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THE ROLE OF THE EXPLOITATION OF NATURAL RESOURCES IN FUELLING AND PROLONGING CRISES IN THE EASTERN DRC

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Table of contents

List of abbreviations	3
Executive summary	5
Introduction	9
Chapter 1: Overview of mining exploitation	13
1.1 Exploitation of mines: an old story	13
1.2 The exploitation sites: an approximate mapping	16
1.3 The North Kivu mining sites	17
1.4 The South Kivu mining sites	18
1.5 The Maniema mining sites	19
1.6 The Ituri and upper Uélé mining sites	20
1.7 The challenge of quantifying the mining sector	21
Chapter 2: The system of production	23
2.1 Property rights, prospecting rights and exploitation rights: confusion, uncertainty and “local arrangements”	24
2.2 Rights of international mining groups: old and new actors	26
2.3 The armed forces and the control of the territory of the mines	29
2.4 An organised and structured work force	31
Chapter 3: Systems of commercial trading	34
3.1 Two commercial systems	35
3.2 The geo-economy of trade	38
3.3 Key actors	42
3.4 The distribution of benefits along the trading chain	47
Chapter 4: Mechanisms of fraudulent activity	49
4.1 Nature of fraudulent activity	49
4.2 Attempts at regulation/accountability in the mineral trade	54
Chapter 5: Impact of mining exploitation on the people and the environment	57
5.1 The mining economy as a poverty trap	57
5.2 Insecurity and violence in the artisanal mining sector	60
5.3 Geo-environmental impact	62
Chapter 6: Summary of recommendations	65
6.1 Main recommendations by theme	65
6.2 From the ineffectiveness of the present sanctions regime to certification/traceability	68
6.3 A new paradigm: making trade formal to make it ethical	70
6.4 Past and present initiatives	71

Acronyms

AFDL	Alliance des Forces Démocratiques de Libération
AFED	Amis de la Forêt et de l'Environnement pour le Développement
AGK	AngloGold Ashanti Kilo
AMG	Advanced Metallurgical Group
ANR	Agence Nationale de Renseignement
APPG	All Party Parliamentary Group
BEST	Bureau d'Etudes Scientifiques et Techniques
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe
BNA	Bureau de la Navigation Aérienne
CAMI	Cadastre minier
CASM	Communities and Small-Scale Mining
CdC	Cadre de Concertation
CEDAF	Centre d'Etude et de Documentation Africaines
CEEC	Centre d'Expertise, d'Evaluation et de Certification
CEPAS	Centre d'Etudes pour l'Action Sociale
CEPGL	Communauté Economique des Pays des Grands Lacs
CHDC	Congo Holding Development Company
CIRAD	Centre de Coopération Internationale en Recherche Agronomique pour le Développement
CIRDI	Centre International pour le Règlement des Différends relatifs aux Investissements
CIRGL	Conférence Internationale sur la Région des Grands Lacs
CNDP	Congrès National pour la Défense du Peuple
COCABI	Coopérative des Creuseurs Artisanaux de Bisié
COFED	Cellule d'Appui à l'Ordonnateur National du Fonds Européen de Développement
COMESA	Common Market for Eastern and Southern Africa
COMIMPA	Coopérative Minière Mpama Bisié
DDR	Désarmement, Démobilisation, Réinsertion
DfID	Department for International Development
DGM	Direction Générale des Migrations
UAE	United Arab Emirates
FAPC	Forces Armées du Peuple Congolais
FARDC	Forces Armées de la République Démocratique du Congo
FDLR	Forces Démocratiques de Libération du Rwanda
FEC	Fédération des Entreprises Congolaises
FNI	Front des Nationalistes et Intégrationnistes
GFE	Gesellschaft für Elektrometallurgie
GMB	Groupe Minier Bangandula
GRAMA	Groupe de Recherche sur les Activités Minières en Afrique
HRW	Human Rights Watch
ICCN	Institut Congolais pour la Conservation de la Nature
INICA	Initiative pour l'Afrique Centrale
IPIS	International Peace Information Service

ITIE	Initiative pour la Transparence dans les Industries Extractives
KIMIN	Kilo-Moto Mining International
KMC	Krall Metal Congo
LRA	Lord's Resistance Army
MDDZ	Mines d'or du Zaïre
MGL	Minière des Grands Lacs
MONUC	Mission de l'Organisation des Nations Unies au Congo
MPA	Metal Processing Association
MPC	Mining and Processing Congo
MPR	Mouvement Populaire de la Révolution
NMC	Niobium Mining Company
OCC	Office Congolais de Contrôle
OCDE	Organisation pour la Coopération et le Développement Economique
OCHA	Bureau de Coordination des Affaires Humanitaires
OFIDA	Office des Douanes et Accises
OKIMO	Office des Mines d'Or de Kilo Moto
ONG	Organisation non gouvernementale
ONU	Organisation des Nations Unies
PARECO	Alliance des Patriotes pour la Refondation du Congo
PNC	Police Nationale Congolaise
PNKB	Parc National de Kahuzi Biega
RAID	Rights and Accountability in Development
RCD	Rassemblement Congolais pour la Démocratie
RDC	République Démocratique du Congo
RMA	Ressources Minérales Africaines
SAESSCAM	Service d'Assistance et d'Encadrement de l'Artisanat Minier
SAKIMA	Société Aurifère du Kivu-Maniema
SARW	Southern Africa Resource Watch
SIPRI	Stockholm International Peace Research Institute
SOKIMO	Société des Mines d'Or de Kilo Moto
SOMICO	Société des Mines du Congo
SOMIGL	Société Minière des Grands Lacs
SOMINKI	Société Minière du Kivu
SWOT	Strengths, Weaknesses, Opportunities, Threats
UCI	Uganda Commercial Impex
UPC	Union des Patriotes Congolais
UPDF	Uganda People Defence Force
USAID	US Agency for International Development
WCS	Wildlife Conservation Society

Executive Summary

1. Gold and various metals of the tin group (cassiterite, coltan, niobium and tungsten) have been mined in the eastern provinces of the Democratic Republic of Congo (DRC) since the beginning of the 20th century. The mining sector was heavily affected by the disintegration of the Congolese state, by widespread corruption and by the destruction of local infrastructure. The national mining companies in the eastern DRC (OKIMO, SOMINKI) collapsed during the 1990s, leaving the way open for informal artisanal mining, in which thousands of miners were employed. The wars waged in North and South Kivu and Ituri between 1996 and 2003 strengthened the illegal character of artisanal mining and fueled the formation of militias who exploited their control of the mines in order to raise the funds necessary for their own economic survival and arms purchases.
2. In a situation where insecurity and illegality fed on each other, the mining economy became a particularly opaque conflict economy (“conflict minerals”). The eastern DRC became an area of uncontrolled extraction of raw materials, organised by local and regional interests operating with actors in the international market.
3. The geography of the mining areas is not well documented. Among the most important sites are Mongbwalu and Djalassiga (Ituri), Durba (Upper Uélé) Numbi, Kama, Kamituga, Twangiza, Lugushwa and Minoro (South Kivu) and Bisié, Itebero, Mumba-Bibatama, Lueshe, Fatwa Kasugho, Musienene and Manguredjipa (North Kivu), Kalima, Kampene, Namoya, and Makania (Maniema). Although the system of mining and marketing of mineral ores in the Kivus has been widely publicised, it is still not possible to provide a complete cartography of production sites. This is partly due to the fact that it is nearly impossible for artisanal mining to act in conformity with the new Mining Code of 2002, which stipulates that it should be carried out in a mining area ‘demarcated by surface area and depth’; Article IV states that wherever the conditions ‘do not allow for industrial or semi-industrial exploitation, the Ministry of Mines can construct settlements inside the boundaries of a defined geographical area in a zone of artisanal exploitation’. But none of these zones in the eastern DRC have been defined to date. Information on mining activity should in principle be centralised in the Provincial Mining Directorates, which do not have the resources enabling them to carry out these tasks. As a result, available information is incomplete. The opaqueness of the mining sector is not simply due to deliberate concealment and fraud, nor to the problems caused by the continued presence and activities of armed groups. The problem starts with the existence of huge gaps in available information about the geography of production.
4. For a number of reasons it is at present not possible to know with any degree of certainty how much ore is produced and exported, due to the multiplicity of government bodies that interfere in the control of production and exportation of ore, and because of deficiencies in the accounting, fraud and smuggling across borders, especially with regard to gold. The quantitative measurement of production requires a system for recovering information which has yet to be developed from administrative statistics, the Fédération des Entreprises Congolaises (FEC) and field research among producers and transporters. Taking into account the lack of centralisation and reliable statistics, any such investigation will necessarily be localised and will not provide an overall view. Smuggling will remain the blind spot in any attempt at quantification.
5. Production from the mining sites in Orientale Province, in Maniema and in North Katanga passes in part through the Kivus and Ituri. Orientale Province, Maniema and North Katanga suffer from a lack of knowledge, as do the diamond mining areas in the Kivus.

6. The informal nature of mining production does not mean that it is not structured. The system of production is based on exploiting a labour force of countless underpaid labourers and on a series of exactions sought by all those people, whether civilian or military, intervening along the way between the mine and the trading houses. Diggers, shovelers and transporters of the ore are working with primitive tools and raw muscle power under the watch of team leaders or soldiers. The various armed groups, as well as the Congolese Army (FARDC), actively take part in this predatory process.
7. The history of concessions illustrates the instability of prospecting and exploitation rights. The “waltz of contracts” that characterised the end of Mobutu’s reign and the regime of Laurent-Désiré Kabila can be explained by the nature of arbitrary power, not through economic reasoning. In the regions analysed, mining activity is based on local arrangements, where modern legal rights must coexist with customary law. Nevertheless, and even if the foreign companies that have taken over from SOMINKI and OKIMO have been slow to relaunch mining activities, international companies remain very interested in working in the DRC.
8. Since 2000, there have been two systems for the commercial trading of “conflict minerals”: informal trading by purchasing agents and trading by the military. Even after the official withdrawal of foreign armed forces from Congolese soil, military trading has not completely disappeared. The FARDC and the various armed groups have militarised, brutalised and bled dry artisanal mining, extracting handsome profits. Mining is therefore an important issue for security and conflict resolution.

The substantial involvement of the FARDC in mineral trading makes the army a “self-generating revenue agency”. The high-level beneficiaries of these illegal activities ensure that they stay below the radar. The FARDC’s involvement has also led to the creation of a criminal network of senior army officers who act in collusion with those in senior governmental positions. The FARDC’s major involvement in the mining trade, and the desire to maintain the status quo, is a factor that has slowed down the army’s “integration” efforts, and thus army reform.

9. The current system of commercial trading is an oligopolistic one that enriches a whole group of government officials, army officers, militia leaders, traders, transporters and foreign intermediaries whose profits are thought to be running in the millions of dollars. The attempts by the UN and by NGOs at identifying the individuals involved in these “networks of elites” have only been partially successful. Despite their lack of transparency, these “networks of elites” illustrate the criminal nature of relationships between business, politics and violence. Trade in minerals represents a significant part of the legal and illegal income of officials responsible for regulating the trade; even if the taxes imposed are less than they should be due to fraud, they still amount to several million dollars each year. In this light it can be seen that the “mining question” represents high stakes for governance in the eastern DRC.
10. The minerals trade in the DRC is based on a multimodal system of communication, which includes portage, road and air transport, and reveals a regional geo-economy that is firmly turned towards East Africa. Border towns or those near the border, such as Goma, Bukavu, Uvira, Beni, Butembo and Bunia where the trading agencies are set up – create a bridge between the informal upstream chain and the downstream linked to the circuits of the globalised economy. The trade in minerals contributes to the informal economic integration of the Great Lakes Region and demonstrates a clear separation between politics (within the framework of national sovereignty) and economics (within the system of integrated trade in East Africa). Congolese minerals are exported through official trading networks that transit through Burundi, Rwanda and Uganda. Minerals are also smuggled across the eastern borders of these three transit countries and the origin of the exported minerals is systematically concealed. The minerals follow the same commercial routes as other merchandise and are part of a

cross-border trade. A degree of specialisation in the commercial routes exists, corresponding to political and above all economic considerations. The Uvira-Bujumbura route is particularly used for gold shipments and the Bukavu-Cyangugu route for exports of gold, cassiterite and coltan. In the early 1990s, Burundi was the most important transit point for Congolese gold, but following the international embargo against the Buyoya regime, and the creation of a tax exemption system for gold in Uganda, Uganda replaced Burundi. In recent years, Tanzania has also become increasingly important in the export of diamonds.

11. Burundi, Rwanda and Uganda profit greatly from the trade in Congolese minerals, which constitute a major source of income. Specialisation applies here too: gold moves through Burundi and Uganda and minerals from the tin group pass through Rwanda. Their spheres of economic influence in eastern DRC have remained fairly stable since 2000. The “mining question” therefore represents major stakes in the geo-economy of the whole region.
12. The investigations carried out by the UN and NGOs have brought to light the ultimate recipients in the trade of “conflict minerals” in Europe, the United States, the Middle East and Asia, as well as the pivotal role of certain groups of businessmen (Lebanese, Indo-Pakistani, Russian, etc.). The American, Russian and Chinese networks are the least well documented.
13. Mining fraud takes the form of illegal taxation (over- or under-taxation) and of smuggling. Corruption in the mining sector impedes all serious attempts to re-establish the authority of the state and contributes to “governance through disorder” in this region. The problem of corruption in the mining sector is a major governance issue in the DRC. National and international initiatives (EITI) set up to regulate the Congolese mining industry have not yet been implemented in the eastern part of the country and have had few results nationally.
14. The social and economic stakes of artisanal mining are considerable. For most of the miners involved in it as a means of survival, either willingly or by necessity, artisanal mining is a poverty trap. Work in a mine represents a break with traditional social organisation by changing the roles of young people and women. It is dangerous, with the risk of accidents, and violent, in light of the sharp rivalries between armed groups and mine site owners.

In spite of its job-creation effects, mining is a poverty trap: behind the illusion of sudden wealth, it generates a dynamic of impoverishment. Research on the human consequences of artisanal mining has concentrated on the diggers, who are the most numerous and the worst off. Some attention has, however, been paid to the various actors along the trading chain, once the minerals leave the mine all the way to the trading houses. There are winners and losers among them, but who are they? A close study would undoubtedly show that the ethnic groups who traditionally held dominant trading positions also control the minerals trade, such as the Bashi in South Kivu and the Nande in North Kivu. Both of these regard the Banyarwanda as intruders and have always sought to discredit them because they are competitors.

Artisanal mining is part of a worldwide process of social transformation driving people from the countryside towards the mines and urban centres. Small towns have sprung up around the largest mining sites, further altering the spatial distribution of the population. These agglomerations created from mining have changed economic, social and cultural life in the Kivus and Ituri.

The system of artisanal mining exploitation produces both direct and indirect violence. Direct violence throughout the trading chain of mining production can be classified into two categories: violence perpetrated by armed men (militia and security forces) towards those engaged in trade, and violent conflict among traders themselves. The minerals trade is a violent

business, and even when the mining areas are “calm”, they still resemble the “Congolese Far West” or, strictly speaking, the “Far East”. The conflicts between the informal owners of mining *carrés* [squares] can turn violent when the intervention of the authorities determining rights is insufficient. The presence of militias and the army is naturally an important catalyst of violence. Traders also fall victim to armed men who often intercept them to steal their goods.

15. The environmental consequences of mining are negative in every respect, from chemical pollution of the water table, deforestation, diversion of rivers, the sweeping away of whole sections of hillsides and the disappearance of arable land to intensive poaching in national parks to feed the miners. These parks have had to pay a heavy price for anarchic mining activities, especially in the Kahuzi Biega National Park, where mining of coltan and cassiterite is in full swing. Given the park’s immense size, the damage inflicted by opening the mines appears as only a few scars in the dense forest. But the slaughter of wild animals to feed the workforce has caused considerable damage, especially since part of the poached game is diverted to markets in the towns in Kivu. Therefore, the mining issue is also an environmental issue in eastern DRC.
16. The current UN sanctions regime (a freeze on assets and travel bans) is directed against the traders and not against the trade in minerals. The UN itself admits the sanctions regime is ineffective because of the lack of cooperation on the part of governments and the lack of any perceived harm by the companies that have learned to manage the risk to their reputation from their activities in the conflict zones. For the moment, the most striking result of being added to the UN list has been the suspension of certain supply contracts by import companies. Some Western firms have distanced themselves from their Congolese suppliers. The UN is now focusing on mapping publications of the mining sites and on controlling borders.
17. Currently two responses to the problem of “conflict minerals” are being debated: restrict trade (to a greater or lesser degree – from total embargo to selective bans) or formalise the trade through a mix of economic, institutional and security actions. Sceptical about the possibility of reducing insecurity by restricting trade, some organisations (INICA, DfID, USAID, etc.) have proposed an alternative of trying to formalise it in order to make it more disciplined and ethical. The latter option, inspired by the Kimberley Process and by the development sector, would involve a global strategy linking sanctions with an improvement in security in all its aspects (legal, economic and physical) and a reform of mining activities.
18. There have been no tangible results from Congolese efforts to improve the situation, such as suspending exports of ore in 2007, closing customs posts in Bunagana and Ishasha in 2008, closing the mines in Walikale and Adidi in 2008, etc. While international initiatives on this problem tend to multiply, it is worth drawing attention to the initiatives to trace coltan by Germany and the requirement to declare the origin of minerals by the US.
19. With a view to helping establish a mining industry that does not generate further violent conflict, this report recommends the following:
 1. Improving geographical knowledge about mining activities;
 2. Improving knowledge about mining in Ituri and in the Kivus;
 3. Understanding the downstream side of the commercial chain;
 4. Evaluating the possibilities of imposing sanctions;
 5. Spreading information in the DRC;
 6. Supporting the proposal of formalising trade;
 7. Reducing incentives for smuggling by harmonising and simplifying customs tariffs at a regional level.

Introduction

‘In Africa, trade never stops. It is only interrupted.’

A Bend in the River. V. S. Naipaul

The economy and conflicts, the economics of conflicts: Exposure and research on “conflict minerals” in eastern DRC

There is a large variety of publications today about the ways in which the exploitation of mineral resources is a factor in unleashing war. Up until the beginning of the 1998 rebellion, the analyses of war in the Great Lakes region were written in the shadow of the Rwandan genocide and the regional upheavals provoked by regime change in Kigali. In Filip Reyntjens’ 1999 book, *La guerre des Grands Lacs* [The Great Lakes War], the economic dimension of the conflict is barely mentioned.¹ Another work completed in the same year, under the direction of Paul Mathieu and Jean-Claude Willame, *Conflits et guerres au Kivu et dans la région des Grands Lacs* [Conflicts and wars in Kivu and the Great Lakes region] concentrated on the land question in Kivu and on the regional aspects of the war. Only one page refers to the ‘economic interests of the conflict’.² It was primarily the press and particularly the Belgian newspapers, *Le Soir* and *Libre Belgique*, which exposed the ‘pillaging of the Congo’³ by Rwandan and Ugandan soldiers. *Le Soir* reported that Museveni was criticised in Uganda, because of the ‘involvement of his half-brother, Salim Saleh, in trafficking in gold and precious wood’, and also that ‘the donor community was concerned about the resources devoted to the war’.⁴ In 1999, *L’Enjeu congolais* [What is at stake in the DRC], by Colette Braeckman, denounced the “war of loot” and described the evolution of events in the DRC from 1996 onwards as ‘a new chapter in the hold-up of the Congo that has been going on for over a century’,⁵ but she did not elaborate on this aspect of the conflict. In *Les Nouveaux Prédateurs* [The New Predators], published in 2003, she returned at greater length to this “hold up”.⁶ The thesis of a war self-financed by the exploitation of the natural resources of the Kivus meanwhile was solidly supported by the work of the UN Group of Experts. This understanding of the conflict coincides with the views of Paul Collier, writing for the World Bank, and is now common knowledge.⁷

The first comprehensive studies devoted to the mining aspects of the war in eastern DRC were written during the period when, after looting by soldiers, coltan fever seized the Kivus. Coltan (Colombo-tantanite), the mineral that experienced a boom in 1999-2000, caused the furor. At the time of this boom, several NGOs in Belgium mobilised forces through the campaign ‘No blood on my cell phone’ to expose the purchases of coltan by European companies in the conflict zones. This exposure resulted in the Security Council setting up a Group of Experts on the Illegal exploitation of the natural resources and other riches of the Democratic Republic of the Congo, a group that has been maintained ever since it was first created in June 2000. The interest of NGOs

1 F. Reyntjens (1999). *La guerre des Grands Lacs. Alliances mouvantes et conflits extraterritoriaux en Afrique centrale* [The Great Lakes War – Shifting alliances and extraterritorial conflicts in Central Africa]. Paris: L’Harmattan.

2 P. Mathieu et J.-C. Willame (1999). *Conflits et guerres au Kivu et dans la région des Grands Lacs. Entre tensions locales et escalade régionale* [Conflicts and wars in Kivu and the Great Lakes region – Between local tensions and regional escalation]. Paris: Cahiers africains No. 39–40. Tervuren. Institut Africain-CEDAF. L’Harmattan.

3 *Le Soir*, 23rd December 1998.

4 *Le Soir*, 28th December 1998.

5 C. Braeckman (1999). *L’Enjeu congolais. L’Afrique centrale après Mobutu* [What’s at stake in the Congo—Central Africa since Mobutu]. Paris: Fayard.

6 C. Braeckman (2003). *Les nouveaux prédateurs. Politiques des puissances en Afrique centrale* [The New Predators : The big powers’ policies in Central Africa]. Paris: Fayard. New revised edition in 2009.

7 P. Collier (2000). *Economic causes of conflict and their implication for policy*. Policy Research Paper. Washington: World Bank.

and the UN in this question led at first to a large body of investigative and exposure literature, followed by field research on the theoretical aspects of the relationship between conflict, war economies, natural resources and development.

Local researchers have been studying the links between conflicts and natural resources at the same time as the UN panel of experts. The Pole Institute in Goma (Institut Interculturel dans la région des Grands Lacs), created at the end of the 1990s, published a study under the direction of Aloys Tegera, *Le coltan et les populations du Nord-Kivu* [Coltan and the people of North Kivu] in February 2001.⁸ Didier De Failly of BEST (Bureau d'Etudes Scientifiques et Techniques) in Bukavu, carried out specific investigation of the artisanal exploitation of coltan and the marketing chain.⁹ Many other researchers have pointed to his concrete explanations of the *modus operandi* of those involved in mining, transporting and marketing coltan within a globalised system; (Stephen Jackson, for example, argued that the producers 'are linked to the world market through a chain of intermediaries and are exposed to all the ups and downs of this market').¹⁰ The exploitation of minerals, whether on an industrial or an artisanal scale, is indeed heavily influenced by demand fluctuations in world markets. **The miner who earns his living by using his own physical energy to dig up coltan in some forgotten forest in Kivu forms the first link of a global chain, the last link of which is the mobile phone user.**

A considerable (although often repetitive) body of literature on mineral exploitation and the conflict in the eastern the DRC is available today. This plethora of reports and publications, mostly accessible on the internet, forces us to be selective.

The numerous reports of UN expert groups, such as the Panel of Experts from 2000 to 2003 or the Group of Experts since 2004, are a basic source, starting from their first report of 12 April 2001 up to their latest of 18 May 2009. Among the many studies of NGOs and research groups, those of the Pole Institute, International Peace Information Service (IPIS), Global Witness, International Crisis Group, International Alert and Human Rights Watch (HRW) are essential sources, since they cover the entire period from 2001 to 2008 and also the different aspects of research. The Diane Fossey Gorilla Fund has carried out a series of studies on the impact of illicit exploitation of coltan on wildlife in the national parks. The Canadian group GRAMA (Groupe de Recherche sur les Activités Minières en Afrique) of the University of Quebec in Montreal studied the marketing of coltan from the DRC.¹¹ In 2007, a report from Pact, commissioned by DfID, USAID and COMESA, analysed the connections between mining activities and commercial circuits in the DRC.¹² A 2008 study by Communities and Small-Scale Mining (CASM) contained very precise information on the exploitation of and trade in cassiterite, drawing on the example of the Bisié mine, the largest in North Kivu.¹³ This mine, which had already been researched by others, including AFED (Amis de la Forêt et de l'Environnement pour le Développement) in 2007, provides a good illustration of how the mining sector works throughout the Kivu region. Very recently, in April 2009, expanding the experience gained from investigating Bisié, Nicholas Garrett and Harrison Mitchell published their work on the relationship between the trade in minerals and development in conflict areas in eastern DRC.¹⁴ This study was carried out with support from DfID, the London School of Economics, the Crisis States Research Centre and the

8 A. Tegera [Ed.] (2002). *Le coltan et les populations du Nord-Kivu* [Coltan and the people of North Kivu]. Jointly researched by the Pole Institute & CREDAP. Regards croisés No. 007. Pole Institute.

9 D. De Failly (2001). 'Coltan: pour comprendre', *L'Afrique des Grands Lacs - Annuaire 2000-2001* [Great Lakes Africa - Yearbook], pp.279-306. Paris: L'Harmattan.

10 S. Jackson (2001). 'Nos richesses sont pillées! Economies de guerre et rumeurs de crime au Kivu' [Our wealth has been plundered! War economies and rumours of crime in Kivu], *Politique africaine*, No. 84, pp.117-135.

11 P. Martineau (2003). *La route commerciale du coltan congolais: une enquête* [The trade route of Congolese coltan : an investigation]. GRAMA. UQAM.

12 Pact (2007). *Researching natural resources and trade flows in the Great Lakes Region*.

13 N. Garrett (2008). *Artisanal cassiterite mining and trade in North Kivu: Implications for poverty reduction and security*, CASM.

14 N. Garrett and H. Mitchell (2009). *Trading conflict for development: Utilising the trade in minerals from eastern DR Congo for development*. Resource Consulting Services.

Conflict Research Group. In the US, Enough – from the Centre for American Project devoted to the prevention of genocide and crimes against humanity – has also shown an interest in the Kivus.¹⁵

A review of the literature shows the central role played by Anglo-Saxon organisations, whether their aims are humanitarian, academic or correspond to economic considerations or interests. Much of the expertise available comes from Belgian researchers, such as the Africamuseum of Tervuren (geology, cartography, and the Centre d'Etude et de Documentation Africaine – CEDAF), as well as universities and research groups in Antwerp¹⁶ Ghent and Leuven. The works of Koen Vlassenroot are particularly indispensable. Beyond to Belgium and Great Britain, several other European research centres have contributed to the debate on mining exploitation and conflict in eastern DRC, such as SIPRI, the Stockholm International Peace Research Institute.¹⁷ In Germany, the Bundesanstalt für Geowissenschaften und Rohstoffe (BGR) [Federal Institute for Geosciences and Natural Resources] published a study on natural resources in the DRC in 2007, in association with KfW Entwicklungsbank [KfW Development Bank].¹⁸ After recommendations were drawn up by the International Conference on the Great Lakes region, seeking a 'Regional Mechanism for Certification of Natural Resources',¹⁹ a G8 summit initiative at Heiligendamm in June 2007 on the certification of minerals has become a reality. Researchers from the BGR are working on the geochemical fingerprint of metals, particularly tantalum in order to establish their origin; a pilot project has just been launched in Rwanda to develop the forms of scientific support to be provided by CTCs, Certified Trading Chains.²⁰

South Africa, which itself has a large mining industry, has understandably followed the situation in the DRC very closely. In 2007, Southern Africa Research Watch (SARW) published a study on the revision of mining contracts.²¹ Roland Pourtier, as part of Initiative for Central Africa (INICA), completed a study in 2004 on the regional implications of artisanal mining in Kivu.²² Alain Karsenty, a CIRAD researcher based in Montpellier, studied taxation of natural resources in the DRC.²³

How the maps are conceived

Maps are an integral part of this report. Some of them localise mining resources, the principal mines and armed groups, drawn up from various bibliographical and cartographical sources that have been consulted. Other maps illustrate commercial aspects of the mining economy – from a local up to a global scale: transport of mineral ores from Bisié mine) to the *comptoirs* [trading houses] in Goma, regional corridors between the eastern DRC and the Indian Ocean ports; importing countries. Some maps show the basic structural data which is essential to an

15 Enough Project Team (2009). *A comprehensive approach to Congo's conflict minerals*. Strategy Paper.

16 In particular, the Centre d'étude de la région des Grands Lacs d'Afrique, which since 1997 has published a Yearbook under the direction of Stefaan Marysse and Filip Reyntjens: *L'Afrique des Grands Lacs*. Paris: L'Harmattan.

17 R. de Koning (2008). 'Resource-conflicts links in Sierra Leone and the Democratic Republic of the Congo'. *SIPRI Insights on Peace and Security*, 2.

18 C. Berke, J. Pulkowski, N. Martin, J. Vasters, M. Wagner (2007). *Les ressources naturelles en République démocratique du Congo – Un potentiel de développement?* [Natural resources in the Democratic Republic of Congo – Potential for development?]. Frankfurt: BGR-KMW.

19 Conférence Internationale sur la Région des Grands Lacs (2006). *Programme d'Action Régional de Certification des Ressources Naturelles*. Projet n° 3.2.2. Dar es Salaam.

20 BGR Press Release (13th March 2009). 'BGR-Pilotprojekt in Rwanda: Transparenz, sozial- und umweltstandards durch zertifizierung mineralischer rohstoffe' [BGR's Pilot project in Rwanda: Transparency, social and environmental standards through certification of mineral resources].

21 C. Kabamba (2007). *Directives pour une révision des contrats d'exploitation Minière en RDC* [Directives for revising mining exploitation contracts in the DRC], June 2007. Johannesburg: Braamfontein. info@sarwatch.org

22 R. Pourtier (2004). *L'artisanat minier au Kivu et ses implications régionales* [Artisanal mining in Kivu and regional implications]. Paris: INICA-OCDE. *L'économie minière au Kivu et ses implications régionales* [The mining economy in Kivu and its regional implications]

23 A. Karsenty (2006). *Etude d'identification d'un programme pour l'amélioration des recettes fiscales et domaniales en République Démocratique du Congo* [composante 'ressources naturelles' d'un programme d'appui à la gouvernance en RDC] [Study to identify a programme to improve state and tax revenue in the DRC ("natural resources" component of a governance support programme in the DRC)]. Ministère des Finances. Cellule d'Appui à l'Ordonnateur National du FED (COFED). CIRAD.

understanding of the conflicts in Kivu: the colonial legacy of the mining economy, the distribution of ethnic groups, chiefdoms and population densities.

The main difficulty in drawing up maps arises from the lack of any cartography for the DRC that is consistent, complete and up-to-date. A project for a 'Reference Common Geography' (RCG) is underway, launched in 2006 by the UN Logistics Centre, supported by OCHA and coordinated since 2007 by the UNDP. In a Cartography of Motives, IPIS has made use of the data available from RGC. Its mapping to a scale of 1/1,000,000 covers most of North and South Kivu, but not Maniema. However, Maniema is included in the satellite maps at a scale of 1/200,000 produced by the University of Ghent. These two series do not, unfortunately, map the whole area of the region under study. To obtain a homogenous base for mapping, we have used the map of the DRC at a scale of 1/2,000,000, drawn up by the Catholic University of Leuven in 2007.²⁴ Additional information was found in the Management Kongo Development map of the DRC published in 2000, which is based on a digital terrain model by the United States Geological Service. Several minor distortions can be seen in comparing these different sources, but they do not affect the maps that figure in this report. The hydrographic data are compatible between the different maps, but this is not the case for roads and the tracing of administrative boundaries, which reveal real differences.

Uncertainty concerning toponomy is a more serious difficulty. Many village names differ from map to map. It is impossible to say where some mines referred to in the documents are situated, as their names do not appear on any map. Even significant sites such as Lueshe, the only industrial site in North Kivu, do not appear on recent maps. Similarly, Ariwara is nowhere to be found, even though it is one of the largest gold-trading centres in Ituri; with the help of a Human Rights Watch study, we were able to situate it. The maps attached to the report have only a relative degree of accuracy. They are drawn up to provide a synthetic view by adding the force of visual images to the text.

