



# LUBERO INFORMATION CHANNEL

## BASLINE EVALUATION AND RECOMMENDATIONS FOR ENGAGEMENT IN THE LUBERO TERRITORY

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## Table of Contents

Presentation.....	5
1 Introduction .....	7
2 Key findings.....	7
3 Recommendations.....	10
4 Methodology .....	14
4.1 Desk Research .....	15
4.2 Field Research .....	15
4.3 Challenges and Limitations .....	16
5 Analysis .....	17
5.1 Governance Assessment and Context of Mining .....	17
5.1.1 Summary Table .....	17
5.1.2 Politics and Governance .....	20
5.1.3 Economic Situation .....	23
5.1.4 Conflict / Security Situation .....	24
5.1.5 Mining Sector Governance .....	34
5.1.6 Health and Safety Situation .....	36
5.2 Local Extraction and Trade Overview in the Lubero Territory.....	38
5.2.1 Stakeholder Map: Relevant Actors in the Mining Ecosystem .....	38
5.2.2 Mining and Circumstances of Mining Activity .....	46
5.2.3 Mineral Trade and Supply Chain Mapping (3TG).....	53
5.3 Due Diligence Implementation .....	61
5.3.1 Supply Chain Due Diligence .....	63
5.3.2 Effects of 3T Due Diligence Deployment, Risks and Community Impacts.....	67
6 Conclusion .....	73
7 List of Annexes.....	73

## List of Acronyms

Acronyms	
3T	Cassiterite (for tin), wolframite (for tungsten) and coltan (for tantalum)
3TG	Cassiterite (for tin), wolframite (for tungsten), coltan (for tantalum) and gold ore
ADF	Allied Democratic Forces
AGR	Africa Gold Refinery
AGIR	Agro Industrie Rural
ANNOB	Butembo Traders Association ( <i>Association des Négociants de Butembo</i> )
ASM	Artisanal and Small-scale Mining
CAHRA	Conflict-Affected and High-Risk Area
CAMI	Mining Registry ( <i>Cadastre Minier</i> )
CEEC	Centre for Evaluation, Expertise and Certification ( <i>Centre d'Expertise, d'Evaluation et de Certification des substances minérales précieuses et semi-précieuses</i> )
CENI	Independent National Electoral Commission ( <i>Commission Electorale Nationale Indépendante</i> )
CLS	Local Monitoring Committee ( <i>Comité Local de suivi des affaires minières</i> )
CNLFM	National Commission Against Mining Sector Fraud (Commission nationale de lutte contre la fraude minière)
CPS	Provincial Local Committee ( <i>Comité provincial de suivi des affaires minières</i> )
CREDDHO	<i>Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme</i>
CSO	Civil society organisation
DGM	Direction General of Migration ( <i>Direction Générale de Migration</i> )
DMCC	Dubai Multi-Commodities Centre
DRC	Democratic Republic of Congo
FARDC	Armed Forces of the Democratic Republic of the Congo ( <i>Forces Armées de la République Démocratique du Congo</i> )
FDLR	Democratic Forces for the Liberation of Rwanda ( <i>Forces Démocratiques de Libération du Rwanda</i> )
FEC	Federation of Enterprises of Congo ( <i>Fédération des Entreprises du Congo</i> )
FPP-AP	<i>Forces Populaires de Paix (Mai Mai)</i>
GADHOP	<i>Groupe d'Associations de Défense des Droits de l'Homme et de la Paix</i>
ICGLR	International Conference on the Great Lakes Region
IOM	International Organisation for Migration
ITRI	International Tin Association
iTSCI	ITRI Tin Supply Chain Initiative
JMAC	Monusco's Joint Mission Analysis Centre
LSM	Large-scale Mining
MCI	Multi Consortium International
MONUSCO	United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo ( <i>Mission de l'Organisation des Nations Unies pour la Stabilisation en République Démocratique du Congo</i> )

NALU	National Army for the Liberation of Uganda
NDC-R	<i>Nduma Défense du Congo-Rénové (Mai Mai)</i>
OCC	Congolese Office of Control ( <i>Office Congolais de Contrôle</i> )
OECD	Organisation for Economic Cooperation and Development
PNC	Congolese National Police ( <i>Police Nationale Congolaise</i> )
RCM	Regional Certification Mechanism
RGI	Resource Governance Index
RINR	Regional Initiative Against the Illegal Exploitation of Natural Resources
SAEMAPE	Artisanal and Small-scale Mining Assistance and Management Service ( <i>Service d'Assistance et d'Encadrement de l'Exploitation Minière Artisanale à Petite Échelle</i> )
Sn	Tin
Ta	Tantalum
UN GoE	The United Nations Group of Experts for the DRC
UPCP	<i>Union des Patriotes Congolais pour la Paix (Mai Mai)</i>
UPDF	Uganda People's Defence Forces
UPDI	<i>Union des Patriotes pour la Défense des Innocents (Mai Mai)</i>
UPLC	<i>Union des Patriotes pour la Libération du Congo (Mai Mai)</i>
WHO	World Health Organisation
WMC	Western Mining Corporation
Wo	Wolframite
ZEA	Artisanal Mining Area ( <i>Zone d'Exploitation Artisanale</i> )

## Presentation

Justícia i Pau (Justice and Peace) is a Christian organization that has operated in Catalonia since 1968. The organization is dedicated to the promotion of human rights, social justice, peace and disarmament, solidarity and the protection of the environment.

With these purposes in mind, Justícia i Pau dedicates its efforts to raise awareness among citizens and to advocate on public powers, political parties, social institutions and private companies by means of a variety of activities which include public campaigns, reports, publications, the organization of congresses and conferences, seminars, appearances in the mass media, etc.

Since 2014, Justícia i Pau has led the #ConflictMinerals campaign, which addresses the socio-environmental impacts of the mining industry throughout the world, currently focusing its attention on the situation occurring in the east of the Democratic Republic of the Congo due to the exploitation of its mineral resources.

Since the very beginning of this campaign, Justícia i Pau's actions have focused on two main axes. Firstly, political pressure to succeed in the passing and application of a European regulation that shapes the conditions to import the so-called conflict minerals (tin, tungsten, tantalum and gold). This regulation was finally passed in 2017. Secondly, awareness-raising among citizens of the socio-environmental impacts of the mining industry. This is achieved by making them conscious of the relation between these impacts and our consumption model, as well as the actions and responsibilities held by persons, corporations, governmental and international institutions. Furthermore, the denouncement of human rights violations related to the mining sector in DRC, and the proposal of improved responsible consumption practices are also put forward by the campaign.

Justícia i Pau operates in collaboration with organizations that work in cooperation and education for development regarding this issue, in the DRC as well as in the European, Spanish and Catalan scope.

Within the framework of the campaign, Justícia i Pau Barcelona has carried out several research projects on the role of civil society in the context of mineral extraction in North Kivu, the accompanying measures scheme for the EU regulation and the level of awareness that Catalan companies working in the ICT field have regarding the due diligence in the supply chain of their products.

The unfolding of the campaign has led us to carry out the research hereby presented. This research analyses the current state of mineral trade and extraction in the Lubero territory, located in the province of North Kivu in eastern DRC, and the effects that due diligence initiatives have on local communities.

The intention of the research is to contribute to the local, European and international debate on artisanal mining activities in North Kivu, specifically with regard to the design of those accompanying measures to be developed by the European Union within the framework of the European regulation, and to raise awareness among European citizens regarding the current conditions local inhabitants endure in those areas, where these key minerals for our lifestyle and consumption habits are mined.

In this regard, the research report provides valuable, updated information on the economic policy in Lubero territory, in the North Kivu province, about which there is little data available, and allows us to conclude we must continue to work in order to minimize the adverse factors related to this important economic activity; factors which include insecurity, corruption or lack of incentives to apply due diligence to ensure that the artisanal mining sector provides the maximum benefits for the local population.

This research was carried out from November 2018 through February 2019, and includes fieldwork research in Lubero in December 2018. This research was conducted in collaboration with BetterChain, a company specialized in supply chain due diligence, and the Commission Diocésaine de Justice et Paix de Butembo-Beni, with the support of the Agència Catalana de Cooperació al Desenvolupament (ACCD) and the Institut Català Internacional per la Pau (ICIP), along with private donations received during a crowdfunding campaign promoted by Justícia i Pau Barcelona.

Eudald Vendrell  
President of Justícia i Pau

A handwritten signature in black ink, appearing to read 'Eudald' followed by a stylized flourish.

## 1 Introduction

The Democratic Republic of the Congo (DRC) is the most glaring illustration of the resource curse dilemma. While it is among the countries most replete with natural resource reserves in the world<sup>1</sup>, such wealth has been siphoned off by illegal activities ranging from armed conflict funding to institutionalized corruption.

International initiatives focusing on demonstrating mechanic traceability with regards to tin, tantalum, and tungsten (3T) ores, have showed limitations in terms of their impact, and have proven vastly inappropriate for the local gold trade, where illegality premiums (e.g. money laundering) are even more significant. Such failings and gold's specific characteristics call for new strategies to incentivize transparent engagement and facilitate reporting of reliable information.

Through this collaborative project with Justícia i Pau Barcelona, BetterChain provides comprehensive, contrasted and up-to-date information in relation to the local community context in and around the Lubero territory in North Kivu (more specifically the locality of Manguredjipa), the extraction and trade of 3T and gold and the impact from such activity, as well as the effects of due diligence deployment, on the risks of adverse impact and socio-economic conditions in the local community.

