduled to remain so until construction of the underground mine is complete.

In late 2014 there appeared to be no immediate prospect of industrial mining on any other of the province's industrial exploitation permits. In most of these, a more likely outcome seems to be continued exploration by the title-holders, cheek-by-jowl with mass artisanal mining. It is possible, however, that a different fate awaits Concession 40 (see History of the Concession, below).

There is evidence of a growing level of semi-industrial gold mining in Orientale, much of it of dubious legality, but further research on the subject is required to understand its scale. Industrial exploitation permit holders, meanwhile, have complained of illegal semi-industrial mining on their permits, often along rivers and carried out by foreign-owned companies. The permit holders have claimed that their legal efforts to stop this have been only temporarily effective, with illegal mining shutting down for just a few days following court orders before resuming somewhere else. Informants¹⁵ said they strongly suspected collusion between the illegal miners and SOKIMO officials, or between them and the *Division des Mines*, or both.¹⁶

SOKIMO officials confirmed the existence of (but have yet to publish) a number of contracts between SOKIMO and foreign-owned semi-industrial mining companies that allow them to operate on SOKIMO's mining permits. The officials conceded that some companies might be operating illegally on permits held by SOKIMO in joint venture with outside partners, but complained of a lack of capacity to address the issue.¹⁷

NMI, a Chinese company, was found during this research operating a river drag just inside permit 5110 (see Figure 3). Permit 5110 is one of three permits from Concession 40 that AngloGold Ashanti gave back to SOKIMO during the contract revision process. IPIS researchers encountered Chinese operators

¹³ Interview with senior mining executives, Kinshasa, November 2014.

¹⁴ <http://portals.flexicadastre.com/drc/en/>

¹⁵ Source to be confirmed

¹⁶ Interviews with senior executives of mining companies with industrial exploitation permits in Orientale, Cape Town Mining Indaba, February 2014, and Kinshasa, November 2014.

¹⁷ Interviews with SOKIMO representatives, Kinshasa (November) and Bunia (August) 2014.

Fametal, Coormid and Gold Dragon Resources using rafts to mine riverine gold in Irumu territory.¹⁸ In December 2014, two months before suspending all semi-industrial mining in Ituri, the Orientale provincial government banned the use of drags to exploit gold in the province.¹⁹



The remaining type of gold mining in the province is artisanal. AGK and Orientale provincial officials have estimated that there are well over 150,000 artisanal miners in Orientale²⁰, plus many more in related trades (e.g. rock crushing, mercury mixing, trading at mine sites, transport etc). Artisanal miners work underground (mostly in former industrial underground mines), in open pits to produce gold amalgam or conduct alluvial mining along existing and former riverbeds to produce alluvial gold. A

Figure 2: A Chinese-operated river drag in Permit 2012 study identified 813 artisanal gold mining sites in Ituri, with the greatest concentration in Mambasa territory, which had 343 sites. Djugu and Irumu had 230 and 209 sites respectively. The study also identified 70 mine sites in the Okapi Fauna Reserve, a national park.²¹

Kibali Goldmines mined 30.4m tonnes of earth during 2014, from which it produced 526,000 ounces (14.9 tonnes) of gold.²²

More research is required about the spread of semi-industrial mining in Orientale and how much gold it produces, particularly since almost none of it makes its way into official statistics. Semi-industrial miners on SOKIMO's permits are supposed to pay SOKIMO 30% of the value of their production, so statistics from SOKIMO should in theory give some indication of production volumes. A senior SOKIMO official in Bunia, however, reported that SOKIMO lacked the capacity to verify the production volumes reported to them by these companies and that "fraud was very likely".²³ SOKIMO officials in Kinshasa said they were bound by confidentiality agreements not to disclose data about sub-contractors' production levels or how much income SOKIMO had received from them as a result.²⁴

Artisanal diggers have been estimated to produce about one gram of gold per day, though in open pit mining this is only the case when a digging team has gained access to a mineralised vein. Production goes down when teams lack or lose access to such veins, and generally during rainy seasons. Artisanal gold production in the DRC as a whole has often been estimated at 10-15 tonnes a year but IPIS research conducted during 2011 suggested that it was as high as 16.5 tonnes in Orientale Province alone.²⁵ An Emeko representative said he reckoned 200 kilos a month of gold passed through Kisangani, leading to an estimated 2.4 tonnes a year.²⁶ A gold trader who has been active in Bunia said his understanding was that several hundred kilos a month were being traded in the town, which he

¹⁸ Steven Spittaels et al, Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update, IPIS, Antwerp, 2014, page 21.

¹⁹ Radio Okapi: "Congo-Kinshasa: Province Orientale - L'usage des dragues interdit pour l'exploitation de l'étain et de l'or", 14 December 2014 ; See <http://fr.allafrica.com/stories/201412152205.html>

²⁰ IPIS research, 2011.

²¹ IKV Pax Christi and Reseau Haki Na Amani, A Golden Future in Ituri?, 2012, page 11.

²² Randgold Resources, 2014 Q4 Report, February 2015, page 1.

²³ Interview with senior SOKIMO official, Bunia, August 2014.

²⁴ Interview with senior SOKIMO officials, Kinshasa, November 2014.

²⁵ IPIS research, 2011.

²⁶ Interview with Emeko representative, Kisangani, August 2014.

estimated added up to at least three tonnes a year.²⁷ It was not possible to estimate the volumes passing through other major trading centres in the province, particularly Ariwara.

Formalisation levels in Orientale range from industrial state-of-the-art at Kibali Goldmines, through to the most rudimentary forms of artisanal labour. The bulk of Kibali's production comes from open pit mining but a new underground mine is under construction and most of the project's output is expected to come from underground mining during later phases of Kibali's lifespan.

Beyond Kibali, formalisation levels are significantly lower, with predominantly foreign-owned semi-industrial miners referred to above. These semi-industrial miners operate with crews ranging from a handful to around sixty, of whom the majority appear typically to be foreign, mostly Chinese nationals. Numerous respondents reported that a favoured operational method of these miners is to divert the course of rivers and to mine the dried out riverbeds. Some respondents alleged that these miners made no attempt to mitigate ecological impacts and instead typically abandoned mined-out sites and moved on.

Some artisanal mining teams have sought to copy the approach of these semi-industrial miners, but without recourse to any mechanical equipment. At Iga-Barrière in Concession 40, for example, a large group of 170 artisanal miners calling themselves "*Qui Cherche Trouve*" were seeking during the course of the fieldwork to divert the course of the river in order to mine the newly exposed riverbed. The group has constructed an elaborate wooden structure that they were filling with sacks of sand (See Figure 4). Once the wall was solid, said the *chef de chantier*, work would begin on evacuating water from one side, to enable mining there.²⁸



Figure 3: 'Qui Cherche Trouve' at work in Iga-Barrière

As in South Kivu, artisanal miners in Orientale typically lack any form of mechanised equipment. There was no evidence during the fieldwork of any mechanical diggers or electronic gold detectors at artisanal mine sites, as may be found, for example, in Haut Katanga. An increasing number of diggers, however, have access to privately operated mechanical crushers (See Figure 5).