Maps and a bibliography are located in the appendix to this report

The area covered by the study

Area (sq. km)		Population		Density (inhab./sq. km)	
		1984 (census)	2008 (estimates)	1984	2008
North Kivu	59 483	2 434 000	5 200 000	41	87
South Kivu	65 070	1 940 000	4 700 000	30	72
Ituri	65 658	1 749 000	4 200 000	27	64
Maniema	132 250	850 000	2 250 000	6	17

Source for 2008: OCHA, Plan d'action humanitaire 2009

²⁴ République Démocratique du Congo, 1/2 000 000, Unité de recherche en environnémentrie et géomatique, Université catholique de Louvain. With the collaboration of the Institut Géographique du Congo and the Belgian Institut Géographique National. ULC-Géomatics, Louvain-la-neuve (2007).

Chapter 1: Overview of Mining Exploitation

Summary:

Gold and tin have been mined in the eastern provinces of the DRC since the beginning of the 20th century. The mining sector has been seriously disrupted by the disintegration of the Congolese state, by corruption and the destruction of local infrastructure. The mining industry collapsed in the 1990s, giving way to informal artisanal exploitation, which employed hundreds of thousands of miners. The wars that affected North and South Kivu and Ituri between 1996 and 2003 reinforced the illegal nature of the mining of ores and promoted the formation of militias, which were able to finance their purchases of arms from their control and exploitation of the mines. In a situation in which insecurity and illegality fed on each other, the mining economy became highly opaque. This has made access to any reliable and accurate information (mines sites and production levels) extremely difficult.

1.1 Exploitation of mines: An old story

The colonial origins of the mining economy

The exploitation of minerals in the eastern DRC began over a century ago.²⁵ Two Australian prospectors found gold in the Agola River in 1903 and named this area after the Chief Kilo. After the discovery of the site in Moto, the gold-bearing region of Upper Ituri was given the name of Kilo-Moto. For more than a century, this name has been the symbol of the DRC's gold, whose long history has recently been tarnished by the massacres of 2002-2003 in Mongbwalu.²⁶ The Société des Mines d'Or de Kilo Moto (SOKIMO) was created in 1926, following the pattern of the major colonial companies such as the Union Minière du Haut Katanga, which were characterised by their paternalist policies towards their labour force, poorly paid but whose basic needs were provided for. These companies, veritable states within a state, were closely involved in the financing and management of regional infrastructure, including socio-educative infrastructure such as transport, health and education.

In the Kivus,²⁷ mining only became important in the 1920s. The Minière des Grands Lacs (MGL) and the CNKI Comité National du Kivu (CNKI) had begun to mine gold before cassiterite was discovered in 1926. Maniema soon became the major area for tin-mining, with centres in Kalima, Punia, Kasese and Sakumakanga. **Two companies, Symetain and Cobelmin of the Empain Group, established in 1932 and 1933, dominated the mining sector until after the DRC's independence.**

The annual reports on economic affairs in the Kivus²⁸ provide interesting production figures when compared with current evaluations:

Gold and cassiterite production during the colonial period

	1935	1940	1945	1950	1955	1959
Gold (kg)	2 954	6 269	3 174	2 397	2 107	3 449
Cassiterite (t.)	1 200	5 250	12 110	8 383	11 379	6 074

²⁵ See maps: Tin basin in the Belgian Congo and Rwanda-Urundi and mining resources.

²⁶ Human Rights Watch (2005). *Le Fléau de l'Or* [The Curse of Gold]. New York: HRW.

²⁷ The Kivu region, whose boundaries were determined by the colonial administration, includes the three areas of North Kivu, South Kivu and Maniema. In 1988 they became provinces.

²⁸ Bashizi Musharhamina (1998). 'Conjoncture mondiale et exploitation minière au Kivu (1933-1959)' [World conjuncture and mining exploitation in Kivu]. *Likunduli. Enquêtes d'histoire coloniale* [Likunduli - Enquiries into colonial history], 9,1, pp.108-121. Lubumbashi: CERDAC.

Employment in the mining sector during the colonial period was already considerable, as the figures for all of the Belgian Congo reflect:²⁹

Employment in the main mining sectors

Annual average	Gold	Tin	Copper	Diamonds
1928-1929	21 000	5 000	16 500	28 600
1938-1940	90 437	38 588	8 498	17 582
1941-1943	88 177	73 303	14 365	12 319

Independence and the collapse of the mining economy: The remarkable failure of SOMINKI and KILO MOTO

Industrial mining became the victim of a combination of two factors:

- The instability of world markets;
- The weakening and disorganisation of economic and administrative structures in a society marked by the “Zaire disease”, a catastrophic variety of bad governance, associated with widespread corruption.

In 1976, Symetain and Cobelmin and some other companies created the Société Minière du Kivu (SOMINKI), in which Zaire held 28% of the capital and the Empain Group 72%. Already handicapped by the costs stemming from the relative isolation of the Maniema mines, which were cut off from the outside world, SOMINKI proved unable to cope with the sharp drop in the price of tin on the world market in 1985. After reaching a peak in February 1985 of over £10,000 a tonne, the price fell to around £4,300 a year later. The continuing decline caused the Empain Group to sell its majority share-holding in SOMINKI.

The world tin market (in tonnes)

1970	1975	1980	1985	1990	1994
1 500	3 000	7 200	9 200	3 500	3 500

Production of tin and associated metals by SOMINKI (in tonnes)

1980	1985	1990	1995
3 000	4 000	2 500	1 000

The decline in tin production following the collapse of world prices in fact preceded the series of lootings by the AFDL. In 1996 this dealt the final blow to a dying company, whose salaried employees had already greatly decreased in number:

Changes in the SOMINKI labour force (1978-1995)

Year	Expatriates	Senior Staff	Production Staff
1978	110	215	16 500
1985	80	283	11 500
1990	24	275	8 500
1995	13	221	5 700

²⁹ J-L Vellut (1981). Les bassins miniers de l'ancien Congo Belge. Essai d'histoire économique et sociale (1900-1960) [The mine basins in the former Belgian Congo; An essay on the social and economic history of 1900 to 1960]. Cahier 7. CEDAF.

SOMINKI was bought in 1996 by the Canadian group, Banro. After chaotic years of war and rebellion, Banro's legal position was clarified in 2003, allowing it to resume its mining activity.³⁰ This is planned, but production had not yet started by 2008.

The Société des Mines d'Or de Kilo Moto (SOKIMO) was formed in 1926 and built practically all the main infrastructure of the Ituri district during the colonial period. It developed a paternalistic management of its labour force. The company was nationalised in 1966 under the name of Office des Mines d'Or de Kilo Moto (OKIMO), which took over the concessions of 83,000 sq. km divided between Ituri and Upper Uélé. The main mining site in Ituri, Mongbwalu, was divided into three blocks (38, 39 and 40). The steady decline of the company led during the 1990s to sub-contracting to artisanal miners, with the possibility of individuals to prospect (US\$150), to exploit an area of 500 m² (US\$250), or even more (against 30% of the profits for OKIMO). This system of sub-contracting both production and exploration compensated OKIMO's lack of capacity to exploit the mines. It should also be noted that OKIMO did not even have the resources to buy the gold mined by the diggers and bring it to the market. During the 1990s, OKIMO leased its concessions to entrepreneurs who controlled access to the mines and collected taxes, sometimes becoming selling the gold themselves. In the past, these sub-contractors had honoured their obligation to pay fees to OKIMO but this came to an end.

Informal artisanal mining and the disintegration of the Congolese state

Since SOMINKI and OKIMO stopped their activities, industrial mining has disappeared in Kivu and Ituri. On the old mining sites, only a few buildings, mining installations in ruin and rusty machinery are left, recalling the period when the DRC's economy had not entirely sunk into the informal domain.³¹ **Industrial mining was not replaced by artisanal mining all at once, but rather accompanied the gradual breakdown of the Congolese state.** Artisanal mining has existed for a long time in the DRC: without going back to historic Katanga whose copper *croisettes* served as currency over much of Central Africa, gold-panning was practised during the colonial period and the early years of independence, but only on a small scale. **It was the disorganisation of the economy resulting from "zairianisation" in 1974 that turned all productive activities into informal ones.** The confiscation of the colonists' assets and their squandering by those benefiting from a redistribution policy not based on competency but on loyalty to the Popular Movement for the Revolution (MPR), had disastrous consequences for the economy. As the "Zaire disease" and the application of "Article 15" of the Constitution ("solve it yourselves") became the norm, the number of artisanal miners increased, particularly in the diamond mining areas of Kasai. Artisanal exploitation was authorised in 1982 outside the mining concessions. The new legislation legalised the already existing situation and encouraged the development of artisanal mining.

Many miners in Kivu, who had lost their jobs with the collapse of SOMINKI, sought compensation by informally exploiting the deposits they knew well. A truly parallel economy – semi-legal – came increasingly into being, involving a range of actors from the mine to the export agencies. The armed clashes in Kivu during the AFDL's campaign in 1996-1997 and the occupation by the Rwandan and Ugandan military during the period of rebellion (1998-2002), completed the destructuring of the formal economy and made the control of mineral resources one of the major issues in a regional conflict. **The coltan boom of 1999-2000 led to an unprecedented rush to the mining areas** by young people attracted by the hope of rapid gain. Coming from rural or urban backgrounds, these men and women thought they could find in the mines a way of emancipating themselves from a society in deep crisis that could not offer them any prospects of a satisfying future. The coltan boom was short-lived. After selling at US\$230 a pound in 2000, tantalum returned by the end of 2001 to its pre-1999 value, between US\$25 and US\$30. This episode nevertheless had long-term consequences, as it represented an irreversible change for many young people who had cast their hopes in the mines.³²

30 See Chapter 2.2.

31 See Y. Lammens & C. Braeckman (2007). *L'or noyé de Kamituga* [Kamituga's drowned gold]. Film produced by Simple Production –Philofilm.

32 See Chapter 5.1.

1.2 The exploitation sites: An imperfect mapping

Although the system of production and commercialisation of minerals in Kivu is well documented today, it is still not possible to draw up a precise and exhaustive cartography of the production sites. The document of reference – the geological and mining map of the DRC published in 2005 by the Africamuseum in Tervuren³³ – uses data from the 1976 map of mineral deposits in Zaire.³⁴ The location of mineral resources is certainly useful, but it doesn't indicate whether or not they are being exploited. The MONUC and OCHA maps provide only brief and fragmentary information about mining sites.

The most interesting document is one published by the International Peace Information Service (IPIS), the 'Cartography of the motives behind the conflicts', which provides locations not only of the mines but also the different armed groups in North and South Kivu for the period between September 2007 and January 2008.³⁵ This substantial work inevitably has its limitations, since it is impossible to provide simultaneous mapping of constantly changing situations throughout a territory covering 59,500 sq. km for North Kivu and 65,000 sq. km for South Kivu. Such a Sisyphean task would depend on information from local correspondents who are difficult to coordinate. IPIS's cartography gives locations for a large number of mining sites, without distinguishing between presently-existing and past sites. For example, in the National Park of Kahuzi Biega all the names of coltan mining sites appear, which were already shown in INICA's 2004 map, itself based on an earlier study by an NGO in Bukavu. **A multi-layered collection of data piling up all the locations, often inexact as regards both time and place, is inadequate to provide an accurate and up-to-date inventory.**

The geography of the mines is often still imperfect. This is due on the one hand to the near impossibility for artisanal mining to conform to the 2002 Mining Code. It stipulates that artisanal activity must be carried out in an area of exploitation 'demarcated as to its surface and to its depth'. Article IV specifies that where conditions 'do not allow for industrial or semi-industrial exploitation, the Minister of Mines may set up such sites within the limits of a geographical area determined to be an area of artisanal exploitation'. But no such areas have so far been defined in eastern DRC.

Information about mining activities should in theory be concentrated in the Provincial Mining Directorates. Unfortunately, they lack the material and financial resources to visit mining sites. The result is that their information is very limited. The opaqueness of the mining sector is not only due to the practice of dissimulation and fraud as well as the activities of armed groups; its starting point is the serious gaps in the geography of production that is only roughly outlined. Many mining sites referred to in certain reports cannot be precisely located. Mine locations are shown on only some of the satellite mapping plates produced by the University of Ghent for the Museum in Tervuren, in particular those of the tin-bearing region of Maniema.

Mineral exploitation in the eastern DRC can be divided between two main types of production:

- Gold – alluvial or in lode deposits – represents most of Ituri's production (Orientale Province) and is also found in many North and South Kivu sites.
- Various metals make up the composite minerals in the tin group – the "3Ts" – tin, tungsten and tantalum. In DRC, tungsten is known as wolfram/wolframite; tantalum is present in Colombo-tantalite, commonly known as coltan, which also contains varying proportions of niobium. The composition of the ore varies according to the sites. Coltan and cassiterite are often found

33 Musée royal de l'Afrique Centrale (2005). *Carte géologique et minière de la République Démocratique du Congo* [Geological and mining map of the DRC], scale 1/2 500 000, Tervuren.

34 Service géologique du Zaïre, Musée Royal de l'Afrique centrale et BRGM (Bureau de Recherches Géologiques et Minières) (1976). *Carte des gîtes minéraux du Zaïre* [Map of Zaïre's mineral deposits], scale 1/200 000.

35 S. Spittaels & F. Hilgert (2008). *Cartographie derrière les conflits: le cas de l'Est de la RDC* [Cartography behind the conflicts: the case of eastern DRC]. Anvers: IPIS, Fatal Transactions.

together, but coltan can also be found with tungsten. The interest in one or another metal depends on demand: in 1999-2000, cassiterite was merely a not very valuable by-product of coltan; today, the opposite is true. The ores also always contain iron, regarded as an impurity, which requires processing to separate it out, so as to reach a sufficient concentration of tin – 65%, if possible – that can be sold at a good price.

- Establishing a complete and up-to-date cartography is a prerequisite for properly understanding the highly dispersed artisanal mining sector.

The principal known mining sites³⁶

Provinces	Name of the mining area	Production (mineral and amount)	Number of miners
Orientale – Ituri (Eastern) – Haut Uélé	Mongbwalu, Kilo-Moto Djalassiga Durba	Gold Gold production in the whole eastern region of the DRC: estimate 5 to 10 tonnes	60 000
North Kivu	Bisié (Walikale) Itebero Mumba-Bibatama Lueshe Fatwa Kasugho Musienene Manguredjipa	Cassiterite, 10 000 tonnes Coltan, cassiterite Coltan, cassiterite Wolframite Production de cassiterite in North Kivu estimated at 14 000 tonnes Niobium Diamonds Diamonds Gold	Estimate for the Province: 200 000
South Kivu	Numbi Nyabibwe Kama Kamituga Twangiza Lugushwa Minoro	Coltan, cassiterite, Tourmaline Coltan, cassiterite Coltan, cassiterite Gold Gold Gold Diamonds	

1.3 The North Kivu mining sites

Minerals of the tin group

Most of the sites are located in the “Little North”, which includes the Walikale, Masisi, Rustshuru and Nyiragongo territories. This is the richest region, especially Walikale, but is also the most complicated area of the Kivus, since all the tension-creating factors – land ownership, demographic, ethnic, economic and military – are concentrated there. In 2007 and 2008 this area was at the centre of the conflicts between the CNDP on the one hand and, on the other, the FARDC and their supporters at that time, the Mai Mai and sometimes the FDLR.

³⁶ See map: Mining exploitation sites.

The largest mining site today is Bisié in the Walikale territory. According to Nicholas Garrett's in-depth study,³⁷ this exceptional deposit produced 70% of the cassiterite exported from Goma. At the time of research (April-December 2007), the four production sites had 1,732 workers. Another study spoke of "7,000 heads" on the site:³⁸ in addition to the miners, there were also porters, traders, family members and prostitutes.

Some mining sites are more or less easily accessible by road and their location can be established precisely, for example in Masisi, known mainly as an agro-pastoral area before the war, but which also has several mining *carrés* [squares]. In Mumba-Bibatama, in the Ngungu area, three quarries are being exploited, one of which belongs to a leading Tutsi personality in the province, Senator Edouard Mwangaschuchu Hizi.

In many cases, however, it is difficult to locate these mines on a map. In its study on 'Coltan and the people of North Kivu',³⁹ the Pole Institute refers to a great number of mining sites (about thirty) in the Masisi, Kalehe and Walikale territories, without indicating where exactly they are found, especially since the names of villages vary from one map to another. "Mining foyers" are referred to south of Walikale, near Itebero, but without any further details about where the "hills" Nkuba and Kakelo are to found.⁴⁰ The Pole Institute also mentions exploitation sites to the north of the Kahuzi Bieza National Park, but those cannot be found because of the absence of any geographical indicators. The Atlas of the Administrative Organisation of the Democratic Republic of the Congo⁴¹ is of little assistance, since in the studies consulted, the mining sites are seldom cross-referenced with groupings or local government areas they are part of.

Lueshe, the only industrial site in North Kivu, specialises in processing pyrochlore (niobium) and does not appear on IPIS maps, nor on satellite maps, nor on any of the general maps of the DRC. It does, however, appear on the 1988 map of the Republic of Zaire. This disappearance of Lueshe is surprising. **It illustrates the importance of developing a rigorous cartographical update.**

Gold and diamonds in the "Great North"

The Great North, which includes the territories of Lubero and Beni, has only a few tin-bearing sites. Gold is mainly mined here, mostly in the Beni area and diamonds near Butembo and Lubero. Fewer studies exist, compared with the "Little North", probably because the "Great North" has been less affected by armed conflict. The Nande provide a strong degree of social cohesion in the Great North, whose economy is one of the most dynamic in the DRC. Butembo and Beni are very active trading centres, particularly for high value items such as gold and diamonds.⁴²

1.4 The South Kivu mining sites

The mining sites can be divided into two groups: minerals of the tin group are dominant in the north of the province and in the south, gold.

Minerals of the tin group

The most accessible sites are along the routes from Bukavu to Walikale and from Bukavu to Goma. The Nyabibwé mine (cassiterite-coltan) is to the south of Saké, along the road remade by "Agroallemande" (Welthungershilfe). The remains of abandoned equipment recall the "pre-artisanal"

37 N. Garrett (2008). Op. cit.

38 AFED, Amis de la forêt et de l'Environnement pour le Développement (2007). *Rapport général de l'étude sur l'exploitation artisanale des ressources minières en territoire de Walikale: Cas du Coltan* [General report on the artisanal exploitation of mining resources in Walikale territory: the case of coltan]. Goma: AFED.

39 A. Tegera (2002). Op. cit.

40 R. Pourtier (2004). *L'économie minière au Kivu et ses implications régionales*. INICA-OCDE.

41 L. de Saint Moulin, J.-L. Lalombo Tshibanda (2005). *Atlas de l'organisation administrative de la République Démocratique du Congo*. Kinshasa: CEPAS.

42 See Chapter 3. Geo-economy of trade.

era. The important mining centre in Numbi (coltan, cassiterite and tourmaline) on the boundary between North and South Kivu is very difficult to reach.

The western part of the Kahuzi Biega National Park, which straddles South and North Kivu, was invaded in total illegality during the coltan boom. The eastern part around Mount Biega, famous for its mountain gorillas, has, on the other hand, remained more protected. The NGO Vision Verte [Green vision] of Bukavu has accurately mapped the sixty-some mines that have been exploited inside the Park. The Diane Fossey Gorilla Fund has paid particular attention to the destruction inflicted on the flora and fauna by the presence of miners.⁴³ Recent information updating the situation there is lacking.

Gold

The gold-bearing area of South Kivu comprises three main areas, Twangiza, Kamituga and Igushwa, which form – together with Namoya, situated in Maniema – the “Golden Furrow” to the south-west of Bukavu. Alluvial gold has been mined since the 1920s around Kamituga, gold in lode deposits from a later date. After the period of legal confusion during the war years, SAKIMA (Banro Group) became the sole holder of mining rights, but this Canadian company is confronted on the ground by the resistance of artisanal miners who have been working alluvial sites inside the concession boundaries for a long time. During recent years, Banro has concentrated on preliminary work for a future relaunch of exploitation (geological and mineralogical research, prospection, etc.). South African engineers carried out a very detailed study on Namoya in 2007.⁴⁴ According to oral testimony, Chinese are taking part in the exploitation of the site for Banro.

Information available on Banro’s website makes it possible to locate the mines with great precision within the company’s perimeters. However, knowledge of where artisanal sites are being exploited outside these boundaries is more uncertain. This contributes to the lack of transparency in the production and marketing of gold, which manages to dodge the control of state institutions to a great extent, but not that of other forms of power, whether military or civilian.

Another resource that eludes state control is diamonds. It appears that there are an increasing number of diamond exploitation sites in the Kivus, although they attract little attention, perhaps because diamonds are considered to be the business of Kasai, the Bandundu areas bordering Angola and the Kisanagani region. IPIS has noted that there is significant production in the Shindano mine, near Minoro (north of Shabunda).⁴⁵ The Pole Institute mentions the in Makania mine in the Punia region, where thousands of diggers have left the cassiterite quarries to pursue diamonds. Other mines are reported to the south-east of Lubutu.

- The geography of artisanal mining is evolving, since the diggers are easily mobilised and willing to move.

1.5 The Maniema mining sites

Maniema has for a long time been at the heart of mining in the Kivus. Up until the collapse of the tin market in 1985, the exploitation of tin was more industrial in nature, with energy being provided by hydro-electric plants in Lutshulukulu and Ambwe to supply Kalima and Kailo. The SOMINKI mining centres were closed one after the other during the 1990s, but the recovery in tin prices boosted artisanal exploitation. Information on Maniema, compared with that on North

43 I. Redmond (2001). *Coltan boom, gorilla bust. The impact of coltan mining on gorillas and other wildlife in eastern DR Congo*, May. Diane Fossey Gorilla Fund and Born Free Foundation; Jevin D’Souza (2003). *Scoping study of the artisanal mining of coltan in the Kahuzi Biega National Park* (April). London: Diane Fossey Gorilla Fund.

44 SENET (2007). *Preliminary assessment no 43-101. Technical Report, Namoya Gold Project, Maniema Province, RDC, prepared for Banro Corporation*. Johannesburg: Senet House.

45 S. Spittaels & F. Hilgert (2008). *Op. cit.*

and South Kivu, is very scarce. This lost corner of the world has been spared from recent military violence, and has aroused little interest among researchers or humanitarian organisations.

The location of the old SOMINKI mines can be seen on satellite imaging maps. What is missing is information about their present condition. Kalima, the former headquarters of SOMINKI's General Management, accessible by road from Kindu, is at the heart of an area that still has great mining potential. Several airstrips in Kamisuku, Kinkungwa, Kama and Kampene, are used to carry ore to Bukavu. Kailo used to be an important mining centre and its cassiterite and wolframite were taken to Kindu. Punia and Kasese produce cassiterite and coltan. According to a research student preparing a thesis on Maniema, Mr Kalombo Vivi Lukongo, gold is also being actively sought. There are several gold-washing sites between Kasese and Shabunda as well as near Kama and Kampene. In the Kasongo territory, Bikenge is a significant centre for gold production, taken out through Kama. To the north of Maniema, diamond quarrying has been referred to near Lubutu. Maiko Park contains gold mines. Grégoire Kayobo, a former Simba, who fought alongside Laurent-Désiré Kabila in 1964, still has his power base here.

- Information about Maniema remains sparse. It would be helpful to carry out field research, so as better to understand the mining economy in an area in which the mineral production passes through the Kivus.

1.6 The Ituri and Upper Uélé Mining Sites

Mining activity is less scattered here than in North and South Kivu. It is confined to gold-mining in the huge gold-bearing basin which stretches to the north-west of Bunia, near two large centres of production, Mongbwalu in Ituri and Durba in Upper Uélé. Control of the gold mines has been at the heart of extremely violent armed conflicts among various political and military groups between 2002 and 2004. Human Rights Watch has analysed these events in a well-referenced report published in 2005.⁴⁶

Like all the other nationalised Zairean companies, OKIMO was unable to escape predatory management. Having sub-leased its concessions to sub-contractors, it turned to seeking partnerships with international groups. Ashanti Goldfields acquired parts of Kilo-Moto Mining International, but, like for Banro, the period extending from Laurent-Désiré Kabila's military campaign in 1996-1997 up until the retreat of Ugandan forces in 2003 was one of risk-filled tribulations. During the rebellion, the RCD-ML leader, Mbusa Nyamwisi, a dissident from RCD-Goma, played a key role in mining affairs.⁴⁷ A joint venture was finally negotiated in 2003 for the exploitation of Concession 40, which covered 8,191 sq. km around Mongbwalu. AGK (AngloGold Ashanti Kilo) brought together OKIMO (13.787%) and Anglo-Gold (86.22%).

Gold has whetted the appetites of all the parties involved in the regional conflicts, such as the looting by the Ugandan armed forces, denounced in the first UN panel of experts report, as well as the ethnic conflict between the Hema and Lendu over land and fishing rights. The withdrawal of the Ugandan troops left the field open to militias who fought for control of Mongbwalu in 2002-2003. The Hema of the Union des Patriotes Congolais (UPC) led by Thomas Lubanga⁴⁸ and then the Lendu of the Front des Nationalistes et Intégrationnistes (FNI) sadly distinguished themselves by carrying out massacres, in particular in Mongbwalu. This recent past, full of violence, has left its mark, particularly because Anglo-Gold had made agreements with the FNI and with the return to a more "normal" situation suspicions continue to abound. AGK's activities have been confined to exploration and feasibility studies on the one hand and some social good will actions

⁴⁶ Human Rights Watch (2005). Op. cit.

⁴⁷ Mbusa Nyamwisi, a Nande, became minister during the Transition and has held a ministerial portfolio ever since.

⁴⁸ Thomas Lubanga was one of the first to be arrested for war crimes and referred to the IPC.

on the other, such as renovating the hospital and paying salaries owing in the health, education and energy sectors. Relaunching production is not envisaged before 2011 – the current crisis is not likely to speed things up.

- **The gaps in information about Upper Uélé call for field research, especially now that the LRA has become involved in mineral trading, according to various sources.**

1.7 The challenge of quantifying the mining industry

It is not possible at the present time to know with any acceptable degree of accuracy what quantity of mineral ore is being produced and exported. The principal difficulties in establishing any quantitative measurement of the mining economy include:

- The multiplicity of organisations involved in the regulation of production and export of minerals, and the lack of coordination between them;⁴⁹
- Deficiencies in handling statistical data, which helps to keep the mining economy in a state of deliberate obscurity, thus encouraging fraudulent activities;
- Administrative fraud: under-declaration of quantities exported and falsification of documents by the customs service; smuggling across borders, particularly of gold.

Using the example of wolframite exported through Goma in 2006, the Pole Institute illustrated the statistical discrepancies among the various administrative services:

OFIDA	392 t	Mining Division	401 t
OCC	268 t	Foreign Trade	295 t

OFIDA's 2006 data for North Kivu is incomplete: it totals the exports through Goma and Kasindi, but doesn't include those through Bunagana and Ishasa, due to the insecurity caused by fighting between the FARDC, FDLR and Mai Mai.

Mined mineral exports from North Kivu in 2006 (OFIDA)

	Weight	Value in US\$
Cassiterite (t.)	2 968	7 065 123
Wolframite (t.)	483	1 063 567
Coltan (t.)	41	217 558
Niobium (t.)	8	17 136
Gold (kg)	9	109 918

In addition to this uncertainty over production, mining potential is also unclear, due either to the mining companies' cult of secrecy or to a lack of basic knowledge. Estimates of tantalum reserves therefore vary widely, as much as from 15% to 60% of world reserves.

Researchers attempting to quantify the volumes and value of minerals turn to various indirect methods:

- Estimating the number of flights by small transport aircraft serving the mining areas, on the basis that they carry 2 tonnes on each flight;
- Comparing the results of surveys conducted with miners, traders and trading houses, but only a small number of mines, such as Bisié, are documented in this way, which means that without

⁴⁹ See Chapter 3. Key actors in trade, administrative services.

thorough research, extrapolations represent little more than statistical tinkering;

- Research downstream in the marketing chain: unlike the DRC, Rwandan foreign trade ministries properly maintain statistics and they can be considered reliable. Administrative organs in Uganda and Burundi are not as capable as those in Rwanda, but their statistical data are nevertheless usable;
- Surveys conducted with transporters;
- Using figures for foreign trade from major data banks (EUROTRACE, TRADEMAP, EUROSTAT, etc.), which unfortunately are not consistent;
- Analysing data provided by European, American and Asian companies importing minerals from the Great Lakes region in Africa.

Estimates of production/export mentioned in reports are invariably fragmentary. The most recent study (April 2009), *Trading conflict for development*,⁵⁰ gives the following figures for production, based on data from the Mining Division in Goma and from the FEC (Federation of Business Enterprises in the DRC) in Bukavu. The authors apply a coefficient of 35% to these figures to account for smuggling. This coefficient is itself an estimate.

Export of minerals from Kivu, 2007 and 2008 (in tonnes)

	2007	+ 35%	2008	+ 35%
Cassiterite	13 656	18 435	18 216	24 592
Wolframite	1 095	1 479	652	880
Tantalum	267	360	383	517

The Pole Institute has produced estimates covering a longer period (1999-2006) that show production trends for each mineral: the temporary boom of coltan, the spectacular rise of cassiterite, and more recently of wolfram (tungsten), and the collapse of niobium in Lueshe. These figures are, however, far from reflecting real production volume because of widespread fraud.

Year	Cassiterite	Coltan	Wolframite	Niobium
1999	71	5	5	
2000	23	15	15	22
2001	550	90	28	605
2002	497	28	28	1339
2003	938	26	26	670
2004	4 672	42	42	386
2005	3 599	26	26	91
2006	2 909	39	401	9

Source: Pole Institute, 2007

- **In conclusion, the statistical problem remains unsolved. The collection of quantitative data on the volume of mining production does not allow for reliable quantification throughout the area under study.**
- **A quantitative evaluation of production requires a method of cross-checking data that is yet to be constructed on the basis of administrative data, the FEC and field research among producers and transporters. Given the lack of centralisation, the poor reliability of statistics and the dispersal of mining sites, such research would need to be localised and would not provide a full picture. Smuggling will always be the blind spot of quantification attempts.**

50 N. Garrett and H. Mitchell (2009). Op.cit.

Chapter 2: The System of Production

Summary:

The informal nature of mining production does not prevent it from being highly structured. The system is based on exploiting the labour of thousands of miners and imposing a whole series of charges by those persons – military or civilian – intervening all along the chain, from mine to trading house. Diggers, shovelers, and porters all work with rudimentary tools and bare muscle power under the watch of team leaders or soldiers. The various armed groups, just like the Congolese Army (FARDC), all take an active part in the predatory process.

The muddle between customary law and modern law leads to legal confusion, a potential source of conflict. The international companies (Banro Group, AngloGold Ashanti) that have replaced SOMINKI and OKIMO are slow to launch activities in an insecure environment. Their arrival raises questions about the future of the miners and the coexistence of artisanal mining and industrial exploitation.

For the reasons given in Chapter 1, mineral production in the Kivus and in Orientale Province remains entirely artisanal in the absence of the large international groups. Their return is delayed by endemic insecurity and, since 2008, by the world economic crisis that provoked a major decrease in the prices of raw materials, with the exception of gold.

Although the artisanal mining is considered to be part of the “informal sector”, it is nonetheless highly organised. All economic actors take part in a system with its own internal coherence and its rules, even if it functions in the margins of official legality, with the force of armed groups. **Various contradictions flow from this, particularly between the customary and administrative authorities, but it also creates hybrid forms of management linking tradition and modernity within the framework of local institutional improvisations.**

The production of minerals remains at the hunter-gatherer economy stage prevailing at the beginning of the colonial period. An unlimited labour force works with rudimentary tools and depends completely on its own muscle power to dig out from the soil the products that will be exported in their raw state or, at best, having undergone a first stage of processing in the trading houses. (Since 2007, in principle the only trading houses to receive authorisation are those that are equipped with magnetic separators and concentrators that give added value to metals of the tin group.)

The same artisanal extraction methods are used in Kivu, Ituri and all other regions of the DRC engaged in mining activity, whether it is the Kasais or Katanga. The digger is a national figure, with some specialists estimating there are as many as two million artisanal miners in the whole country. Mining in the eastern part of the DRC differs from that in other mining regions:

- All of production depends on the work of the diggers;
- Social and ethnic tensions are exacerbated by land disputes, the resentment by “locals” towards “outsiders” and the legacy of violence in Rwanda spilling into eastern Kivu. The spread of artisanal labour has occurred in this context, which has favoured the militarisation of the economy.