## 2 Key findings

The purpose of this study is to present the current state of mineral trade and extraction in the Lubero territory, located in the province of North Kivu to the east of DRC along the border with Uganda. The study places emphasis on ASM, the extent of due diligence implementation in that sector, and the effects of such implementation on local communities.

### **Mining sector and activity**

Artisanal mining is vital for people's economic survival and should therefore be supported rather than fought against. However, artisanal mining is affected by several challenges:

- Armed group interference,
- Widespread illegal taxation,
- Fraud and illegal export to neighbouring countries,
- Limited impact in terms of economic development and local communities' wellbeing.

These issues, applicable not only to the Lubero territory but to the whole country, seem largely rooted in the ineffective functioning of DRC's mining agencies and broader governance structures, which are underfunded and understaffed.

The 3TG mining sector is unorganized and mostly informal:

- Few mine sites produce 3T minerals. Wolframite is the most extracted.

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<sup>1</sup> USGS, January 2018, "Mineral Commodity Summaries 2018", available: <https://minerals.usgs.gov/minerals/pubs/mcs/2018/mcs2018.pdf>



- Most of the mine sites produce gold: artisanal gold trade is dominated by illegal activities, which creates a significant loss of public revenue.
- Artisanal 3TG trade is based on a pre-financing system.
- Due to the informal nature of the sector, it is difficult to obtain reliable data on production and trade. Official data of production and exports, particularly for ASM gold, is far lower than the reality.

The government does not have a firm presence in the territory nor an accurate understanding of production, exports, or the numbers of artisanal miners:

- Most mining State agencies lack manpower and resources to implement legislation.
- Understaffed and underpaid State agents are prone to bribery and corruption.

High level of insecurity in mining areas:

- The presence of many non-State armed groups, coupled with difficult access to mining extraction points and local trade hub (underdeveloped transportation and access infrastructure), complicate formalisation and implementation of due diligence systems.
- High level of militarisation of mine sites: illegally controlled mine sites, illegal tax checkpoints (both by non-State armed groups and by FARDC).

For the most part LSM is excluded from this study due to it being practically non-existent in the Lubero territory; this also prevents any comparative analysis between LSM and ASM. However, several studies note the many problems in relation to human rights abuses and environmental impact of large-scale mining and industrial projects<sup>2</sup>.

### **Due diligence systems key findings**

Due diligence and traceability initiatives have a very limited presence in the territory, and have so far proven ineffective in addressing corruption and illegal mining activities:

In the 3T sector:

- Organisations operating due diligence schemes seem to express limited interest for such a remote and complicated area, particularly considering its low productivity.
- Exporters do not have any incentive to commit due diligence efforts either, since due diligence systems are costly and, again, the territory has low productivity.
- However, minerals extracted from this territory do reach international “compliant” markets.

In the gold sector:

- Lack of traceability and due diligence initiatives for gold supply chains.

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<sup>2</sup> Ruggie, J. (2006), “Interim Report of the Special Representative of the Secretary-General on the Issue of human rights and transnational corporations and other business enterprises”, E/CN.4/2006/97, available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/110/27/PDF/G0611027.pdf?OpenElement> and Stavenhagen, R. (2003), “Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples”, E/CN.4/2003/90, available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/105/44/PDF/G0310544.pdf?OpenElement>

- The ASM gold sector has been ignored and is therefore prone to issues such as mineral theft, smuggling, and opaque trading practices, which significantly elevate the risk level.
- The small quantities which are officially recorded by the government are processed through the Regional Certification Mechanism (RCM), however mineral certification is not delivered in conformance to RCM requirements.

3TG from Lubero territory access international markets with ICGLR certificates, however the process also does not comply with RCM requirements.

The above-mentioned issues, which are directly related to due diligence and traceability systems, are exacerbated by:

- Lack of due diligence cost-sharing: costs associated with due diligence systems are discounted from the value returned to compliant mineral producers, so it is more profitable for upstream mining operators to illegally trade minerals and gold,
- Limited government capabilities to enforce regulations and monitor compliance,
- Limited knowledge and awareness in relation to the global supply chain due diligence process and requirements among the actors involved in the 3TG extraction and trade, including supply chain participants, civil society organisations and mine State agencies.
- Beyond civil society's lack of knowledge specific to due diligence, they also lack capabilities and funding to properly conduct:
  - monitoring activities at mine sites and mining areas,
  - reporting of findings in a coherent manner and in line with the OECD Guidance,
  - advocacy activities at the local, provincial and national level.

All the above has fuelled mineral theft, smuggling and opaque trading practices, which significantly increase risk (both in terms of adverse impact on the local community and business disruption / reputational impacts) for supply chains originating from DRC and the Lubero territory.

### **Impact on local communities' key findings**

ASM activities provide substantial livelihoods for stakeholders in the Manguredjipa mining area and its surrounding local trade hubs. However, the presence of several armed groups is a source of significant insecurity.

Socio-economic conditions:

- Insecurity and human rights abuses: kidnappings, extortion and coercion, killings, forced labour and sexual violence are commonplace,
- Lack of transportation infrastructure,
- Limited access to electricity and no access to running water,
- Access to drinking water is limited and sanitation levels are low,
- Low level of school enrolment and attendance: children often drop out to go work in agriculture and at the mine sites,

- Women: mainly work in small businesses (e.g. food) and prostitution. Practically no woman owns mine pits or works as a miner. They face multiple abuses: scams, rape and sexual slavery, forced prostitution, underage marriage, etc.

Since the implementation of the iTSCI system in Manguredjipa, civil society organisations do not report any improvement of the local community. However, it is worth noting again that iTSCI is only vaguely operational in the area, as the production is very low and hence does not warrant sustainable due diligence deployment (no cost recovery).

### 3 Recommendations

The following are recommendations to reduce the illicit trade of ASM minerals<sup>3</sup> and develop the potential of mineral supply chains at the local level to drive economic growth and prosperity in CAHRAs:

1	Support formalisation of the ASM sector
	<p><b>Advocate for strengthening of the ASM sector governance:</b></p> <ul style="list-style-type: none"> <li>• To address systemic dysfunctions of mines States agencies for instance Mines Divisions and SAEMAPE, which are underfunded and understaffed, with even unpaid staff (hence creating incentives for involvement in bribery schemes).</li> <li>• Establishment of more ZEAs in pre-identified viable mining areas (involve State geological services in the pre-identification of mining areas).</li> <li>• Improve access to reliable geological data (through State agencies - CAMI, Mines Divisions, etc.) to increase the efficiency and longevity of mine sites, increase the profitability and reduce negative environmental impacts.</li> <li>• Establishment of publicly available and up to date registry of cooperatives.</li> </ul>
	<p><b>Promote closed-pipe supply chains model:</b></p> <ul style="list-style-type: none"> <li>• Support the development of supply chains with fewer actors involved and reinforce the business engagement between supply chain partners to secure production and the implementation of due diligence requirements.</li> </ul>
	<p><b>Review the role of ASM cooperatives:</b> in practice, many cooperatives are created to control the trade of minerals and become an extra layer of taxation imposed on miners</p> <ul style="list-style-type: none"> <li>• Review their business models and governance structures.</li> <li>• Help design more democratic structures that involve all the cooperative members.</li> <li>• Support the legalization of cooperatives.</li> </ul>

<sup>3</sup> For specific recommendations on the illicit trade of gold between DRC and Uganda and to weaken the opaque network of actors, refer to the recommendations provided by The Sentry in their recent report "The Golden Laundromat: The Conflict Gold Trade from Eastern Congo to the United States and Europe" of October 2018, pp. 4-5.