Figure 4: Mechanical ore crusher, Concession 40

the fieldwork for this study is that the PDG system continues to dominate the artisanal sector in the province.

In some areas, and particularly in the few permits still exclusively held by SOKIMO, PDGs are required to pay SOKIMO 30% of the value of the gold they produce. There is a small mobile SOKIMO team that is

²⁷ Telephonic interview with Bunia gold trader, November 2014.

²⁸ Interview with Thierry Basoloko, chef de chantier, 'Qui Cherche Trouve', Iga-Barrière, Concession 40, August 2014.

supposed to police this arrangement, but the system is ineffective and SOKIMO officials claim to not know what percentage of this production the company really receives. Elsewhere, PDGs and their teams mine with the knowledge but rarely with the agreement of permit holders.

In contrast to most artisanal mining sites in the country, a striking feature of artisanal gold mining sites on SOKIMO's joint venture and exclusive industrial exploitation permits is the absence of officials from SAESSCAM, *Division des Mines*, *Police des Mines*, and the *Direction Général de Migration*.²⁹ The officials are absent because Congolese law forbids artisanal mining on industrial exploitation permits and so - the reasoning goes - the state cannot deploy officials on those permits. SOKIMO officials have said that since the artisanal miners are effectively present, they would welcome the presence of SAESSCAM, which could then attempt to organise the diggers into co-operatives. Talks on the matter between SOKIMO and SAESSCAM had not yet, in mid-2014, produced an agreement that would enable the deployment of SAESSCAM agents.³⁰

Denied a presence at artisanal mining sites on SOKIMO's exclusive and joint venture permits, state officials have instead used the road network to collect revenues. There are, for example, eight roadblocks on the road from Bunia to Bambu in Ituri. Two are controlled by soldiers of the FARDC who demand money from people travelling after 6pm; two are operated by the *Police de Roulage*, who particularly target motorbike taxis and one is operated by a provincial tax collection agency, the DGRPO, which charges vehicles and trucks, but not motorbikes, US\$20 for a return trip. At one point, the national road becomes impassable, and, for a small fee per vehicle, SOKIMO operates a boom on a diversion through some of its disused industrial installations. The *Transport et Communications Agence* (Trascom) has a roadblock at which agents demand drivers' documents and levy fines on drivers whose papers are deemed not to be in order. The funds are supposed to be paid into the *Fonds National d'Entretien Routier* (See Figure 6). The national insurance agency SONAS also operates a roadblock where its agents demand proof that vehicles are insured, and fines those lacking the right paperwork.³¹



Figure 5: Trascom roadblock, Bunia-Bambu Road

C. The gold supply chain in Orientale: from production to export

Artisanal mining teams have different ways of dividing the fruits of their labour, but usually a fixed percentage goes to each digger and another to the PDG. An important variable, however, is pre-financing. If teams are being pre-financed – and they very often are - the financiers will take a percentage of the team's output, depending on the scale of their outlay. Teams with the misfortune to fail to find gold for long periods can end up so indebted that once they do strike gold, almost all of it disappears in servicing their debts.³² The PDGs of teams that have not been pre-financed have the most freedom to sell gold to whomever they chose. Pre-financed teams, however, or those subject to coercion by the FARDC or armed groups, are often obliged to sell to specific buyers. Even then, the

²⁹ The Agence Nationale des Renseignements (ANR) is present in some sites and not others.

³⁰ Interviews with SOKIMO officials in Bunia (August 2014) and Kinshasa (November 2014), and interviews with Division des Mines and SAESSCAM officials in Bunia (August 2014).

³¹ Interview with motorbike taxi association representative, Bambu, August 2014.

³² Interviews with artisanal gold diggers, Ituri, August 2014.

prices paid by these buyers are usually competitive; if the prices are not competitive, eventually PDGs will find ways to sell elsewhere.

Gold buyers in Orientale, as elsewhere in DRC, can be divided into those who deal solely in gold (*négociants*) and those who trade in gold and other goods too. This latter group pays cash for gold and/or barter goods for it in a continuous trading cycle. *Négociants* are obliged to pay the *Division des Mines* and the provincial authorities for annual permits, but traders who barter with gold can often evade these fees.³³ *Négociants* either transport their gold to larger buyers in the province's main trading centres Kisangani, Bunia, Butembo and Ariwara, or representatives of these buyers travel to them to buy. The gold is usually smuggled from these trading centres to neighbouring Uganda by road or air.³⁴

A small proportion of the gold that comes to the trading centres is sold there to legally registered *unités de traitement*. The province's legal *unités de traitement* face huge hurdles that they have claimed make it impossible for them to operate profitably. In addition to the steep taxes they are obliged to pay, a key hurdle for the *unités de traitement* is that the law stipulates that gold may only be exported if it has a certificate issued by the CEEC confirming that it comes from a mine that satisfies the requirements of the Regional Certification Mechanism (RCM) of the ICGLR. For mines to satisfy RCM requirements they have first to be validated 'green' by a joint validation mission. But as of April 2015, no gold mines in Orientale Province had been validated and hence no gold from the province had received ICGLR certificates in line with the stipulated process. With no valid ICGLR certificates available, legally registered *unités de traitement* in Orientale Province cannot legally trade gold from Orientale.

The only legally registered *unité de traitement* active in Orientale is Emeko, which has a buying office in Kisangani. Emeko is a Belgian company that purchases gold from several African countries and operates a gold refinery in Belgium. Both during the fieldwork and at the time of writing Emeko was buying gold in Kisangani.³⁵ The process has been fully monitored by the CEEC, with each shipment taking several days for the agency to inspect. At the CEEC's insistence, Emeko's gold is then sent to Kinshasa, where it is certified by the CEEC. This also takes several days.³⁶ Well-informed industry and CEEC sources have alleged that CEEC officials charge fees for their signatures in both Kisangani and Kinshasa. The same sources have also alleged that the CEEC has been circumventing the problem that no mine sites have been validated in Orientale Province by giving Emeko gold ICGLR certificates from the Kivu provinces. The CEEC has neither confirmed nor denied this allegation.³⁷

Emeko has said that its Congolese operations are losing money and will continue to do so for as long as the ICGLR certificate problem persists. Both Emeko and Orientale Governor Bamanisa Saïdi Jean have appealed for ICGLR certification to begin as soon as possible. The Governor also complained that it is "outrageous" that Emeko should have to send its gold to Kinshasa.

The CEEC's procedures are too bureaucratic. Why should a process take three hours in another African country and here more than a week? And anyway, we in the provincial government want to stop our product going out via Butembo, Kinshasa and Kampala. We want it exported from here. We want *comptoirs* to install themselves here. Then the *négociants* must have

³³ Dan Fahey, *Le Fleuve d'Or: The Production and Trade in Gold from Mongbwalu, DRC, L'Afrique des Grands Lacs Annuaire, 2007-2008*, page 367. Also interviews with *négociants*, Concession 40, August 2014.