2.1 Property rights, prospecting rights and exploitation rights: Confusion, uncertainty, overlapping and “local arrangements”

A blurry legal situation

Knowing who owns a mine may appear to be very simple but this is far from the case. In reality, it is highly complex because of overlapping legal systems. Like everywhere in Sub-Saharan Africa, customary law and modern law, as it emerged from colonisation, clash head on. The transposition of European property rights to a society where access to land depends on other criteria than private property has encountered resistance from the traditional authorities in the countryside. In those chiefdom-based societies in eastern Kivu, the *mwami* are the holders of property rights, which they concede to “land chiefs” or “hill chiefs”; these chiefs’ legitimacy is based on the right of being the first occupant, a right that is inherited. The colonial administration relied on the traditional chiefs by giving them administrative responsibilities. The creation of the Republic weakened their authority as it deprived them, from a legal point of view, of their prerogatives over land. The Bakajika Law of 1966, as amended by the 1973 Land Act, effectively attributed to the state full legal power over the land and what lay beneath it as well as exclusive jurisdiction over land transactions. There is a vast difference between what is written and practice, particularly in a failing state unable to apply its own laws.

In territories far away from Kinshasa, increasingly isolated because of the collapse of the transport infrastructure, customary chiefs have retained real power and they continue to insist on their leading role in regulating land ownership. Yet they are well-informed about the legal procedures for accessing property and adept at playing both systems for obtaining land titles. A double system of law persists, therefore, which adds to confusion over land status and leads in practice to opening up the land market and creating a new class of landowners of “big men” farmers, especially cattle-farmers, traders, politicians and senior army officers. Transactions in land titles tend to vary according to political changes. Under the RCD-Goma administration, Rwandans, mainly Tutsi, were favoured. A document drawn up by the customary authorities of Kalehe territory in 2004 criticised the anarchic sales of land with the ‘complicity of the provincial and cadastral authorities and Land Affairs in Bukavu’. They added a list of purchasers, which included a DRC deputy and the governor of North Kivu, Eugène Serufuli. Photocopies of documents of the sale of land titles and of long-term leases were added to support the memorandum’s arguments, which called for restoring the rights of Mwami Ntale IV of the Buhavu chieftainship.⁵¹ A great number of memoranda are produced by civil society, including local associations and NGOs, giving a first-hand feel for the local reality and the conflicts of interest. One of the main problems is how to clarify land disputes, which have multiplied since the displacements of people caused by the wars.⁵² This is a particularly complex task because of the lack of transparency of cadastral services and the endless disagreements between the rightful owners and those actually occupying the land.

■ Landowning interests interfere with mining interests.

The hill and the *carré* [square]

Mining has introduced a new legal element, since mining rights are distinct from land rights. According to the 2002 Code, the mining registry has precedence over the land registry. If mining licences are granted, land title holders are limited to claiming compensation. Since in most cases customary chiefs do not possess land titles, this opens the way to negotiations or to a power struggle. In the eastern DRC, the customary chiefs who proclaim themselves “owners of the hill” argue that they have the right to exploit the minerals or to receive rental income. The “hill” has

51 Entente des ressortissants du territoire de Kalehe “EREKA”, *Memorandum des notables du territoire de Kalehe à l’intention de son excellence Monsieur le Président de la République Démocratique du Congo à Kinshasa* [Memorandum of the Kalehe territory notables to his excellence the President of the DRC in Kinshasa], 4th May 2004.

52 S. Mugangu Matabaro (2008). ‘La crise foncière à l’est de la RDC’ [The land crisis in eastern DRC]. *L’Afrique des Grands Lacs, Yearbook 2007–2008*, pp. 385–414.

no legal existence as far as the Mining Code is concerned.⁵³ A mining right is only acceptable under the Mining Code if it is registered with the Mining Registry (CAMI). Mining regulations⁵⁴ include all the technical considerations governing boundaries within the country.

The basic surveying unit is the square (*carré*). The sides of the square, lying east-west or north-south correspond to ‘an angular distance of 30 seconds in geographical coordinates as represented on the official maps of the whole country, produced by the Geographical Institute of the Congo on a scale of 1/200,000’ (Article 39 of the mining regulations). Each square covers an area of 84,955 hectares. Admirably precise, considering the state of cartographical coverage. Boundaries for mining concessions and exploration permits are determined by these squares. As for artisanal mining, the Ministry of Mines defines the zones for artisanal exploitation and notifies the Mining Registry, which marks them on the mining resources maps (Article 109 of the Mining Code). Article 109 also stipulates that a ‘Perimeter with a currently valid mining title cannot be transformed into an artisanal exploitation zone’.

The situation on the ground the situation is quite removed from a Code that doesn’t apply to the Congolese context. Almost all the artisanal exploitations in the eastern DRC are **outside the law**, because

- Not a single artisanal exploitation zone has been defined in recently-opened mines (also called quarry or work area);
- Miners rarely officially declared;
- A large number of sites being exploited are located within concessions theoretically protected by mining titles.

The overlapping of hill and square creates legal situations of a hybrid nature and often leads to disputes quarry miners, permit holders and land “owners”. The Pole Institute gives an example in the Masisi with the reminder that these conflicts are not new, that rights are acquired by payment in this jungle, where the survival of the fittest is the norm, where ‘cows are now replaced by the famous “mining squares” for the exploitation of coltan’.⁵⁵ The reality on the ground is always very complex. In the Masisi, the Mumba/Bibatama mine, for example, comprises three squares rich in cassiterite, coltan and wolframite. One is exploited by the Hizi International Company, and it seems that the owner, Senator Mwangachuchu, is the only one to hold a production licence. The formal sector, in good standing with the Mining Code, thus coexists with the informal sector.

One type of arrangement between legal and illegal actors: The Bisié mine

The economic issues provoked by the Bisié mine illustrate the ways in which the two levels of law overlap and in which international and local groups compete.⁵⁶ After the wealth of mining site had been discovered, two trading houses in Goma began to compete for their share in its economic exploitation, the Groupe Minier Bangandula (GMB) and the Mining and Processing Congo (MPC). The GMB was set up by local shareholders, led by Alexis Makabuza (with 50% of the shares), one of the most prominent men in Goma politico-business circles and close to Laurent Nkunda. The MPC was associated with the Metal Processing Association (MPA), supplier of the tin foundry in Gisenyi. Both companies are subsidiaries of the South African group, Kivu Resources, based in Mauritius.

On site, each company allied itself with an influential customary chief from one of the four families who claimed to hold land rights: the Bangandula family for the GMP and the Bassa family for the MPC. Both of these chiefs claimed to be “chief of the hill” by dint of their “right of first occupant”. On the legal front, GMB signed a leasing contract with Sakima in October 2005 covering 7 concessions, including Biruwe that was supposed to include Bisié. During 2006, GMB took “possession” of the mine after signing a contract with the Administrator of Walikale territory to ensure the safety of its staff,

53 *Code minier*. Loi n° 007/2002 of 11th July 2002. Journal Officiel de la République Démocratique du Congo, 15th July 2002.

54 *Règlement minier*, Décret n° 038/2003 of 26th March 2003, Journal Officiel de la République Démocratique du Congo, 1st April 2003.

55 A. Tegera (Ed.) (2002). Op. cit.

56 N. Garrett (2008). Op. cit.

and above all after reaching an understanding with the non-integrated 85th Brigade which had de facto control over the mining zone. As for MPC, after proving by Global Positioning Satellite that Bisié was outside the concession, it obtained an exploration licence in September 2006 covering the area in dispute.

The chiefs of the hill from the Bangandula and Bassa families ended up reaching an understanding and signing an agreement with the MPC, which promised to give them a percentage of its revenues. The 85th Brigade, for its part, guaranteed the functioning of the system and a minimum of security, in exchange for a share of the production as it left the mine. **Their interests were more complementary than conflictual between the “legal” actors, such as the MPC, who observed the Mining Code, and those actors basing themselves on customary law or on the force of arms.**

- The period of disturbances, along with the informalisation of the Congolese state, aggravated legal uncertainties. This opened the doors to all kinds of arrangements between the different forms of local power (civil servants, customary chiefs, militia, local politicians, and security forces) and Congolese businessmen. Gaining “ownership” of a mining site is never a permanent, but rather a changing compromise between local powers.

2.2 Rights of international mining groups: Old and new actors

Since Mobutu was overthrown in 1997, civil wars, a transition with labyrinthine-like negotiations, and the long time taken to set up new institutions all had serious consequences for both the old and new mining companies, which were slow to launch their operations. Despite all the uncertainties, **new mining groups that had no past history to live down entered the stage and gambled on the future by taking up positions in the Kivus.**

The disputed legacy of SOMINKI

The sale of SOMINKI gave rise to a legal imbroglio with which Congo-Zaire was all too familiar. Envisaged from 1986 onwards by the Empain Group, it was not concluded until ten years later, in 1996, by its sale to the Canadian group Banro and the Belgian company Mines d’or de Zaire (MDDZ). After buying out MDDZ’s share, Banro set up the Société Aurifère du Kivu-Maniema (SAKIMA). Legally confirmed by a decree dated 6 May 1997, just ten days before the fall of Mobutu, Banro became the holder of 47 concessions covering a total of over 10,000 sq. km representing SOMINKI’s holdings, and included six gold-bearing concessions – Kamituga (3), Lugushua, Namoya and Twangitza.

The liquidation of SOMINKI was carried out amidst great confusion as a result of the political situation – the AFDL’s military campaign and looting of the company’s buildings and stocks, then Laurent-Désiré Kabila’s accession to power. Mainly interested in gold, Banro decided not to become directly involved in the tin-bearing concessions. In October 1997, SAKIMA signed a leasing agreement with the Ressources Minérales Africaines (RMA), a Kinshasa company belonging to the Belgian-American, Bernard Van Rooyen. RMA’s management was put in the hands of a well-known Goma businessman, Victor Ngezayo, a mixed-race Tutsi.⁵⁷

Banro’s decision to withdraw from the tin side of its business, the calling into question of contracts signed by Mobutu during the war of liberation led by Kabila, and no doubt Kabila’s increasing hostility towards the Rwandan leaders, led him to abrogate the decree that established SAKIMA by another decree of 29 July 1998 – on the eve of the unleashing of the second war. On the same

⁵⁷ His brother, Albert, had been assassinated in March 2008, perhaps as a result of confusion on the part of the killers. In any case, he had not been involved in mining and political affairs, unlike his brother Victor. Victor wanted his rights recognised, or to sell them. During the rebellion, he kept his distance from the RCD-Goma, by creating his own political party. Regardless, assassinations and other settling of political scores are common in the Congolese “Far East”, and add to the endemic insecurity there.

day, a new company, Société Minière du Congo (SOMINCO) was created, followed on 31 July by the loss of all Banro's mining rights, reclaimed by the Congolese state. It is not insignificant that the nomination as administrator-delegate of SOMINKO was won by the *mwami* of Luhwinja, Philemon Naluhwindja, who had never stopped claiming his rights over the land attributed to the concessions. Customary authorities remain one of the active forces in this complex game which links economic interests, legal claims and political posturing.

The Congolese actors were not, however, in control of a game subject to international rules. The case between Banro and the Congolese state was taken to the International Centre for Settlement of Investment Disputes (ICSID) in Washington. The war generated enormous confusion, but afterwards the situation returned to normal, at least legally, and Banro's concessions were restored (April 2003 decision), although the dispute between Banro and the RMA had not been settled. The legal situation may have been clarified in principle, but work at the mines was limited to some preparations for exploitation. While the lawyers and experts battled things out in the gilded rooms of international justice, tens of thousands of diggers were digging up the ground on the concession-holder's lands.

SOMIKIVU: A confused situation and an uncertain future

La Société des Mines du Kivu, set up in 1982, brought together the Congolese state (20%), the German company Gesellschaft für Elektrometallurgie (GFE) (70%) and the Belgian company Cofimines (10%). GFE was a subsidiary of the American Metallurg, whose main shareholder, according to David Barouski, was the Safeguard International Fund based in Wayne, Pennsylvania.⁵⁸ In 2006, Metallurg took over the Dutch company Advanced Metallurgical Group (AMG), whose supervisory board included, according to Barouski, many influential political and financial personalities. In the DRC, as the last link of the chain of the politico-financial networks of the great powers, the role of Director-General of SOMIKIVU was taken by Modeste Makabuza, one of the leading businessmen in Goma; his brother, Alexis, said to be close to Laurent Nkunda, was also active in the mining sector through the Bangandula Group.

SOMIKIVU had been inactive since 1993, as all the expatriate staff had left due to the climate of insecurity caused by the inter-ethnic massacres. Activity resumed during the period that the RCD-Goma was in charge in the area, under the direction of Karl-Heinz Albers, with the England-based Niobium Mining Company (NMC), providing technical assistance. The legal position became complicated, when the Congolese state granted Krall Metal Congo (KMC), a company set up in 1999 in Kinshasa, GFE's (6th April 1999 decision). After the "reunification", Krall Metal tried to assert its rights with the help of Kinshasa, who saw this as an opportunity to restore its authority in Kivu by weakening the legacy of the RCD that had profited from a company involved in the looting of resources. Facing legal proceedings, Karl-Heinz Albers resigned in March 2004 and delegated his powers to Julien Boillot, an officer of the Niobium Mining Company, who in turn delegated them to Modeste Makabuza. According to a 2001 UN Report, he was on good terms with Paul Kagame. His company, Jumbo Safari, took part in the transporting of mineral ores. NMC's purchase of the tin foundry in Kigali in 2003 strengthened ties with Rwanda.

The SOMIKIVU manager announced a resumption of production in 2007. But in fact nothing happened for several reasons, including the continuing armed violence and lack of security, the increasing difficulties to access the mine because of the deterioration of the road infrastructure, the chronic lack of electricity, and declining world demand for pyrochlore which did not justify significant investment in a country at risk.

The waltz of contracts for Kilo Moto

The history of the ownership of the Kilo Moto gold mines has been particularly turbulent. In 1991, Kilo-Moto Mining International (KIMIN) signed a contract with OKIMO for

58 D. Barouski 'The case of the Lueshe Mine', *ZSpace*, 27th July 2008. Available at <http://www.zmag.org/zspace/commentaries/3566>.

2,000 sq. km around Mongwalu. In 1996, Ashanti Goldfields bought KIMIN's share, but in 1997, Laurent-Désiré Kabila unilaterally annulled this contract and granted it to Russell Resources International (Australia). Mbusa Nyamwisi, then head of the RCD-ML before he became a minister during the transition, awarded the management of the state enterprise OKIMO to a Mr Kiza, who leased his concessions to members of his family. In 2000, a new contract was signed between Ashanti and OKIMO, which led to the creation of a joint venture (AngloGold Ashanti Kilo – AGK), and in 2001, Ashanti obtained rights over the whole concession 40. The joint venture has held rights over this concession since 2003 – OKIMO 13.78% and Anglo 86.22%. AGK returned to the area in 2004, but had “dubious relations” with the FNI, which were reported in the international press – medical care for militia members, giving a house to a militia chief and money transfers – and forced the company to denounce these practices.⁵⁹ The state's reestablishment of control in Mongbwalu, an area much disputed between militias, was achieved thanks to MONUC via the deployment of a Pakistani infantry battalion in 2005 and to one of the first integrated brigades of the FARDC. Between 2005 and 2007, AGK carried out exploration and feasibility studies with plans to begin production only in 2011 because of the lack of infrastructure. From then on, the problem was no longer the armed groups, but the artisanal miners who were in physical control of the mineral deposits. In December 2007, the Governor of Orientale Province, Médard Autsai Asenga, announced the closure of the Adidi mine for ‘reasons of health and security’. This represented a manoeuvre to allow the AGK to physically regain control of the site with the help of the police, who blocked entry to it.

The newcomers

The likelihood that the political situation in the DRC would be normalised, together with the sharp rise in minerals prices, cassiterite among others, between 2004 and 2008 attracted international companies, that had hitherto not been present in the DRC. These newcomers have obtained rights, but have so far not yet begun prospecting.

This is the case, for example, of Shamika Resources Inc., a company registered in Canada, which calls itself a junior mining company, aiming to promote sustainable development for the benefit of the population through developing mining. It set up a Congolese subsidiary in January 2007, Shamika Congo Kalehe Sprl, and opened an office in Goma. According to its website,⁶⁰ it has acquired mining rights in North Kivu, South Kivu, Maniema, Orientale Province and Katanga. It holds three licences in Maniema in the Punia-Lubutu region. In South Kivu the company holds licences on the island of Idjwi and in Kalehe. In North Kivu, it has designs on Walikale territory, in Orientale on the Poko site, in Katanga on Manono, which was once the centre of the industrial exploitation of tin in the DRC. In all, it holds 15 exploration licenses.

Transafrika, a company under Mauritian law, with a majority holding of South African capital, holds exploration licences in the south of South Kivu, but has not yet begun prospecting.

At the beginning of 2009, a Russian company, Congo Russian Industry, a subsidiary of Rosspetsplav, declared its intention to relaunch production of niobium in North Kivu. A holding company, based in Luxembourg, Midural Inc., owns the Congolese shares and the Congolese Foreign Affairs Minister paid a visit to Russia. Russian penetration in this sector has already encountered some problems: the Congolese authorities confiscated a consignment of niobium on the grounds that the ore came from an area previously controlled by the CNDP.⁶¹

- **Since the informal economy has become deeply rooted in social practice since 1982, the return of industrial companies poses in an acute way the question of the future of the diggers in all mining regions of the DRC.**

59 Human Rights Watch (2005). Op. cit.

60 Shamika Resources. Available at <http://www.shamikaresources.com/overview.cfm>

61 Africa Mining Intelligence, 29th April 2009.

- Like Katanga, Kivu is also subject to major manoeuvring by international groups dominating the mining sector. An overall view requires research into the delivery of rights by mining authorities.

2.3 Armed groups and territorial control of the mines

- Armed groups are crucial actors in the economic system of mining, as has been illustrated by the many UN enquiries and also those of NGOs working for peace and respect for human rights.⁶² The remarkable cartographic work by IPIS located the positions of the different armed groups during the period from September 2007 to January 2008. Since then, major changes took place after the fighting during the summer and autumn of 2008 and above all after the military events of the winter of 2009. These included the arrest of Laurent Nkunda in January, followed by the integration of the CNDP troops into the FARDC and the joint offensive by Rwanda and the DRC against FDLR soldiers. After fleeing into the depths of the forest, the FDLR are now ready to make a come-back, which could have disastrous consequences for the village people.
- The FDLR⁶³ are present in North and South Kivu, with a strong concentration of their troops in the “Little North”, where their headquarters are based in Kalonge. They are mainly located in the forest areas, particularly along the edges of the national parks and nature reserves, such as Virunga, Kahuzi Biega and Tayna. The forest is an especially important a refuge for that section of the FDLR made up of old Hutu militias *interahamwe*, who live in fear of being judged and condemned as perpetrators of genocide if they return to Rwanda. According to the expert group’s preliminary report, they make several million dollars, through their direct control of many production sites. (75% of their income comes from trade in mineral ores.) They control most of the artisanal sites of South Kivu except Kamituga (cassiterite, gold and coltan), gold deposits to the west of Lubero and cassiterite in the Walikale area in North Kivu, the Unde mine in the “Great North” and other sites in the Kahuzi-Biega Park on the border between the two Kivus. The 3rd battalion of the FDLR-FOCA is present in the Kilembwe area and receives a share of the gold and cassiterite.
- The CNDP has established itself around Masisi and in the Rutshuru region where the “Congolese Tutsi” are the most numerous. These are areas devoted to agro-pastoral activities with few mining sites. In 2007 and 2008, when the CNDP, fresh from its military successes, was strengthening its positions, it organised a parallel taxation system for its own benefit at the border posts of Ishasa and Bunangana. Like all the other armed bands, it levied its taxes at all the road barriers erected on the main roads.⁶⁴ The CNDP has also been present at some coltan sites and at the Lueshe mine. According to the UN, only 15% of its income comes from mining activities.
- The Mai Mai and other local militias adopted an old self-defence tradition of rural communities. Under the leadership of a Nande, General Sikuli Lafontaine, PARECO brought together several “indigenous” ethnic groups, particularly the Hunde, Nyanga and Temba, already allied during the interethnic massacres, in which they fought against the Banyawarandas, joined by the Havus and a few Hutus. The December 2008 UN experts’ report considered them to be the third largest armed group. Quite attached to their independence but at the same time easily manipulated by political leaders, their alliances changed constantly; the only point all the Mai Mai groups had in common was a visceral rejection of “outsiders”, especially the Tutsi. Disputes over land, rather than mining, were at the centre of the fighting by the Pareco, who denounced what seemed to them to be the creation of a “Tutsiland” and opposed the return of

⁶² See map of Armed Groups in Kivu.

⁶³ See map of FDLR locations.

⁶⁴ S.S. Andrew (2008). *Laurent Nkunda et la rébellion du Kivu. Au cœur de la guerre congolaise* [Laurent Nkunda and the Kivu Rebellion – at the heart of the Congolese war]. Paris: Karthala.

Tutsi refugees. In Shabunda and in the extreme north of Kahale, the PARECO deployed units at the mining sites. The Mai Mai, like all the armed groups, took part in the general system of extortion in exchange for “protecting” mines situated in areas under their control, especially in the “Little North” and in exacting taxes at the road barriers set up along the main routes.

- The FARDC: In the Kivus and Ituri the Congolese army has found an ideal opportunity as predators in the mining economy. In the mines and along the roads, soldiers levy illegal taxes, said to be destined to the military hierarchy in Bukavu. Several brigades join in and profit from the **militarisation of artisanal mining activity**:⁶⁵
 - The 18th integrated Brigade controls the landing strip in Lulingu in South Kivu used exporting minerals from Kahuzi Biega.
 - The 122nd Brigade controls Kamituga and the road between Mwenga and Kitutu in South Kivu.
 - Soldiers from the 12th battalion of the FARDC exploit gold from the Mufa mine) and cassiterite from Karhembu in Tubimbi in the Walungu territory (South Kivu).
 - The 11th integrated Brigade controls Shabunda, the town from where exports left for Bukavu.
 - The 6th Brigade from South Kivu controls Mobale Mine.
 - The 85th Brigade, commanded by Colonel Samy Matumo, controlled the area around Walikale and in particular the coltan mine in Bisié, at two days journey on foot from Walikale, which produced 70% of the cassiterite reaching the trading houses in Goma. This brigade was replaced by elements of the CNDP after the Congolese-Rwandan operation of early 2009.
 - Soldiers have been involved in the exploitation of cassiterite in Lemera in South Kivu.
 - A brigade was deployed in Mongbwalu in Ituri.
 - The FARDC is also present at mining sites in Kamole and Nyamkinga on the Island of Idjwi on Lake Kivu.

The mining sites attracted and still attract the greed of the armed groups. Ituri provides a good illustration of the fight for gold between armed groups: the Ituri militia (UPC, FNI, and FAPC) fought each other for the control of the gold deposits. The FAPC and the FNI clashed over the control of Djalasiga. The UPC held Mongbwalu up until 2003 and were then replaced by the FNI, who were succeeded by the first brigade of the FARDC to be deployed in Ituri. At the time they dominated, the FNI imposed an entry fee at the mine on the diggers and began to exchange arms for gold, blemishing the UN peacekeepers’ reputation. It should be recalled that in their first deployment in Ituri in 2005, the Congolese Army immediately established itself at the mining sites of Mongbwalu and Bambu, from where they drove off the local militia by force, with no regard for the local civilian population.⁶⁶ Clashes between FDLR and FARDC also occurred in 2005 over the control of Mwenga in South Kivu.

It should, however, be noted that the armed forces present did not carry on a **permanent mining war**. They could make agreements to divide the profits from a production site and seek a partial economic balance. What happened on the ground was in fact much more complicated than might be expected from hostility between rival groups. Before “Operation Kimia II”, the Shabunda area was peacefully “shared” between the 4th Battalion of the FDLR-FOCA, the Mai Mai and the FARDC. The mining production zone was under the control of the FDLR, while the local airports were under the FARDC’s control, which meant the two sides had to cooperate. The Numbi mine in the north of South Kivu that produces cassiterite, coltan, manganese and tourmaline, was “shared”. This large mining area was a source of income for the RCD and for Rwanda during the military occupation.⁶⁷ IPIS reported at the time of its enquiry in February 2007 that

⁶⁵ Global Witness (2009). *Face à un fusil, que peut-on faire ? La guerre et la militarisation du secteur minier dans l’Est du Congo* [What can you do in the face of a rifle? War and militarisation of the mining sector in eastern Congo]. London: Global Witness.

⁶⁶ Justice Plus (2007). *Ituri: l’armée n’a pas fait la différence*.

⁶⁷ The Report of the Group of Experts of 12th April 2001 mentioned the fact that the Patriotic Rwandan Army was using 1,500 prisoners to exploit coltan in the area around Numbi.

Numbi was controlled by the 14th integrated Brigade. Military units from PARECO and the FDLR were stationed in the villages around the mining area, each one levying a percentage of the production. The CNDP, a new arrival and common enemy, also no doubt profited from the mining exploitation. The owners of the mining sites are mostly Congolese Tutsi, the main operator being – like in Mumba – Edouard Mwangachuchu, one of the strongest supporters of the CNDP. **Therefore, arrangements exist for embezzling mining resources, arrangements that transcend military outcomes, and whose main beneficiaries are the “big men” – military or civilian.** This logic of dividing up the economic spoils works particularly among the three forces mentioned (FARDC, Mai Mai and FDLR), although such arrangements are always unstable.

- **The armed groups and the FARDC exercise tight territorial control over the main mining sites. Only secondary mining sites escape from their grip. This territorial hold is both their strength and their weakness.⁶⁸ Still, this is not a “blood diamonds” scenario, where the local people are reduced to slavery in order to dig in the mines.**
- **The FARDC’s substantial involvement in the mining trade made the army a “self-generating revenue agency”, whose highly-placed beneficiaries of this racket carefully remain in the shadows. This involvement has generated a veritable mafia within the high-ranking military.**
- **The FARDC’s substantial involvement in the mining trade is a factor slowing down their “integration” and therefore the reform of the army (since they prefer to stay where they are).**
- **Certain troop movements after the Congolese-Rwandan operation can be interpreted as changes in military control over mining sites, such as the CNDP in Bisié and the aborted shift of the CNDP towards Shabunda to take over the mining sites).**

2.4 An organised and hierarchical work force

Exploitation techniques

Numerous studies have described the organisation of work in the mines, ranging from the Pole Institute in 2001 up to the detailed analysis of the Bisié mine in 2008. The mines function somewhat differently, according to whether it is a quarry in an alluvial area, an open-cast mine or an underground mine. The tools are invariably rudimentary, picks and shovels, hammers to break up the blocks of ore or to chisel the rock, basins and jerry cans, punctured for gold-washing. Mining galleries can be several dozen metres deep, with or without props, depending on the nature of the rock. The work is exhausting and dangerous. Several films provide a good illustration of this, such as *L’or noyé de Kamituga* [The drowned gold of Kamituga]⁶⁹ or the recent *Katanga Business*.⁷⁰

Artisanal gold-mining techniques

Two types of gold are mined in Mongbwalu: dry gold (90% to 95% purity) and amalgam gold (82-90% purity). Before the Adidi deposit was closed, 35-40 kg of gold a month were produced there (25% dry gold and 75% amalgam gold). Several mining methods are used:

- Underground in three old industrial mines (Adidi, Senzere and Makala). The largest was in Adidi, 4 km from Mongbwalu, with about 2,000 diggers before its closure in 2007, and 5,000 workers total, including porters, pulverisers, etc.
- Pit mining: 365 in Concession 40 and 33 near Mongbwalu
- Alluvial mining: dredgers (some traders have obtained them) or changing the course of streams

68 See Chapter 3.

69 Yvon Lammens and Colette Braeckman (2007). Op. cit.

70 *Katanga Business* (2009), film by Thierry Michel.

There are two systems of gold exploitation in Kamituga: open-pit mining, in which mud is filtered into receiving basins by the gold-washers; underground exploitation that involves blasting with dynamite and retaining galleries propped up with wooden poles – resulting in many work accidents. There are several systems of production/commercialisation: gold-washers sell their product to the owners of the *outra* or they are employed by the *doyen* or “guard” or they work directly for the trading agencies.

As a general rule, the exploitation is strictly manual, with some help from motorised pumps to speed up the flow. Only one company, Hizi International, exploits its coltan mine with machinery to wash the ore, which represents a technological advance.

The organisation of production units

The organisational structure of mine exploitation includes the “owner” of the mine or the tenant of the land on which it is situated. A manager, paid by the owner according to a percentage of the production that is defined by contract supervises the work and collects the ore. Team leaders organise the work of a dozen people. “Diggers”, are different from “shovelers”. The workplace is under the surveillance of “policemen” responsible for making sure that the miners do not steal any ore. In areas controlled by the armed forces, they often carry out this task themselves. The porters form a separate category. A detailed study, like that by Nicholas Garrett,⁷¹ shows that there exists a hierarchy among the diggers between a small minority of card-holders and the others. The rock crushers are at the bottom of the labour hierarchy.

The question of how many diggers there are⁷² remains unclear, since only a small number of them are complying with the Mining Code, and have purchased their digger’s card. They sometimes form cooperatives which are not without problems. Organising a cooperative is often beyond the abilities of the diggers, many of whom are young school leavers, with neither social capital nor legitimacy. Since they must adhere to certain norms, particularly for accounting, cooperatives are most often placed under the responsibility more educated people or local notables. For example, in a document intended to seek funding for artisanal miners and ‘women involved in forest-based nutritional activities’ the president manager of the Kakelo/Walikale Mining Cooperative is none other than the owner of the Kakelo “hill”. Experience shows that good intentions do not prevent the abuse of positions of president or treasurer. Neither does the setting up of cooperatives escape from manipulation, as the Bisié case demonstrated: both of the rival companies pressed for creating miners’ cooperatives. GMB was behind the Coopérative Minière Mpama Bisiye (COMIMPA) and half the members of this cooperative, notably Alexis Makabuza, were shareholders in the Bangandula Group. MPC reacted by encouraging the creation of a rival cooperative, the Coopérative des Creuseurs Artisanaux de Bisié (COCABI). In 2007, at the end of negotiations among those concerned, a compromise was reached protecting the MPC’s commercial interests, while letting COMIMPA intervene in the production phase. In a country where associations spring up like mushrooms, the diggers seem poorly organised. Some of them work in small groups outside the large mining sites, independently, but run the risk of their production being stolen. Most of them do their work under the control of team leaders, sometimes backed up by armed men. In social environments where social structure has broken down and where life is a matter of improvisation, individualism prevails.

- Production techniques are rudimentary and dangerous and could be improved with modest investment.
- The weakness of the diggers’ collective organisation points to the need for studies on the sociology of work, which are sorely lacking at present.

71 N. Garrett (2008). Op. cit.

72 See Chapter 5.

Photos of artisanal exploitation techniques



Chapter 3: Commercial Trading Systems

Summary:

Since 2000 there have been two commercial trading systems of “conflict minerals”: informal trade through trading houses and “military commercialism”. Despite the departure of foreign troops on Congolese soil, military commercialism has not completely disappeared. The FARDC and various armed groups have taken up this form of trading for themselves, in a less organised way that is very “decentralised” and parasitical. Mineral trading in the DRC is based on a multimodal system of communications using portage, roads and aircraft. The Kivus and Ituri are not only production areas, they are also export routes for the minerals that come from deep within the Congo in Orientale Province, Maniema, and North Katanga. The towns on or near the border where the trading houses have been set up in Goma, Bukavu, Uvira, Beni, Butembo and Bunia fill an essential place in the commercial trading system. These towns form a bridge between an informal upstream and a downstream linked to the circuits of the globalised economy.

This trade constitutes an oligopolistic system that benefits an assortment of officials, soldiers, militia leaders, traders, transporters and foreign intermediaries, which the UN and NGOs have tried to identify with only partial success.