	<ul style="list-style-type: none"> <li>Support the cooperatives to improve the working conditions of miners (equipment leasing, encourage H&amp;S measures, etc.)</li> </ul>
2	<b>Create local incentives for miners to participate in the formal mineral trade</b> <p><b>Incentives for mining actors to join the formal sector:</b></p> <ul style="list-style-type: none"> <li>Support mechanisms that make their participation in the informal sector less attractive. For example: reinforce the efficiency of the Congolese anti-fraud cell, reinforce cross-border country collaboration to weaken smuggling practices, support programs aiming at globally reducing bribery practices among State agents.</li> <li>Increase miners' productivity by making provision of appropriate equipment contingent on ASM miners involved in responsible supply chains.</li> <li>Increasing value generated from the formal trade of minerals through: <ul style="list-style-type: none"> <li>More efficient supply chains, involving a limited number of intermediaries (while acknowledging the importance of local providers of finance).</li> <li>Minimised due diligence costs, which may only be achieved by leveraging and capacitating local stakeholders and promote due diligence cost sharing / optimisation along supply chain participants.</li> <li>Make locally available (as yet) untapped data on mineral extraction and trade more directly relevant to downstream supply chain actors, so as to involve them in the continuous funding of local transparency efforts.</li> </ul> </li> </ul> <p><b>Reduce the burden of taxes on ASM miners:</b></p> <ul style="list-style-type: none"> <li>Support efforts to harmonise mining and mineral trade taxes across the sub-region: <ul style="list-style-type: none"> <li>Strengthen the dialogue among ICGLR member States to effectively implement the RINR, notably the harmonisation of legislations as requested by the RCM, since differences in export taxes and mineral prices incentivise cross-border smuggling of minerals, especially gold.</li> </ul> </li> <li>Advocate for a rationalisation of the DRC taxation system (currently there are many different taxes and fees), making it clearer and more transparent.</li> <li>Target the elimination (comparative reduction) of illegitimate taxes on actors involved in transparent supply chains</li> </ul>
3	<b>Attract local investment and facilitate access to finance for upstream supply chain actors</b> <p><b>Encourage new strategies to support international private sector engagement and value creation for stakeholders at the origin of supply chains:</b></p> <ul style="list-style-type: none"> <li>International regulations (incl. the EU regulation) risk further marginalising CAHRAs such as Manguredjipa, by nudging international downstream actors to sourcing from less difficult areas to mitigate potential legal and reputational risks. <ul style="list-style-type: none"> <li>Advocate <u>for</u> procurement of minerals from the Lubero territory (and more generally from CAHRAs) as a way to support the inclusion of mining communities in global trading chains and engage with them on a compliance path.</li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>○ Raise awareness among EU-based companies targeted by EU regulations on the OECD requirements and the importance of the ASM sector.</li> <li>● Encourage mine-to-store connections and enable consumer-facing brands to constructively engage in support of local communities at the origin of their supply chain <ul style="list-style-type: none"> <li>○ International downstream supply chain actors / mineral end-users targeted by international regulation (including consumer-facing brands) and affected by reputational risks and investor pressure must demonstrate better forms of along their supply chain, and demonstrate their compliance and responsible sourcing credentials.</li> <li>○ The accountability for local (upstream) supply chain due diligence presently sits with small, relatively hidden actors (e.g. mineral traders, smelters, refiners) with limited incentive to increase transparency and positively impact local communities.</li> <li>○ New forms of accountability mechanisms can now exist to relate the context of mining operations to European consumer actions, without interfering with the business confidentiality of mineral and metal trade actors.</li> </ul> </li> </ul>	
<p><b>Encourage the EU to consider creating a coordination mechanism</b> between donors aiming at guaranteeing strategy consistency towards a comprehensive responsible sourcing approach.</p>	
<p><b>Establish strategies to enable upstream supply chain operators to access finance</b> (locally and internationally) to reduce credit uncertainties in their trading activities and formalize their supply chains. This could take the form of loans or credit to support ASM trading and extraction activities.</p>	
<p><b>Restore the image of ASM activities</b>, which represent a substantial sector in DRC local economy, to lower the risk aversion of financial institutions to engage in the ASM sector (who now consider it too risky and not profitable).</p>	
4	<p><b>Advocate the EU and donors for more efficient demilitarization strategies of 3TG mines sites</b></p>
<p><b>Reinforce the use of MONUSCO’s “intervention brigade”</b>. These brigades were initially created for offensive operations against specific non-State armed groups (M23 or ADF) that highly threaten civilians. Even though its efficiency and the long-term impact of such operations depend on the political context and on the level of collaboration with the FARDC, their actions to weaken armed groups were relatively positive. There is a need to advocate for such offensive interventions to target militarized sites and ensure a follow-up with the FARDC to secure the areas. This strategy would need to review the specific mandate of the MONUSCO, which is more focused on peacekeeping rather than on offensive actions.</p>	
<p><b>Reinforce implementation of DDR programs</b> (disarmament, demobilization and reintegration), taking into considerations the lessons learned from previous programs including low level of reintegration of former combatants, bad conditions in former combatants camps which reduce the incentives for combatants to participate in a DDR program.</p>	

**Reinforce the fight against impunity at the local and national levels for both State and non-State actors involved in the illegal exploitation of minerals.** The Congolese military justice who oversees judging such crimes and should focus on this in order to create precedents.

**5 Empower local organisations to better report on the ASM extraction and trade, and to effectively ensure their role in the due diligence process**

Strengthen implementation and efficiency of upstream due diligence: empower upstream supply chain participants to conduct due diligence in a standardised way

- Provide them with training on due diligence regulations and requirements.
- Provide them with consolidated reporting tools that can be used directly by all of them, avoiding the use of costly third-parties.

Provide financial support, training and tools to local civil society organisations across DRC's mining regions so they can 1) effectively monitor mining activity, and 2) enhance their communication capacity toward different types of stakeholders:

- Increase funding available for local organisations so that they can fund their data collection activities as well as advocacy and training work in relation to local, provincial and national authorities.
- Provide them with tools and training for consistent reporting of information provided by different sources, in order to address current limitations in terms of data reliability / discrepancies. Training would be useful also to learn about basic data analysis, incl. the need to cross-check information, etc.
- Support local organisations based in the trading towns to develop a network of key informants to get access to reliable data on minerals trade and extraction.

*Specific to the Lubero territory:*

Support the creation of a direct channel of communication between local committees (based in the mining areas) and local organisations based in Butembo. This could take the form of an observatory of mining activities for the Lubero territory, composed by a network of civil society organisations. The observatory's activities could include:

- Monitoring function:
  - Monitor mining activity: existing and new mine sites, number of miners and other supply chain stakeholders at mine and mining area levels, improvement (or lack thereof) of socio-economic conditions of mining communities.
  - Reporting of key information and figures obtained from the monitoring activity. This could then be used to design improvement strategies, for advocacy and raising awareness, etc. Interested recipients could include from donors and government agencies to private sector international stakeholders.
- Capacity building function:
  - Support the creation of mining cooperatives closer to the cooperative principles, with more democratic structures and member participation.

- Provide training to civil society organisations focused on topics related to mining, on mining due diligence regulations and requirements, and what that means in practice in mining areas.
- Provide training and tools to civil society organisations based in mining areas to conduct monitoring and reporting activity. This could then be fed into the observatory's monitoring function.
- Facilitate synergies among local organisations working on related topics: environment protection, human rights, women empowerment, etc.

In relation to designing strategies for women empowerment and support in the mining sector in the Lubero territory, we would recommend partnering with:

- *Dynamique Femmes Mines* (DYFEM): based in Goma, this association's mission is to promote female leadership in the Congolese mining governance. Their work areas include governance of natural resources, community development, gender and economic justice, women's autonomy, and citizen empowerment.
- Other associations based in Butembo such as the ones within the SAFDF platform are also relevant. Among them, the following have been especially recommended:
  - *Solidarité des Associations Féminines pour les Droits des Femmes* (SAFDF): contact is Bisomeko Mbambu, safdfbbo@yooh.fr ; tel. (+243)994005042
  - *Femmes Juristes pour les Droits de la Femme et de l'Enfant* (FJDF) Butembo: contact is Abidana Kathi, femmesjuristesbutembo@yahoo.fr ; abidanakathik@gmail.com ; tel. (+243)998743168
  - *Femmes Engagées pour la Promotion de la Santé Intégrale* (FEPSI): contact is Marie Kafanya, fepsibutembo@gmail.com ; tel. (+243)997719375
- *Ligue des Organisations des Femmes Paysannes du Congo* (LOFEPACO): lofepacordc@gmail.com ; tel. +243 997185105 and (+243)813198496

## 4 Methodology

The methodology follows a qualitative research approach; hence we have used methods such as semi-structured interviews, record keeping, document and literature review, and direct observation. These methods have provided us with mainly descriptive data concerning the target area and population. The research was separated into three parts: a desk-based preparation phase, a field-based research phase, and a desk-based research phase.

We have taken into consideration both primary and secondary sources, including academic publications, reports by civil society organisations and international organisations, reports by organisations specialising in the field in question, technical reports by various DRC government agencies, data from the DRC mining cadastre, and interviews with multiple stakeholders.



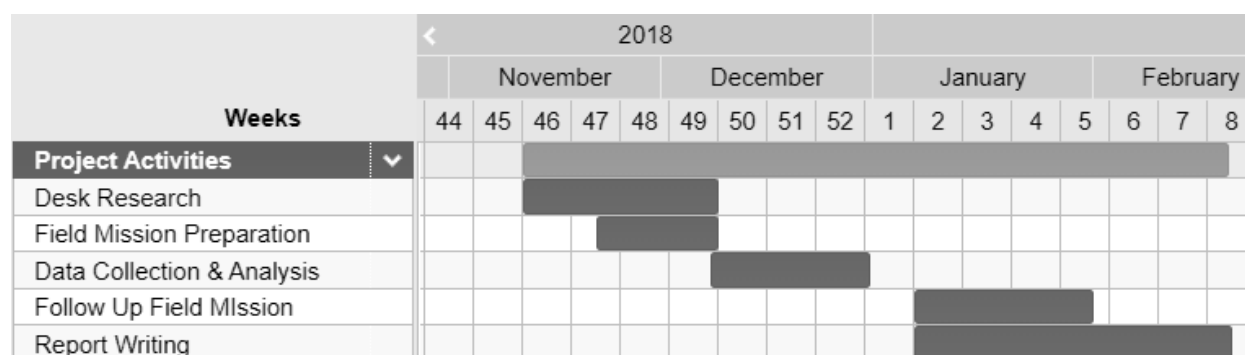


Figure 1. Timeline.

#### 4.1 Desk Research

The first part of the desk research was directed at getting an understanding of the general situation in the North Kivu province, particularly of the Lubero territory (politics, economics, security, health), and also to get initial insights into the mining activity in the Lubero territory, mainly regarding mining areas and sites, mineral production, actors involved, and presence of certification schemes. This was achieved by doing a literature review of multiple academic publications and technical reports.

It was useful also to map out all relevant stakeholders and note what areas and topics of the research required locally-held information and insights, which was the basis to create the list of stakeholders targeted for interviewing during the field mission, both in Goma (capital of North Kivu province) and in Butembo (second largest city in the province) located in the Lubero territory.

The second part of the desk research went in parallel to the field mission and continued after the mission ended. It was used to complement and cross-reference information obtained during the field mission and included follow up emails with some interviewees on issues still open, analysis of documents such as reports by the DRC Mines Division, and additional literature review.