³⁴ *Ibid*, page 368. Also interviews with gold buyers, Bunia, August 2014.

³⁵ Email communication with Emeko, November 2014.

³⁶ Interview with Emeko representative, Kisangani, August 2014.

³⁷ Interviews with industry insiders and senior CEEC officials, Kinshasa, November 2014.

contracts with the *comptoirs*. And the diggers must join co-operatives that have contracts with the *négociants*. Each purchase must be traceable.³⁸

In Bunia, only *Métaux Précieux* is registered to trade gold. Despite the CEEC's insistence that it should send its gold to the capital, *Métaux Précieux* consistently refused to export its gold via Kinshasa and instead took it out from Bunia to Uganda. The company closed its Bunia office in September 2014 and indicated that it would remain closed until it saw "decisive action by the authorities" on gold smuggling by the company's rivals.³⁹ This points to another big hurdle for legal gold buyers in Orientale and elsewhere in the DRC, which is how to compete with buyers who do not pay export taxes and/or may be generating all the profit they need from a counter-trade in other merchandise, and can thus offer sellers better prices.

Métaux Précieux, Emeko, and other legal buyers in the DRC typically purchase gold at the world price minus around 7-8%, in order to pay all their taxes and earn a small profit margin. Non-registered exporters often offer sellers world price minus just 2-3%, or, in some cases, a price even closer to the world price. Sales hence gravitate towards non-registered gold exporters, leaving legal buyers with too little product to generate the trade volumes that would enable them to sustain smaller margins.

Legal exporters say that in return for their hefty tax payments, the state should enforce the law and take action against non-registered exporters, who are in many instances known to the authorities. *Division des Mines* and CEEC officials in Bunia have conceded that illegal purchasing and smuggling of gold is rampant and that gold sales should pass through legally registered *unités de traitement*. The officials added, however, that legal buyers were paying "too little" for gold and that the industry would be easier to regulate if they increased their prices.⁴⁰

Also in Bunia, an association of *négociants* called CONORI has registered as a *unité de traitement*, though as of late 2014 it had apparently not received official authorisation to export.⁴¹ Despite this, a representative of the CEEC in Bunia said that CONORI was one of three *unités de traitement* in the town that had been "officially recognised by the state".⁴² The president of CONORI concurred that CONORI was licensed to buy gold, adding that CONORI had made its first 'legal' purchase of gold from Orientale in July 2014. It was not clear under what circumstances the gold was subsequently exported. The CONORI president added that there were eight major gold buyers in Bunia and another 150 smaller buyers who belonged to the association.⁴³

A tiny proportion of the gold produced by semi-industrial gold miners in Orientale exits the country through official circuits, but in the main, it seems, these operators bypass both the CEEC and established illegal buyers, instead using their own networks to smuggle the gold they have mined out of the country.⁴⁴ Further dedicated research is needed into this important subject, since because the production is semi-industrial, the volumes involved could be substantial.

Kibali's industrially mined gold is flown from its site to Nairobi and from there to Johannesburg for refining.⁴⁵

38 Interview with Governor Bamanisa Saïdi Jean, Kisangani, August 2014.

39 Telephone interview with a source close to *Métaux Précieux*, November 2014.

40 Interviews with representatives of *unités de traitement*, unregistered gold exporters, and officials from the CEEC and *Division des Mines*, Kisangani, Bunia, and Kinshasa, August and November 2014.

41 Email communication from a gold industry source in Kisangani, November 2014.

42 Interview with Eric Yamba, CEEC, Bunia, August 2014.

43 Interview with Christophe Mukwa, president of CONORI, Bunia, August 2014.

44 Interviews with CEEC and SOKIMO officials and gold traders, Bunia, Kisangani and Kinshasa, August and November 2014.

45 Interview with Kibali Goldmines senior executive, Kinshasa, November 2014.

III. Concession 40: case study

Since the late 1990s, Concession 40 became increasingly notorious for conflict financing. Gold mining there, in particular, helped finance the war efforts first of the *Union des Patriotes Congolais* (UPC) and then the *Front des Nationalistes et Intégrationnistes* (FNI) (see History of the concession)⁴⁶. Sales of gold by these militia to supply chains that led to Kampala prompted the UN Security Council to impose sanctions on Kambale Kisoni, a gold buyer from Butembo, and two Ugandan gold buyers, UCI and Machanga, in March 2007.⁴⁷ These are the only sanctions the Council has ever imposed for conflict financing.

In 2005, AngloGold Ashanti, which holds fifteen of the eighteen permits to Concession 40 in a joint venture with SOKIMO, was strongly criticised by US-based Human Rights Watch (HRW) for its dealings with the FNI.⁴⁸ While maintaining a small physical presence in Concession 40, AngloGold Ashanti subsequently proceeded very cautiously, taking five more years to decide to build a project there. AngloGold Ashanti officials have said that once this decision was taken in 2010, the number of onsite staff quickly rose from 200 to 1,200, and over US\$100m of equipment was purchased. But in 2013, following a steep fall in the share price of AngloGold Ashanti, and an equally alarming drop in the gold price, the company took the decision to suspend construction on Concession 40, as well as on a number of other projects internationally.⁴⁹ In early 2015, AngloGold Ashanti disposed of its shares in the joint venture, which were acquired by Mongbwalu Gold Investments.⁵⁰

A. Types of mining, production volumes and formalisation levels

There is artisanal and semi-industrial alluvial and artisanal open-pit mining in Concession 40, carried out by an estimated 150,000 diggers. There used to be artisanal underground mining on the Concession too, carried out by diggers in abandoned industrial shafts, but this practice was said by respondents to have been discontinued. IPIS research conducted in 2011 resulted in estimates that annual artisanal gold production in Djugu territory, almost all of which comes from Concession 40, was around 7-8 tonnes.

IPIS was not able to estimate production from semi-industrial operations on Concession 40. SOKIMO declined to reveal how many 'partnerships' the company has agreed with semi-industrial miners, though some local civil society sources said they thought the number to be about ten. Each company employs between a handful and around 60 employees, many if not most of whom are foreign, mostly Chinese nationals. Several industry sources indicated that production from these companies was likely to be several tonnes annually. There is currently no industrial gold production on Concession 40.

The research indicated that most artisanal diggers on Concession 40 are organised in teams, headed by PDGs and that there are very few registered mining co-operatives. Despite their lack of legal status, there are still many people who identify themselves as *encadreurs*, some of whom have reported that they still have digging teams. Many digging teams have access to mechanical crushers, but few - if any - use mechanical drilling or dynamite, and none appeared to have electronic metal detectors to assist them.

SAESSCAM and the *Division des Mines* have offices in Bunia and the *Division* also has an office in Nizi. There is no permanent SAESSCAM presence on the Concession 40 permits, nor are there officers of the

⁴⁶ Source to be confirmed

⁴⁷ <http://www.un.org/press/en/2007/sc8987.doc.htm>

⁴⁸ Human Rights Watch, *The Curse of Gold*, HRW, New York, 2005.