Described as one, if not *the* only motive, behind the wars in eastern DRC, the trade in minerals has been and still is a focus of international attention. While the reports of the Group of Experts, of IPIS, Global Witness, Human Rights Watch, etc., are essentially aimed at denouncing the economic basis for the conflicts in the eastern DRC and unmasking the relations between actors in the international raw materials market and the perpetrators of violence in the DRC, the research literature attempts to decipher the mechanisms of international trade and its impact, particularly as it operates in the DRC. Thus this twofold literature moves back and forth between the minerals trade seen as trafficking (the UN perspective) and this trade seen as one of the manifestations of the informal economy that dominates the DRC and challenges even the very categories of legality and illegality. As this trade is largely informal, some writers judge that it is more “non-legal” than “illegal”.⁷³ It should be noted that of all the minerals traded commercially in the eastern DRC, coltan has been best documented, for the reason cited above. Given the strength of the market after the crisis in 2008, the gold is now attracting most attention.

In addition to the reports by the Group of Experts, the following documents are especially useful for the analysis of the minerals trade in eastern DRC:

- **Analysis of trade:** publications of the Pole Institute (Mined resources, formal and informal cross-border trade in eastern DRC), of Resource Consulting Services (*Trading conflict for development*), of DfID (Trading for Peace), of INICA, (*L’Economie minière au Kivu et ses implications régionales*) and GRAMA, (*La route commerciale du coltan congolais*);
- **Analysis of relations between actors in the conflict and international trade:** all Human Rights Watch publications, (*The Curse of Gold*), those of IPIS (particularly *Cartographie des motivations derrière les conflits*), and of Global Witness (*Under-mining peace: tin – the explosive trade in cassiterite in eastern DRC*).

⁷³ On the relevance of the concepts of legality and illegality, as applied to the trade in minerals, see particularly *Les ressources minées* (Pole Institute) and *Trading conflict for development* (Resources Consulting Services). These two studies challenge the relevance of the notion of illegal exploitation, since in the DRC the informal economy is the way the majority of people survive and for them “legality” is synonymous to theft by the state.

Various trading systems are used for trading mineral ores in the eastern DRC. They have not so much emerged successively as they have been superimposed one on top of the other. The trading system based on artisanal miners coexisted with official industrial commercialisation during the colonial period and the Mobutu regime. As indicated in Chapter 1, commercial trading based on formal industrial companies (whether national or foreign) disappeared during the 1990s, swept away by the general disintegration at the end of the Mobutu regime. This kind of trade has not re-emerged, since the two large companies that returned to Kivu (Banro) and to Ituri (AngoGold Ashanti) are still in the study phase and do not trade in artisanal production (confirmed by the UN Group of Experts). From the time Mobutuism collapsed and the AFDL and RCD appeared, the gap left by the industrial firms has been filled by largely informal trade of the *comptoirs* and by “military commercialism”. These two commercial trading systems reveal the culpable relationships between business, politics and violence as well as the criminalisation of the minerals trade in this part of the world.

3.1 Two commercial systems

“Military commercialism”⁷⁴

“Military commercialism” defines the system of exploitation implemented by Uganda and Rwanda during the two wars (1996-97 and 1998-2002). It was based on the **more or less direct involvement** of the army in the commercial minerals trade. Described in detail by the UN Group of Experts and several NGOs, military commercialism refers to the use of the army in order to generate direct profits for the political-military elites of Kampala and Kigali. The involvement of Ugandan and Rwandan army officers in the natural resources trade has been demonstrated in several reports. An aircraft accident in 1998 in Ituri exposed the presence together of a UPDF general, Israeli and Indo-pakistani businessmen and family members of James Kazini, Commander-in-chief of the Ugandan army in the DRC; they were carrying US\$1.2 million for buying gold.⁷⁵ In addition to this accidental revelation, the mineral exports from Uganda (particularly of gold) and from Rwanda (of coltan) increased significantly after their military intervention in the DRC, considered to be the result of smuggled exports organised by the two countries’ armies. Similarly, according to the Group of Experts, Rwanda and Uganda respectively exported US\$4.5 million and US\$6.2 million in diamonds to Belgium between 1998 and 2001, although neither country has any diamond deposits. After the UPDF’s intervention in Ituri, gold exports from Uganda rose appreciably from 225 kg in 1994 to 6,819 kg in 1997. It should be noted that the Porter Commission challenged the idea that gold production from the DRC had been seized, arguing that the variations in the export figures were due to an initial under-estimation of gold production in Uganda in the official statistics, because of the prevalence of artisanal mining; (90% of artisanal mining takes place outside Uganda’s legal framework).

This military commercialism took different forms in Kampala and in Kigali

The Rwandan army organised its natural resources grabbing in a highly rational way, while the less disciplined Ugandan army quickly fell into the trap of this pillage, its officers taking part straight away as both “public” and private operators. In Rwanda, from the beginning of the first war, Congolese mineral imports were controlled by the “Congo desk”, an offshoot of the intelligence services. They are said to have registered US\$64 million of coltan in 2000 and US\$44 million in 2001 (according to IPIS) and to have reinvested between 60% and 70% of the profits in financing the war effort. The grabbing of natural resources was directly organised by the Rwandan army: during the coltan boom (from November 1999 to March 2001), direct flights were made from the production sites in South Kivu to Kigali. In addition, Rwandan trading companies often included high-ranking military officers in their staff (Rwanda Metals, Prime Holdings, Caldar Holdings, TriStar, Rwanda Investment Group). According to the Expert Group, the coltan boom, which lasted only 18 months, brought in US\$250 million to the Rwandan army.

74 Expression invented by IPIS.

75 G. Prunier (1999). ‘L’Ouganda et les guerres congolaises’, *Politique africaine*, No. 75, pp. 43–62.

Salim Saleh, the Ugandan President's brother-in-law, and James Kazini, the general in charge of the UPDF's campaign in the DRC, set up several companies in order to channel Congolese mineral resources towards Kampala; these included Caleb International, a trading company in Kisangani, and an airline, Air Alexander. As Commander-in-chief, James Kazini sent orders to the occupying units of the UPDF to give assistance to the Victoria Company. This company, set up in 1999 and managed by Salim Saleh, his wife and Muhoozi Kainerugabe (one of Museveni's sons), 'enjoyed the monopoly of coffee, diamond and gold exports in the area under his command'.⁷⁶ After breaking with Laurent-Désiré Kabila, the Ugandan army, which was present in the Orientale Province, rapidly took over positions in the gold-bearing areas of the north-east (Durba in the Haut Uélé district) and Mongbwalu (in the Ituri district) and laid its hands on about one tonne of gold taken from OKIMO's concessions. The Ugandan army's seizing control of the public company OKIMO's concessions resulted in intimidation and violence towards the Congolese staff of the company who did not want to collaborate.

This military commercialism was also carried on through the intermediary of the Congolese armed movements affiliated to Kigali and Kampala, who took over mining concessions and trading rights. Tibasima, in Ituri, one of the leaders of the RCD-ML, granted the Trinity Investment company a tax exemption covering all its trading activities in the area controlled by this movement – including the transport of gold, coffee and wood from Orientale province to Uganda. During the coltan boom, RCD-Goma granted a monopoly of export taxes on coltan to the Société Minière des Grands Lacs (SOMIGL 2000-2001), and later to the Congo Holding Development Company (CHDC), managed by Gertude Kitembo. These two companies were both **commercial arms of the RCD-Goma**.⁷⁷

This military commercialism was based on the domination of the Ugandan and Rwandan armies and of their Congolese allies. It follows from this that their performance depended on the territorial control of the armies. The attempt to control the production of the mining sites in South Kivu through the CHDC, which in exchange for military protection by the RCD-Goma was supposed to hand over half of its profits to Kigali, failed. The RCD-Goma controlled only the main roads from Bukavu but never managed to exert any real control over sites far away from urban centres and frequently under attack by the FDLR and the Mai Mai. Military commercialism was thus limited by the degree of territorial control exercised by the armies on the ground.

The Ugandan and Rwandan governments rejected the accusation of military commercialism levelled at them by the Group of Experts.⁷⁸ They always attributed this phenomenon to isolated acts perpetrated by misguided soldiers. President Kagame accepted that some of the military had engaged in illegal exploitation of natural resources, but said they had been punished. In Uganda, the Porter Commission, set up following the Group of Experts' accusations, exonerated the government of any official involvement in the illegal exploitation of Congolese resources, but nevertheless recommended supplementary enquiries concerning General Kazini and the President's brother, Salim Saleh. The Ugandan government recounted anecdotes to the Group of Experts that gifts in kind (mineral ore) had been given to Ugandan soldiers who had married Congolese women. Military commercialism came to an end with the official withdrawal of the Rwandan and Ugandan armies in 2003), but the commercial relations established during the period 1996-2003 between the Rwandan and Ugandan political-military elites and big Congolese traders die hard. As one of the panel members remarked, 'When the spider leaves, the web remains!' (Mervin Holt). It is easy to understand that the recent Congolese-Rwandan offensive gave rise to strong suspicions that Rwandan military commercialism has returned to North Kivu.

76 T. Raeymaekers (2003). 'Network war: An introduction to Congo's privatised war economy', IPIS.

77 Idem.

78 Group of Experts' report dated 16th January 2001.

- In spite of the end of the foreign military presence on Congolese territory, military commercialism has not completely disappeared: the FARDC and various armed groups have taken up military commercialism on their own account. It continues, then, in a much less organised form, very “decentralised” and parasitic.⁷⁹

The system of *comptoirs* (trading houses)

Informal artisanal production in the DRC gives rise to trade that is just as informal, meaning that it functions outside administrative and state regulations. This informal trade is a marketing funnel system run by a chain of traders stretching from the mining sites to the export centres where the main trading houses are located in Bukavu, Bunia, Butembo, Goma and Uvira. This chain begins with the small traders operating near the mines selling to other traders, who themselves re-sell to “big traders” at the *comptoirs*, the only ones authorised to export, at least in theory. This commercial chain is extended into the capitals of neighbouring countries such as Bujumbura, Kigali and Kampala by officially registered trading companies that are the necessary intermediaries for international trade to buyers in Europe, Asia and the United States.

The “big traders” in the DRC, those with the largest volume of business, advance the necessary funds to intermediate traders to buy mineral ores. In some mining sites, trade is dispersed among a large number of sellers (250 in Mongwalu!), whereas at other sites, trading is handled by a few persons in a dominant position. This marketing funnel commercial chain is dominated by a handful of big traders who give the orders: they have the money needed to arrange transport and purchase the minerals. The traders’ activity is largely dependent on the prefinancing provided by the exporters. There are, therefore, many small sellers, many traders, but only a few exporters. Panju, Groupe Olive, MDM, Etablissement Namukaya, World Mining Company and Etablissement Muyeye are the six main exporters dominating the South Kivu market. The principal gold traders in Bukavu are the Namukaya (Congocon) and Panju firms, which sell large amounts of gold and cassiterite from Shabunda and Kamituga. (Between April 2005 and February 2006 Namukaya declared 109.11 kg of gold exports and Panju 549.95 kg.) There are some sixty traders in Butembo, of whom a dozen enjoy a dominant position. As a result of this position, the exporters are able to influence prices in various ways, through stocking, control of transport, etc. This commercial chain is not always followed of course, since some buyers try to bypass the intermediate traders and even the *comptoirs*. In Mongwalu, for example, buyers come directly from Butembo or from Uganda.

While the production phase is totally informal, the commercial trading phase is only partly so. Of the seven diamond *comptoirs* in Butembo, only one has a licence. The traders are rarely registered – of the 60 traders in Butembo, only one third are declared – whereas the trading houses are more frequently operating legally. Whether registered or not, these commercial operators rarely respect the mining code and rarely declare their total sales.⁸⁰ Some of the mineral ores cross the border through smuggling – particularly gold, which is easily carried – but those that are “voluminous” and require heavy transport (aircraft or lorries) are registered by different administrative services, sometimes right at the production sites. In the export centres, a degree of formalisation of trade exists in the form of registration of quantities and the levying of taxes by various offices. Coltan from Walikale, for example, follows a relatively formal commercial circuit to the extent that the quantities of coltan sent to Goma by air are “registered” by various administrative services and are taxed. **This administrative formalisation of trade** is obviously not complete, since some coltan is smuggled out and because, as is shown in Chapter 4, there is a widespread practice of under-recording of quantities. Formalisation is more generalised in the regional export centres. Trading companies are often – though not systematically – officially registered by the authorities and they declare at least part of their sales, as can be seen from OFIDA, CEEC and OCC records.

⁷⁹ On this point, see Chapter 3.3, ‘The key actors’.

⁸⁰ See Chapter 4.

The formalisation of sales takes a decisive step in the capitals of the other regional countries, where buyers operate in a context of state governance that is stricter than in the eastern DRC. This means official companies are operating in conformity with the commercial legislation in force, maintain accounts, pay taxes and keep records of their sales and purchases. As has been shown by research of the Group of Experts and IPIS, these trading companies have contracts drawn up in due form with the traders based in the countries where the raw materials are processed or with totally official industrial processing companies.⁸¹ At this point, the trading of Congolese minerals largely leaves the informal sector and becomes part of the world market. This integration into formal trade takes place in the transit countries (Burundi, Rwanda and Uganda), even if smuggling still goes on at the eastern borders of these states and if the concealment of the country of the minerals' origin is still current practice.

Diagram of the gradual formalisation of trade in mining products⁸²

Sellers at the sites
Traders
Congolese exporters
Exporters in neighbouring countries

- The upstream part of the commercial trade chain is relatively hidden but it becomes more open as it moves downstream.

3.2 The geo-economy of trade

The commercial chain shapes the commercial geography of the region. Intermediate traders – about 10 Indian businessmen and 30 local traders in this “exit” for Watsa gold in Ariwara)⁸³ – are located in the secondary commercial centres while the “big traders” – a handful in each town – manage their business from Congolese export centres. The commercial routes lead from the principal sites to the two main ports in Mombasa and Dar-es-Salaam.

Commercial flows to the East⁸⁴

All the mineral ores extracted from the areas under consideration in this study follow routes by road or air to the East. There are seven main commercial routes leaving from Ituri and the Kivus towards East Africa that join the two corridors leading to the Indian Ocean – one to Mombasa and the other to Dar-es-Salaam:

- The route Beni-Butembo-Kasese-Kasindi-Kampala-Nairobi-Mombasa, the best land route (wide tarred road);
- The route Goma-Gisenyi-Kigali-Dodoma-Dar es Salaam;
- The route Uvira-Bujumbura-Dodoma-Dar es Salaam;
- The route Uvira-Fizi-Baraka-Kigoma: a more difficult route which involves a lake crossing, but connects to the rail and road network in Tanzania;
- The route Bukavu-Cyangugu-Bujumbura-Dodoma-Dar es Salaam;
- The route Bunia-Kampala-Nairobi-Mombasa: air route and road transport;
- The route Aru-Arua-Kampala-Nairobi-Mombasa: land route.

Besides these international commercial routes, there are also more modest trading routes from the border towns of Ariwara and Mahagi in Ituri into Uganda. While departure points in the DRC are numerous, cargo by land always ends up on two trade routes: the one leading from Kampala to Mombasa (tarred road throughout) and the other that leads from the west of Tanzania and from

81 To learn the identity of the final buyers, see Chapter 3.3 The final buyers

82 The degree of clarity indicates the degree of formalisation of the commercial actors.

83 Ariwara is a small commercial town in Ituri, to the north of Aru, near the Ugandan border.

84 See the map: Access corridors in the eastern DRC

Burundi and Rwanda to Dar-es-Salaam (less negotiable than the first, but with the advantage of being both a road and a rail route).

Minerals follow the same trading routes as other merchandise and are part of cross-border trade. Political and especially economic considerations accord a certain degree of specialisation in these trading routes. The route from Uvira to Bujumbura is best known for gold exports and the route from Bukavu to Cyangugu for gold, cassiterite and coltan. At the beginning of the 1990s, Burundi was the most important transit country for Congolese gold, but after the regional embargo against the Buyoya regime and the creation of a tax exemption system for gold in Uganda, Uganda became the main transit country. Similarly, Tanzania has played a more important role in recent years for diamond exports (up from US\$115,392 in 2000 to US\$16,015,349 in 2004, without any particular explanation), which illustrates the vitality and development of trading routes in East Africa.

It is revealing from this angle that in its project on 'the DRC's relations with the countries of Central Africa and the Great Lakes region', the CEEC proposes purely and simply a diversion of the cassiterite traffic from the East to the West by river through Kisangani, arguing that this would cost less (!) than air freight through the East and avoid the loss of commercial opportunities for Congolese businessmen.

- **As the whole mineral trade from the Kivus and Ituri is oriented towards the East, diverting it towards the West and Kinshasa would be an economic, geo-strategic and nationalist challenge.**
- **Multiplicity of trading routes in the DRC, in spite of the poor infrastructure**

The contrast between the disappearance of transport infrastructure in the DRC and the multiplicity of commercial export routes is striking. Studied in detail in *Researching natural resources and trade flows in the Great Lakes Region*, the routes for taking gold out of Mongbwalu, an area long without any road access, provide a typical example of this situation:

- Mongbwalu-Bunia-Kampala (air route)
- Mongbwalu-Kwandroma-Mahagi-Kampala (land route)
- Mongbwalu-Watsa-Ariwara-Kampala (land route)
- Mongbwalu-Bunia-Beni-Butembo-Kampala (air route)

Human portage is often the primary means of carrying mineral ores. Bicycles and *tchukudu*⁸⁵ are used wherever there is a viable path. The Bisié site, for example, is isolated in the forest with no road to link it to the Goma-Kisangani route, itself barely usable. The path most used to reach the route stretches 45 km between the village of Manoiré in the middle of the mining zone and Ndjingala. The ore is carried on the backs of porters in 50 kg sacks and the trip takes 16 hours. Once it arrives in Ndjingala, the ore is taken by lorry to the improvised landing strip on a section of the tarred road in Kilambo, where small cargo aircraft carry 2 tonnes per flight.⁸⁶

85% of the gold that reaches Bunia leaves by air for Kampala while the remaining 15% goes to Butembo.⁸⁷ From Bunia, the airport used for exporting gold from Mongbwalu, the gold follows one of two routes, an indirect one to Butembo in North Kivu, or a direct route to Kampala. Both routes lead to the same destination, Kampala. Other export centres on the Uganda/Ituri border are more direct (Ariwara, Aru, Mahagi). Ariwara is a market for gold heading towards Uganda and handles an estimated quantity of 5 kg a week. Despite the deterioration or even the absence of roads, mineral ores cover great distances. According to the CEEC's branch in Butembo, the

85 A large home-made wooden scooter that can carry loads of over 100 kg.

86 See Map: Transport of cassiterite from Bisié to Goma.

87 See Map: Production and commercial trading of gold in Ituri.

gold traded in that town comes mainly from Orientale Province (and from Ituri in particular), from North Kivu (Lubero, Beni, Walikale), from South Kivu, but also from Katanga and from Equatorial Province. Diamonds from Kisangani, Bafwasende, Mambasa and even from the Park of the Garamba bordering Sudan come to Butembo. Another example: gold and cassiterite from Kilembwe take the road to Fizi, then to Baraka, and arrive in Uvira for export.

Air transport plays a major role in the domestic minerals trade, since some sites are completely isolated.⁸⁸ Butembo is an important minerals market both because of the deposits nearby and its “airport infrastructure” which enables its trading houses to move the production out from Upper and Lower Uélé. The ore from Namoya in Maniema reaches Bukavu by air, since there are no longer any usable roads. The same applies to ore from Kamituga, since the RN2 to Bukavu is in a terrible state, and also to ore from the Kahuzi Biega Park, a large part of which is taken out via the Lulingu landing strip. At the height of the coltan boom, there were around 7 to 10 flights a day between Mubi and Goma. In addition to the international connections from the border towns in Rwanda (Bukavu and Goma) or near the Ugandan border (Bunia, Beni and Butembo), there are direct “international flights” from deep inside Congolese territory – for example between Isiro and Entebbe for the export of minerals and diamonds.

- Despite their difficulty, cost and even dangers, the various domestic trade routes provide a much deeper and denser network for commerce than might be imagined.
- The mineral trade in the DRC depends on a multimodal transport system combining portage, roads and aircraft.
- The Kivus and Ituri are not only production areas, they are also exit routes for minerals that come from deep within Congolese territory in Orientale Province, Maniema and North Katanga.
- Border towns or those close to the borders, where the *comptoirs* are located, fulfil an important role in the system of commercial trading. These towns are a bridge between the informal upstream and the downstream connected to the circuits of the globalised economy.

The final destinations⁸⁹

A study of several records of commercial exchanges (EUROTRACE, COMESA, TRADEMAP, EUROSTAT) indicates that in 2005-2006, companies importing minerals from the DRC were located in Europe, North America, the Middle East and the Far East:

- Belgium (diamonds, cassiterite, wolframite, cobalt)
- Germany (coltan)
- United Kingdom (cassiterite, cobalt, wolframite)
- Dubai/UAE (gold)
- China (coltan)
- Malaysia (cassiterite)
- Israel (diamonds)
- Netherlands
- Thailand (coltan)

Recent research by the Group of Experts expands this list.⁹⁰ Usually through Rwanda, cassiterite, wolframite and coltan are sent to Austria, Belgium, Canada, China, India, Malaysia, Thailand, South Africa, Switzerland, Netherlands, Russia, the UAE and the United Kingdom. Gold goes

88 See map: Transport of mineral ore by air.

89 See map: Countries importing minerals from the eastern DRC.

90 See December 2008 report.

primarily to the UAE and to Europe (Belgium and Switzerland), passing mainly through Uganda and Burundi.⁹¹ The commercial chains highlighted are the following:

- *Export of coltan:*

The Kazakh connection: Rwanda Metals – Raremet, Finconcord and Finmining (off-shore companies owned by a Swiss businessman, Chris Huber)⁹²–Ulba Mechanical Works (processing works in Kazakhstan);

The Russian connection: Pan African Business Group (Goma trading house) – Eurosib Logistics (St. Petersburg-based company) – Novosibirsk Integrated Tin Works;

The German connection: Rwanda Metals, Grands Lacs Metals – A&M Minerals and Metals (Trading company in Great Britain) – H.C. Starck (Germany, processing works, Group Bayer AG, market leader);

The Belgian connection: Hua Ying, Gemico, Kivu Metal, WMC (Goma trading houses) – Traxys (Belgium);

The Belgian-Asian connection: Munsad, Amur, Clepad (agencies) – Trademet – re-exportations to India, China and Thailand;

The British connection: Socomi and Kotecha (based in Bukavu) – Afrimex – Thailand Smelting and Refining Corporation (belonging to the British company Amalgamated Metal Corporation);

The American connection: Eagles Wing Resources (Rwanda) – Cabott (USA), Trinitech (USA).

- *Export of gold:*

The Emirates connection: Machanga and UCI (Burundi and Uganda) – Emirates Gold (Dubai);

The Swiss connection: Machanga and UCI (Burundi and Uganda) – Metalor (Switzerland) (subsidiary officially suspended after UN sanctions);

The Belgian connection: Etablissements Namukaya (Bukavu) – Machanga (Burundi) – (Belgium).

It should be noted that the importing companies are either companies trading in metals or metallurgical companies directly involved in processing.

In their October 2002 report, the Group of Experts accused 85 companies of having violated OECD principles concerning the involvement of multinational firms in conflict zones. Most of these companies were European.⁹³ The links in the UN reports said to exist between some foreign economic operators and arms sales (notably by the Kazakh connection with the appearance of Victor Bout's transport company) corroborated the accusation of actively participating in the conflict that was directed to certain foreign business groups.

91 For example, Burundi exported US\$ 55 million in gold in 2005 to the UAE, Switzerland and Belgium, according to COMESA.

92 Chris Huber, with his Russian associates, was the pivot of the Kazakh coltan network. After his Swiss company Finconcord was condemned for tax evasion in Kazakhstan, he set up two others registered in St. Kitts.

93 UN Panel of Experts Report (October 2002). Annex III, p.7.

3.3 The key actors

Armed groups and security forces

The role of armed groups in the minerals traffic has been and continues to be a subject of attention by the United Nations, which created a Group of Experts specially dedicated to this task. While the involvement of armed groups in the minerals trade has been known and documented from early on, the involvement of the security forces (FARDC, PNC) has begun to attract attention, as is indicated in the recent report by Global Witness.⁹⁴

Over the years, the Expert Group has accumulated proof of how armed groups have been financed by the trade in minerals and it believes that no armed group has stood outside this system.

According to the December 2008 Group of Experts' report, the CNDP was in contact with Tutsi businessmen active in the minerals trade (such as Tribert Rujugiro Ayabatwa, Senator Mwangachuchu or the Makabusa brothers). The CNDP received taxes of US\$700,000 between September 2007 and September 2008 at the Bunagana customs posts, as well as around the coltan mine in Bibatama, exploited by two *comptoires* whose activities it had authorised (MUNSAD and MH1). According to the UN, about 15% of the CNDP's financial resources came from the minerals trade since its financial base was quite varied, including taxation at the customs posts in Bunagana and Ishasha.

As well as being a mineral ore supplier, the FDLR collects taxes on merchandise along strategic export routes. The Group stressed FDLR's relations with the large Bukavu traders. In addition, the FDLR traders maintained close business ties with the *comptoires*, some of which were run by Tutsis.

In its latest report, Global Witness brought to light the FARDC's involvement in mining exploitation in North and South Kivu, either by being physically present or by having local commercial agents. (For instance, the mining shafts "belong" to the provincial military authorities.) The 85th Brigade in Bisié, composed of former Mai Mai, had instituted a double system of taxation: taxes on the production of mineral ores (which brought in about US\$120,000 a month) and taxes on imported merchandise, collected at barriers along the route from Njingala to Bisié, (said to have brought in a further US\$100,000 a month).

In Ituri, the UPC, a Hema movement, exploited the gold-bearing zone of Mongbwalu, following an agreement with the OKIMO management, facilitated by their belonging to the same ethnic group. When the FNI took over, it levied a tax of US\$1 on the gold-panners, bringing in about US\$2,000 a month.⁹⁵

- Armed men profit from the mining trade in at least three ways:
 - levying taxes;
 - payment for protection (the PNC and the FARDC protect the mining sites where Banro and AGK work);
 - receiving a share of mineral ores (the least common method).
- **Armed men are fiscal parasites on the mining trade at the production sites and on the transport routes. They were also implicated in human rights violations (see Chapter 5).**

⁹⁴ *Face à un fusil, que peut-on faire ? La guerre et la militarisation du secteur minier dans l'Est du Congo* (2009). Global Witness.

⁹⁵ Human Rights Watch (2005). Op. cit.

“Administrative services”: an institutionalised maquis⁹⁶

There is a **wide gap** between the authorities who hold responsibility for managing the exploitation and trade of mining products and those who levy taxes on the trade. According to Congolese regulations, the administrative services are five in number, while the number of tax collectors varied depending on the imagination of the officials and, above all, on the physical presence of the authorities in places where exploitation and trade were actually going on. (For example, the CEEC were not present at all the export centres in the East, only in Butembo and Goma). These five services include:

- OFIDA, Office of Customs and Excise. It registers and regulates exports and imports. It imposes duties of 5% of the value of products exported and also collects the fees for OGEFREM, the Office for managing maritime freight, and to FPI, the Fund for the Promotion of Industry.
- The Mining Division, whose agents regulate mining products, including weighing and storing before export, either at the *comptoirs* or at the airports. It receives 45% of a compensatory tax, estimated at 1.25% of the value of exports – the balance of 55% destined for the CEEC.
- The OCC, Congolese Control Office, was set up to check the quality and quantity of exported products, but it lost this control over gold and diamonds in 1999.
- The CEEC, Centre for Expertise, Evaluation and Certification, was created in 2003, with the purpose of implementing the recommendations of the Kimberley process for diamonds.
- The Foreign Trade Division registers documents regarding exported and imported products.

Several other services belong on this list, which also provide statistical data – in particular the BNA (Bureau of Air Traffic) and the DGM, the central migration authorities.

As a result of the lack of resources and degradation of Congolese administrative services, **predatory exactions** are imposed along the entire chain of commercial mineral trading in the name of offialdom. Monographs have highlighted this administrative parasitism which begin at the mining sites and continue to the point of export.

Some examples of administrative exactions

At Aru/Arua, 12 different services levy taxes on exported minerals:⁹⁷ OFIDA, OCC, OGEFREM, ANR, DGM, provincial authorities, territorial authorities, border police, BIC, foreign trade, hygiene and the mining division.

Between the mine in Bisié and the customs post in Goma, mining production is taxed 23 times (many times by the same administrative service: 3 times by DGRAD, 3 times by CEEC, etc.) amounting to a total of about 15% of the product's value (or US\$365 per tonne). The actual level of taxation is 40% for exporting gold exported from Ituri.

It should be noted that everyone considers it natural that the civilian and military intelligence services are involved in the taxation of mining

It is common ground that an increase in the fiscal burden on the mining sector accompanied administrative reunification – moving from the RCD-Goma's regulations to those of Kinshasa – and the creation of “reunified tariffs”.⁹⁸ In its day, RCD-Goma had already raised the price of cards for the diggers (US\$50) as well as operating permits for the trading houses (US\$15,000 a year), and these rates have increased even more. In North Kivu, mineral exports brought in US\$ two million (2007) and US\$4.3 million (2008) to the customs authorities, to CEEC, OCC, DGRAD and the Decentralised Administrative Entities; (OFIDA was by far the main beneficiary). Taxation by the administrative authorities is relatively arbitrary at the production sites and on

⁹⁶ See map: Local authorities in North and South Kivu

⁹⁷ Pact (June 2007). *Researching natural resources and trade flows in the Great Lakes Region*. DfID, USAID, COMESA.

⁹⁸ Pole Institute (2005). *Ressources minérales, la faillite de la politique minière en RDC* [Mined resources, the bankruptcy of DRC's mining policy].

the transport routes, but it has stabilised somewhat at the export centres. Still, it should be noted:

- The final recipients of administrative taxes levied on the mining trade remains obscure;
 - Taxation is generally arbitrary and not based on legal documents;
 - In addition to it being arbitrary, the export tax regime for DRC minerals is much more onerous than that in neighbouring countries;
 - The attempt to put things in order in the tax services at border posts failed. In 2002, the government decreed that only four administrative services should operate at border posts: OFIDA, DGM, OCC and the Hygiene Service. This decree has never been respected.
- **The trade in minerals represents a major part of the legal and illegal revenues of officials in charge of regulating trade, and even if the taxes levied are less than they should be because of fraud, they amount to several million dollars a year.**

The “Big Men” of trade

The big traders are at the centre of the political-financial system that forms the backdrop to the minerals trade. Their financial power gives them access to local and national politicians, the ability to pre-finance the largest purchases of mineral ores, to control the means of transport from the mining areas with difficult access, to set the local price for minerals, to buy protection from armed groups and security forces, and sometimes to instrumentalise them in their competition with rival traders. In 2006, for example, MONUC, Global Witness and the Pole institute reported on tensions between two companies for the control of the mine in Bisié in North Kivu. Mining Processing Congo, a South African company, with good connections in Rwanda, competed with the Groupe Minier Bagandula (GMB), a company also closely tied to the members of the RCD-Goma, for access to the mine. GMB “won” by signing an agreement with the territorial administrator on 28th August 2006, ceding to him 10% of Bisié’s production, for security, i.e. the support of the local FARDC brigade. In addition, the Coopérative Minière de Mpama Bisiye (Comimpa) is a GMB creation: of its 22 founder members, 11 are GMB shareholders. GMB was set up on 23rd September 2005 and half of its shareholding belongs to the Saphir Society. One of GMB’s key people is **Alexis Makabuza**, a financial backer of CNDP.