#### 4.2 Field Research

The purpose of conducting field research is typically to observe, interact and understand people while they are in their natural environment. Since one of the main objectives of this study was to understand and analyse the current state of mineral trade and extraction in the Lubero territory, which is a remote area in DRC that has not yet received as much attention as other areas, conducting field research was a necessity.

The field mission took place 9 - 16 December 2018 in Goma and in Butembo. The purpose of the mission was first and foremost to engage with local stakeholders to gather locally-held information. Additionally, we provided training to the organisation Justice et Paix Butembo to enhance their capacity to monitor mining areas and mineral supply chains, with the aim of



becoming a reliable source of information and knowledge for potential research and advocacy purposes.

For research and data collection purposes, the main method used was the interview, using a semi-structured approach with a sample of respondents selected from the relevant target population.

A total of 33 interviews were conducted with 3TG supply chain actors (incl. trade associations, government officials, civil society and international organisations representatives, journalists, due diligence program representatives and experts in the field of natural resources in DRC<sup>4</sup>. The interviews have also allowed us to obtain local documents that cannot be found online or elsewhere, for example the most updated data on production and export of minerals. Among the interviewees, only 2 were women. This very low number reflects the gender imbalance and inequality that persist in most organisations and institutions in DRC and particularly within the mining sector.

#### 4.3 Challenges and Limitations

##### *Challenges*

The main issue we faced was the difficulty of accessing reliable data about extraction and trade of 3TG. This was particularly difficult in relation to gold, since the level of militarization of gold sites is higher, and the level and persistence of illegal activities is more significant than for 3T. To address these issues, we have triangulated findings from the field research with publications and reports from international organisations, civil society entities and research institutions. That is, we have conducted a reconciliation of all available data and cross-checked the information obtained from secondary sources with the data obtained during the face-to-face interviews.

Additional challenges are time and budget. Considering the relatively short project length (November 2018 to February 2019) and limited budget (more than one third spent in field mission logistics), this study is not intended to provide an in-depth analysis but rather an overview of the extraction and trade of 3T and gold in the Lubero territory and the impact it has on local communities, as well as information on the presence of due diligence systems and deployment / effects of such systems. Therefore, it could be interesting to dig deeper into some of the research areas.

##### *Limitations*

Initially the scope of the study was supposed to include research on the cohabitation between ASM and LSM mining. However, this was not possible because there are currently no active LSM operations in the Lubero territory. The gold mining company Loncor is indeed mentioned in the DRC mining cadastre (CAMI) as a holder of 11 permits currently valid, but the company

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<sup>4</sup> Annex 1 - List of interviews.

has not been active since 2013 due to security reasons, as confirmed by a Loncor representative. Additionally, the representative noted that their permits have been for several years under the regime of “force majeure”<sup>5</sup>.

The study was also supposed to include mine site visits and assessments, but this was not possible either. During the planning of the field mission we discussed with the Justice et Paix team in Butembo, who would accompany us to the mine sites, as well as with other experts from the region, and it was concluded that it was not safe to conduct such mine visits. The main reasons were the high insecurity and health risk levels, coupled with a particularly tense environment in the context of the presidential elections.

## 5 Analysis

The core of the report, the analysis, is divided into three main sections. First, an assessment of the governance and the context of mining activity in DRC (section 4.1). Second, an analysis of the 3T and gold mineral extraction and trade in the Lubero territory, including stakeholder mapping, information on mining areas and production, and supply chain mapping (section 4.2). Finally, section (4.3) addresses due diligence implementation, with a review of the extant systems in the area, followed by an assessment of the effects on risks and community development.

### 5.1 Governance Assessment and Context of Mining

This first section of the analysis contextualizes the research by providing information regarding relevant dimensions (political and economic situation, security, etc.) that impact and shape mining activities in the DRC, particularly ASM and the local communities in North Kivu and more specifically the Lubero territory.

The dimensions included are: politics and governance, economics, conflict and security, mining sector governance, and health and safety. The analysis of each dimension begins with a country-wide snapshot, is then assessed in detail from the perspective of each territory and concludes with the in-depth analysis of each dimension. The impact of the various dimensions on mining activity are summarized in table 1 (section 5.1.1).

#### 5.1.1 Summary Table

Note: the risk level qualifies how much each dimension affects mining activity (mining exploitation, trade, etc). The risk level is a combination of likelihood (how often the risk materialises) and impact (the cost of the risk when it does occur, in terms of loss of life, loss of revenue, etc).

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<sup>5</sup> Mining company Loncor Resources Inc. Interview with BetterChain. Jan-2019.

Table 1. Summary of governance assessment and mining context.

Dimension	Description	Risk level
Politics and governance	<ul style="list-style-type: none"> <li>● Government is highly centralised and characterised by vast patronage networks and rampant corruption.</li> <li>● High level of corruption at each level of the hierarchy, which has repercussions on the functioning of local State agencies and local authorities.</li> <li>● Very low in governance-related indicators (ranking for DRC)</li> <li>● Insecurity / potential instability related to a contested electoral process: <ul style="list-style-type: none"> <li>○ Presidential elections were cancelled, and legislative elections postponed, in the electoral circumscriptions of Beni, Beni city and Butembo (North Kivu province) and Yumbi (Maï-Ndombe province) due to the high risk of Ebola and attacks by militias and rebel groups.</li> <li>○ Reports noted that FARDC and armed groups interfered with voting in several locations in the provinces of North Kivu, Maniema, and Kasai.</li> <li>○ Election results proclaimed Félix Tshisekedi as the winner. However, results were initially contested by multiple stakeholders including one of the main opponents.</li> </ul> </li> </ul>	High
Economic	<ul style="list-style-type: none"> <li>● DRC is one of the poorest and least developed countries on Earth, scoring only 0.457 on the Human Development Index in 2017, which positions the country at 176th of 187 countries.</li> <li>● Very challenging business climate: <ul style="list-style-type: none"> <li>○ Ranked at the bottom of The World Bank Doing Business 2018 Report: increases contractual uncertainty and the likelihood of reputational risks to business.</li> <li>○ Ongoing depreciation of the CDF against the USD since 2016 (risk of liquidity crisis).</li> </ul> </li> <li>● Relevance of informal markets and criminal networks: Butembo and Beni are key commercial and trading hubs in Eastern DRC. Kasindi, the main border crossing with Uganda, is a major import-export centre. Consequently, the area's informal markets and criminal networks are politically and economically very important, both at the local and national levels.</li> </ul>	Moderate
Conflict / security	<ul style="list-style-type: none"> <li>● Regional tensions persist, with consequences on the level of security in the Eastern part of DRC: with Rwanda accused of fuelling internal conflicts and taking economic advantage,</li> </ul>	High

	<p>conflicts in Burundi and South Sudan have been spilling over into the provinces of Ituri and South Kivu.</p> <p>In North Kivu:</p> <ul style="list-style-type: none"> <li>● Extensive presence of ethnic or tribal non-State armed groups.</li> <li>● The situation has been in decline since 2010, particularly in Beni territory, with kidnappings, disappearances and massacres. More recently, the Ugandan armed group ADF has been attacking MONUSCO forces.</li> <li>● The high insecurity threat created by the ADF in the Beni territory also negatively impacts the security of Lubero.</li> <li>● Surge of attacks against the FARDC and civilians in January 2019, representing a major escalation in violence. Across North Kivu FARDC and police have taken a heavy-handed approach to public gatherings as tensions build over the elections results.</li> </ul>	
Mining sector governance	<ul style="list-style-type: none"> <li>● USD 1.7 billion generated in 2015 by DRC's extractive sector, 82% from mining activities.</li> <li>● Poor governance of resources: DRC mining sector scored only 33/100 in the 2017 Resource Governance Index (RGI), placing the DRC in the 75th position among the 89 conducted assessments.</li> <li>● Current Mining Code (2018): <ul style="list-style-type: none"> <li>○ Raises royalties to a point that it makes it very onerous compared to other countries. Code was not welcome by mining companies present in the country.</li> <li>○ Cobalt, coltan and germanium are now classified as strategic: subject to the upper royalty fee (10%), which might have a negative impact for miners on the local prices.</li> </ul> </li> </ul>	Moderate
Health & Safety	<ul style="list-style-type: none"> <li>● Approx. 70% of Congolese have little or no access to health care.</li> <li>● Low life expectancy: 59 years for men and 62 for women. Malaria remains the main cause of morbidity and mortality in the country, however the epidemics of cholera, measles and Ebola continue to rage, particularly in Kinshasa and the Kivus.</li> <li>● Current humanitarian crisis, exacerbated by taking in hundreds of thousands of refugees from Central African Republic, Rwanda, Burundi and South Sudan.</li> </ul> <p>In North Kivu:</p>	Moderate

	<ul style="list-style-type: none"> <li>● Ebola outbreak declared since August 2018, however many healthcare professionals cannot perform their work due to the security situation (which include attacks targeted to them).</li> <li>● Porous borders allow members of armed groups and their support networks to regularly cross the border between DRC and Uganda, increasing the risk of transnational spread of Ebola.</li> </ul>	
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## 5.1.2 Politics and Governance

### 5.1.2.1 National Level

The DRC is the second largest country in Africa with a population of 81.34 million in 2017<sup>6</sup>. It is located in Central Africa, covering an area roughly half the size of the EU.

The national government is led by Joseph Kabila who took over the presidency after the assassination of his father in 2001. Kabila was formally elected to the office in 2006, and re-elected in 2011, though both elections were reported on by international monitoring organisations that identified many irregularities<sup>7</sup>. The government is highly centralised; characterised by vast patronage networks and endemic corruption. The DRC is ranked 161 of 180 countries in the 2017 Transparency International's Corruption Perception Index<sup>8</sup>.