⁴⁹ Interview with AngloGold Ashanti senior executives, Kinshasa, November 2014.

⁵⁰ Telephone interview with informed industry source, April 2015.

Police des Mines. SOKIMO inspection teams are active on Concession 40 permits, tasked with securing 30% of the gold output from artisanal mines for the company. SOKIMO agents have said that this gold is subsequently sold by SOKIMO to gold traders Bunia.⁵¹ Diggers on Concession 40 have reported that the SOKIMO teams also arbitrate in diggers' disputes for set fees.⁵² According to SOKIMO officials, the teams lack the manpower and resources to do their job properly and as a result a large proportion of the gold mined on Concession 40 is not taxed by SOKIMO.

Though Concession 40 was once a major source of conflict financing, today all the artisanal mines in localities in Djugu territory on the concession⁵³ are consistently reported by respondents to be free of illicit rent seeking by militia.⁵⁴ There is an FARDC presence along roads within the concession and money is extorted by troops at roadblocks⁵⁵, though no evidence emerged during the fieldwork of the control of pits within the concession by FARDC commanders. This does not mean, however, that some commanders do not control pits and the subject requires further study (See Conflict Links and other Annex II Risks).

⁵¹ Interview with Bunia-based SOKIMO officials, Kinshasa, February 2015.

⁵² Interviews with artisanal gold miners, Lopa, Concession 40, August 2014.

⁵³ The localities are Mabanga, Nizi, Kobu, Iga-Barrière, Lopa, Chele, Dala, Mbijdo, Tchudja, Kilo, Bambu, Yedi, Pili Pili, Paradiso and Lodjo.

⁵⁴ Interviews with multiple stakeholders, including diggers, Division des Mines, SOKIMO, SAESSCAM and NGO in Bunia and Concession 40.

⁵⁵ Interview with motorbike taxi association representative, Bambu, Concession 40, August 2014.

IV. Conflict Links and Other Annex II Risks

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

In Orientale's Ituri district, IPIS has reported that during 2013 gold mines in Irumu territory played "an important role in conflict financing", mainly because the *Forces de Résistance Patriotique en Ituri* (FRPI), a militia headed by Cobra Matata, was collecting revenues from gold mines around Bavi.



Figure 6: Screenshot showing FRPI controlled mines near Irumu (Source: IPIS Conflict Map, 2013)

Gold mines in Ituri's Mambasa territory, meanwhile, had been "especially affected by the activities of Mai-Mai Morgan". The militia had mostly concentrated on poaching, "but also extortion at and pillaging of mine sites".⁵⁶

IPIS subsequently reported that security in Ituri improved during the first half of 2014. In Irumu the FRPI was considerably weakened, with many combatants either surrendering or fleeing into remote areas to escape the military operations of the FARDC. Matata formally abandoned his rebellion in November 2014, and called for the FRPI to be integrated into the FARDC.⁵⁷ In Mambasa, Mai-Mai Morgan surrendered along with 42 of his combatants in April 2014.⁵⁸ Elsewhere in the province, the presence of Mai-Mai Kumu has been reported at mine sites in the Bafwasende territory of Tshopo district.⁵⁹

While Orientale Province is not as strongly militarised as the Kivu provinces, there is a large presence of the FARDC nonetheless, with significant military deployment in many artisanal mining areas. The UN Group of Experts on the DRC has often investigated the FARDC's involvement in artisanal mining in the Kivus but has spent far less time looking closely at conditions in Orientale Province. Consequently, and

⁵⁶ Steven Spittaels et al, Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update, IPIS, Antwerp, 2014, page 19.

⁵⁷ See: <http://radiookapi.net/actualite/2014/11/22/ituri-cobra-matata-sest-rendu-aux-fardc-beni/#more-196357>

⁵⁸ Ibid, page 20.

⁵⁹ IPIS research, 2011.

unfortunately, the UN GoE has produced much less data for Orientale than for the Kivus. IPIS researchers have found evidence of FARDC (and *Police Nationale Congolaise* - PNC) involvement in the gold sector in Bafwasende in Tshopo district, Mambasa in western Ituri, Bondo in Haut-Uele and around Isiro in Bas-Uele.⁶⁰

Concession 40

IPIS researchers found that during 2013-14 gold production from Ituri's Djugu territory, which includes Concession 40, seemed "free of military involvement".⁶¹ Earlier IPIS research found evidence that several FARDC officers were implicated in the gold trade in Ituri, and that FARDC soldiers frequented mine sites in the Mongbwalu-Kilo region, but nonetheless concluded that the FARDC "did not seem to control mining sites or to profit systematically from them".⁶²

This study, based on site visits and interviews during August 2014 with a wide range of respondents, including diggers, SOKIMO and state officials and NGO workers in Bunia and Concession 40, reached the same conclusion. It was evident that the FARDC was present on the concession, and particularly along transport routes where soldiers maintain checkpoints and reportedly extort payments from people travelling after 6pm (see Types of Mining, Production Volumes and Formalisation Levels above). There was no indication during site visits, and none of the respondents during the fieldwork indicated an awareness of cases of FARDC officers controlling and/or extracting rents from artisanal miners' pits. Some respondents alleged that the presence of AGK and SOKIMO agents had deterred the FARDC, but this has not deterred the army in the past, and the subject deserves more thorough investigation. Nonetheless, it seems fair to conclude that on the available evidence, Concession 40 is not currently a significant source of conflict financing. However, issues of transportation risks would need to be considered.

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

Serious abuses associated with the extraction, transport and trade of minerals from mines are reported to have continued in parts of Mambasa and Irumu territories in Ituri still controlled by the FRPI and Mai-Mai Morgan. There are also some reports of this type of abuse, which includes torture, armed extortion, theft, rape, arbitrary detention and murder, being committed in artisanal mining areas by the mining police, FARDC and *Agence Nationale des Renseignements* (ANR), the last of which has a presence at an astonishing number of artisanal mine sites, both provincially and nationwide.⁶³

Concession 40

Respondents during fieldwork were adamant that there were no serious abuses of the type indicated above being committed by non-state armed groups on the concession. Armed FARDC soldiers, however, do extort money and steal from travellers at roadblocks in the concession and are reported to have at times illegally detained people who have refused to pay up. Torture appears to be much rarer, but according to representatives of two women's NGOs in Ituri, cases of rape and other forms of sexual violence were "endemic" in artisanal mining areas, and were committed by miners and the security forces alike.⁶⁴ NGOs have also reported that child labour on mines throughout Concession 40 was

⁶⁰ IPIS research, 2011.

⁶¹ Steven Spittaels et al, Analysis of the interactive map of artisanal mining areas in Eastern DR Congo: May 2014 update, IPIS, Antwerp, 2014, page 19.

⁶² IPIS research, 2011.

⁶³ Interviews with natural resource NGOs, including Réseau Haki na Amani, in Bunia, August 2014.