Three other “Big Men” in the trade have been identified:

- Senator **Mwangachuchu**, the owner of the MHI Company (Mwangachuchu Hizi International), holds the mining squares (*carrés*) of the Bibatama site in Masisi – where the CNDP is active – as well as interests in the Numbi mine in South Kivu.
- Madame **Aziza Kulsum**, otherwise known as Madame Gulamali, is a mixed-race person from Bukavu, who managed SOMIGL, the company to which RCD-Goma had granted the export monopoly of minerals in South Kivu in exchange for US\$1 million a month. She owns a coltan-trading company (Shenimed) with *comptoirs* in Nukavu and Goma. Her payments to RCD-Goma enabled that movement to draw up a budget for the first time in December 2000. She also owned a tobacco factory in Bukavu (Uzabuco) and has been accused of arms trafficking with the Burundi rebel forces FDD and with RCD-Goma. Mme Gulamali is in business with Panju in Bukavu.
- Mr **Omar Oria**, a Ugandan citizen settled in Ariwara, appears to be the leading gold trader in that area, which owes its expansion to the trade. Together with James Nyakumi and Vincent Adjua, Omar Oria was one of the leading traders/financiers of the FAPC under Commander Jerome. In exchange for protection and a kind of commercial monopoly granted by the FAPC, Omar Oria arranged for gold to be moved to Kampala and helped to finance this militia.

These big traders are so powerful they can sometimes disagree with the dominant armed movements. A good example is the failure to control SOMIGL’s mineral exporting, a company that RCD-Goma had given the monopoly exports to in South Kivu. The network of Bashi traders, who were cheated by this decision, resisted and smuggled out mineral ores. As a result, SOMIGL has never been able to impose its monopoly and was abandoned in 2002.

Tragic end of a Nande Big Man trader: The murder of Kambale Kisoni

Kambale Kisoni, the managing director of Congo Metal, was one of the biggest gold traders of Butembo. Placed on the UN sanctions list in March 2007 because of his connections with the FNI that controlled Mongbwalu, he was assassinated on 5th July 2007; he was a close associate of Mbusa Nyamwisi and an amiable contributor to the RCD-ML's war effort, indeed its main paymaster. His air company, Butembo Airlines, flew directly between Mongbwalu and Butembo and carried arms and troops for the FNI, besides gold, which earned him a spot on the UN sanctions list.

He was gunned down in his Butembo office by a team of international killers (Kenyan and Ugandan). Shortly before his death, he had taken steps to be removed from the UN sanctions list. Several theories circulated about his assassination: jealous businessmen who wanted to take over his business, and concerns in Kinshasa or Kampala about possible revelations in exchange for taking him off the sanctions list. The Butembo trading community observed a day of mourning in his memory by closing their shops. His wife took over his business and converted it into a clothing and other consumer goods business, gave up the mineral trade and moved to Uganda.

- The “big traders” are the strategic link in the system of commercial mineral trading and the point of concentration of capital and of the network of relationships that is indispensable to doing business in this environment. Who they are is still only partly known.
- The network of traders often have an ethnic base (Hemi, Bashi, Nandé and Rwandaphone traders divide the market), although no ethnic group has an exclusive hold on trade.⁹⁹

The indispensable intermediaries

The transporters and the trading companies based in neighbouring countries are the indispensable intermediaries of this trade.

TMK is the main transporter in Goma and provides transport between Beni and Goma, and then through the north corridor from North Kivu to Mombasa. The Jumbo Safari Company is in second place. The air carriers involved in the mineral trade in Bukavu include: Delta Force, Atral, Zalia (flights for Kamituga), Agefreco Air, Congocom Air and Stellavia (flights to Namoya), Agefreco Air, Congocom Air, Grace Express, Lokole and Acocha (flights to Namoya) Agefreco Air, Congocom Air, Grace Express, Lokole and Acocha (flights to Shabunda and Lulingu). Two Bolloré subsidiaries are also present in the region – Agetraf SDV in Bukavu and SDV Transami in Kigali.

Aided by very favourable policies for exporters (no import taxes) and by the Ugandan Army's control over the north-east of the DRC, Ugandan companies successfully began exporting gold. Between 2002 and 2006 the main gold exporters were:

- Uganda Commercial Impex
- Machanga Limited
- AP Bhimji Limited

UCI and Machanga have been on the UN list since 2007. Machanga Ltd. has a branch in Bujumbura and therefore also buys gold coming from South Kivu. Between 2005 and 2007, Emirates Gold bought from this company in Uganda and in Burundi 10.17 tonnes of gold, 6.61 tonnes from UCI, 1.39 tonnes from AP Bhimji Ltd. and 0.03 tonnes from Congomet. UCI has a refinery for treating the gold it imports.

The main gold export companies in Bujumbura were Farrel Trade & Investment and Gold Link Burundi Trading, managed by Mutoka Ruganyira. The first of these companies ceased trading

⁹⁹ See map: Ethnic groups in Kivu.

in 2009, leaving the second in a monopoly position; its director was well connected to power circles in Burundi and often travelled to Dubai. There are altogether 64 registered trading houses in Burundi.

On the Rwandan side, trading companies are numerous:¹⁰⁰

- Africa Primary Tungsten
- Afriprom
- Albert Mupenzi
- Centrale Multi Services
- Copimar
- Ets Munsad
- Ets Mbanzabugabo
- Eurotrade International
- Harelimana Froduald Enterprises
- Imperial Trading Company
- Metal Processing Association
- Metrade Overseas
- Minerals Supply Africa
- Multiserve Consult
- NRD Rwanda
- Niobium Mining Company
- Phoenix Metal
- Pyramide
- Redemi
- Rwanda Metals
- Sodem
- Trading Services Logistics
- Valence Kalinda

It should be noted that Rwanda carries out (primary) processing of mineral ores. Gisenyi has a tin foundry – the property of Metal Processing Association, which owns Metal Processing Congo in Goma¹⁰¹ – while in Kigali several trading houses separate out other components such as iron and tungsten from the coltan. According to the Rwandan minister of mines, 25% of Rwandan imports come from the DRC, although Global Witness estimates this figure could be closer to 80%.¹⁰²

- **There is a lack of information about exporters in neighbouring countries, especially in Burundi and Uganda.**¹⁰³
- **There is a lack of information about who are the real owners of trading companies in the three neighbouring countries.**

The foreigners

The presence of **foreign business milieus** in the Great Lakes commercial trading system is a phenomenon that cannot be overlooked. Three groups of foreigners appear repeatedly during investigations into the minerals trade:

Businessmen from the former Soviet Union: at the time of the coltan boom, many citizens of the former Soviet Union turned up (Uzbeks, Kazakhs, Russians, etc.). Conmet, an active trading

¹⁰⁰ N. Garrett & H. Mitchell (April 2009). Op. cit.

¹⁰¹ MPA is considered to be a South African company. Created in 2001, it produces 200 tonnes of tin ingots a year.

¹⁰² Global Witness (July 2009). Op. cit.

¹⁰³ In their last report, the Group of Experts emphasised the lack of cooperation by the authorities in Burundi over providing information on export companies and their alleged links with FDLR networks.

house in Beni and Butembo, was run by Russians, whose managers were based in Kampala. Valentina Piskakova was the general manager of Conmet, which belonged to the Ugandan company, Kullinan Finance Investment that had supply contracts with Germany, South Africa and Kazakhstan. Valentina Piskakova also had a presence in Ituri through the Ituri Gold Mining Company Limited. This Russian presence via Uganda was part of the Kazakh coltan connection. In addition, there has been a renewal of Russian interest in niobium.¹⁰⁴

Lebanese diamond merchants appeared to be closely connected to the Ugandan elite at the time when the UPDF were in the DRC. IPIS and the Group of Experts have documented their activities by showing Lebanese ties with the Victoria Company. (Khalil Nasseem Ibrahim, one of the key persons in this company, owned a restaurant jointly with Salim Saleh's wife.) They also showed the Lebanese presence in the DRC through diamond *comptoirs* in Orientale Province in Beni and Bukavu as well as their relations with Belgium (where they export diamonds and own other companies and real estate). Clearly, the Lebanese circles active in the diamond sector in eastern DRC redirected their activities to Kampala, when Uganda became the “dominant power”. The trading house Sodexmines in Goma has been managed by a Lebanese businessman since 2005 on behalf of one of the big businessmen of the DRC.

Indo-Pakistani businessmen from the Great Lakes are highly active in the gold trade in Uganda (through the companies UCI and Machanga Ltd) and in Burundi, through Farrel Trade and Investment Corporation. Machanga is run by the businessmen Rajendra Vaya and Vipul Kumar and UCI by J.V. Lodhia. The Indo-Pakistanis of Kampala have also been accused of involvement in gold-trafficking, implicating the Pakistani UN peacekeepers in Ituri. At the moment, the Indo-Pakistanis of Uganda are the only people whose companies remain on the UN sanctions list (UCI and Machanga).

It should also be noted that SDE and Sodexmines, two Goma trading houses, belong to the Elwyn Blattner's group, an American businessman who settled long ago in the DRC and owns several companies.

- This change of direction and the appearance of Lebanese diamond merchants in Kampala's circles of power indicate the extreme flexibility and adaptability of the actors in the diamond trade.
- These business milieus often serve as a bridge between the Congolese mineral trade and the international criminal community, particularly mafia-like organisations, illustrated by the appearance of Victor Bout as a transporter and the links the UN uncovered between the arms traffic and mineral exports.

3.4 Distribution of benefits along the trading chain

The lack of a consistent application of fiscal regulations, the interest of the operators in maintaining a degree of opaqueness around their activities, and the various mechanisms for fraud make it impossible to calculate the real profits from mineral exploitation in the eastern DRC that are derived by those participating actively or passively in this trade. A number of studies have tried to evaluate the income of the different actors. While it is not possible to achieve a high degree of precision, there is no doubt that the diggers receive only smallest portion of the value added coming from the mine. Their daily pay is around 1 or 2 or 3 (US) dollars a day, amounts spent at once with the shopkeepers for daily necessities, particularly food. The isolation of many of the mines has a heavy impact on the cost of living, since much of the supplies are flown in. As can be seen from the various reports on the mining economy,

¹⁰⁴ See Chapter 2.

most of the value of production leaving the mine is divided among team leaders, managers, owners and the military.

Nevertheless, field observations confirm the impression that the higher one goes in the commercial chain, the greater the benefits obtained. The diggers at the bottom of the chain hardly earn enough to survive; the traders who control the commercial flow between the mine quarries and the trading houses are able to make a profit – approximately US\$100 per month, according to local traders. Depending on the volume of their trade, the exporters earn profits that amount to thousands, if not millions of dollars – just like the passive actors in the trade, represented by the officials and armed men. Whilst the analyses do not show how value is distributed throughout the commercial chain, they all agree on the fact that the great losers in the trade are the diggers. On the one hand, the diggers are victims of a lack of balanced information, compared with the buyers, who analyse samples and accordingly fix the price and on the other hand, the diggers have no capacity to save.¹⁰⁵

The neighbouring countries are the real beneficiaries of this **shared income**, to the extent that mining production in the DRC enables them to increase their own exports of minerals and therefore to improve their balance of trade and strengthen their national budgets. This forced division of the Congolese mining income has been highlighted by comparing national output and exports. In a 2005 study, Global Witness¹⁰⁶ quotes OCC figures for the total exports of cassiterite from North and South Kivu: 7,591 tonnes. An analysis of data collected in Rwanda shows that it exported 1,800 tonnes more than its own nationally-produced cassiterite. This NGO drew the conclusion that ‘it is very likely that these imports came mainly from the eastern DRC, including the conflict zones.’ Similarly, a comparison between gold production and exports in Uganda is rather telling, revealing that the exported gold came mainly from the DRC, and more particularly from Orientale Province.

Exports and gold production in Uganda (kg)

	1994	1996	2000	2004	2006	2007
Exports	225	3206	7 303	5 465	6 937	3 556
Production	2	3	56	178	22	25

Source: D. Fahey (2008). ‘The River of Gold: gold production and trade from Mongbwalu, DRC’. pp. 357–383. *L’Afrique des Grands Lacs. Annuaire 2007–2008*. Paris: L’Harmattan.

Quite apart from the quality of the mineral ores, it goes without saying that the profitability of this trade depends on many parameters: transport costs, the extent of fraud and changes in world prices influence profitability more than the diggers’ earnings. The factor of “changing world prices” was clearly seen during a) the coltan boom that allowed for the rapid enrichment of some operators and b) the collapse of prices in 2008. Since then, the actors in the mineral trade have tried to reposition themselves in gold, whose price is stable.

- The profitability of the mining industry depends on too many parameters (particularly parameters for which information is weak) to be evaluated without an econometric model.

¹⁰⁵ See Chapter 5.

¹⁰⁶ Global Witness (2005). *Under-Mining Peace: Tin – the Explosive Trade in Cassiterite in Eastern DRC*.

Chapter 4: Mechanisms of Fraudulent Activity

Summary:

The minerals trade in the DRC is characterised by a high degree of fraudulent activity in terms of illegal taxation and of fraud over exporting/smuggling. The difference between legal, illegal and “deregulated” activities is often difficult to establish and most of the trade is carried on in a subterranean economy, which gradually becomes a more formalised one as the mineral ores approach closer to the borders for export to the world market. A certain number of national and international mechanisms aimed at improving the regulation of the mining sector have not yet reached the Kivus, and their success is still very limited at national level.

4.1 Nature of fraudulent activity

Fraud in the minerals trade in the DRC is a vast subject. A good deal of information and detailed documents are available about it. Many sources give excellent descriptions of the character of fraud in both the formal and informal mining sectors in the DRC. They contain far more elements revealing the complexity of the question than can be elaborated in the present study. The sources are as follows:

- Reports of the Pole Institute (Goma, DRC), in particular ‘Rules for Sale’;
- Documentation of the research project ‘Trading for peace’, financed by DfID, USAID and COMESA;
- The reports of the Panel of Experts and of the Group of Experts of the UN.

Other reports and comments from NGOs, such as Global Witness and Rights and Accountability in Development (RAID), go more deeply into the links between the minerals trade and violent conflicts, and emphasise the question of corruption in the process. Other writers, Hans Romkema, Koen Vlassenroot and Tim Raeymaekers, have also brought information together on fraud in the minerals trade in connection with local government and societal changes. The recent analysis, *Trading conflict for development: Using the trade in minerals from eastern DRC for development*, published in April 2009 in the context of the project ‘Trading for peace’, gives the most up-to-date perspective of the functioning of the mining sector, with a thorough-going discussion on fraud amongst the principal local actors.

According to the 2007 report entitled ‘Le commerce au service de la paix’, **the percentage of specific exports from the DRC, which officials did not record as they should have, was estimated to be 50%.** This problem can be attributed to bureaucratic inadequacies, to the poor management of the state regulatory agencies and to fraudulent conduct aimed at evading taxes and charges. Officials themselves often violate the regulations, which the 2007 report identifies as the principal reason why the traders take part in fraudulent behaviour.¹⁰⁷

This chapter of the study deals essentially with fraudulent behaviour, although bureaucratic and regulatory inadequacies make the system particularly open to corruption.¹⁰⁸ **There are different kinds of fraudulent behaviour discussed in the resources trade literature, namely:**

107 DfID, COMESA and USAID (October 2007). ‘Le commerce au service de la paix: Instauration de la sécurité et réduction de la pauvreté par le commerce des ressources naturelles dans la Région des Grands Lacs’ [Trading for peace : bringing security and reducing poverty through the natural resources trade in the Great Lakes region], p.4–7.

108 *Ibid.* p.5.

1. Illegal taxation
2. Fraudulent exporting/contraband

Illegal Taxation

Taxation of the mining sector is not illegal in itself, but many state officials levy heavier taxes than what is authorised by Congolese law.¹⁰⁹ Although Congolese law specifies which agencies are authorised to regulate trade at the borders, this law is not respected and quite often, more agents are present there than the law authorises. In addition, there are frequent complaints of taxation by the Congolese army, illegal in all cases, particularly in the eastern DRC.¹¹⁰ It should be noted that taxation by armed groups is not limited to the trade in mineral ores. **In the eastern DRC in general, the strong presence of security forces (the army, the government police or members of armed groups) leads to the harassment of the population in all economic sectors.**¹¹¹

In the eastern DRC, there is also the phenomenon of “legal but not recorded” trade in products not liable to tax, which the officials do not bother to list. Handicapped persons are exempt from taxation at the borders and are therefore used as traffickers. They can move whole lorry loads in a very short space of time by making multiple journeys in their wheelchairs or in specially adapted carts.¹¹² **At the height of the conflict, a large part of the mining sector operated without any regulation or formal structure, which is what we mean by “deregulation”.**¹¹³ Indeed in 2001, the UN panel of experts tackled the question of the exploitation of resources from the point of view of a “financial war”, rather than that of a confrontation between legal and illegal activities.¹¹⁴ Similarly, artisanal mining can be described as “deregulated”, even if it produces beneficial results for individuals and the state.¹¹⁵

The Mining Division estimates revenue received in the Kivus between January 2007 and September 2008 at US\$6 million, which means that the formal part of trade was far from negligible.¹¹⁶ The situation is complicated at local level, however, where **even taxes legally collected (in other words by those who are legally empowered to collect them) can be utilised illegally by the same officials for personal enrichment rather than being placed in the official accounts.** According to the study ‘Le commerce pour la paix’, 30 to 40% of the taxes legally collected end up in the pockets of the officials who collect them.¹¹⁷ In other words, there is no budgetary transparency in the administration and taxes legally collected can be used in illegal ways.

Both legal and illegal taxation is levied along the whole length of the trading chain, from the mine up to the market. Efforts have been made for years to set up a legislative framework in order to fill legal holes. As is shown in one of the Pole Institute’s reports, ‘One can never be certain, for example, if trade in a rebel area should be considered illegal if the trader pays no tax at all or if, on the other hand, he does pay it’.¹¹⁸ To take another example, should tax evasion be seen as fraudulent even if it is common knowledge that tax receipts are used improperly by those who collect them instead of being placed in the state treasury? The Pole Institute’s report also shows that **the existing structures for exploiting resources were only made legal when the belligerents became legitimate leaders, although the resources still failed to benefit the Congolese people.**¹¹⁹

109 See Chapter 3, ‘Key actors’.

110 N. Garrett and H. Mitchell (2009). Op. cit., p.7.

111 A. Tegera and D. Johnson (May 2007). *Rules for sale: formal and informal cross-border trade in eastern DRC*, p.7. Goma: Pole Institute.

112 A. Tegera and D. Johnson (2007). Op. cit., p.21.

113 ‘Le commerce au service de la paix’, Op.cit., p.14.

114 T. Raeymaekers (2003). Op. cit., p.11.

115 N. Garrett and H. Mitchell (2009). Op. cit., p.7.

116 Ibid.

117 ‘Le commerce au service de la paix’, Op.cit., p.26.

118 ‘Natural Resource Exploitation and Human Security in the Democratic Republic of Congo: Seminar Report’, p. 18. (February 2004). Pole Institute & International Alert.

119 Ibid., p.24.

Fraudulent exporting/contraband

Trade across the borders between the DRC and its eastern neighbours has existed since long before the conflict. There are strong ethnic links that cross over borders, notably between the Nande of the “Great North” in North Kivu and the Kondjo in Uganda and between the Banyarwanda of the “Little North” and the Rwandans. Another fraudulent trading practice dating from before the war: some people try not to pay taxes to the bureaucrats in Kinshasa.¹²⁰ Gold is apparently one of the commodities traded fraudulently, as it can easily be carried or concealed. While reliable statistical data for trade in the eastern DRC remain difficult to obtain, it is estimated that 35% of trade in the East is never reported. For cassiterite leaving the airport in Goma, this would correspond to the equivalent of around US\$9.4 million (in 2007 prices).¹²¹ This figure could reach as high as 95% for gold.¹²² According to a May 2008 World Bank report, **the whole DRC mining sector should produce about US\$200 million in revenue per year (an estimate made before the current financial crisis). Yet in 2005, the government declared that it had received US\$27 million in taxes from the mining sector.**¹²³

The traders often avoid paying taxes and duties at the areas of control at the borders by “negotiating” with officials. They pay them something in an informal way rather than paying taxes to them. This suits both parties and has given rise to the expression of “fraud between consenting adults”.¹²⁴ Another possibility is for the traders to avoid the places where taxes are collected by using another means of transport. The Pole institute has identified several different forms of export fraud in the mining sector in North Kivu.

Mechanisms for fraudulent exporting
The operators and service providers in North Kivu conspire to arrange that a large proportion of goods enter the province from neighbouring countries and leave the province for these same countries informally, even at official border posts. This fraudulent transit operates in various ways:
The goods are untaxed or exempt from entry or exit duties, and thus the customs do not even bother to record them;
The incorrect usage of trade nomenclature for calculating the taxes is another way of exacting higher sums than the amounts due;
The goods are subject to tax, but to reduce the amount, the importers and exporters bribe the customs officials and other agents of the state to record lower quantities or lower value or let them pass without declaring anything at all;
The state organisations involved abuse their status and do not apply the tax or customs rules, either in part or in total, to traders or certain traders, in return for personal payments;
Taxable goods are hidden beneath non-taxable goods and only a minimum of careful inspections are made or none at all, in exchange for personal payments;
Traders benefiting from tax exemptions for certain goods conceal other goods within a consignment of exempt goods;
Traders enjoying tax exemptions act on behalf of others who are not exempted;
Goods are handled by people who know highly placed officers or other members of the army and security forces instruct the civilian service representatives to “look the other way” when vehicles pass;
Goods pass through unofficial border posts – in the open country, on minor roads or by boat, crossing the lakes.

Source: Pole Institute, Interviews with state officials and traders in Goma, January-April 2007.

Source: ‘Le commerce au service de la paix’, p.25

120 A. Tegera et D. Johnson (2007). Op. cit., p.15.

121 N. Garrett and H. Mitchell (2009). Op. cit., p.29.

122 Ibid., pp.7 and 23.

123 World Bank (May 2008). ‘République Démocratique du Congo: La bonne gouvernance dans le secteur minier comme facteur de croissance’, p.6. Report No. 43402-ZR.

124 A. Tegera et D. Johnson (2007). Op. cit., p.7.

According to the study ‘Le commerce au service de la paix’, the traders and a large number of officials would actually prefer a better system of regulation that was “fairer” than the existing one. But the current system is more economical for the traders than the formal system. The Pole Institute quotes an observer for whom, ‘If everyone paid all their taxes, everything would become too expensive for people to buy’.¹²⁵

Another Goma trader explains, ‘At present, I have to pay US\$6,500 in tax to legally export a 25-tonne container of cassiterite from the DRC. If I export it from Rwanda, it costs me US\$200; from Uganda US\$40. So if I can first get my product to Rwanda or to Uganda and then export it officially from those countries, I save a lot of money. To avoid the DRC taxes costs me US\$2,000 for each container, so I save US\$4,500. The DRC is the only country in the region that still levies an export tax. It has been abolished everywhere else’.

Source: ‘Le commerce au service de la paix’, p.26.

- ‘Le commerce au service de la paix’ compared the mining sector’s recorded exports with the real figure, which revealed the gap between the two and the serious under-reporting of information. This does not apply only to minerals, but also to foodstuffs, machinery, vehicles, etc. Several official agencies collect data about trade, which explains the lack of a single reliable source.¹²⁶ Different agencies collect information on different products and some statistics on the same products even differ between agencies. Some goods are registered in categories in which they do not belong.

Attempts to quantify fraud

Several efforts have been made to estimate the extent of fraud. The above-mentioned Pole Institute study tried to estimate it from the specific case of cassiterite coming from Walikale (Bisié mines) and exported through Goma, by comparing the data of different administrative agencies, including the Office of Aerial Navigation in Goma, the Walikale Mining Office and the DGM [National Migration Agency] in Walikale.

Estimate of cassiterite from Walikale on its way to Goma in 2006 (in tonnes)

OFIDA	Foreign Trade	OCC	Mine Division	BM Walikale	BNA Goma	DGM Walikale
2 948	2 896	2 912	2 904	4 767	4 818	10 309

These figures show little difference between the four services directly involved in exports. On the other hand, the differences between the figures provided by the Walikale mining office, the Office of aerial navigation in Goma, and particularly the office of the migration authorities (DGM) in Walikale are substantial. If the data recorded by the DGM is reliable – as the researchers of the Pole Institute believe – this implies that half the production disappears between Walikale and Goma; if one compares these data with OFIDA’s statements, more than two thirds of the production vanishes and escapes from state control and taxation. For the researchers of the Pole Institute, the DGM’s registry differs from all the others because its agents are not in a position to “negotiate” any service they can render.

This carefully-studied example shows how difficult it is to obtain satisfactory statistical information. Everyone is aware that production figures are seriously under-estimated by the official services, but by how much? The figure of 35% put forward in ‘Le commerce au service de la paix’ is only a hypothesis. Fraud is especially significant for gold, since the majority of its production is moved

¹²⁵ *Ibid.*

¹²⁶ The organisations that collect statistics are OFIDA (customs office), the provincial trade department, the OCC (Congolese control office), the Mines and Geology Division and the CEEC (Centre for expertise, evaluation and certification). The Pole Institute’s report ‘Rules for Sale’ suggests that a detailed examination be undertaken of how all these agencies carry out their tasks.

fraudulently into the neighbouring countries. According to a study of cross-border trade carried out by INICA in 2007, most of the gold produced in South Kivu leaves as contraband on its way to Bujumbura.¹²⁷ The authors of 'Le commerce au service de la paix'¹²⁸ compare official figures for North and South Kivu mineral exports with figures they think correspond to reality:

	Recorded exports	Real exports
cassiterite (2006)	6 748 t	16 870 t
gold (2005)	609 kg	10 000 kg

The table below shows the difference between the reported level of exports and the estimated real level.

Table 1: Evaluation of real and recorded exports from the DRC

Registered exports from the DRC	Estimated real exports	Observations
Copper (2005)		
OFIDA, 117 315 T	223 000 T	Real volume based on registered imports into Zambia, adjusted upwards by 10%
Gold (2005)		
600 kg (South Kivu); 9 kg (North Kivu)	About 10 T	Based on the quantities produced, the US Geological survey, and traders' estimates
Cassiterite (2006)		
3 599 T (DM, North Kivu) 3 149 T (OFIDA, South Kivu)	16 870 T	Estimate of real volumes based on the details of air freight loaded in Walikale, as recorded by the Mining General Management, and on estimates from traders on the levels of exports and unregistered production
Wood (2006)		
25 000 m3, see paragraph 40	50-70 000 m3 from Ituri, North Kivu	Exports from eastern DRC. Real quantities based on wood imports registered in Uganda, Rwanda and Burundi, where data collection is relatively reliable.
Imports of petroleum products (2005)		
Recorded volume, 16 264 m3	Real volume, 25 805 m3	Data compiled by the Beni branch of the national petroleum company SEP-Congo, 2005 (June to September)

Source: 'Le commerce au service de la paix', p.17.

In addition, **mineral ores are recorded several times along the commercial chain, leaving the way open to multiple possibilities for fraud.** The mineral ores dispatched from the mines to the trading centres near Walikale are recorded on their departure from the airport in Walikale, a second time when they reach the airport in Goma, and again on their leaving Goma by road for the international market. In addition, records are maintained by neighbouring and transit countries. The banking system also provides a strong potential for fraud. Income from foreign trade is indeed illegally taken

127 INICA, UNECA (2007). *Natural resources and trade flows in the Great Lakes Region*.

128 H. Sunman and Nick Bates (2007). 'Le commerce au service de la paix'. DfID, USAID, COMESA.

by the central government to finance its expenses.¹²⁹ All this provides a strong incentive for traders to avoid the formal sector altogether. Similarly, the traders' evaluation of the ore at the production site gives rise to fraud towards the producers, as they under-estimate the quality or manipulate prices.

- **The style of fraudulent activities is classic (swindling and fiscal confusion, abuse of power by officials, etc.) and characteristic of a predatory administration operating in the context of a failed state.**

4.2 Attempts at regulation/accountability in the mineral ore trade

National initiatives

The Government of the DRC promulgated a Mining Code in 2002,¹³⁰ followed by Mining regulations in 2003,¹³¹ defining how the Code was to be applied. The Mining Code confirmed which agencies were empowered to regulate the mining sector, namely the Minister of Mines, the Mining Survey Department, the Mining Division and the department responsible for protecting the mining environment.¹³² The Code also established a baseline for working out taxes, customs dues and payments associated with the minerals trade. But like many laws in the Congo, the code has never been fully applied.

The Mining Code set up, among other things, a mining survey or cadastral service, under the supervision of the Mining and Finance ministries, in order to regulate the management of mining rights and titles, and thus reduce the possibilities for fraud. This service, the Cadastre Minier (CAMI) receives requests and issues permits for research and exploitation. The World Bank has noted problems in following up payments, between those billed by CAMI and those received by the Ministry of Finance and the Central Bank. The World Bank has also taken note of the accusations of pressure on the CAMI in order to obtain 'exceptional treatment with regard to the directives and established criteria within the framework for transparency in issuing mining rights'.¹³³

A certain number of government organs are responsible for different aspects of follow-up and the regulation of the mining sector. The CEEC,¹³⁴ an autonomous agency, was created to implement the Kimberley process, but it is also responsible, under a recent Decree, to evaluate and supervise the quality of mineral ores before they are exported. The OCC has responsibility for supervising the quality and quantity of products imported and exported. **Given the poor capacity of all state agencies to supervise trade in an effective way, the possibilities are growing for those interests hostile to change to use the supervision process for their own benefit.** As indicated in a report from CASM in 2008, 'it is not uncommon for individuals or organisations (mining companies, politicians or military) to spread false information deliberately, to exaggerate or to seek favours from the authorities, in order to be in a good position during and after the formalisation process'.¹³⁵ The SAESSCAM (Service d'assistance et d'encadrement de l'artisanat minier) is a state agency set up to provide technical help and advice to artisanal miners to inform them of the law, training in mining methods, organisation of cooperatives, as well as health and safety, etc.¹³⁶ In principle, this initiative should help to reduce the exploitation of artisanal miners. But in addition to problems caused by insufficient funding, the SAESSCAM has faced accusations of conflicts of interest over its responsibility for collecting taxes and internal corruption. These accusations come from the artisanal miners themselves.¹³⁷

129 A. Tegera et D. Johnson (2007). *Op. cit.*, p.59.

130 Law No. 007/2002 of 11th July 2002.

131 Decree No. 038/2003 of 26th March 2003.

132 'Corruption et gouvernance en RDC durant la transition (2003-2006)', p.53.

133 'République Démocratique du Congo: La bonne gouvernance dans le secteur minier comme facteur de croissance' May 2008, p.41. World Bank.

134 Decree creating this agency included in annex.

135 N. Garrett (2008). *Op. cit.*, p.24. Communities and Artisanal & Small-Scale Mining Initiative (CASM) 1st June.

136 N. Garrett (22 October 2007). 'Preliminary observations from the Democratic Republic of the Congo (DRC). Extractive Industries Transparency Initiative (EITI) and Artisanal & Small-scale Mining (ASM), pilot study.

137 N. Garrett (2008). *Op. cit.*, p.22.

A certain number of national initiatives have been undertaken to examine the fraudulent or abusive aspects of mining contracts. The peace agreement signed in 2003 called for setting up a multiparty parliamentary commission to investigate the exploitation of natural resources during the war from 1996 to 2003. Under the leadership of Christophe Lutundula, the “Lutundula Commission” published its 2005 report, pointing to the mining contracts that should be cancelled or renegotiated. The Commission also recommended the institution of legal procedures against certain political figures and businessmen.¹³⁸ At the time, some NGOs criticised the National Assembly and the Government for their lack of reaction to the recommendations in this report.