New elections were due to take place in 2016 and were postponed several times. That, combined with Kabila's attempt to seek a third term, sparked nationwide protests and fuelled civil unrest. In the end, a date was agreed: 23 December 2018. The elections eventually took place on 30 December 2018 and results were released on 10 January 2019 by CENI (*Commission Électorale Nationale et Indépendante*), proclaiming Félix Tshisekedi from *Union pour la Démocratie et le Progrès Social* as the winner with 38.57% of votes, followed closely by Martin Fayulu (34.83%). Kabila's continuity candidate, Emmanuel Shadary, fell behind with 23.84% of votes.

The pre-election favourite, Martin Fayulu, claimed the results had been fabricated, and the day after his appeal for a recount to the constitutional court, both the intergovernmental organisations Southern African Development Community (SADC) and International Conference on the Great Lakes Region (ICGLR) also called for an election recount. The Congo Research Group contested the results due to leaked data from CENI which indicated a win for

<sup>6</sup> World Bank data, last accessed: 20-Dec-2018, available: <https://data.worldbank.org/country/congo-dem-rep>

<sup>7</sup> Freedom House, last accessed: 12-Feb-2019, available: <https://freedomhouse.org/report/freedom-world/2012/congo-democratic-republic-kinshasa>

<sup>8</sup> Transparency International, last accessed: 11-Dec-2018, available: <https://www.transparency.org/country/COD>

Martin Fayulu by a large majority. Riots erupted in the streets when CENI released contradictory results to proclaim Tshisekedi the winner.

However, after initial turmoil the situation calmed down. Subsequently, the African Union declared it was ready to work with President Tshisekedi ahead of the 32nd African Union Summit which took place at the beginning of February 2019 with no incidents in relation to Tshisekedi's legitimacy.

Despite the relatively smooth summit the DRC State apparatus is deficient on every recognised index and has been so for some time. The 2017 World Bank's "Worldwide Governance Indicators" are clear<sup>9</sup>:

Table 2. Worldwide Governance indicators 2017 (Percentile rank of the country for governance indicators. Higher values indicate better governance ratings.)

Governance indicator	DRC percentile	Low income countries percentile	Sub-Saharan countries percentile
Voice and accountability	9	26	33
Political stability and absence of violence/terrorism	3	23	31
Government effectiveness <sup>10</sup>	5	17	26
Rule of law	4	20	30
Control of corruption	6	20	31

While the Kabila regime welcomes a peaceful political alternance, some experts stated the system in the DRC has become a "nomination" democracy<sup>11</sup>. Delays to the presidential election, challenges to the legitimacy of, and further delays in, an internationally recognised outcome increased political instability to the level of civil unrest and loss of life.

#### 5.1.2.2 Territory Level

Located in the Eastern part of the country, the North Kivu province borders with Uganda and Rwanda; due to dense forests and mountains, many areas are rather isolated. The Lubero territory, together with the Beni territory, form what is known as the *Grand Nord*, a remote

<sup>9</sup> World Bank data, last accessed: 13-Feb-2019, available:

<http://info.worldbank.org/governance/wgi/index.aspx#reports>

<sup>10</sup> Including perceptions of the quality of public services, quality and independence of civil service, quality of policy formulation and implementation, and credibility of the government's commitment to such policies.

<sup>11</sup> Jeune Afrique, Dossier N°3029, January 27 to February 2, 2019, available:

<https://www.emediaplace.com/jeune-afrique-n3029/>

and underdeveloped area. The largest city of the *Grand Nord* is Butembo with a population of 744,838 in 2015<sup>12</sup>. It does have a small airport operating local flights; however, by road it would take over 7 hours to reach Goma and an almost impossible road trip of 2,443 km to DRC's capital Kinshasa.

The *Grand Nord* has traditionally been a stronghold of political opposition: during the Second Congo War (1998-2003) the RCD/K-ML rebellion (now a political party) administered the area. Residual networks linked with the RCD/K-ML are still operating presently<sup>13</sup>. The borders of this area are porous, mainly due to demographics and lack of security making it easy for the armed groups in the area to regularly cross the border between DRC and Uganda, with the main crossing being at Kasindi<sup>14</sup>.

Most of the area's population belongs to the Nande community, which are cross-border cousins to the Ugandan Bakondjo. Lubero territory is practically all Nande, while Beni territory hosts several minority groups: Vuba (Bambuba-Kisiki *groupement*), Batangi (Beni-Mbau), Batalinga (Watalinga *chefferie* (chiefdom)), and Bapakombe (Mayangose, just outside of Beni town)<sup>15</sup>. However, it is worth noting that the meaning and relevance of ethnicity varies.

There are four main languages in the *Grand Nord*. At least 80% of the population speaks a local dialect of Swahili. In Butembo in the Lubero territory, Kinande is commonly spoken, while French is spoken by government officials and well-educated minorities. In Beni territory, the strong presence of the national army FARDC means that Lingala is also commonly used<sup>16</sup>.

Perceived differences in identity, ethnicity and language can be magnified and used by local militias as a recruitment tactic. Militia's also present a viable alternative for governance given the extreme weakness of formal State structures at the local level. This is reflected in a power structure of patronage-based clientelist networks.

During election day, on 30 December 2018, the FARDC and armed groups interfered with voting in the several locations in the provinces of North Kivu, Maniema, and Kasai, apparently telling voters what candidates they needed to vote for<sup>17</sup>. Additionally, due to the high risk of Ebola and attacks by militias and rebel groups the presidential elections were cancelled, and the legislative elections were postponed, in the electoral circumscriptions of Beni, Beni city

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<sup>12</sup> Cellule d'Analyse des indicateurs de Développement, last accessed 20-Dec-2018, available: <https://www.caid.cd/index.php/donnees-par-villes/ville-de-butembo/?domaine=fiche>

<sup>13</sup> Juliet Bedford, August 2018, "Key considerations: North-Kivu Province (180810)", available: [https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP\\_North\\_Kivu\\_context.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP_North_Kivu_context.pdf)

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> ACLED, 8 January 2019, "Regional Overview – Africa", available: <https://www.acleddata.com/2019/01/08/regional-overview-africa-8-january-2019/>

and Butembo (North Kivu province) and Yumbi (Maï-Ndombe province); approximately 1.2 million citizens could not cast their votes. The elections are scheduled for March 2019<sup>18</sup>.

### 5.1.3 Economic Situation

#### 5.1.3.1 National Level

In 2017 the country's GDP was USD 37.24 billion, with an annual growth of 3.7%. GNI per capita was 870 (PPP), placing the country at the very bottom of the world's ranking<sup>19</sup>. Indeed, the DRC is one of the poorest and least developed countries on Earth, scoring only 0.457 on the Human Development Index in 2017, putting the country 176<sup>th</sup> on a list of 187 countries<sup>20</sup>. Vulnerable employment was estimated at 53.5% of total employment, and child labour among children aged 5-17 was estimated at 26.7%<sup>21</sup>.

The country's rampant corruption has a clear impact on bureaucracy and business practices, where facilitation payments are the norm. The significant challenges in the DRC business climate increase contractual uncertainty and the likelihood of reputational risks to business are reflected by the country's rating in The World Bank "Doing Business" 2018 Report ranking the DRC 182<sup>nd</sup> out of 190 countries<sup>22</sup>. In addition to this, the Congolese Franc (CDF) has dropped its value against the USD dollar since 2016: from trading steadily at approximately USD/CDF 930.00 between 2011 and 2015, at the beginning of April 2016 it began to lose ground to approximately USD/CDF 1,400.00 in April 2017<sup>23</sup> and dropped further to USD/CDF 1,600.00 in January 2019<sup>24</sup>. The likely drivers of this depreciation are the country's political turmoil and persistently low prices for Congo's key commodity exports (metals and minerals incl. cobalt and copper, crude oil, wood products). Despite the significant risk of liquidity crisis, IMF support is unlikely without stabilization of the political and security situations (sections 4.1.2 and 4.1.4, respectively).

#### 5.1.3.2 Territory Level

At a regional level, Butembo in Lubero territory, and Beni city in Beni territory are key commercial and trading hubs in eastern DRC. The main border crossing with Uganda is at

<sup>18</sup> RTBF, "RDC: pourquoi les élections du 30 décembre sont reportées dans trois districts électoraux?", 26-Dec-2018, available: [https://www.rtbf.be/info/monde/detail\\_rdc-report-partiel-des-elections-du-30-decembre-dans-deux-zones-de-conflit-dont-beni?id=10106118](https://www.rtbf.be/info/monde/detail_rdc-report-partiel-des-elections-du-30-decembre-dans-deux-zones-de-conflit-dont-beni?id=10106118)

<sup>19</sup> World Bank Development Indicators, last accessed 12-Dec-2018, available: <http://databank.worldbank.org/data/reports.aspx?source=2&country=COD>

<sup>20</sup> UNDP Human Development Reports, last accessed 13-Dec-2018, available: <http://hdr.undp.org/en/composite/HDI>

<sup>21</sup> UNDP Country Profile, last accessed 13-Dec-2018, available: <http://hdr.undp.org/en/countries/profiles/COD>

<sup>22</sup> World Bank, 2017. *Doing Business 2018: reforming to create jobs - Congo, Democratic Republic of*. Doing Business 2018. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/740471509621658920/Doing-Business-2018-reforming-to-create-jobs-Congo-Democratic-Republic-of>

<sup>23</sup> Export.gov, last published 24-Jul-2017, last accessed 13-Dec-2018, available: <https://www.export.gov/apex/article2?id=Congo-Democratic-Republic-Market-Overview>

<sup>24</sup> XE live currency charts, last accessed 16-Jan-2019, available: <https://www.xe.com/currencycharts/?from=USD&to=CDF&view=1M>



Kasindi, which makes it a major import-export centre for goods transiting through Uganda and Kenya, and places Kasindi as DRC's second most lucrative border crossing<sup>25</sup>. Consequently, the area's informal markets and criminal networks are politically and economically very important, both at the local and national levels.