⁶⁴ Interviews with Dziju Malozi Jacqueline, Fédération des Mamans de l'Ituri (FOMI), Bunia, August 2014 and Ngaye Amoti Henriette, Noyau Pacifiste des Mamans Coordination de ILP, Mabanga, Concession 40, August 2014.

“highly prevalent”.⁶⁵ This was confirmed during site visits, where it was immediately apparent that many children were working in the mines, though there was no clear evidence of the worst forms of child labour.

C. Bribery and fraudulent misrepresentation of the origins of minerals

Industrially mined gold from Kibali is being exported transparently and correctly on a weekly basis. However, there is disturbing evidence that the origins of the small volumes of gold being exported by legally registered *unités de traitement* in Orientale have been fraudulently misrepresented by the CEEC in Kinshasa. Most semi-industrially and artisanally mined gold from Orientale is being smuggled from the country. This means that any fraudulent misrepresentation of this gold’s origins is happening outside the DRC, since within the country the gold is not being misrepresented in official statistics – it is simply missing.

The supply chains through which smuggled artisanally and semi-industrially mined gold from Orientale passes *en route* to international markets are mostly known to the Congolese authorities, and yet have continued to function almost unchecked. The main exception to this rule was the murder of prominent Butembo gold smuggler Kambale Kisoni in 2007, which resulted for a time in the decline of Butembo as a regional centre for the illegal gold trade.⁶⁶

For the illegal trade in gold to have carried on almost uninterrupted for so long, despite so many state officials having detailed knowledge of who is involved, is strong circumstantial evidence, though not conclusive proof, of systematic bribery.

⁶⁵ Interview with Réseau Haki Na Amani, Bunia, August 2014.

⁶⁶ Dan Fahey, *Le Fleuve d’Or: The Production and Trade in Gold from Mongbwalu, DRC, L’Afrique des Grands Lacs Annuaire, 2007-2008*, page 367.

Concession 40

The same logic applies in Concession 40, where predominantly Chinese semi-industrial miners have illegally dragged rivers with impunity, and up to eight additional tonnes of gold are mined artisanally and smuggled out, usually via Bunia, each year. Well-placed industry sources have alleged widespread corruption and collusion by officials⁶⁷, and it is difficult to envisage how else, apart from systematic corruption and bribery, such overt practices could have continued for so long.

D. Money laundering, payment of taxes, fees and royalties

Congolese taxes on gold exports and on the establishment of legally registered *unités de traitement* came down significantly in 2012, and tempted several operators in Orientale and other provinces to open official gold buying businesses. Yet Orientale operators have since complained that it is impossible for them to trade profitably, legally and in a tax-compliant manner, for two main reasons:

- The first is that none of Orientale's artisanally or semi-industrially mined gold is legally exportable, since it lacks ICGLR certification because sites have not been validated by the authorities.
- The second is that gold smugglers and business people who trade gold for imported goods rather than cash, pay gold sellers in Orientale far better prices than legal operators do for their gold (See: The gold supply chain in Orientale: from production to export).

Five explanations are commonly advanced for this second challenge to legal gold buyers:

- Smugglers pass on some of the cost savings from their evasion of taxes to gold sellers.
- The 'kingpins' supplying the bulk of the money for gold smuggling supply chains are laundering their funds, and are thus not too troubled if their gold purchases are not done at a profit.
- Business people who exchange gold for imported goods make their profits on the goods and not the gold.
- Competition between buyers is so intense that they are forced to work on tiny margins and make their profits on volumes.
- The buyers are paying such high prices in a bid to force their competitors out of business.

Concession 40

Some artisanal gold mining teams and some semi-industrial companies working in Concession 40's permits pay a 30% tax in gold to SOKIMO on their declared output. The percentage of total output that this declared is unknown. It is also unclear what percentage of the total number of artisanal and semi-industrial miners operating in Concession 40 pay dues to SOKIMO.

Négociants working in Concession 40 pay licence fees to SAESSCAM⁶⁸ but otherwise the only levies and taxes collected on the gold sector come from roadblocks along its main transport routes. Many of these levies are of dubious legality, and some are clearly extortionate (See: Types of mining, production volumes and formalisation levels).

⁶⁷ Interviews with senior mining executives, Kinshasa, November 2014.

⁶⁸ Interview with the comité locale minière, Mabanga, Concession 40, August 2014.

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

Encouraged by Governor Bamanisa and led by provincial minister of mines Paulin Odiane Doune, awareness of the OECD Due Diligence Guidance among Orientale mines ministry staff is increasing. The provincial administration has indicated its strong support for greater transparency and traceability in Orientale's gold sector and is waiting impatiently for multi-stakeholder validation teams to begin work in the province.⁶⁹ The CEEC in the province has also expressed support for traceability, and is hoping to roll out a proposed new bagging system for gold in Orientale and the rest of the country in the wake of the mines validation process (see below).⁷⁰

SAESSCAM officials in Orientale have shown awareness of the OECD Due Diligence Guidance and expressed the determination to organise artisanal diggers into co-operatives, which it says will contribute to their implementation.⁷¹ The *Division des Mines* in Orientale has already begun training registered gold buyers in the province about traceability and ICGLR certification.⁷²

Among gold buyers in Orientale, the management of Emeko and *Métaux Précieux* were very aware both of the requirement that gold exports should have ICGLR certification and that it is currently impossible to obtain these certificates for gold from the province as no sites have been validated. The two companies have also indicated an awareness and understanding of the OECD Due Diligence Guidance. The management of CONORI said it had benefited from training about traceability and ICGLR certification from the provincial *Division des Mines*. One of the findings of the fieldwork, meanwhile, was that awareness of the OECD Due Diligence Guidance among *négociants* operating on the ground in Ituri was extremely limited. Among diggers, awareness appeared non-existent.

Randgold and AngloGold Ashanti management are cognisant of the OECD Due Diligence Guidance (though only the latter has participated in the OECD Forum on Responsible Supply Chains of Minerals) and Kibali's management has the conviction that their Kibali joint venture was compliant.

In Bunia, civil society groups formed the *Cadre de Concertation de la Société Civile sur les Ressources Naturelles (CdCRN)*; the CdCRN has worked in Concession 40 on relations between artisanal diggers, state agents and AGK, and more generally in Ituri on issues of mineral certification, traceability, the OECD Due Diligence Guidance, human rights on mining sites and the Extractive Industries' Transparency Initiative (EITI).⁷³

A. Initiatives to mitigate Annex II risks

In contrast to other eastern Congolese provinces, there is still no mine site validation programme in Orientale Province, though there are indications that one may start during 2015. When mine site validation programme gets underway, this should pave the way for roll-out of the ICGLR Regional Certification Mechanism (RCM) in the province, finally enabling gold from validated sites to be ICGLR-certified and thus legally exported. Until this happens, the RCM will, unfortunately, remain a *de facto* hindrance to traceability and OECD Due Diligence Guidance implementation, given the remaining

⁶⁹ Interviews with Governor Bamanisa Saïdi Jean and provincial mines minister Paulin Odiane Doune, Kisangani, August 2014.