In 2007, the Congolese Government began examining 61 mining contracts, with a view to issuing recommendations over the revision or cancellation of these contracts. The aim was to put right the “imbalance towards private enterprises to the detriment of the state.”¹³⁹ The final report of the investigative commission, published in March 2008, recommended that 39 contracts should be renegotiated and 22 terminated. The Australian company, Anvil Mining, in whose case a cancellation was recommended, had obtained a complete exemption from taxes for itself and for one of its sub-contractors for twenty years, thanks to a contract signed in 1998. The Congolese Government began a long-term process of renegotiation with the last six mining enterprises, whose contracts had not been dealt with. This process, involving AngloGold Ashanti, Banro, First Quantum, Gold Fields, Freeport-MacMoRan and Mwana Africa, has just been extended for six months.¹⁴⁰ NGOs such as Global Witness have criticised the lack of transparency and accountability in this examination process.¹⁴¹

Initiatives by the international mining sector

The Initiative for the Extractive Industries Transparency Initiative (EITI) is a coalition of governments, private companies, civil society organisations and concerned parties who support better state governance in the mining sectors through transparency and the publication of corporate tax payments and government receipts. The EITI proposes norms and guiding principles, but putting these into practice is the responsibility of member states. The DRC is a candidate member of EITI and must validate its application between now and 9 March 2010 in order to become a member in good standing. A national committee has been created and has published a work schedule.¹⁴²

The OECD’s guiding principles for multinational businesses represent the norms to which governments voluntarily adhere concerning corporate behaviour on human rights questions, on the fight against corruption, on taxation, and on publishing information, amongst other things. During the conflict, the UN Panel of Experts drew on them as a reference for evaluating the role played by businesses in supporting the economic activities of the armed groups in the eastern DRC. The Panel specifically recommended that the signatory governments should make sure that businesses registered in their countries should not violate OECD principles.¹⁴³

According to ‘Le commerce au service de la paix’, the Kimberley process has clarified the management of the diamond sector, but ‘production and sales remain considerably under-declared’.¹⁴⁴ Others have commented that the Kimberley process set in motion ‘commercial processes aimed at putting an end to what is essentially a problem of governance, of which insecurity is a symptom, [and is therefore] mistaken about the fundamental dynamics of the question’.¹⁴⁵

138 Global Witness, ‘R.D. Congo: mettre fin à l’exploitation illégale des ressources naturelles’, press release. 12th February 2006. See http://www.globalwitness.org/media_library_detail.php/422/fr/r.d._congo_mettre_fin_a_lexploitation_illegale_des.

139 IPIS ‘République Démocratique du Congo: Contrats miniers – État des affaires’, p.1. [25th March 2008]. Antwerp.

140 The Northern Miner, ‘More delays for DRC’s big miners’. 17th April 2009.

141 See for example ‘L’examen des contrats miniers en RDC: filière rapide ou fausse piste ? [Congo Mining Contract Review: Fast Track or False Trail?], a Global Witness press release, 18th February 2008. http://www.globalwitness.org/media_library_detail.php/629/fr/lexamen_des_contrats_miniers_en_rdc_filiere_rapide_t

142 See web page at <http://eitransparency.org/fr/R%C3%A9publiqueD%C3%A9mocratiqueCongo>.

143 Report of the UN Panel of Experts, October 2002, p.36.

144 ‘Le commerce au service de la paix’, Op. cit., p.24.

145 ‘Trading conflict for development’, Op. cit., p.28.

Actions by the United Nations

The UN Security Council has passed many resolutions concerning the DRC and the exploitation of natural resources. In 2000, the Security Council set up a Panel of Experts on the illegal exploitation of natural resources and other forms of wealth in the DRC. This panel was mandated to collect information and to make recommendations to the Council about the illegal exploitation of resources in the DRC and the connections to the conflict. In 2004, the Security Council set up a Sanctions Committee and a Group of Experts to supervise the launching the arms embargo in the DRC.¹⁴⁶ In numerous reports, the Group of Experts mentions the criminal networks operating in the eastern DRC that provide support to the armed groups and goes into role of the mining sector.

To insure the improved regulation of the mining sector, the Group of Experts in its December 2008 report recommended that the Security Council call on MONUC to establish teams at the Bunagana and Kasindi border posts to carry out cross-border spot-checks.¹⁴⁷ The Group also recommended that the member states should work out and publish a map of mineral-rich regions and the position of armed groups, in order to inform businesses of the origins of the minerals they were buying. These two recommendations have been implemented. The member states were also encouraged to ensure that businesses under their jurisdiction were exercising reasonable diligence over the question of origin.¹⁴⁸ In its previous reports, the Group had recommended to neighbouring states to carefully screen and prevent economic partnerships between their national enterprises and the armed groups.¹⁴⁹

Following the recommendations of the Group of Experts, the Security Council gave MONUC a mandate to ‘prevent the provision of any support’ to illegal armed groups, by means obtained through illicit economic activities’ and ‘to use its means of surveillance and inspection to prevent illegal armed groups from benefiting from support coming from any traffic in natural resources’.¹⁵⁰ In another resolution, the Security Council extended the ban on travel and the freezing of assets to include ‘persons or organisations supporting the illegal armed groups in the eastern Democratic Republic of the Congo by means of illicit trade in natural resources’.¹⁵¹ The same Resolution encouraged member states to ensure that importers, processing industries and consumers ‘exercise all the necessary precautions in regards tot their suppliers and to the origins of minerals they purchase’ and to transmit to the Sanctions Committee the names of persons or entities to be put on the list of travel bans and the freezing of assets.¹⁵² As Security Council resolutions are legally binding, individuals can be prosecuted for commercial transactions benefitting armed groups. But the Group of Experts also indicated that many member states are not fully applying existing sanctions against individuals.¹⁵³

- None of these attempts at regulation or enforcing a return to order has borne fruit.

146 Security Council Resolution S/RES/1533 of 12th March 2004.

147 Report of the UN Group of Experts, December 2008, p.57.

148 Ibid, p.58.

149 See for example Report of the UN Group of Experts, S/2004/551 of 15 July 2004, p.31.

150 UN Security Council Resolution S/RES/1856 of 22 December 2008, Operative paragraphs 3(g) et (j), pp.4-5

151 Ibid., Operative paragraph 4(g), p.3.

152 Ibid., paragraphs 15-16.

153 Report of the UN Group of Experts, December 2008, p.52.

Chapter 5: Impact of Mining Exploitation on the People and the Environment

Summary:

Most artisanal miners are in a poverty trap, as they either choose or are compelled to work in the mines in order to survive. The economic and social impact of a massive flow of people towards the mining sites can only be evaluated by integrating all of the activities of the people, particularly agriculture, since heading for the mine is often provoked by crisis in the countryside. Mining work represents a break with traditional social organisation by changing the roles of young people and women. It is a dangerous activity with the risk of accidents as well as violent in the context of rivalries between armed groups. Sexual violence towards women is a result of this generalised insecurity more than of mining as such.

The Rwandan and Ugandan military occupation and the coltan boom transformed mining exploitation into a real pillaging of natural resources, with no respect for the natural parks and animal reserves. Wild animals have paid a heavy tribute as hunting escalates to supply game to the miners and the military. The environmental consequences of mining activity depend greatly on population densities.

The United Nations recognises the negative impact of mining exploitation on the people and on the environment, but this is more specifically documented by NGOs that have denounced the “war commerce” in the eastern DRC. Inspired by both human rights and by environmental questions, substantial literature has developed on this point, including key studies by the Pole Institute, particularly *Le coltan et les populations du Nord Kivu* [Coltan and the people of North Kivu], the reports of Human Rights Watch, Amnesty International and Global Witness, not to mention the documents published in journals such as *Congo-Afrique* by CEPAS in Kinshasa or the Annual *L’Afrique des Grands Lacs* by the Centre d’Etude de la région des Grands Lacs d’Afrique in Antwerp.

5.1 The mining economy as a poverty trap

Mining activity: Between poverty machine and economic lifeline

The artisanal mining economy is a survival economy on a grand scale affecting hundreds of thousands of Congolese. Estimates of the number of miners in the literature are somewhat random. But the figures are striking: 200,000 people are thought to be involved in the mining economy in North Kivu. This order of magnitude is not impossible for a province that already had a population of 2,434,000 inhabitants in 1984. According to the head of the Mining Division in Bunia, Ituri has at least 60,000 gold-panners, divided amongst the sites in Mahagi (10,000), Djugu (20,000), Irumu (10,000) and Mambasa (20,000). In Mongbwalu alone, artisanal exploitation involves from 50,000 to 60,000 miners on the concession, according to the recent well-documented study by Dan Fahey, ‘Le fleuve d’or’ [River of gold].¹⁵⁴ In addition, there are the South Kivu sites and in Maniema, for which there are no estimates, but which undoubtedly reach into the tens of thousands of people, given the number of known mining sites. Whilst only very rough estimates are possible, one thing is certain: **the artisanal mining force is an essential source of income for hundreds of thousands of families throughout eastern DRC.**

154 D. Fahey (2008). ‘Le fleuve d’or: The production and trade of gold from Mongbwalu, DRC’, pp.357–383. *L’Afrique des Grands Lacs*. Annuaire 2007–2008. Paris: L’Harmattan.

Despite its effect of creating jobs, mining activity is a poverty trap. Behind the illusory appearance of sudden enrichment, it generates a dynamic of impoverishment. Research into the human consequences of artisanal mining usually concentrates on the diggers. These are certainly the most numerous categories and the least well provided for. Other actors in the trading chain from the mine gate to the *comptoirs* are not however altogether neglected. There are winners and losers amongst them, but who are they? A detailed study would certainly show that those ethnic groups who traditionally fill the commercially dominant positions are the same as those who control the mineral trade – the Bashi in South Kivu, and the Nande in North Kivu. Both of these consider the Banyarwanda intruders and have always sought to discredit them since they are competitors.

The diggers' earnings from their work are minimal, which means they are unable to turn them into advantage. Different sources – the UN Group of Experts and the NGOs – have tried to calculate the diggers' income. For gold-panners, for example, it can vary from US\$1 and US\$6 a day, depending on the sites, which is not a poor salary by Congolese standards. The monthly income of diggers in Kamituga is close to US\$30. In 2007, a study¹⁵⁵ on gold exploitation in Ituri and Orientale Province estimated the daily production per miner to be about 0.5 grams on average. The diggers earn between US\$1 and US\$2 a day. According to the Group of Experts, of the 17 mining areas studied in Ituri, only four made net gains. Out of 39 households studied in Nord and South Kivu, 75% were indebted. Because of the remoteness of the sites, food and consumer goods were between two and three times more expensive near the mines. The diggers also spent some of their earnings on beer and women. They were often forced to incur debts with the traders who manage the commercial circuits between the quarries and the trading houses as well as the flow of consumer goods in the other direction. The miners are completely dependent on those controlling the exploitation of the mines and the sale of the ore. This indebtedness is more apparent in the rainy seasons when it is difficult to work. Overall, the median income of the miners is just enough to survive. **The Group of Experts even concluded that in the end the diggers' yearly income was negative and that they were easy prey for the money-lenders.** However, this idea of a negative income, based on an accounting approach to the problem, seems inadequate to explain this grim reality completely submerged in the informal. **The diggers' financial position appears to be similar regardless of the mineral they are mining.**

Before becoming a “poverty trap” for them, the mine represented an attractive economic alternative for many, because they saw it as a way of stepping into the modern world and a chance of making – or so it is believed – easy money. A large number of people have been displaced by the armed violence suffered by the civilian population in Kivu. When they are not looked after by the UNHCR or humanitarian NGOs, they find salvation in the mines, a local alternative to migration to some faraway town. Those who have been marginalised by being uprooted find themselves compelled into accepting the least well paid work, which is breaking up the mineral ore. Alongside these poorest of the poor, who have fled from their villages, are town dwellers, young school dropouts or officials whose salary – when they get one – is not sufficient to provide a living for their families. A number of teachers are among them, some working full time in the mine, others during the school holidays. After the MONUC-sponsored disarmament, demobilisation and reinsertion operations, former soldiers, particularly those from the Mai Mai, became miners. Mines also offers economic opportunities for women, like small canteens run by “mothers” who need only a saucepan to set up a restaurant and feed the unmarried men. The least well off women find a place in the mineral production chain by taking part in breaking up cassiterite and coltan ore, in gold-washing and in carrying water.

Koen Vlassenroot and Timothy Raeymaekers, in their study on Kamituga, noted that people dig for gold because growing manioc doesn't bring them any money. They mention the fact that the gold-washers or *garimpeiro*¹⁵⁶ who succeed are an example for their children.¹⁵⁷ This

155 K. Hayes et al. (2007). *Researching natural resources and trade flows in the Great Lakes Region*. PACT.

156 De Boeck Filip (2001). 'Garimpeiro worlds: Digging, dying and "hunting" for diamonds in Angola', pp. 549–562. *Review of African Political Economy*, 90/28.

157 K. Vlassenroot and T. Raeymaekers (2004). 'Divisé en deux. Or et identité sociale à Kamituga (Sud-Kivu)' [Split in two. Gold and social

phenomenon was already noticeable before the war, according to a 1987 study in the Bushi country, where 30% of the young men had left farming for the mines.¹⁵⁸ In the highly populous regions in the eastern edge of Kivu, difficult land access for the youth is one of the main reasons why they leave the area.

Faced with an economy of extortion that exploits their labour power, the miners have few means of defence. They try to reconstitute some sort of society in places where photographs and films come close to evoking penal labour. To make up for the loss of social cohesion previously rooted in family structures, new kinds of social ties emerge, similar to the dynamics in the very poorest towns, where poverty, in the words of Theodore Trefon, is transformed into the “solidarity of despair”.¹⁵⁹ But however painful the miners’ conditions, abused by the mirage of enrichment or under duress from a situation of armed conflict, in their eyes such a life is better than that of agricultural labourers stuck in their villages without any access to basic social services.

- **Whilst the artisanal mining economy provides no lasting wealth for basic workers, it does offer a means of survival to all those who either voluntarily or under duress end up working in a mine.**
- **Only with solid quantitative data – as accurate as possible – will it be possible to correctly measure the economic and social impact of artisanal mining.**

Social transformations and artisanal mining

The artisanal labour force engaged in mining is part of a worldwide social transformation that brings with it migrations from the countryside to mines and to urban centres. Small towns develop in the largest mining areas. By shifting the geographical distribution of the population, these centres of urban growth around the mines produce changes in the economic, social and cultural arenas in the Kivus and Ituri.

This profound change does not date from the recent wars but goes back to the 1980s, when the liberalisation of mining attracted tens of thousands of young people. Social change is to be measured according to all the dynamics affecting society and the physical space it inhabits. From this angle, Kivu was not spared from the deterioration of transport infrastructures which led converting the Congo into a series of “islands”. The breakdown of links between town and country moved isolated villages backwards in time towards the sphere of self-sufficiency, jeopardising food supplies to the towns and to the mining areas. The demands of the armed groups and the pillaging of harvests have accentuated the division between towns and their hinterland. Kamituga, about 180 kilometres to the south-west of Bukavu, became impossible to reach by road, except with such difficulty that the aeroplane replaced the lorry to supply an urban centre with more than 10,000 inhabitants. The impact of the cost of transport on consumer goods weighs heavily on the personal budgets of the miners, who must bear the expenses of isolation. Older people recall with some nostalgia the days when SOMINKI used to buy part of the local food crops in order to feed its own workers. Back then the roads played their role as a link between sellers and buyers. **A return to a formal economy is only conceivable if the transport infrastructure is improved.**

The consequence of this exodus of young men from the rural economy is hard to evaluate beyond taking note of a decline in agriculture and a reduction in food security, which the reports attribute to a deficit in the male labour force. Everyone interrogated during the Pole Institute’s field studies referred to the effects of evictions on agro-pastoral activities and mining. The actual situations is often more complicated: it is not exceptional for miners to own land that members of their families are exploiting, as a safety net. Systems of agricultural production need to be carefully studied. Amongst Bantu groups living in the forest, for example, women play a central role in

identity in Katimuga]. *L’Afrique des Grands Lacs*. Annuaire 2003-2004.

158 H. Dupriez (1987). *Bushi: l’asphyxie d’un peuple* [Bushi : the asphyxiation of a people]. Bukavu: ADI-Kivu.

159 T. Trefon (2002). ‘The political economy of sacrifice: Kinosis and the State’. *Review of African Political Economy*, No. 93/94.

labour, while men primarily prepare the fields for cultivation using slash and burn techniques. Women perform all the remaining work – sowing, planting, weeding, reaping and transporting crops from the field to the village. The men's absence is only a real problem during the period of slash and burn in the dry season. This is a critical period, but it lasts only a few weeks, or only several days if a chain saw is available. The many reports on mine conditions do not tackle or only in a very limited way the question of the work timetables. This calls for investigation, since informal production systems are often characterised by multiple activities.

It is the prolonged absence of the young men at the mines that destabilises the farms. It reduces the productive capacity of family farming, since the women and the older men are unable to carry out the work involving heavy labour such as clearing the ground. The production of food crops is thus affected quantitatively and also qualitatively. The loss of wild game resources, due above all to reckless slaughter by the armed groups, leads to protein deficiencies. Doctors point to a return of *kwashiorkor*. Isolation, the lack of health care structures and the lack of security all contribute to aggravating living conditions in the villages.

- The diggers are not a homogenous group, either socially or culturally, contrary to the conclusions of most studies focusing on their economic status, their income levels and the nature of their expenses. The sociological complexity of hundreds of thousands of diggers within the DRC must be taken into account in the perspective, even if a distant one, of their reinsertion into an economic system that is less informal than today's.
- The sustainable improvement of the miners' economic situation does not depend only on increasing their income, but also and perhaps above all on rebuilding transport infrastructure, as it is key in connecting rural areas to markets; is the disappearance of road traffic that has transformed these areas into enclaves.
- The struggle against poverty depends on re-launching all segments of the economy, reintegrating agriculture into the national market economy, as well as improving working conditions in the mines.

5.2 Insecurity and violence in the artisanal mining sector

The system of artisanal mining exploitation leads to direct and indirect violence. The acts of direct violence along the whole length of the trading chain of mining products can be placed into two categories: those carried out by armed men (militia or security forces) against those carrying on the trade and those carried out between traders themselves. The minerals trade is a violent business, and even when the mining areas remain "calm" they are still areas of violent peace, the "Congolese Far West", or more correctly the "Far East". The conflicts between the informal owners of mining "squares" often give rise to violence, when the intervention of the authorities regarding questions of rights is not sufficient. For example, in Mukungwe (South Kivu) two groups claiming ownership of the mining site appealed to military men to help them get the upper hand. The presence of armed groups is naturally the leading factor of violence. Even if the NGOs agree that the phenomenon of enslavement of the local populations by the armed groups is rare in artisanal mining, some cases of this have been found. The NGO Justice Plus denounced the FARDC's enslavement of the Walendu Bindi in Bhavi, forcing the young men to dig gold for them.¹⁶⁰ The Ugandan army perpetrated violence in Durba against OKIMO managerial staff from 1999 on, to force them to take part in their acts of pillage and to increase gold production. In Mongbwalu, where confrontation between the FNI and the UPC for the control of the area caused some 2,000 deaths between 2002 and 2004, it is believed that the exactions by the militia were replaced by those of the FARDC, when they took over the concession. The Groups of Experts, in its February 2007 report, confirmed that there was no difference between the militia and the

¹⁶⁰ Justice Plus (2007). *Ituri: l'armée n'a pas fait la différence*.

FARDC, who in Ituri, ‘occupied the gold mining areas where they replaced the different militias and use force to impose their will and extort taxes from the mining communities’. In Ituri again, it should be noted that two military observers from MONUC, deployed in Mongbwau, have been assassinated. The traders are also the victims of armed men who often intercept them in order to steal the goods they are carrying. Banditry did not stop at the borders: the route from Entebbe to Kampala, notorious for being used by smugglers, was the scene of many bloody robberies.

The role of violence in the exploitation of and trade in minerals is controversial. The level of violence carried out by men in arms varies in fact considerably from one group to another and from one site to another. In Bisié, the 85th Brigade exercised control rather than coercion over the population by the selective use of violence. A kind of unequal exchange appears to have developed between the people who dig and upon whom the armed groups depend for their funding and the latter, who ensure the diggers’ physical protection.¹⁶¹ This phenomenon can also be seen in Kilo Moto, where during the Ugandan occupation, certain UPDF commanders invited and encouraged the population to come and work in the mines, through an agreement to divide up the gold produced: each miner had to pay one gram of gold a day in return for protection.

Indirect violence involves women and children. The social impact of mining activity is regarded in a very negative light by the Congolese who associate mining sites with the breakdown of families, the deterioration of moral standards and the emptying of the schools. The women complain of being left behind in the village and having to bring up the children and cultivate the land without any financial support, as most of the diggers are unable save any money. The men’s absence not only has economic consequences, but is felt also on the level of personal security. Women on their own are less secure than when there is a man in the household. The women are the main victims of a general lack of security. Just recently, a campaign by the group Enough described the eastern DRC as the most dangerous place on earth for women.¹⁶²

Sexual violence is not directly connected with the mining economy, but with the lack of security and the reigning anomie in the areas outside the law where the Kalashnikov is king. Against this background, the mine milieu is more protected than the isolated villages without defence, which are exposed to exactions of every kind by those carrying weapons. On the other hand, they are major centres of prostitution. Young girls who want to escape from the constraints of family authority are lured by making money. Others drift to the mines because they have been rejected by their families, for example after being raped. This prostitution in places with deplorable health conditions is a factor in spreading AIDS.

Children are also involved in mining production. In Kamituga, they go to school in the morning and look for gold in the afternoon. The small amount of money they earn pays for their schooling. According to reports, the dropping out of school is worse in mining areas than in rural areas, but what is in the situation today in the village schools? They too have not been left untouched by the disorganisation of education resulting from the war. Even the category of “child” is unclear without precise research work on the age and jobs that children perform. For example, at what age do youth start working underground? Young boys are often appreciated for their suppleness and agility, allowing them to slip easily into the bowels of underground exploitations. Many children present on the mining sites help their parents or their teachers because of their physical abilities. The war produced many orphans and some have found the mines to be a means of survival.

- **Relations between the labourers and the armed forces are based on a forced alliance of interests.**
- **Individuals at artisanal mining sites face a permanent state of insecurity.**

¹⁶¹ Report of the Experts’ Group of December 2008, and N. Garrett (2008). Op.cit.

¹⁶² Enough (2009). *Ten reasons why eastern Congo is the most dangerous place on earth for women*. Washington, DC: Center for American Progress.

Accidents at work and health risks

Working conditions in artisanal mines are extremely dangerous. Every year, landslides sweep away their quota of diggers. The rudimentary techniques employed in the underground mines also lead to frequent accidents. Miners in Adidi, an underground mine in the Mongbwalu area, were exposed to continual risks: lack of ventilation, use of charcoal fires to weaken the rock and improvised roof supports. During the Ugandan occupation, security was the last of the military's considerations, who thought only about pillaging resources. Towards the end of 1999, about 100 miners died in the collapse of the underground mine of Gorumbwa, because of intensive exploitation methods. Several dozen miners were buried alive in Bibatama, in Kibabi in March 2001 due to inadequate roof supports. The technical side of artisanal exploitation means the risks are always high. Two miners were suffocated, for example, in the underground mine in Senzere (Mongbwaku) on 24th February 2004.

In addition to the fact that the diggers risk their lives at the mine, the physically exhausting work there affects their health. Some local initiatives are aimed at better managing the risks and minimising the nuisances created by extractive activities. Mining companies say they are concerned by these questions. In Mongbwalu, a study on the miners' living conditions carried out in 2007 by the Cadre de Concertation (CdC), set up by AGK, revealed the deterioration of the state of health of those living in mining areas: illnesses due to dust and chemical substances used (mercury and acids), sexually transmitted diseases, accidents, miscarriages among women working at the mine, without forgetting the cost to children of hard work and sexual abuse. The CdC report provides examples of social actions in favour of the diggers that include education for better use of their income, and encouragement for economic diversification. Such initiatives are still rare, and people are usually left to their own devices or seek succour for their distress from religious groups and from the sects flourishing in this atmosphere of misery. All this is a general problem, not one specific to the mining world.

5.3 Geo-environmental impact

The environmental consequences are all highly negative: chemical pollution of water tables, deforestation, diversion of rivers, levelling of entire hills and disappearance of arable land as well as intensive poaching in the parks to feed the miners.

The different areas protected, including national parks, game reserves, and national reserves, have all greatly suffered from the wars and from invasion by miners. The degradation of the fauna and flora has been well documented by the major international NGOs devoted to the protection of nature and by their local connections. The Institut Congolais pour la Conservation de la Nature (ICCN) has, for example, received support from GTZ for a project concerning the National Park of Kahuzi Biega (PNKB). The Wild Life Conservation Society (WCS) is also very active in the area. In the lower part of the park called "Low Altitude", covering 90% of the park's 5,400 sq. km, the WCS counted nearly 3,600 elephants and 8,000 gorillas, figures reported in *Le Gorille*, an environmental communication journal, published by the Project PNKB-GTZ.¹⁶³ During the coltan "fever" in 1999-2000, some 12,000 local and foreign diggers (Hutus from the current FDLR) settled inside the park on some twenty sites. The NGO, Vision Verte, from Bukavu, drew up a precise map of this.¹⁶⁴ A comparison between this map and a GTZ map several years earlier is telling: back then the park was practically uninhabited.¹⁶⁵

Considering the park's immense size, the damage inflicted by the opening of these mines was little more than a few gashes in the gigantic mass of the forest. But the slaughter of wild animals to

163 SOS (2001). 'Le PNKB à la merci du Coltan'. *Le Gorille*, June, No. 4.

164 See map: Sites of coltan exploitation in the Kahuzi Biega Park.

165 Institut Zairois de Conservation de la Nature-GTZ (1996). *Cartes de la végétation et de l'utilisation des terres du Parc National de Kahuzi Biega et des régions avoisinantes* [Maps of vegetation and land use in Kahuzi Biega National Park and neighbouring regions].

feed the workforce has caused considerable damage, especially since part of the poached game is diverted to markets in the Kivu towns. Dried game meat (the lack of roads prevents transporting fresh meat) from the national park is for sale in Bukavu market stalls, where ivory is also easily found. **The losses caused to the environment cannot all be attributed to the mining economy, but rather to the whole predatory system that the war unleashed for which biodiversity also pays a high price.** The small mountainous part of the PNKB, called “High Altitude”, which is home to world heritage of the mountain gorillas, has also suffered, not from mining activity, but from the powerlessness of the park managers, helpless in the face of the armed bands in search of trophies. During the summer of 2000, the WCS organised a census of the gorillas, estimating their number had dropped to 130 from the 258 recorded in 1996.

The activities of the Diane Fossey Foundation, supported by the media and its publications,¹⁶⁶ have contributed towards awareness among many actors and decision-makers in the North. Created in 2003, the Durban Process fought for the protection of the Kahuzi Biega gorillas. This advocacy work made an impression on the companies in the North. The American company, Cabot, one of the largest in the tantalum industry that was targeted by the 2000 UN experts’ reports, decided to stop buying coltan coming from the DRC, in particular from the protected areas. ‘We do not and will not knowingly purchase any material containing Tantalum, including coltan, which was mined in the Kahuzi-Biega National Park and the Okapi Wildlife Reserve in the Congo’.¹⁶⁷

The environmental consequences of mineral exploitation largely depend on population density. From this point of view, Kivu is quite varied. Its eastern part, up to a hundred kilometres from its borders with Uganda, Rwanda and Burundi, has the highest densities in the DRC, up to 250 inhabitants per sq. km, or more, whereas towards the West, the territories of Walikale and Shabunda have fewer than 10 inhabitants per sq. km, according to the 1984 census, as is shown in Henri Nicolai’s precise cartography.¹⁶⁸ Twenty-five years later, the contrast between populated or over-populated areas and those that are empty spaces remains stark. In the absence of a census, satellite imagery provides confirmation. In the meantime, the population has doubled. One of Kivu’s basic characteristics is this “oro-demographic escarpment”, which separates the populated highlands from the empty lowlands. Daily life in the mines also depends on human densities in the surrounding areas. The opening of a quarry generates conflict only in areas of dense settlement. On the other hand, feeding the miners is less difficult there than in isolated areas far from habitation that must rely on supplies being flown-in.

166 I. Redmond (2001). Op. cit.; K. D’Souza (2003). Op. cit.

167 Cabot Position on Tantalum and Coltan and the Democratic Republic of Congo (August 2008). Cabot.

168 H. Nicolai (1998). *La répartition et la densité de la population du Kivu* [Population distribution and density in Kivu]. Brussels: Académie Royale des Sciences d’Outre-Mer. See map of North and South Kivu: population density by community.

Destruction of river banks and deterioration of the landscape at the gold-bearing sites in Ituri



Chapter 6: Summary of Recommendations

Summary:

The current sanctions regime is not effective. The problem of “conflict minerals” gives rise to two main groups of recommendations:

- Restrict trade, more or less radically, from total embargo to selective bans;
- Formalise or regulate trade by a mixture of economic, institutional and security initiatives.

Several initiatives are underway, including one on traceability (Germany) and another on the obligation to certify the origin of mineral ores (USA).

All the actors (NGOs, UN, Parliamentary groups, etc.) are looking for a solution to “conflict minerals” and combine their reports with recommendations. The first generation of reports, which coincided with the coltan boom, suggested a boycott of Congolese mining products and sanctions against those involved in the trade. These recommendations were applied in some respects and ten years later it is possible to draw some conclusions. A second generation of reports now calls for a “**global strategy**” which would link sanctions, an improvement in security and the formalisation of the mining sector. The most recent version of this second generation of recommendations was produced by the American NGO, Enough. It proposes in its ‘comprehensive approach to the DRC’s conflict minerals’,¹⁶⁹ a four-pronged strategy:

- transparency in the supply chain;
- making strategic mines secure;
- reforming governance;
- developing economic opportunities for the diggers.

6.1 Main recommendations, classified by theme

In this chapter, recommendations are classified according to the thematic order of this report, and their originating organisation is indicated in brackets.

Recommendations relating to the system of production

Recommendations	Methods of implementation
Break the territorial control of armed groups over the production of minerals	Deploy FARDC and MONUC in the principal mines and trade routes (Resource Consulting Service) Prevent access to mining sites and trade routes to the belligerents by means of surveillance by MONUC (Global Witness) Legal action against soldiers involved in minerals trading (Global Witness) Cautious reindustrialisation (bring in responsible mining companies, while leaving room for artisanal miners) (Resource Consulting Service)
Reform the security system	Training, discipline and regular payment of the PNC and FARDC (UN, DfID, APPG, SARW, Global Witness)

¹⁶⁹ Enough. *Comprehensive approach to Congo’s conflict minerals*. Washington, DC: Center for American Progress. 23rd April 2009.

Formalise the artisanal mining sector	Set up mining cooperatives (World Bank, Global Witness, Pact) Develop SAESSCAM (register diggers, issue cards, etc.) (Resource Consulting Service, World Bank, Global Witness) Officially designate areas for artisanal mining (Resource Consulting Service, World Bank) Develop CEEC controls in artisanal mines (Resource Consulting Service, CEEC)
Restore legal security	Review land titles, mining contracts and local community rights (DfID) Simplify and clarify mining rights, particularly to distinguish the roles of traders and agencies (UN) and resolve conflicts between customary rights, land rights and mining rights (Pact) Extend CAMI's services in the provinces (World Bank, Global Witness)
Reinforce the application of mining rights	Set up an independent mining authority (national and international) to supervise application of the mining law and especially the attribution of concessions in the Kivus (APPG) Create a Congolese parliamentary commission on natural resources (APPG)

Recommendations relating to the system of commercial trading and the struggle against fraud¹⁷⁰

Recommendations	Method of implementation
Reduce the revenue taken out of the minerals trade by armed groups	Total ban on the import of certain minerals from the eastern DRC (IPIS, HRW) Implementation of reasonable diligence (UN, Global Witness, Enough)
Simplify, harmonise and clarify customs tariffs in the Great Lakes region	Negotiations in the framework of the CEPGL (DfID, Resource consulting services) Establish a regional customs organisation (DRC, Rwanda, Burundi, Uganda, Tanzania) (INICA)
To ensure traceability along the supply chain	Obligation on the importing companies to publish the origin of their mineral ores (Enough, IPIS) Effective application of "due diligence" (Global Witness, HRW) Setting up of an administrative procedure for identifying mineral ores ¹⁷⁰ (ITRI) Statutory obligation for independent audits on importing companies on the origin of mineral ores, with fines for violations (Global Witness, Enough, IPIS, HRW) Developing an administrative certification throughout the supply chain (DfID, Global Witness, Pact, Resource consulting services, UN) Developing a geochemical certification (Pact, Institut fédéral de géosciences) Monitoring of mining activities by civil society (APPG, HRW)
To formalise cross-border trade	Publish accounts and of export taxes paid by the trading houses (DfID, Resource consulting services) Institutionalise a forum for regional dialogue (Resource consulting services, Pact) Establish joint customs posts (Resource consulting services) Set up a regional EITI or apply the national EITI to the Kivus (Global Witness, DfID, Resource consulting services)

¹⁷⁰ 'Progress report: towards a responsible cassiterite supply chain'. Available at www.itri.co.uk.