During the period of coffee trade liberalisation under Mobutu the Nande, local to Butembo, became more affluent through that trade. Whereas, in Beni trading activities were dominated by foreigners, such as the Belgians and Greeks. In this way, Butembo developed into a business and trading town. The availability of cash attracted gold traders who exchange gold for either cash or manufactured products originating from Asia. Indeed, the bartering of gold for manufactured products is highly prevalent in Butembo.

#### 5.1.4 Conflict / Security Situation

##### 5.1.4.1 Country Level

The conflict and security situation in DRC are complex, shifting and multi-layered, with State and non-State actors as well as various armed groups all exerting different levels of power and control at different times in different regions. The country maintains difficult relations with its neighbours, particularly Rwanda, which is accused of fuelling internal conflicts and taking economic advantage. Conflicts in Burundi and South Sudan have been spilling over into the provinces of South Kivu and Ituri, respectively. Based on international indicators, DRC is in a state of armed conflict. For example, the 2018 Global Peace Index ranks DRC 11th out of 138, on the scale of terrorism impact, ranging from very high to very low risk.

The United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) was created after UN Security Council resolution 1925 of 28 May 2010 in order to ensure "the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts". The mandate has been extended several times, is currently set to 31 March 2019. However, some Security Council members have stressed that the mission's closure without improvements in the security situation would be premature. Nevertheless, there is general agreement that after Kabila's exit and the appointment of a new president, MONUSCO's mandate will need to be reassessed.<sup>26</sup>

##### 5.1.4.2 Territory Level

The security situation in North Kivu is characterized by the extensive presence of armed groups, which are primarily organised along ethnic or tribal lines. Additionally, local military

<sup>25</sup> Juliet Bedford, August 2018, "Key considerations: North-Kivu Province (180810)", available: [https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP\\_North\\_Kivu\\_context.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP_North_Kivu_context.pdf)

<sup>26</sup> UN Security Council Report, January 2019, "Monthly Forecast" available: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2019\\_01\\_forecast.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2019_01_forecast.pdf)

intervention by the national army (FARDC) is regularly affected by power struggles in Kinshasa, since the divide between the capital and the Eastern provinces means that the risk of entire FARDC battalions not responding to central command is high. A further contribution to the proliferation of armed groups is that any instability in the system naturally creates tensions and may lead to a division; where there was one, there are now many. Many of the Congolese armed groups include “Mai-Mai” in their name; this is a loose term that refers to community-based militia groups, typically created to defend their territory from other groups or perceived “enemies”.

During the field mission of this study 33 in-depth qualitative interviews were conducted with local and national stakeholders. The current security situation was a prominent topic. Interviewees stated armed groups are ubiquitous throughout the territory of Lubero, with a stronger concentration on the East and West borders. Additionally, the threat of significant insecurity created by the ADF in the Beni territory also negatively impacts the security of Lubero. In general, the main cities are controlled by the FARDC while the villages are controlled by the armed groups.

Most militia groups present in Lubero are created with the desire to protect their community in the face of high insecurity and deficient public security forces, such as police or FARDC. They are typically formed along ethnic lines and are ethnically homogenous. A sense of jingoism directed at Rwandans is predominant among the local militias, which are motivated by the desire to defend their homeland against “the invader” as a result of their national government’s inability to do so. Being based on tribalistic ideals, the militia groups harbour an antagonism between the “native” and the “non-native”.

It is common practice for local militia groups of the Lubero area to be involved in ASM mining extraction, and trade. As well as being an end in and of itself, for both profit and power, the exploitation of natural resources to finance military activities is also important to most of these non-State armed groups. Indeed, the control of ASM and trade plays a major role in the protraction of conflicts and constitutes a key factor in the violently reinforcing circle of insecurity in this region of DRC.

Fieldwork for this study confirms there are strong links between Nande groups which cut across the ASM industry constructs. As a “big family” of ethnic ties, the Nande are linked throughout armed groups, authorities and traders. This family effect is further reinforced as militia groups focus their recruitment efforts and rely on a support base drawn from the leaderships’ home area and surroundings, sometimes extending to no more than a few villages. The high degree of familiarization between community members and armed groups often leads to collaboration.

Armed groups are embedded in complex social networks that stretch from the very local (several villages) to the national, sub-regional and international levels; networks that

encompass both State and non-State actors. These groups maintain ties of a varying nature to politicians, businesspeople, local authorities as well as government security forces, sometimes operating as proxies or allies in military operations<sup>27</sup>.

The money generated through the gold trade, as well as the donations, whether mandatory or voluntary, plays a key role in this system: the rhetoric is “you eat, they eat, we eat”. However, in this type of configuration the weakest suffer and are left without benefit.

The general trends and characteristics of armed groups in the Lubero territory, described above, are exemplified by specific historical and recent incidents. The situation started to deteriorate in 2010 with hundreds of kidnappings and disappearances, presumably linked in some way to forced recruitment into armed groups<sup>28</sup>. Three years later in 2013, a series of violent massacres began. These recurrences increased in 2014 and massacres continue to the present day. However, contemporary incidents have been less frequent, and with an apparent change of target from civilians to the FARDC and MONUSCO forces. Years of massacres have resulted in tens of thousands being displaced and a death toll in excess 1,000 civilians<sup>29</sup>.

The initial massacres focused on the eastern part of Beni territory, controlled mainly by ADF, while those in 2014 and 2015 targeted the northern area of Beni (from Beni city to the limit with the Ituri territory). According to witnesses, the kidnappings and killings did not seem to correspond to discrepancies across religion or ethnicity, rather they included international aid workers and UN contract staff<sup>30</sup>, although some facts point towards a conflict between the autochthonous communities of Beni territory and the Nande, accused of taking over their territory<sup>31</sup>.

The current threat in Beni area is very high amid multiple attacks by Mai-Mai UPLC attacking FARDC, and ADF targeting of MONUSCO. A preventive FARDC operation against FPP-AP in Lubero was carried out at the end of November 2018. Its stated objective was to disrupt the armed group’s ambition to progress towards Beni where an alliance with Nande Mai-Mai factions could have increased security risks ahead of the elections<sup>32</sup>. Joint FARDC-MONUSCO operations against ADF have led to several casualties from the troops of the joint-forces. The deadliest ADF attack, directed at MONUSCO’s base in Semuliki (Beni territory) was in

<sup>27</sup> Rift Valley Institute / Usalama project, 2016, “Stable Instability: Political settlements and armed groups in the Congo”, p.8.

<sup>28</sup> Juliet Bedford, August 2018, “Key considerations: North-Kivu Province (180810)”, available: [https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP\\_North\\_Kivu\\_context.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP_North_Kivu_context.pdf)

<sup>29</sup> Congo Research Network, 2016, “Qui sont les tueurs de Beni?” Rapport d’enquete No 1, available: <http://congoreserchgroup.org/wp-content/uploads/2016/03/Rapport-Beni-GEC-21-mars.pdf>

<sup>30</sup> Human Rights Watch, 16 December 2015, “DR Congo: Kidnappings Skyrocket in East”, available: <https://www.hrw.org/news/2015/12/16/dr-congo-kidnappings-skyrocket-east>

<sup>31</sup> Congo Research Network, 2016, “Qui sont les tueurs de Beni?” Rapport d’enquete No 1, available: <http://congoreserchgroup.org/wp-content/uploads/2016/03/Rapport-Beni-GEC-21-mars.pdf>

<sup>32</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessment 5 - 12 Dec-2018. Unpublished confidential document.

December 2017, leaving 15 UN peacekeepers dead and 53 injured<sup>33</sup>. Members of the UN Group of Experts were also targeted: in December 2018 FARDC colonel Jean de Dieu Mambweni was arrested in connection with the March 2017 killing of two members of the Group of Experts, Zaida Catalán and Michael Sharp. Mambweni is suspected of conspiring with Jean Bosco Mukanda, a local militia leader.<sup>34</sup>

In connection with the elections of December 2018, attacks on a CENI warehouse in Beni were reported, seemingly intending to damage voting materials. On 17 December 2018, a group of suspected Mai-Mai UPLC militia laid an ambush against a provincial member of parliament and his team returning from an electoral campaign on the Butembo-Kirima axis. Further to that, FCC presidential candidate Emmanuel Ramazani Shadary cancelled a campaign stop in Butembo, only a week after CACH candidate Felix Tshisekedi was also forced to abandon a visit to the opposition stronghold, amidst reported security threats from Mai-Mai elements<sup>35</sup>. In this context of extreme volatility, the Uganda People's Defence Forces (UPDF) deployed Local Defence Units (LDU) at the Uganda-DRC border, most likely to avoid violence crossing the border<sup>36</sup>. January 2019 has seen a surge of attacks against the FARDC and civilians, representing a major escalation in violence. Across North Kivu, FARDC and police have taken a heavy-handed approach to public gatherings as tensions build over the elections results<sup>37</sup>.