⁷⁰ Interview with Eric Yamba, CEEC, Bunia, August 2014.

⁷¹ Interview with Eto Etokwala, SAESSCAM, Bunia, August 2014.

⁷² Interview with Christophe Mukwa, president of CONORI, Bunia, August 2014.

⁷³ Interview with Jimmy Munguriek Ufoy, permanent secretary of the Cadre de Concertation de la Société Civile sur les Ressources Naturelles (CdCRN), Bunia, August 2014.

obstacles to the legal export of Orientale gold; this continues to encourage either the smuggling or the fraudulent misrepresentation of the origins of the province's artisanal and semi-industrial gold exports.

The CEEC's intention is that mine site validation should also enable the rollout in Orientale of a new bag-and-tag traceability system for gold. The system, which has been designed but not yet implemented, is for a three-stage bag-and-tagging process similar to the iTSCi system, first at the mine site, then at the *négociant* and finally at the exporter.

On Concession 40, a *Comité de Pilotage d'Orpaillage* began work in early 2012. The committee, which was reportedly originally proposed by AGK, consists of government representatives, traditional leaders, diggers' associations and co-operatives, SOKIMO and AGK. The committee meets regularly, and is mostly concerned with addressing and mediating disputes between diggers. However, according to a government representative on the committee, SOKIMO and AGK have not attended meetings.⁷⁴

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⁷⁴ Interview with the chef de cité, Mongbwalu, August 2014.

VI. Conclusion and Recommendations

In a highly encouraging development, violence and conflict in Orientale Province have significantly reduced and the province is largely peaceful. The gold sector is still a contributor to conflict financing in the province, but much less than it used to. This is not because transparency or traceability has improved – they have not - but because of the diminishing levels of conflict. In particular, there is no evidence of conflict financing, at least for non-state armed groups, from Concession 40, and no clear indication that FARDC commanders control pits there, though soldiers are illegally taxing transport routes.

The province is furthermore being run by an energetic governor who has said he is dedicated to cleaning up the gold sector, ensuring traceability, tax-compliance and the elimination of conflict financing. Governor Bamanisa has given clear instructions to the provincial mines minister to drive these issues forward and awareness of the issues among provincial ministry staff is already increasing.

Production at Kibali Goldmines, Orientale’s only functioning industrial gold mine, is steadily rising and the company has claimed that it is on track to meet its production targets. Some of the 25,000 diggers Kibali relocated to make way for its mine have re-invaded, but, according to the company, with little impact on production. The company furthermore claims that many more ex-diggers have made the most of new opportunities created by industrial mining in the area and have become sub-contractors to the mine for everything from food, labour, construction and aggregate.⁷⁵

Eighteen years after AngloGold Ashanti acquired a majority stake in the permits that make up Concession 40, all of which are designated for industrial exploitation, no project is in development to restart industrial mining there. People living in the Concession have said they are angry, particularly about what they have described as an “administrative vacuum” on the permits, and are calling for clarity. In 2013, AngloGold Ashanti abandoned plans to develop the asset and in early 2015 disposed of its shares in the joint venture, which have been bought by a private company.

Congolese law currently prohibits industrial mining permit holders from allowing, let alone facilitating artisanal miners to mine parts of their properties, though government sources have indicated that this might change when the country’s mining code is updated. Were this to happen, or a special exemption granted that meant the industrial permit holder was not required to assume full liability, designated mine sites on Concession 40 could be a source of traceable, OECD Due Diligence-compliant, responsibly-mined gold once agreement is reached between artisanal miners, the permit holders and potential buyers on how to work together to achieve this. Artisanal diggers and their PDGs on the Concession have said they favour selling to the permit holders, respecting conditions determined by the OECD Due Diligence Guidance. Another supporter of this potential solution is Governor Bamanisa. A source close to Mongbwalu Gold Investments, the new majority shareholders in the joint venture, has indicated that, once the legal issue is settled, the company would prefer that an alternative buyer was found for the artisanal miners’ output. The source also called for the diggers to have access to concessional financing, also conditional on their implementation of OECD due diligence standards.⁷⁶

Beyond the sale of artisanally mined gold to the permit holder or a third party, an interested party could provide a range of support to artisanal miners on the concession; this could be technical support to miners and/or cooperatives to boost productivity, exploring pre-financing models or providing logistical

⁷⁵ Interview with senior Randgold executive, Kinshasa, November 2014. Aggregate is coarse material used in construction, including sand, gravel, crushed stone and slag.

⁷⁶ Telephone interview with informed industry source, April 2015.

support, for example secure transport to the next export point where an international buyer could take delivery. Legalisation of the status of artisanal miners and even production agreements between permit holders and artisanal mining cooperatives could furthermore be explored. A range of additional relevant measures to create economic and development opportunities for artisanal and small-scale miners are outlined in the Appendix to the Supplement on Gold in the OECD Due Diligence Guidance.

Semi-industrial production of gold in the province needs more study. It is clear that output is growing, that much - if not most - of the output is illegal and unrecorded, and that nearly all this gold is smuggled out of the country, some with the collusion of government officials. SOKIMO in particular needs to be much more transparent about the exact nature of the contracts it has entered into with semi-industrial miners, these miners' levels of production and what happens to their exports.

The *status quo* in Orientale Province, in which there is no artisanally mined gold from the province which legal *unités de traitement* can lawfully export, because none of the gold can legitimately be ICGLR certified, is a major impediment not only to the financial viability of legal operators but to any chance of success for traceability and due diligence implementation.

As in the rest of the country, legal gold buyers in Orientale also suffer the major constraint that they cannot compete on price with smugglers and those trading gold directly for imported goods, and they also cannot force sellers to sell to them. The Orientale Province authorities have all promised action but little has materialised, discouraging legal buyers. *Métaux Précieux* suspended its Bunia operations for this reason in September 2014.

Governor Bamanisa's vision of Kisangani as the export hub for all gold from Orientale remains a long way from realisation. The city is poorly served by regional transport networks; there is a flight to Kinshasa, but none to Entebbe (Uganda) or Nairobi (Kenya) and it is unsurprising that Bunia-based gold traders, who enjoy better eastward connections, are reluctant to fly their gold there. Emeko transports a small percentage of Orientale's artisanal gold from Kisangani to Kinshasa and then exports to its refinery in Belgium. Almost all the rest is smuggled, mostly to Kampala, the subject of the fourth baseline study in this series.

Civil society in Ituri is among the best informed and most active in the whole country on natural resource governance and is steadily building its capacity further, particularly concerning EITI. NGOs in Ituri are also acquiring greater expertise in OECD Due Diligence Guidance but have not yet begun working systematically with mining companies on this issue. Concession 40 could be a good place to start. A train-the-trainer workshop on the OECD Due Diligence Guidance is scheduled to take place in Kisangani in mid-2015; similar such workshops have already been held in Bukavu (South Kivu) and Kinshasa in 2014.