To fight against customs fraud	<p>Independent monitoring of administrative services' behaviour at the borders by observatories of cross-border trade (DfID, INICA, UN)</p> <p>Training of and regular salary payment to customs officers</p> <p>Reform of customs procedures (DfID)</p> <p>Reduce the number of administrative services involved in cross-border trade (DfID)</p> <p>Privatise customs services (UN, APPG)</p> <p>Reveal the identities of corrupt officials and prosecute them (Pole Institute)</p> <p>Define the payment at source of 40% of receipts, according to the Constitution (Pole Institute, SARW)</p>
Ensure that OECD principles and UN sanctions are respected	<p>Publish maps of the mining production areas under the control of armed groups (UN)</p> <p>Surveillance of trading and industrial companies by their governments (IPIS, UN, Global Witness, HRW)</p> <p>Prosecution by the IPC of traders involved in "conflict minerals" (Global Witness)</p> <p>Systematic commitment to criminal prosecution of companies violating sanctions (Global Witness, HRW, Resource consulting services)</p> <p>Boycott by Western consumers of products made with "conflict minerals" (Enough)</p> <p>Stop the exploitation of minerals in certain zones occupied by armed groups (HRW, IPIS, Global Witness)</p> <p>Create a "gold observatory" in Ituri (HRW)</p>

Recommendations relative to the impact on people and the environment

Recommendations	Methods of implementation
Diversify local economic opportunities	<p>Agricultural development (SARW, INICA, Pole Institute, Pact, Global Witness)</p> <p>Development of infrastructure (particularly roads to serve agriculture) (INICA, Pole Institute, SARW, Global Witness)</p> <p>Create local markets (INICA, Pact)</p>
Develop social responsibility among mining companies present in the DRC	Develop a code of conduct for mining enterprises (UN)
Adopt Congolese environmental standards suitable for artisanal and industrial mining activities	Law or Decree (INICA)
Improve the diggers' safety	Surveillance of working conditions in artisanal mines by SAESSCAM (World Bank)
Increase the awareness of the diggers about their rights and market prices	<p>Mobile telephones (INICA)</p> <p>Dissemination of the Mining Code (INICA, World Bank)</p> <p>Training of diggers by SAESSCAM (World Bank)</p>
Reduce child labour	Programme of education for children employed in the mines (Pact)

6.2 Moving from the ineffectiveness of the current sanctions regime to certification/traceability

Emerging from the work of the Group of Experts, the first generation of measures passed consisted of targeted sanctions, decreed by the UN Security Council. These took the form of:

- **Blacklisting** (individuals or companies appearing on the UN List are no longer to be used as suppliers or traders by mining sector companies);
- **Freezing assets;**
- **Ban on visas.**¹⁷¹

Even the United Nations conceded that these sanctions, which do not target trade in itself but only certain actors in illegal trade, have not had the intended effect. The ‘sanctions bother their targets, (but) their general effect is to reduce hardly at all the activities they aim to put an end to’.¹⁷² In other words, they did not stop the illegal exploitation of the DRC’s natural resources, nor prevent the armed groups from profiting from the mineral trade, nor put an end to violence. The multiplicity of traders, of *comptoirs* and of export possibilities render ineffective sanctions targeting a few traders who conduct business with armed groups. In other words, the present sanctions are incapable of:

- Limiting the recourse to force in the extraction of mineral resources;
- Discouraging fraud;
- Punishing all the mining operators who are guilty of having relations with the militias.

According to the UN, one of the great weaknesses of the present sanctions systems is the lack of cooperation among the states that have responsibility for implementing the sanctions. Although the UN put the two largest Ugandan gold exporters on their list in 2007, these companies were never bothered by the Kampala authorities: one of big traders in Ariwara, Ozia Mazio, who died in 2008 and was on the list of people violating the embargo by supplying arms to the FAPC -- blacklisted by the US Treasury and the Bank of England for gold trading -- continued to buy gold in Mongbwalu in 2008 and went regularly to Kampala to sell it. (He is said to have learned that he was on the list from UN officials). The Group of Experts’ December 2008 report emphasises the reluctance of the Ugandan Central Bank and of several other banks in Kampala to freeze the accounts of Ugandan gold-trading companies blacklisted by the UN. In Uganda, the Porter Commission recommendations to initiate further enquiries have never been carried out. The Rwandan and Burundian Governments do not exercise any “due diligence” towards gold importers or importers of other minerals who were operating on their territory.

The governments of the region are not the only ones at fault; European governments are also very reluctant to police the European companies denounced by the United Nations. Up until now, not one of them has been found guilty by a court; at a maximum a few of them have been called to “hearings” (more by parliamentary investigative commissions than by judges). The heaviest “sanction” so far imposed has been an official declaration of having violated OECD principles concerning the activities of multinationals in conflict zones. Even those companies who have been caught “red handed” (AngloGold Ashanti with the FNI, Traxys and Trademet with the trading houses that buy from the FDLR) in dealings with armed groups have not been pursued. The Belgian authorities made known their concern to Trademet and Traxys, but refuse to go any further for the moment. AngloGold Ashanti, who had provided logistic and financial support to the FNI militia, in exchange for guarantees of security,¹⁷³ has faced no legal actions in consequence, and the company, while admitting its inappropriate relationships with a militia, had mainly relied on public relations statements to handle this problem. No European government seems at present willing to impose any obligation of “due diligence” on companies, NGOs have insisted. Another limit to the effectiveness of sanctions is that exporting companies named by the

171 The travel ban and the freezing of assets date back to 2005 (Resolution 1596) and have invariably been renewed.

172 Group of Experts’ Report of 8th February 2008

173 Human Rights Watch (2005). Op. cit.

UN reorganise to carry out their activities clandestinely or hide themselves behind other names.¹⁷⁴ In the absence of sanctions against companies, the UN's measures are reduced to a sort of moral embargo on "conflict minerals". **Observing these measures is left to the good will of private companies who at present exercise hardly any control over their suppliers.**¹⁷⁵

The case of Afrimex: Denunciation without condemnation

In Europe, only the United Kingdom has dared to declare one of its enterprises as having violated the OECD principles, following a complaint by Global Witness in February 2007. The British National Point of Contact for implementing these principles indicated in 2009 that Afrimex, which figured on the UN list since 2002 because of its links with the shadow company RCD-Goma, had violated the OECD principles. But this did not lead to any legal action. Afrimex claimed to have stopped acquiring any mineral ores in the DRC, and in its latest report, Global Witness demanded that the British Government independently verify this statement.

For the time being, the most serious result of being put on the UN list has been the **suspension of some purchasing contracts** by importing companies. Some Western companies have officially kept their distance from their Congolese suppliers. In 2001, following the Group of Experts' report, American Cabot stopped importing Congolese coltan and Eagles Wing Resources gave up importing coltan from the DRC and turned to Rwanda. After the large Ugandan exporters and the AngloGold Ashanti scandal were placed on the UN list, the Swiss company Metalor Technologies SA stopped buying Ugandan gold from 2005 onwards; the Ugandan companies involved (UCI and Machanga) then found a new buyer in the Gulf, Emirates Gold, based in Dubai. This company bought 18 tonnes of gold from Uganda and Burundi, but in 2007, the Emirates authorities requested that it to stop these purchases and Emirates Gold blocked the accounts of UCI and Machanga. Nevertheless, the Group of Experts brought to light in its December 2008 report the fact that Emirates Gold had continued to buy gold from doubtful sources even after 2007. The same reaction came from Hussar Ltd to UCI, which it accused of not having revealed the real origin of its gold. The most striking result was the financial retaliation by the buyers against their suppliers, because of the **risk of damaging their reputation**. Very recently (May 2009), the Belgian company Traxys announced its intention to stop purchasing in Kivu following the revelations by IPIS of the links between one of its trading suppliers (World Mining Co) and two armed groups (the Mai Mai of Pareco and the FDLR). The risk to reputation is a lever that may have some effect, but it has its limits. The large electronic companies (Ericsson, Hewlett Packard, Intel and Motorola) have reacted to the "No blood in my mobile phone" campaign by turning mainly to public relations (by developing codes of conduct), by blaming their suppliers and by trying to pass blame and responsibility down the supply chain.¹⁷⁶

The notion that the ineffectiveness of the present sanctions regime gives cause for considering a second generation of measures that moves away from the idea of blocking trade in minerals was recognised by the United Nations in a report that makes a show of "soul searching" and was reaffirmed in the December 2008 Group of Experts report.¹⁷⁷ The idea of an embargo or of a boycott of mineral products from the eastern DRC was put forward in reaction to the ineffectiveness of the sanctions in question. In 2001, IPIS called for a complete embargo on coltan from this area. In the same perspective, the American NGO Enough along with Amnesty International argue that the UN should adopt resolutions in order to prohibit the buying and selling of minerals coming from the conflict zones in the Democratic Republic of the Congo. Amnesty International

174 In its December 2008 report, the Group of Experts indicated that the blacklisted gold-trading company, Machanga Limited, based in Kampala, had created a shadow company in Nairobi, Usindi Exports, through which its exports transited to Emirates Gold.

175 Global Witness (2009). Op. cit.

176 The electronic companies are prepared to accept responsibility for their immediate suppliers, but not for those lower on the chain, who should be monitored by other supplier companies in the chain. In other words, these companies refuse to accept responsibility for the whole chain of their suppliers.

177 Chapter 196, p.50 'If steps are not taken by Member States to enforce compliance with the sanctions regime and relevant Security Council resolutions, the work of the Group will have little impact.'

called for dismantling the mafia-like networks behind the wars and that maintain armed groups, considering that the end of the war depends on ending the illegal exploitation and the fraudulent sale of the country's wealth.

Even if the option for a trade ban without a ban on named traders continues to be raised, there is now a consensus between the United Nations and the NGOs not to pursue the trade embargo angle, because it could lead to:

- penalising artisanal miners, who are among the poorest people;
- penalising the Congolese government;
- discrediting legitimate exports of minerals from neighbouring countries;
- a risk of reprisals against the MONUC;
- armed groups substituting other resources;
- avoiding the embargo by falsifying the real origins of mineral ores;
- an expansion of smuggling (particularly of gold, which is easily exported in small quantities).

“Due diligence” (checking the blacklist during any commercial transactions) remains therefore the currently favoured solution, but to be fully effective, it assumes a) that it will be obligatory b) that the precise origin of mineral can be ascertained. This could be achieved by administrative means (certificates of origin) or physical means (geochemical traceability of the mineral ore). Drawing on the Kimberley process, Germany has developed a pilot project for certification of the “business chain” in Rwanda for coltan and it hopes to extend it to the DRC. This project is part of the industrial logic of labelling, which does not concern the quality of the ore but its “**political ownership**”. From across the Atlantic, an American initiative is designed to make “due diligence” obligatory for companies listed on a stock exchange, and this could be an important step in moving from a regime of good intentions to a system of contradictory obligations that could be reviewed (verification of declarations by auditors independent of the supply chain).

- **Sanctions supporters look for suitable pressure points in the supply chain: the western NGOs consider that pressure should be applied to the end-user companies through consumers and legislators, so that they can apply pressure in return on the suppliers. This strategy, some fear, may be too indirect to make a real impact on the ground, since the suppliers can always find other buyers and/or conceal the origin of the minerals.**
- **The technical, financial and institutional feasibility of certification/traceability, as a kind of transposition of the Kimberley process to the “conflict minerals”, remains in question.**

6.3 A new paradigm: Make trade formal to make it moral

Opinions differ on the usefulness of systems of banning trade in minerals, whether selectively or not, since bans depend on capacities for due supervision and verification (“due diligence” and “certification schemes”). Some organisations (INICA, DfID, USAID, etc.) remain sceptical about the possibility of reducing insecurity by restricting trade and offer another alternative, which involves no longer placing sanctions on trade but trying to formalise it in order to give it discipline and morality. Their reports favour a formalisation/ return to order of the mineral trade in the region, which implies a wide range of economic measures (clarification and simplification of Congolese customs regulations, reindustrialisation, publication of legal taxes, regional customs system, etc.). Whilst these reports distance themselves from systems of constraint (embargo, targeted sanctions and certification measures), they acknowledge the need to have recourse to constraint, particularly in order to drive armed groups away from the mining sites (simultaneously bringing in Congolese forces of order and industrial mining operators). The report, *Trading conflict for development*, recommends, for example, a strategy of constraint against the FDLR: targeted sanctions against the leadership, military operations against their mining sites, legal prosecutions, etc.

The period of economic solutions has replaced the period of legal solutions (sanctions) with the move towards formalising the mining trade. This formalisation should achieve what sanctions have not been able to do, that is gradually marginalising armed groups in this sector. This solution through the economy is opposed, for example, to targeted sanctions, which lead to strengthening the informalisation of the sector by driving trade activity into clandestinity. From restricting trade in the eastern DRC, there would be a move to formalisation, which implies a whole range of measures:

- Reforming the security sector;
- Reforming customs;
- Fighting corruption in the mining police, the OFIDA, the intelligence services and the Ministry of Mines;
- Developing legislation on transparency and ethics of companies operating in conflict zones;
- Creating a cross-border commission to set up mechanisms for joint control, or even privatising customs control;
- Certifying mineral ores by the CEEC;
- Harmonising regional customs regimes, to reduce incentives for smuggling;
- Setting up joint customs posts.

To ensure its effectiveness any move towards formalisation would mean the consensual involvement of a multitude of actors (Congolese government, the governments of neighbouring countries, international actors and private sector operators) in long-term actions, dealing with complex subjects and various structural reforms (security, customs, etc.). This formalisation must rely on a strategy of incentives, and it is not easy to see at this stage what they might be. (What, for example, would be Rwanda's motivation for introducing transparency in its imports from the DRC?) Writers sidestep this problem by insisting on the traders' willingness to operate legally, if the government improves its performance.

- **Inspired by the EITI and by the strenuously developmental Kimberley process, the formalisation of trade is an attractive alternative to ineffective sanctions, but it opens up a vast field of activity, all of the parameters of which are far from being controllable, much less identified.**

6.4 Past and present initiatives

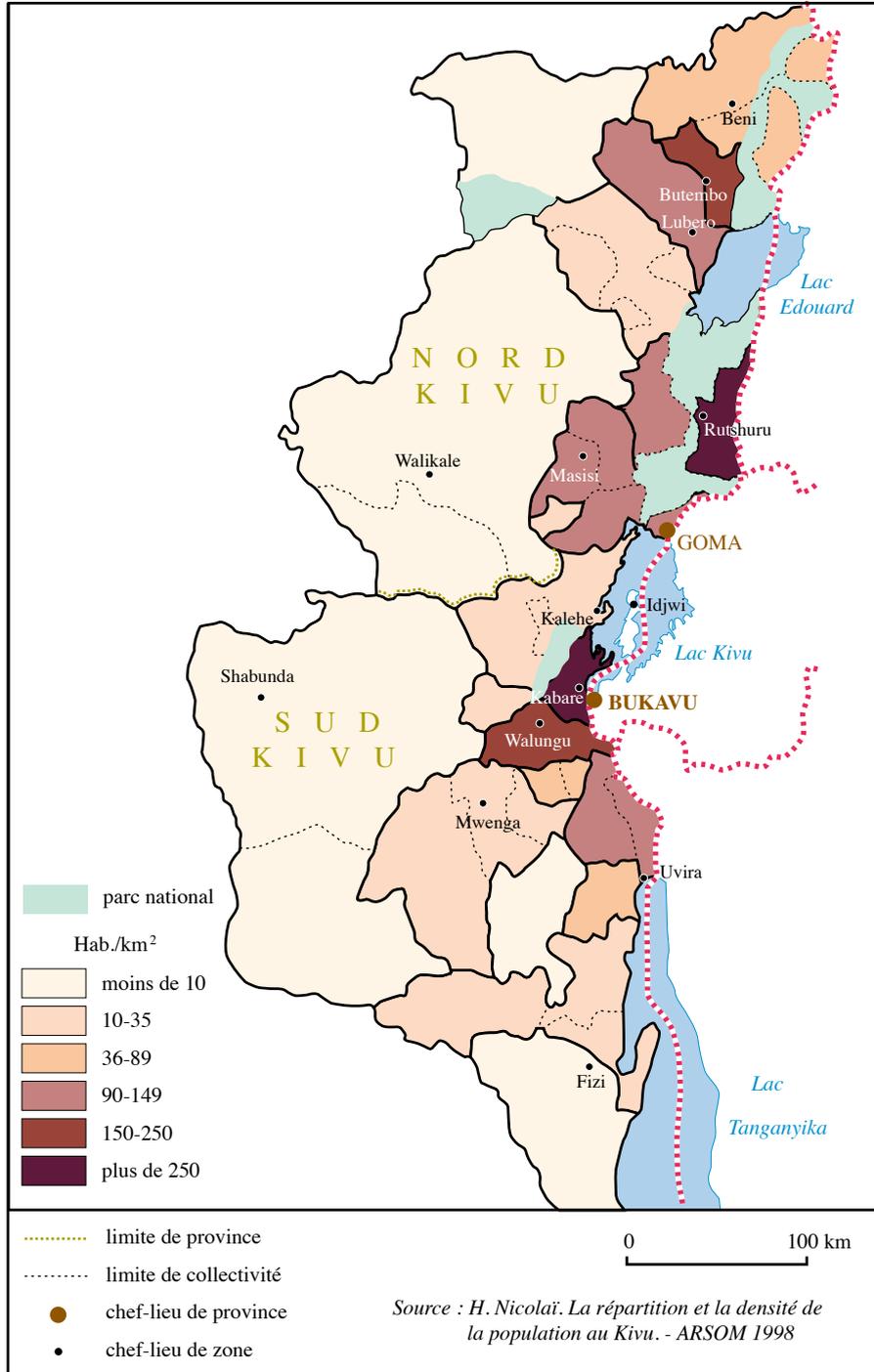
The discussions taking place at the United Nations or amongst NGOs about what measures might be effective do not imply total inertia concerning attempts to regulate the mining trade in the Great Lakes region. In addition to national processes (EITI etc.), referred to in Chapter 4, the International Conference on the Great Lakes Region has taken up the question of illegal exploitation of natural resources. Particular measures have been implemented inside the DRC, such as the suspension of exports of mineral ores in 2007, closing the customs posts in Bunagana and Ishasha in 2008, closing the mines in Walikale and Adidi in 2008, etc., and a more structured course of action is underway.

Past Initiatives	Commentary
Closing the customs posts in Bunagana and Ishasha (2008)	These closures aimed at depriving the CNDP of customs revenues, but according to the latest reports from the UN, this post is still used by the CNDP. ¹⁷⁸
Closing the mines in Walikale and Adidi (2008)	Setback. The mine in Walikale was reopened in April 2008, under pressure from the traders.
Suspension of mineral ore exports (April 2007)	Reassignment of licences to 11 trading houses.

Ban on importing unprocessed ore	Setback, as there is no processing capacity in the DRC. In 2005, when Kabila visited China and South Korea, projects for a coltan processing plant were submitted to him.
Demand by the Deputy Governor of South Kivu to demilitarise the mining sites (2008)	No result.
Establishing a single window	Setback, as a multitude of administrative services for customs formalities persists.
Rwandan-Congolese military operation against the FDLR (2009)	The Congolese-Rwandan offensive was meant to cut off the FDLR from the mining production areas. After withdrawing, the FDLR returned. Operation limited to North Kivu – no impact on their mining resources in South Kivu and use of gold easily transportable. Setback from mining standpoint.
Initiatives underway	Commentary
Pilot project for certifying the commercial chain (CTC) begun in September 2008 in Rwanda by Federal German Institute for geosciences and natural resources (BGR). The project concerns Colombo-tantalite, cassiterite and wolframite.	18-month project, could be extended to the DRC. Certification depends on good will in the countries of origin. Possibility of sidestepping it by mixing ores from various sources. Determining the source of tantalum by geochemical processes (Fingerprint), tried out by BGR in another project, is long and costly.
Random MONUC inspections of loading mineral ores (Resolution 1856)	These inspections should be made in the presence of Congolese authorities who are not always available and MONUC has no powers of arrest if it discovers trafficking.
Preparation of a draft law in the US Congress imposing “due diligence” on companies and obligations to declare origins	Three US Senators, with the support of the NGO Enough, Republican Sam Brownback and Democrats Dick Durbin and Russell Feingold initiated a draft law on conflict metals in the DRC, which aims to control the purchase of metals for the manufacture of high technology products (radar, mobile phones, etc.) that enable armed groups in the DRC to be financed. If this draft law were accepted, companies registered on American stock exchanges would be under the obligation to ‘declare annually to the ASEC, gendarme for the US stock exchange, the countries of origin of these raw materials. If these countries were the DRC or its neighbours, the company would have to state which mine the ore came from,’ according to the draft law. In addition to this obligation to make a declaration of origin, the companies would also have to submit to independent audits of their supply chains. Enough is conducting a public campaign in support of this draft law (www.raisehopeforcongo.org).
Extending the competence of certification of the CEEC to all mineral ores	The CEEC has received authorisation to certify all mineral ores and is seeking support to expand its work. It is now present in Bukavu, Goma and Butembo.
Regional struggle against the illegal exploitation of natural resources (meeting in Bujumbura in April 2009)	A meeting of the Regional Initiative against illegal exploitation was held in Burundi in April and the agenda included a draft regional mechanism for certification, and a regional protocol on illegal exploitation and on capacity-building. This plan remains quite vague.

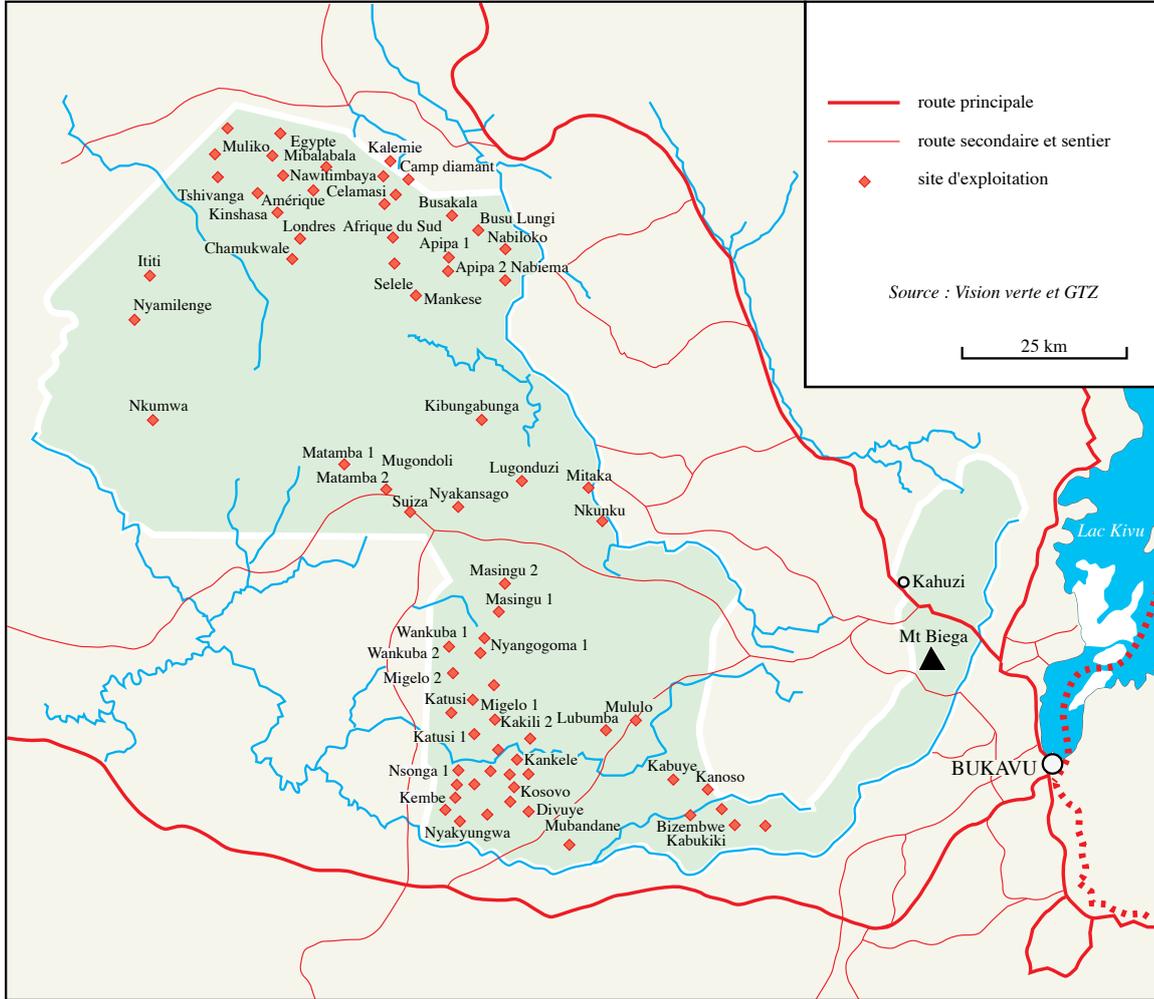
- Congolese initiatives have been blocked by Congolese interests; the regional initiative remains unclear and slow; bilateral initiatives (American and German) are the most likely to be completed within a reasonable timescale.
- Two main schools of thought are contending over the problem of the illegal exploitation of minerals:
 - Restricting trade (in a more or less radical way, from complete embargo to selective bans);
 - Reforming trade through a combination of economic, institutional and security measures.

NORTH AND SOUTH KIVU: POPULATION DENSITY BY ADMINISTRATIVE DISTRICT (1984 CENSUS)



N et R POURTIER

SITES OF EXPLOITATION OF COLTAN IN THE KAHUZI BIEGA PARK (SITUATION AT THE END OF 2001)

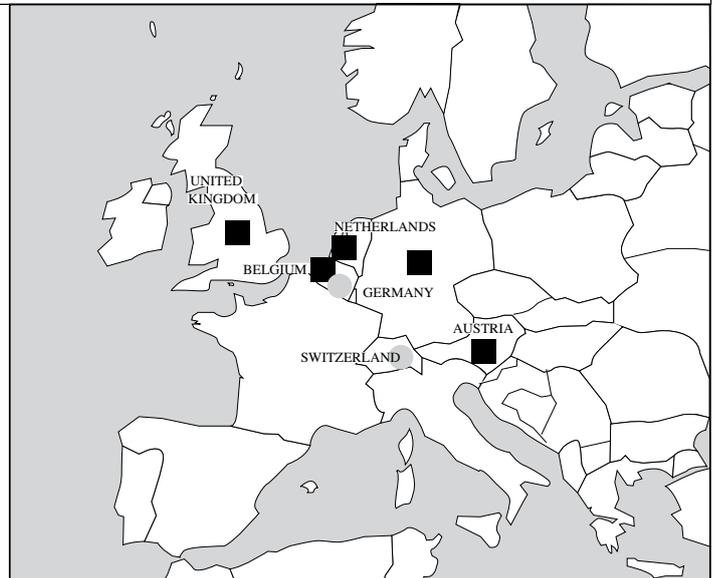
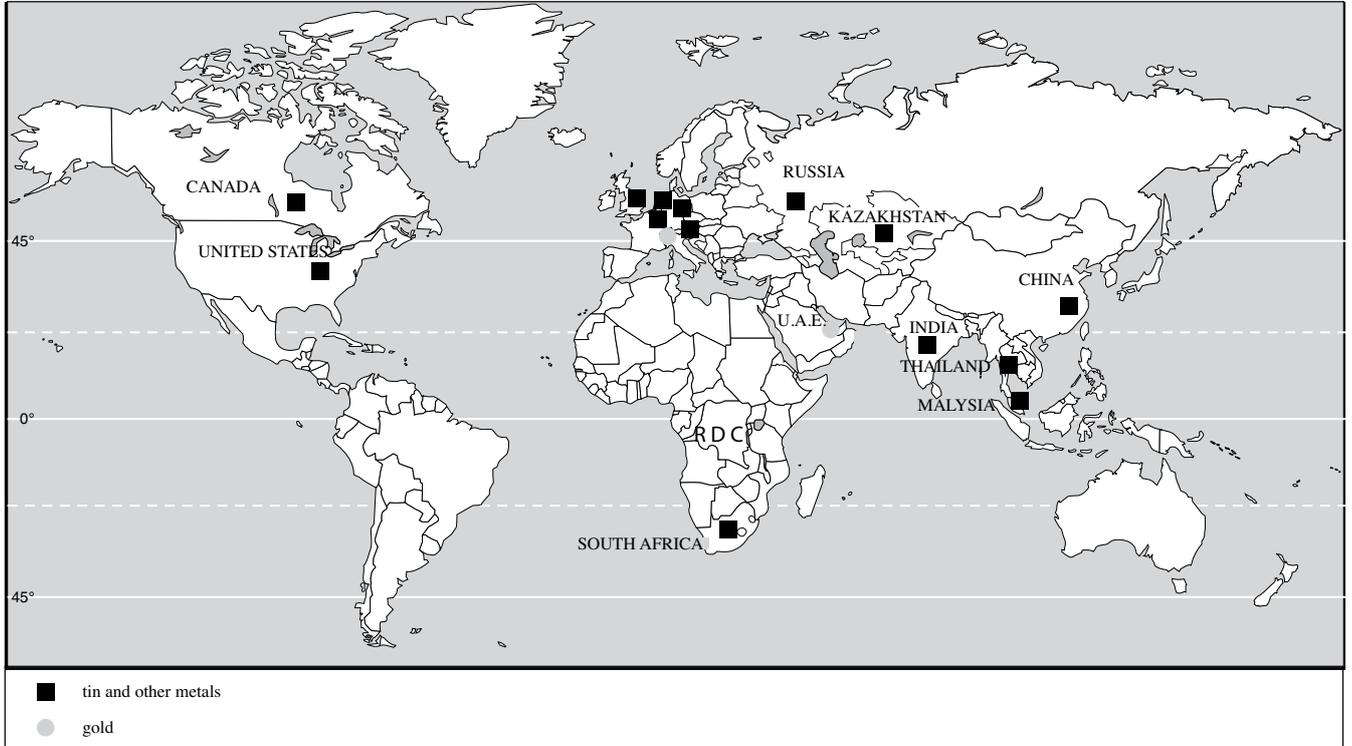