The situation in North Kivu, particularly in the Beni area, illustrates the precarious situation of civilians, who are in the front line and therefore taking the heaviest toll in terms of casualties and kidnappings by ADF. In the meantime, the fact that Mai-Mai have freed ADF combatants could contribute to closer collaboration among the two groups in the future and lead to an increase in the level of violence. However, there is currently no convincing evidence that ADF and Mai-Mai elements are collaborating<sup>38</sup>.

The distinction between armed groups is challenging where defection and the creation of sub-branches are common practices. Nevertheless, as a result of this research 10 non-State armed groups were identified; names and characteristics are summarized below:

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<sup>33</sup> Fiston Mahamba, "Rebels kill 15 peacekeepers in Congo in worst attack on U.N. in recent history", Reuters, 8-Dec-2017, available: <https://www.reuters.com/article/us-congo-un/rebels-kill-15-peacekeepers-in-congo-in-worst-attack-on-u-n-in-recent-history-idUSKBN1E21YK>

<sup>34</sup> UN Security Council Report, January 2019, "Monthly Forecast", available: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2019\\_01\\_forecast.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2019_01_forecast.pdf)

<sup>35</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessment 12 - 20 Dec-2018. Unpublished confidential document.

<sup>36</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessments 31 Oct - 7 Nov and 14 - 21 Nov-2018. Unpublished confidential documents.

<sup>37</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessment 3 - 9 Jan-2019. Unpublished confidential document.

<sup>38</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessments 31 Oct - 7 Nov and 14 - 21 Nov-2018. Unpublished confidential documents.

Table 2. Summary of non-State armed groups.

Group name and Leader	Location / intervention area
<b>Name: Mai-Mai NDC-R</b> <b>Leader:</b> Shimiray Mwissa Guidon	Significant parts of Lubero Territory at the border between Walikale, Lubero and Rutshuru (ex: Kasugho, Miriki, Lusamambo). Also <i>chefferies</i> of Batangi and Bamate in south Lubero.
<b>Name: Mai-Mai Kilalo / UPLC</b> <b>Leader:</b> Katembo Kilalo and Mambari Bini Pélé (alias Saperita)	South-east of Lubero town
<b>Name: Mai-Mai Mazembe / UPDI</b> <b>Leader:</b> Muhindo Kitete Bushu	Bamate and Batangi <i>chefferies</i> , and Miriki region in Lubero territory.
<b>Name: Mai-Mai FPP-AP</b> <b>Leader:</b> Unclear: Kabido or Lafontaine	Moves around the areas of Kasiyiro, Bwalengire, Kinyatsi and even Ivingu.
<b>Name: Mai-Mai Corps du Christ</b> <b>Leader:</b> Kakolele Bwambale	Bashu and Rwenzori <i>chefferies</i> in Lubero territory.
<b>Name: Mai-Mai Simba (branches active in the Lubero territory)</b> <b>Leader:</b> Luc Yabili	Area of Manguredjipa in the Lubero territory and North West West of North Kivu Province
<b>Name: UPCP - Lafontaine</b> <b>Leader:</b> Lafontaine	West of Lake Edward in Lubero territory.
<b>Name: ADF</b> <b>Leader:</b> Seka Baluku	Foreign group: Area around Beni.
<b>Name: Mai-Mai Muhambalyaki</b> <b>Leader:</b> Muhambalyaki	West of Lake Edward.
<b>Name: FDLR-FOCAS</b> <b>Leader:</b> Sylvestre Mudacumura	South of Lubero: Bamate and Batangi <i>chefferies</i> .

### ***Mai-Mai NDC-R (Nduma Défense du Congo-Rénové)***

The NDC-R are present in large parts of Walikale territory, significant parts of Lubero territory and small parts of Rutshuru and Masisi territories<sup>39</sup>. Particularly, the group is currently active in the *chefferies* of Batangi and Bamate. In Batangi they occupy a large part of the Musindi *groupement* while in Bamate they occupy Luenge and Tama. They have taken the positions formerly held by Cheka. In August 2018 the FARDC successfully ousted NDC-R from their positions in Kasugho and Kagheri, in the West of Lubero territory<sup>40</sup>.

The NDC-R leader is Shimiray Mwissa Guidon, and the group is composed of Walikale communities such as Balenge. As is the case for the majority of non-State armed groups in DRC, NDC-R total troop numbers are difficult to estimate, as it changes often and the many associations with other armed groups are fluid. Also, there have been clashes between NDC-R and other armed groups operating near, or in, the NDC-R zone of influence, mostly with the Mai-Mai Mazembe and their former allies UPDI. These clashes took place in the western part of Lubero territory near two major villages, Miriki and Kashugo<sup>41</sup>.

The UN Group of Experts reports that according to a large variety of sources, NDC-R is an armed group considered to be well-disciplined and structured, however it also references 46 documented cases of child recruitment by NDC-R in 2017<sup>42</sup>. Ex-combatants also told the UN GoE that some NDC-R commanders regularly conferred with FARDC officers in local bars and discussed the strategy for attacking the positions of other armed groups. This was the case in the Kagheri-Kasugho area and in the Pinga area, where mixed FARDC-NDC-R patrols were spotted by the local population<sup>43</sup>. NDC-R has always declared allegiance to the Congolese government.

In relation to the influence and impact that NDC-R has on mining activities, local expert in natural resources<sup>44</sup> confirmed UN GoE findings: gold miners are illegally taxed by NDC-R through a taxation system that involves the payment of monthly *jetons* (token) at 1,000.00 CDF each. The obligation does not seem to apply to teachers, medical staff, village chiefs or students with a student card. However, the non-payment of the monthly *jeton* carries heavy consequences: arrest, torture and fines that can go up to 50,000.00 CDF<sup>45</sup>.

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<sup>39</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>40</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessments 31 Oct - 7 Nov-2018. Unpublished confidential documents.

<sup>41</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>42</sup> *Idem*, paragraph 79, page 16.

<sup>43</sup> *Idem*.

<sup>44</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>45</sup> *Ibid*.

Additionally, the UN GoE notes that NDC-R collects between 15 and 35 gr per mining pit per week, depending on the size of the pit and the number of miners operating in a pit<sup>46</sup>, while our local sources<sup>47</sup> report the collected quantity is approx. 0.08 gr of gold (equivalent to one “tipe” as it is called in the mine sites) per miner per month. The UN GoE<sup>48</sup> remarks that there is also the obligation to sell the gold to the Mai-Mai group at 25 USD/gr instead of the market price 60 USD/gr, with an estimated number of gold diggers under the control of NDC-R ranging between 1,000 and 1,500. The armed group also has a monopoly on the sale of products such as drinks and cigarettes in mine sites. In addition to gold, the group also controls the exploitation of timber in areas where they are present.

In relation to gold trade, the UN GoE notes that according to their sources, middlemen bought gold from NDC-R through the gold market in Kasugho and then sold it in Butembo, following which it would be exported to Kampala (Uganda)<sup>49</sup>.

### ***Mai-Mai Kilalo / Union des Patriotes pour la Libération du Congo (UPLC)***

The Mai-Mai Kilalo are present in the area South-East of Lubero town, and count between 500 and 600 members.

The leaders of this group are Katembo Kilalo, a locally renowned *féticheur* or producer of dawa, which is a potion believed to render combatants invincible, and Mambari Bini Pélé (alias Saperita). Kilalo, who is the nominal head of the group, is a former combatant and healer in Lafontaine’s armed group, while Saperita has been a member of local militia groups as well as a FARDC officer<sup>50</sup>.

Reports suggest that Kilalo has been working on building coalitions with Mai-Mai groups from Ituri in the north and Rutshuru in the south, and former combatants interviewed by the UN GoE confirmed the presence of children, many as young as 10 or 11 years of age, in each of the UPLC groups.<sup>51</sup>

In terms of ideology, this group sees the Kinshasa government as an occupying regime and continue to fight the FARDC because they believe the army is infiltrated by Rwandese. They use that rhetoric, together with the casualties caused by FARDC operations, to push local youth to join Kilalo’s ranks. It has been reported that Mai-Mai Kilalo is the group behind the attacks in Butembo in December 2016 and in January 2018.<sup>52</sup>

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<sup>46</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>47</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>48</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>49</sup> Idem, paragraph 92, page 18.

<sup>50</sup> Kivu Security Tracker, last accessed 20-Dec-2018, available: <https://kivusecurity.org/about/armedGroups>

<sup>51</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>52</sup> Ibid. Further confirmed during the field mission.



There is evidence that the group sustains their activities through taxation including in farms and at checkpoints, likely affecting mineral trade<sup>53</sup>.

### ***Mai-Mai Mazembe / Union des Patriotes pour la Défense des Innocents (UPDI)***

This group is present in the Bamate *chefferie* and Miriki region in the Lubero territory, with strong positions in Rutshuru territory such as in Bwito *chefferie*. Among their strongholds are Kanune, Luhanga, Kalevya, Kyambuli, Vutolera, and Kaghumo, with the head base in Kimaka (approx. 20 km south of Luofu).

The leader of UPDI/Mazembe is Muhindo Kitete Bushu, and the group is mainly composed by Nandes, counting approximately 150 members<sup>54</sup>. They share territory with the NDC-R, and they united to fight against the Rwandan FDLR between 2015 and 2017, since they both consider the FDLR as aggressors. However, current and former combatants said that the two armed groups fell out following a dispute between their leaders in May 2017<sup>55</sup>. The UPDI/Mazembe claim they fight to defend the Nande against the Hutu, so they recruit combatants among the local Nande population. There are no reports of the UPDI/Mazembe fighting against former allies Mai-Mai FPP/AP (covered below).