A. Recommendations

1. Joint validation teams should begin work as soon as possible in Orientale Province, to start the process that culminates in the issuing of ICGLR certificates.
2. The CEEC should either issue ICGLR certificates according to the ICGLR and the DRC government rules or it should not do so at all. In view of the fact that no gold mines in Orientale Province and very few nationally have been validated, the DRC government should consider suspending the requirement that only ICGLR certified gold can legally be exported until more validations have taken place.
3. The Orientale authorities should encourage legal gold buying by taking action against known smugglers. They should also take action against illegal semi-industrial mining.
4. Donors should support due diligence training for *négociants* and digger co-operatives in Orientale Province.
5. Stakeholders, and particularly the permit holders, should consider the 'SOMINKI option' (selling gold to the permit holder), or the alternative of facilitating the production and sale of gold mined under conditions meeting the standards of the OECD Due Diligence Guidance, to appropriate alternative buyers for appropriate areas of Concession 40. As is envisaged in the DRC's draft revised mining code, the government should assist implementation of these options by changing the law to enable artisanal mining on industrial permits, in cases where the industrial permit holder supports this.
6. Permit holders, investors and donors should explore measures to support artisanal miners, including technical support to miners and/or cooperatives to boost productivity, exploring pre-financing models or providing logistical support, for example secure transport to the next export point. Legalisation of the status of artisanal miners and even production agreements between permit holders and artisanal mining cooperatives should furthermore be explored.
7. SOKIMO should publish details of its contracts with semi-industrial miners, of their production volumes and of the sums these miners are remitting to SOKIMO.
8. Refiners: Refiners should implement OECD Due Diligence Guidance to ensure they are not refining conflict gold from Orientale Province and should engage with Concession 40's permit holders and other producers of non-conflict gold to explore the possibility of sourcing and refining this material. In addition to working with the permit holders, refiners are also encouraged to work with local government, civil society and artisanal mining cooperatives to explore options for pre-financing responsible gold production from Orientale Province.
9. Civil Society Organisations (CSOs): CSOs should continue to monitor developments in the gold mining sector in Orientale Province, and particularly on Concession 40, both identifying the risks of conflict financing and potential sources of non-conflict gold in the province.

Annex A: Historical background

Oriental Province is the historic home of gold mining in the DRC. Local residents of the northeast of the province in particular have known about and artisanally exploited the bountiful gold deposits there for centuries. Following in their wake, Western geologists identified gold in the Agola River near Mongbwalu in 1903, and went on to chart a semi-continuous greenstone belt that runs roughly from Moto in the province's Haut-Uele district to Kilo at Mongbwalu, in Djugu territory, in Ituri district.

The Kilo mine began operations in 1905 and Moto launched in 1911. In 1919, the Belgian colonial administration established the *Régie Industrielle des Mines Kilo-Moto*, which in 1926 was transformed into the SOKIMO.



Figure 7: SOKIMO share certificate, 1920s

SOKIMO was granted exclusive mining rights to 83,000 km² of territory in the northeast, 2.7 times the size of Belgium (See Figure 2). The main producing areas of which were: Concession⁷⁷ 38: 4,560 km² around Durba and Watsa, including the mines of Gorumbwa, Agbarabo and Durba; Concession 39: 4,880 km² around Djalasiga and Zani; and Concession 40: 8,191 km² around Mongbwalu.

Following substantial investment, particularly in underground mining and hydroelectric power generation, by the 1930s SOKIMO was producing around five tonnes of gold per annum.

Over the years, in much the same way as also happened with *Union Minière du Haut Katanga* (later Gécamines), SOKIMO assumed an ever-more controlling role in its workers' and local communities lives, as part of the classic

Belgian colonial trinity comprising big business, the government and the Catholic Church. The government levied taxes, made and enforced the law. SOKIMO mined and sold the gold, provided employment, built houses for its workers, sponsored sports teams and other 'character building' activities and supplied the company store, while the Church, generously funded by SOKIMO, established several missions with churches, hospitals, orphanages, sports fields, schools and colleges.

Kilo-Moto was nationalised by the government of Mobutu Sese Seko in 1966 and became the *Office des Mines d'Or de Kilo-Moto* (OKIMO). OKIMO was initially well managed but subsequently failed to invest adequately in exploration, mine development and the maintenance of existing infrastructure. Compounding these problems was Mobutu's penchant for treating state owned enterprises as his personal fiefdom. OKIMO's production climbed during the 1970s, peaking at around 800kg/month, but output fell sharply during the 1980s, while artisanal mining, often taking place illegally on industrial permits, grew in its place.

In a decree issued in 1981, Mobutu proclaimed the liberalisation of the Zairean mining sector. He ordered that those state-owned monopolies lacking sufficient capacity to operate effectively on their own, should form partnerships with the private sector.⁷⁸ OKIMO was soon approached by local and

⁷⁷ Each concession consists of numerous permits. Concession 40, for example, is made up of 18 permits.

⁷⁸ Dan Fahey, *Le Fleuve d'Or: The Production and Trade in Gold from Mongbwalu, DRC*, *L'Afrique des Grands Lacs Annuaire*, 2007-2008, page 358; and Jean-Claude Williame, *Insecurité, Violences et Ressources Naturelles au Congo-Zaïre*, 2007, www.eurac-network.org/web/.../20070601_9230.doc

international entrepreneurs wishing to mine. Only in 1986, however, did OKIMO start signing contracts with local entrepreneurs, known as *encadreur*s, granting them permission to mine portions of OKIMO's permits.

According to Augustin Mpela wa Kindombe, who was and has remained in charge of partnerships at SOKIMO:

I invented this monster of *encadreur*s! MIBA⁷⁹ secured its concession by force. But our concession is twice the size of Belgium. There are more than 100,000 diggers. We couldn't kill them! So we did a deal with them. 30% of the production would come to us. We were also supposed to buy the 70%, but after a while we did not have the money to buy. So we allowed *comptoirs* to buy...⁸⁰

Many people living in gold-rich parts of Orientale interpreted Mobutu's liberalisation announcement as a presidential green light to start digging. Even today, many artisanal miners in Orientale still cite the decree as an almost mystical, enduring official guarantee of their right to dig for gold.⁸¹ As diggers fanned out across the province and their geological expertise increased, more gold deposits were discovered, which in turn attracted more diggers (see Figure 3). Some of the new deposits were found on OKIMO concessions, and were thus supposed only to be exploited by diggers under *encadreur* contracts, but corruption and OKIMO's lack of capacity to police its concessions ensured that this was often not the case. Many of the new deposits, however, were outside the OKIMO concessions.

⁷⁹ The Société Minière de Bakwanga (MIBA), a state-owned diamond mining company based in Kasai-Oriental Province.

⁸⁰ Interview with Augustin Mpela wa Kindombe, secretary-general in the directorate of participation and management of partnerships, Société Minière De Kilo-Moto, Kinshasa, November 2014.

⁸¹ Interviews with artisanal gold miners in Ituri, August 2014.