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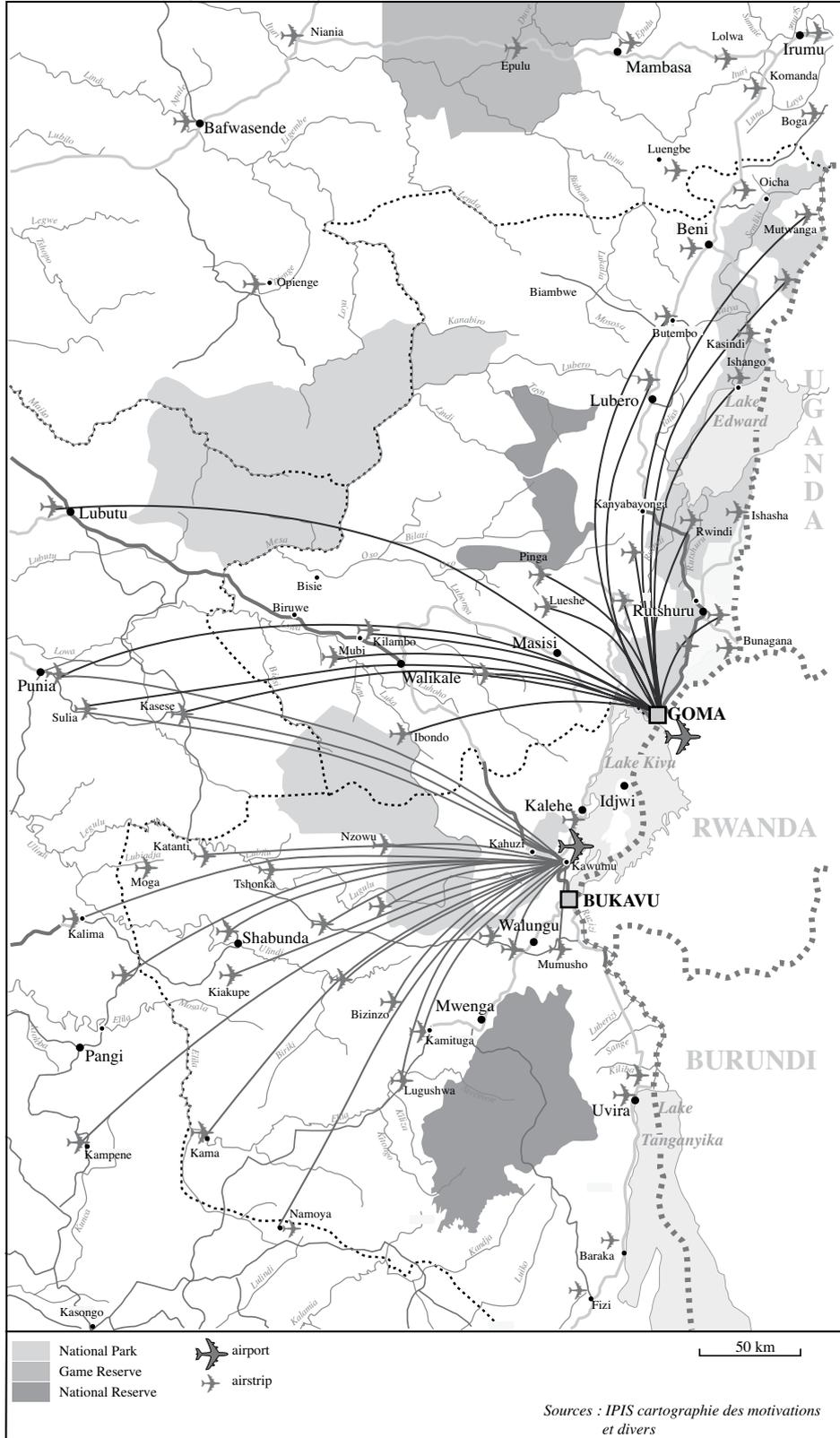
ETHNIC GROUPS IN KIVU



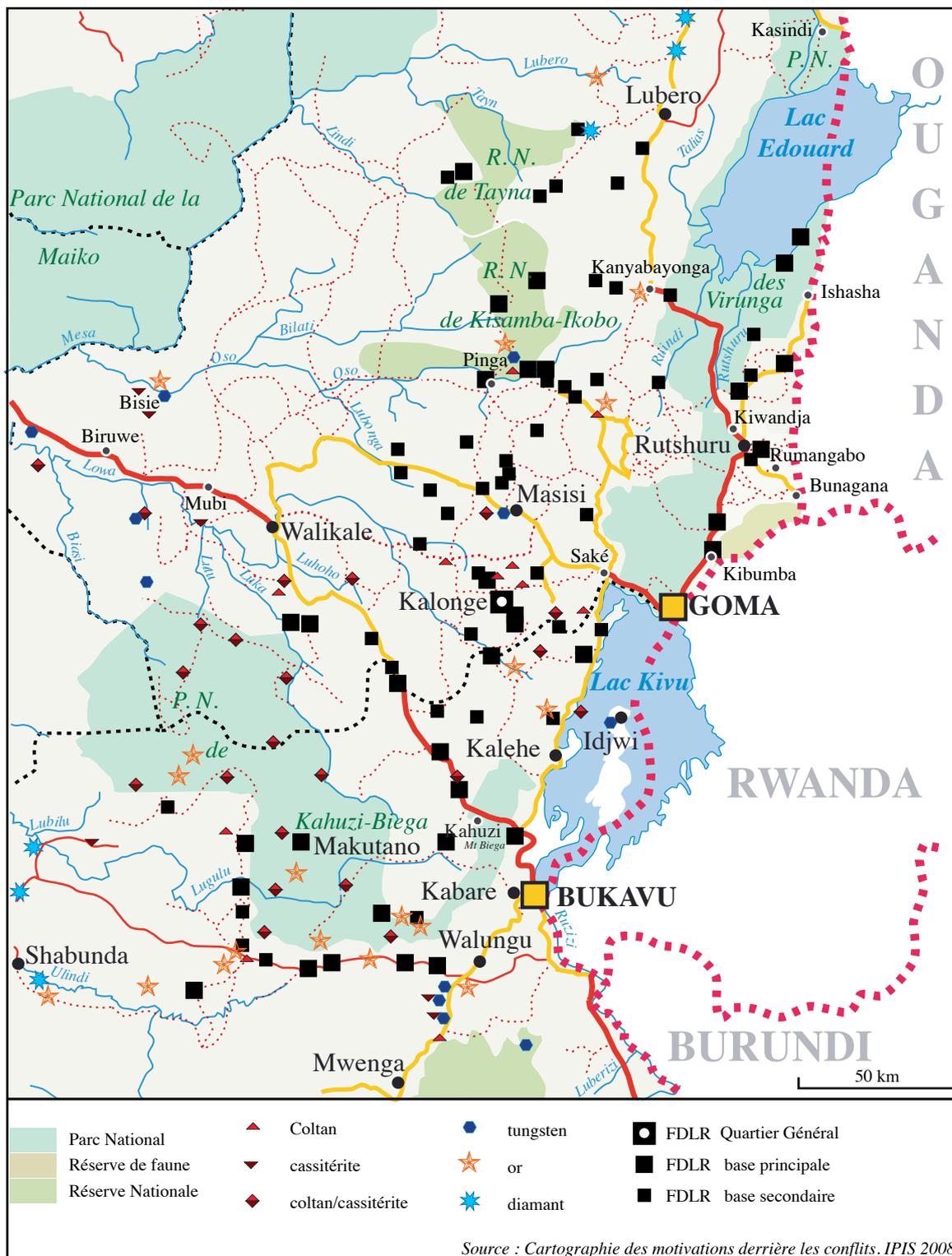
COUNTRIES IMPORTING MINERALS FROM THE EASTERN DRC



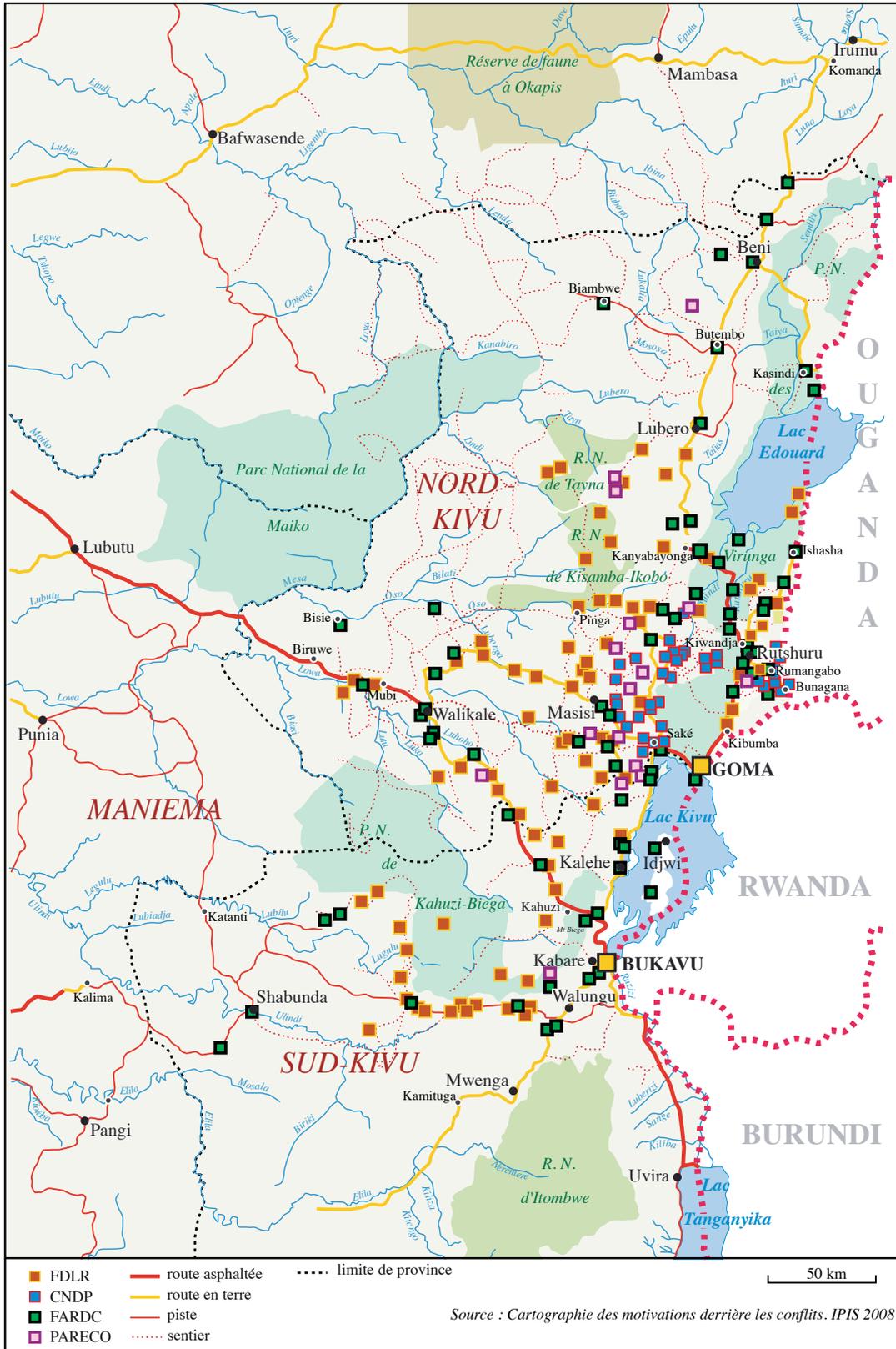
TRANSPORT OF MINERALS BY AIR



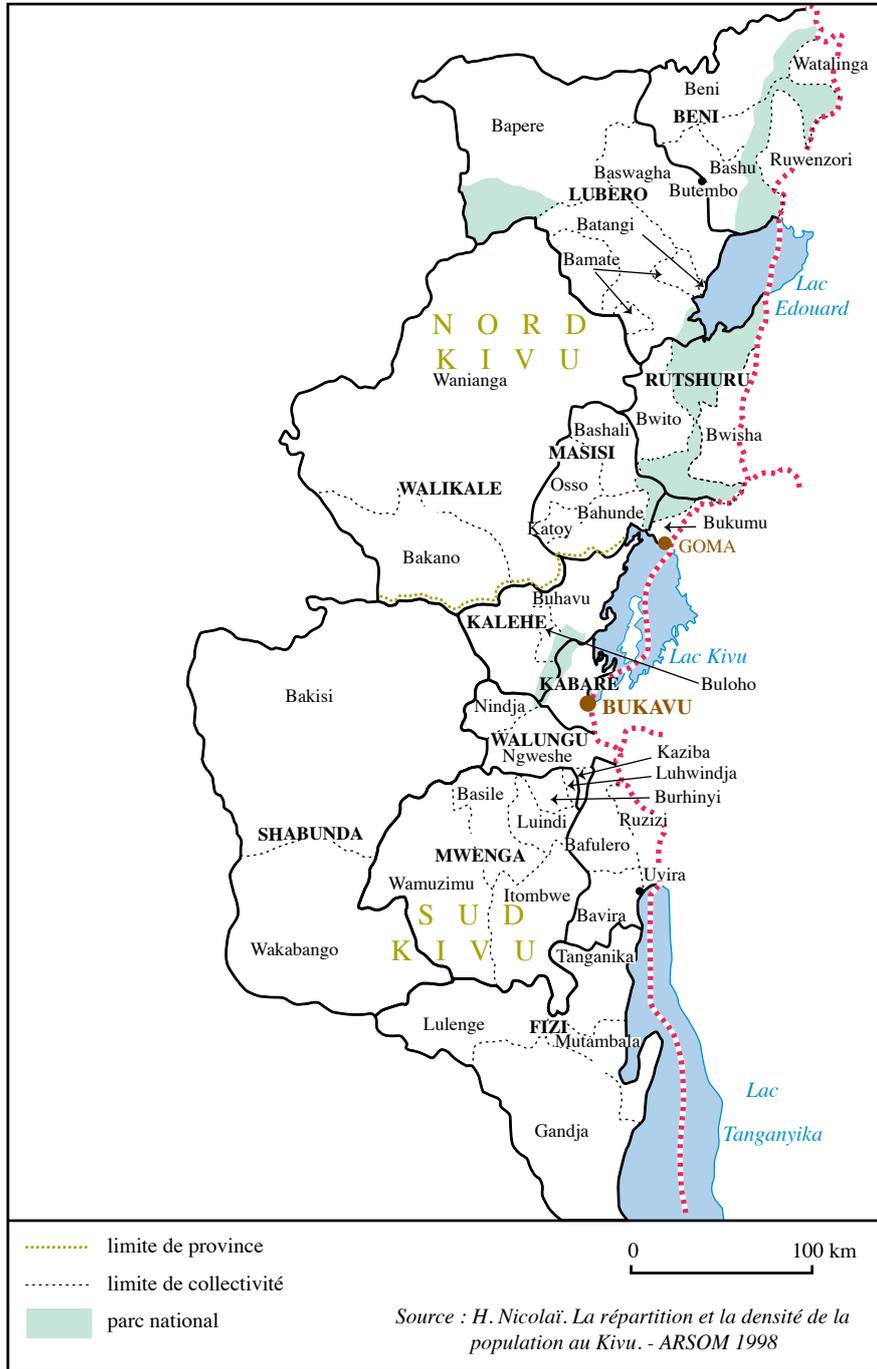
LOCALISATION OF FDLR (END OF 2007)



ARMED GROUPS IN KIVU (END OF 2007)

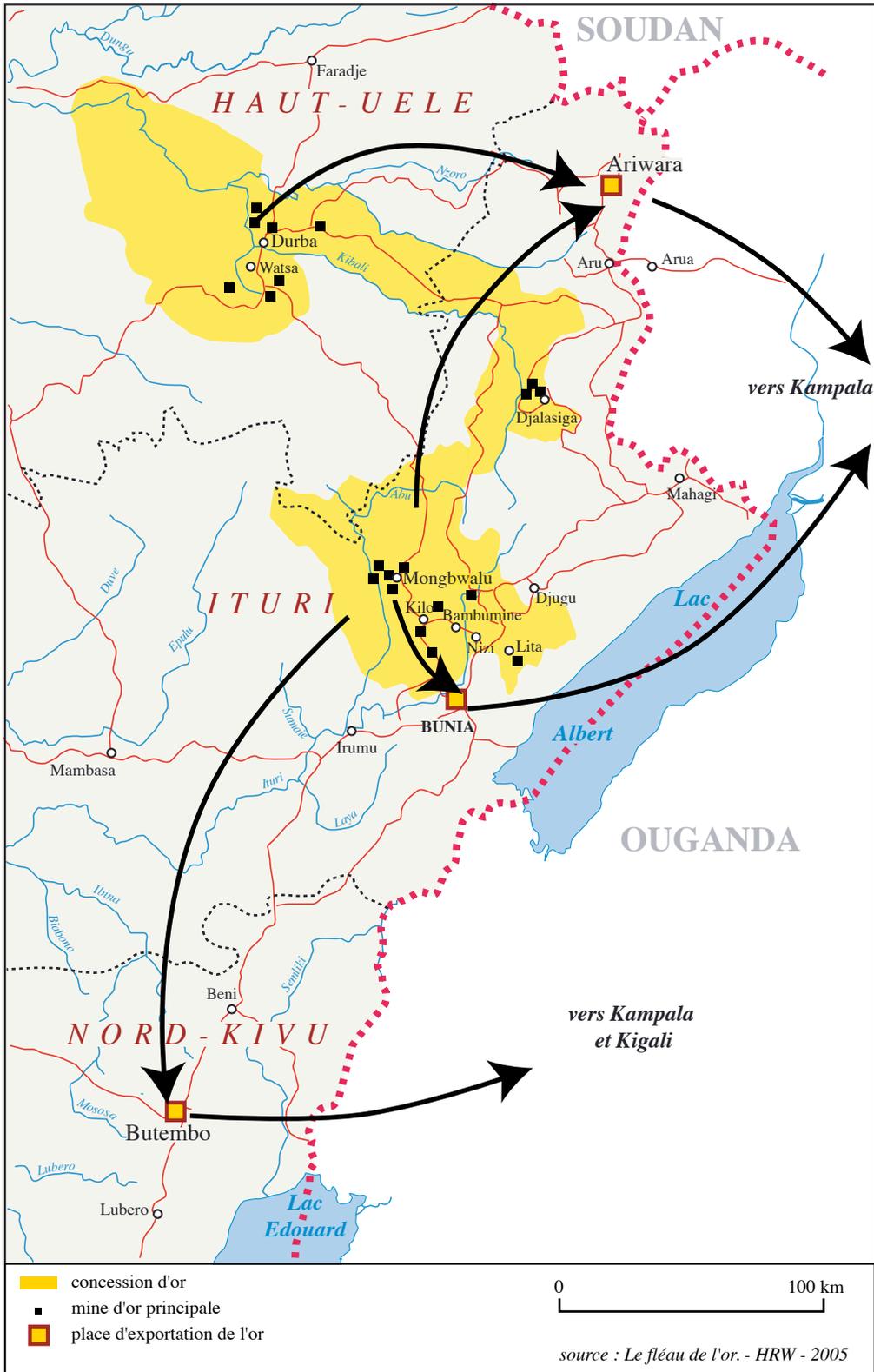


ADMINISTRATIVE DISTRICTS IN NORTH AND SOUTH KIVU

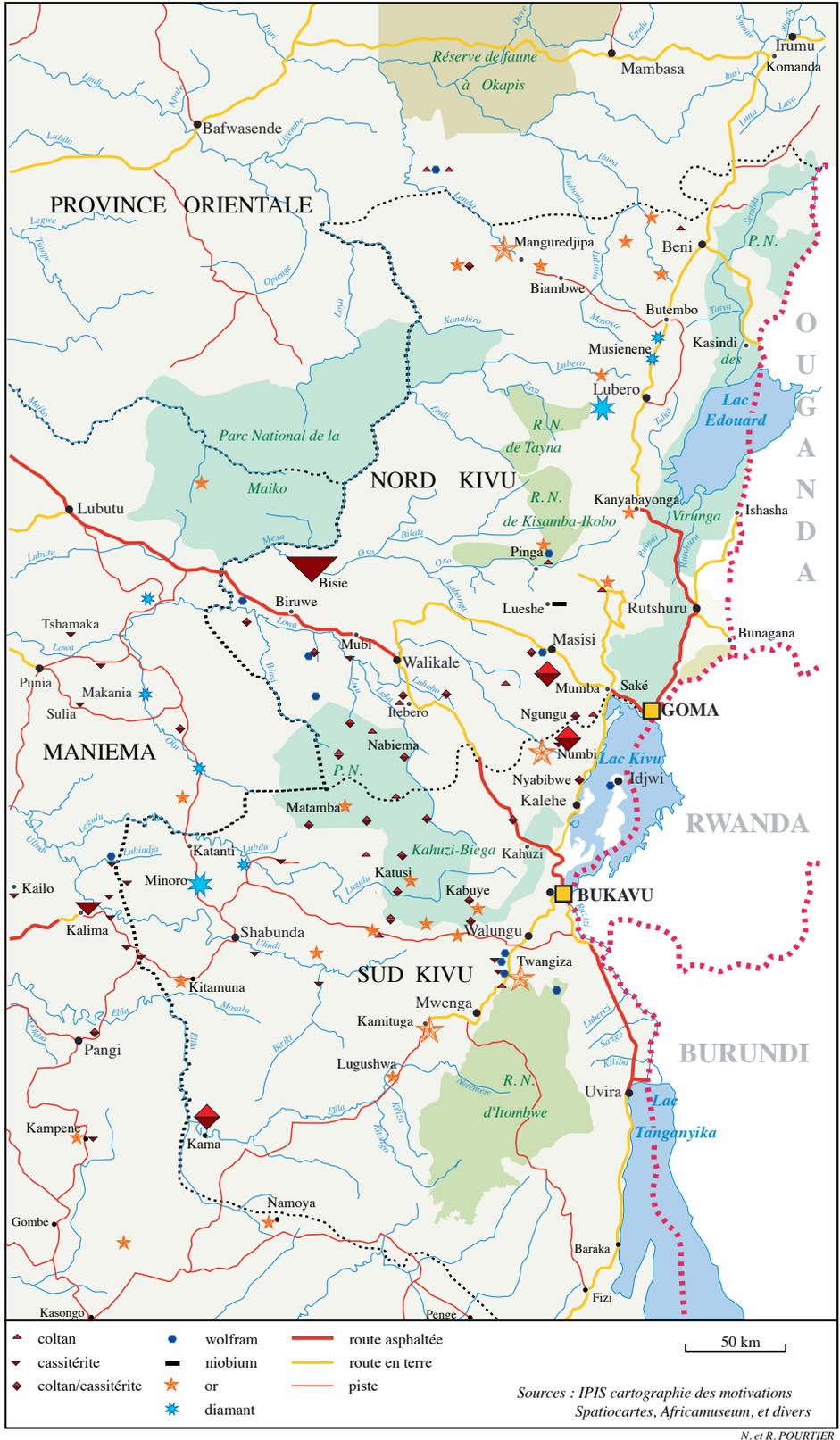


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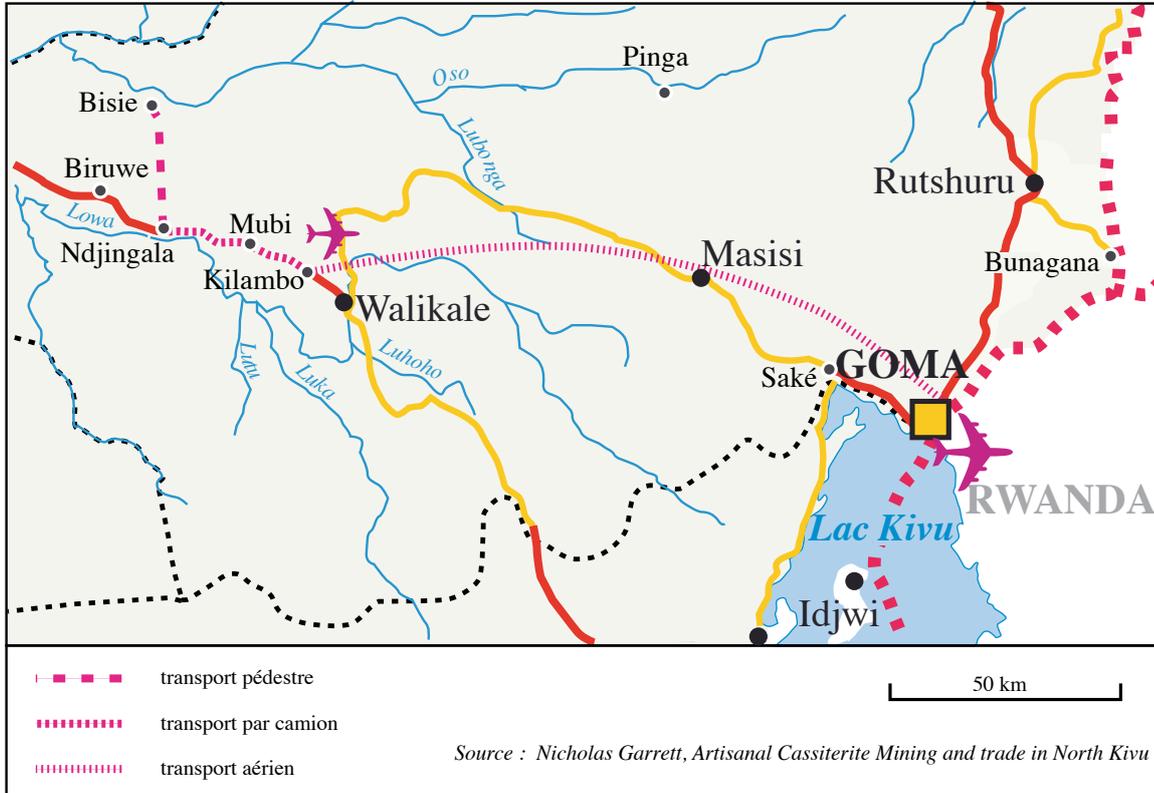
PRODUCTION AND COMMERCIALISATION OF GOLD IN ITURI



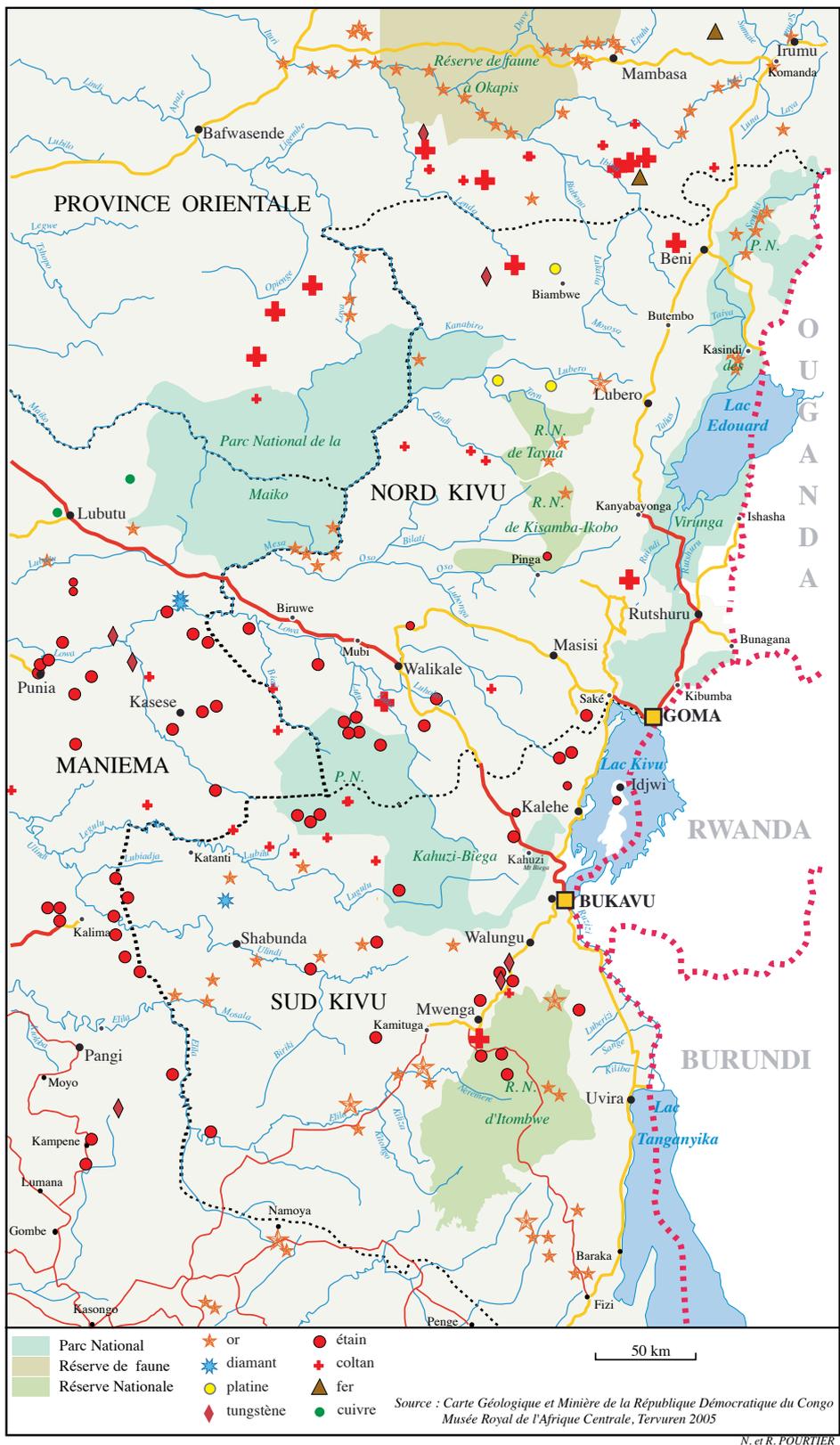
SITES OF MINERAL EXPLOITATION



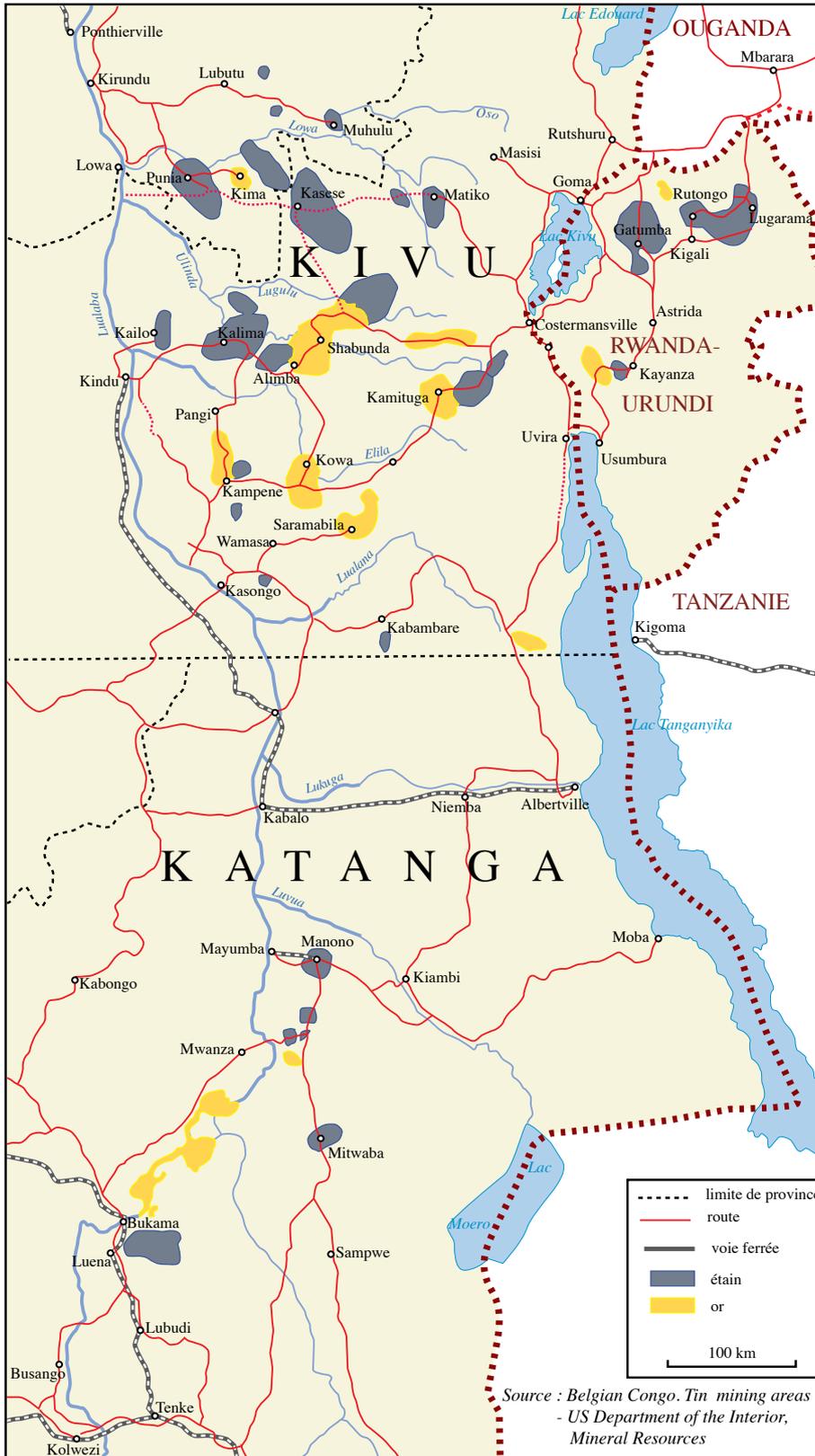
TRANSPORT OF CASSITERITE FROM BISIE TO GOMA



MINERAL DEPOSITS



THE TIN BASIN IN THE BELGIAN CONGO AND IN RWANDA-URUNDI IN 1945



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