Annex B: History of Concession 38

Concession 38, like the other main SOKIMO assets, has had a chequered career. In 1987, the concession was allegedly 'given' to Belgian businessman William Damseaux by Mobutu, in payment for loans Damseaux's company Orgaman had made to the government to help pay OKIMO wages. Kabila initially refused to recognise Damseaux's claim on Concession 38, but was later induced to do so by the president's powerful advisor, Augustin Katumba Mwanke.⁸² Damseaux sold the bulk of his stake in 2003 to Australia's Moto Goldmines via a complicated arrangement that in 2006 was consolidated into a single lease giving 10% to Orgaman, 60% to Moto Goldmines and 30% to SOKIMO. Moto Goldmines bought out Orgaman in 2008.

In January 2009 the government's mining contract review approved the Moto contract and all OKIMO's Concession 38 titles were subsequently transferred to newly-created Kibali Goldmines, with Moto holding 70% and SOKIMO 30%. Later that year, Moto Goldmines sold its entire stake in Kibali to Randgold and AngloGold, while SOKIMO sold them 20% of its stake, leaving it with just 10% of the company.

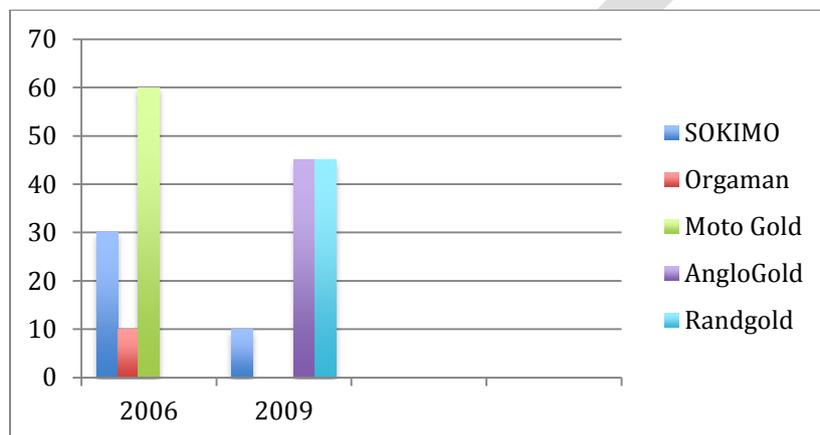


Figure 8: Concession 38 shareholding structure (%), 2006-2009

According to a well-placed industry source:

Three days after SOKIMO received the money, they were instructed to transfer 70% of it to some strange account in the central bank... What was left was soon eaten up in bills, salary arrears and kickbacks... Within six months, SOKIMO could once again not pay salaries.⁸³

A senior source in SOKIMO commented:

We are 100% state owned. We were told to sell. It was not our idea and it was a bad thing for us.⁸⁴

⁸² Interviews with Orgaman officials, Kinshasa, 2009.

⁸³ Interview with senior mining executive, Kinshasa, November 2014.

⁸⁴ Interview with senior SOKIMO executive, Kinshasa, November 2014.

Annex C: History of Concession 40

In 1997, Mobutu was toppled from power by a coalition of troops apparently led by Laurent Desiré Kabila, who succeeded him to the presidency. Kabila had scant regard for contracts signed during the Mobutu era and directed OKIMO to quit its Ashanti Goldfields deal in Concession 40 and sign a new contract instead with a company called Russell Resources Group. Ashanti Goldfields, however, quickly reached out to the new administration and in 1998 succeeded in re-securing its shares in KIMIN (See Companies active in Orientale Province).

Shortly after, Ashanti Goldfields bought out the remaining Mindev stake in KIMIN, and in 2000, KIMIN itself was replaced by a new joint venture between Ashanti Goldfields and OKIMO called Ashanti Goldfields Kilo (AGK). In 2001, the new president Joseph Kabila approved an amendment to AGK that greatly extended its mining rights, to the whole of Concession 40. Ashanti Goldfields merged with AngloGold in 2004 to become AngloGold Ashanti, and the new company inherited Ashanti Goldfield's 86.2% share in AGK, with OKIMO holding the remaining 13.8%.⁸⁵

While the various players' share percentages rose and fell, back in Ituri the African War of 1998-2002 proved particularly devastating in the district. Initially, the region fell under the control of the Ugandan-backed Kisangani faction of the *Rassemblement Congolais pour la Démocratie* (RCD-K), led by Ernest Wamba dia Wamba. During this period, the Ugandan People's Defence Force (UPDF) assumed an increasingly active role in Ituri's affairs and is widely alleged to have contributed to the stoking of tensions between Hema and Lendu communities, which erupted into bloody conflict in 1999, and only ended four years later.

Concession 40 was for some time under the control of the predominantly Hema UPC but in March 2003, the FNI, a predominantly Lendu militia attacked and captured it and rapidly gained control of most of Concession 40. Just as the UPC had done, the FNI immediately set about maximising its revenue collection, levying taxes on gold production and export and on the movement of people and goods.

As fighting worsened throughout Ituri between the UPC and FNI, the UPDF came under increasing international criticism for its role, prompting the Ugandan government's withdrawal of several thousand Ugandan troops from there in April 2003. The resulting power vacuum intensified the conflict, and on 30 May 2003 the UN Security Council authorised the deployment until 1 September of an 'emergency multinational force' in Bunia.⁸⁶ Operation Artemis, largely consisting of French troops, arrived a few days later and quickly secured the town, though it took longer to subdue the UPC and FNI in the outlying rural areas. Artemis handed over to the UN mission in DRC in September 2003.

AGK subsequently resumed its efforts to explore Concession 40, bringing it into contact with the FNI, which had retained *de facto* control of Mongbwalu and its environs, where it continued to commit numerous human rights abuses⁸⁷. AGK's alleged relationship with the FNI, which, the company later admitted, included financial payments, was later denounced by Human Rights Watch.⁸⁸ AngloGold Ashanti responded that it admitted and regretted that its staff had yielded to extortion and promised that it would not be repeated. The company strongly denied, however, that it supported the FNI.⁸⁹

⁸⁵ SRK, Mongbwalu Project Environmental Impact Study and Management Plan of the Project, 2010, page 3.

⁸⁶ UN Security Council, Resolution 1484 (2003), Paragraph 1, 2003.

⁸⁷ Source to be confirmed

⁸⁸ Human Rights Watch, *The Curse of Gold*, 2005.

⁸⁹ Anglogold Ashanti, *Response to Human Rights Watch Report*, 2005.

AGK for several years conducted only limited exploration on Concession 40 but was spurred into action by a review of joint venture mining contracts initiated by the DRC's ministry of mines in 2009, which demanded that companies either develop their assets or lose them. In 2010, AngloGold Ashanti took the decision to build a project at Concession 40. In 2013, however, AngloGold Ashanti reversed this decision, leaving the area's future uncertain. AngloGold Ashanti then invited Randgold to go into partnership to develop Concession 40 but Randgold decided against this.⁹⁰

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⁹⁰ Interviews with senior executives from AngloGold Ashanti and Randgold, Kinshasa, November 2014.

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