As regards mining activities the Miriki region has become hotly contested between UPDI/Mazembe and NDC-R, with the two groups frequently clashing to assume control of local taxation. Like the NDC-R, the UPDI/Mazembe collect the monthly *jeton* of 1,000.00 CDF per person. However, there is no quarrying in the influence areas of the group, so their main source of income is the monthly taxation, also on items other than mining such as automobiles, food warehouses, etc.

### ***Mai-Mai FPP-AP***

This group does not have any fixed or permanent area of presence: it moves around the areas of Kasiyiro, Bwalengire, Kinyatsi and even Ivingu (close to the ICCN energy site), where there is little presence of FARDC<sup>56</sup>.

Questions persist concerning the leader of the faction, since “General” Kabido has apparently joined Mai-Mai UPLC while “General” Lafontaine is reportedly controlling the group. As per JMAC sources, the group’s capacity is currently estimated at up to 300 combatants.<sup>57</sup>

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<sup>53</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 16 August 2017, S/2017/672/Rev.1.

<sup>54</sup> Civil society organisation 3. Interview with BetterChain. Butembo, DRC, Dec-2018

<sup>55</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 22 December 2017, S/2017/1091.

<sup>56</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>57</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessments 31 Oct - 7 Nov-2018. Unpublished confidential documents.



The FPP-AP splintered from Mai-Mai UPDI and have since been chasing NDC-R from Lubero, which the former hold as a Nande territory. However, these clashes have considerably weakened FPP-AP and triggered desertions, which explains their attempts to strengthen capacity by recruiting former Corps du Christ, PARECO, and Mai-Mai Léopard elements.<sup>58</sup> In an effort to prevent FPP-AP from building a Nande coalition to withstand FARDC pressure, the FARDC launched an offensive against the group in November 2018<sup>59</sup>. The FARDC offensive managed to oust FPP-AP from many positions, and the fight still continues in Kasiyiro (86 km NW Lubero).

According to JMAC assessments<sup>60</sup>, it seems that the broader objective of Nande Mai-Mai factions, which include Mai-Mai Kilalo, Mai-Mai Mazembe and Mai-Mai FPP-AP, are firstly, to contest the legitimacy of the current government; secondly, to seize government weapons; and to avenge the population as they accuse the military forces (in particular what they portray as “the *Rwandophone* component”) to be behind the exactions on civilians. However, JMAC assesses that the setting up a structured group following a single chain of command remains unlikely considering the record of failed similar attempts in the past.

### ***Mai-Mai Corps du Christ***

The Corps du Christ armed group was created in 2016 amidst a new wave of armed mobilization around Butembo town in response to massacres in Beni territory<sup>61</sup>. By mid-2017 the group had been pushed back to remote areas in Bashu and Rwenzori *chefferies*, and it is unclear to what extent the group is still operational. According to interviewed sources, the group is located in the hills around Butembo, in Isale, which is approximately 30 km from Butembo centre.<sup>62</sup>

The leader was initially David Maranatha, but in 2017 Kakolele Bwambale declared himself leader of the group. The group initially claimed to be against the government in Kinshasa. Some militias and armed groups around Beni claim to be allies of the group (including Mai-Mai Kilalo and Nzirunga)<sup>63</sup>.

Although the group does not appear to be directly involved in the ASM extraction and trade, most likely this group is managed and financed by large traders from Butembo<sup>64</sup>.

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<sup>58</sup> Ibid.

<sup>59</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessments 31 Oct - 7 Nov-2018. Unpublished confidential documents.

<sup>60</sup> MONUSCO Joint Mission Analysis Centre, Weekly Threat Assessments 31 Oct - 7 Nov and 14 - 21 Nov-2018. Unpublished confidential documents.

<sup>61</sup> Kivu Security Tracker, last accessed 20-Dec-2018, available: <https://kivusecurity.org/about/armedGroups>

<sup>62</sup> Congolese expert in natural resources 1 and Congolese expert in natural resources 2. Interviews with BetterChain. Goma, DRC, Dec-2018

<sup>63</sup> Kivu Security Tracker, last accessed 21-Dec-2018, available: <https://kivusecurity.org/about/armedGroups>

<sup>64</sup> Congolese expert in natural resources 1. Interview with BetterChain. Goma, DRC, Dec-2018

### **Mai-Mai Simba**

Mai-Mai Simba is an umbrella term for nationalist armed groups in the DRC since the country's independence in 1960. The group has different branches in the North Kivu province, such as the North-West of the North Kivu province and in the Manguredjipa area.

The founder and first leader of this group was Paul Sadala (a.k.a. Morgan). He was killed by the FARDC in 2014, after which the Emmanuel (Manu) took over. Manu was infamously known for poaching and the killing of okapis<sup>65</sup>, with Mangaribi as his lieutenant. Apparently, Manu has recently been killed and the new leader of the group is expected to be Luc Yabili; the group counts approximately 200 members<sup>66</sup>.

Reports point at this group as responsible for attacks and / or illegal taxation to miners in the Mangwale and Poussa Bango mine sites, located in the Bapere collectivity<sup>67</sup>.

### **UPCP-Lafontaine**

This group has had several names, including Mai-Mai Lafontaine, *Forces d'autodéfense populaire* (FAP), and *Coalition des patriotes résistants congolais* (PARECO).

The origins of the UPCP date back to the end of the Mobutu regime in 1993, when it emerged as a local defence group in the southern Lubero territory. In 2016 the group was forced out of its base around Bunyatenge due to the emergence of the Mazembe militia in the area. Allegedly, a small UPCP group is still based west of Lake Edward (Lubero territory)<sup>68</sup>.

The leader was Kakule Sikuli Lafontaine, a former FARDC officer, although since 2016 the leader is allegedly Muhambalyaki. Lafontaine himself is reported to be based outside of the country. Similar to other Mai-Mai groups, the UPCP recruits members from the Nande community. As a component in President Kabila's strategy to chase down Ugandan and Rwandan enemies it grew in strength during the Second Congo War (1998-2003). However, the group cut its ties with the government and at various points participated in alliances with the Rwandan FDLR (*Forces démocratiques de libération du Rwanda*) and was even part of the M23 rebellion<sup>69</sup>.

The group does have some involvement in mining activities, but their main revenue comes from taxation on fishing, according to a JMAC expert.

### **Allied Democratic Forces (ADF)**

The ADF is an Islamist Ugandan group that settled in eastern DRC in 1995 and integrated into Congolese society. The ADF formally allied with the National Army for the Liberation of

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<sup>65</sup> Kivu Security Tracker, last accessed 21-Dec-2018, available: <https://kivusecurity.org/about/armedGroupss>

<sup>66</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>67</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>68</sup> Kivu Security Tracker, last accessed 21-Dec-2018, available: <https://kivusecurity.org/about/armedGroups>

<sup>69</sup> Ibid.

Uganda (NALU), a group motivated by the claims of the Konjo community in Uganda and which shares the same language and traditions with the Nande community in DRC<sup>70</sup>.

The group is active in the area around Beni. The headquarters are in Madina camps, and the main base is known as Whisper. The group is also present in the Mwalika forest, where the UN GoE notes there is a reception and training centre for recruits coming from the Ugandan border<sup>71</sup>. Local sources of the UN GoE have reported ADF troop movements and bases in the Mayangose area between Beni town and the Mbau-Kamango road.

The leader is Seka Baluku. The current number of ADF members is estimated at 400 - 450 armed people, including some women and children. Mostly integrated by Ugandans but there are Congolese too. However, the number of new recruits has been lower than in previous years<sup>72</sup>. The ADF continues to arm and train children, who are either abducted in the DRC, recruited from neighbouring countries, or were born and raised in ADF camps. Two former ADF combatants spoke of young children of 14-15 years of age being armed, trained and sent to fight, usually at the front lines<sup>73</sup>.

The ADF generates revenue from cross-border trade of minerals, forestry and agriculture products<sup>74</sup>, as well as in illegal taxation.

#### 5.1.5 Mining Sector Governance

The DRC is highly dependent on the mining sector as a source of revenue. In 2015 the Congolese extractive sector generated USD 1.7 billion, 82% of which came from mining activities<sup>75</sup>. However, the mining sector scored only 33 out of 100 in the 2017 Resource Governance Index (RGI), placing the DRC in the 75th position among the 89 conducted assessments. The RGI evaluated three components: value realization (52/100), revenue management (35/100) and enabling environment (12/100)<sup>76</sup>.

The governance of the mining sector falls under the Ministry of Mines, which is divided into multiple specialized services and public bodies. The most relevant are:

- Mines Division: the mining authority at provincial level. It is represented by its local offices.
- SAEMAPE (*Service d'Assistance et d'Encadrement des Mines Artisanales et de Petit Echelle*) assists and supports formalizing artisanal miners by providing information, resources, training and technical assistance.

<sup>70</sup> Congo Research Group, March 2016, "Qui sont les tueurs de Beni?", *Rapport d'enquête No.1*

<sup>71</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Congo Research Group, March 2016, "Qui sont les tueurs de Beni?", *Rapport d'Enquête no.1*

<sup>75</sup> EITI, last accessed 11 December 2018, available: <https://eiti.org/democratic-republic-of-congo>

<sup>76</sup> Natural Resource Governance Institute, last accessed 11 December 2018, available: <https://resourcegovernanceindex.org/country-profiles/COD/mining>

- CEEC (*Centre d’Evaluation, d’Expertise et de Certification*) registers values and taxes production of diamonds and other high-value minerals.
- CAMI (*Cadastre Minier*) is the mining registry office.

The current Mining Code dates from 2018 (law 18/001 of 9 March 2018). One of the most prominent changes is that the new fiscal regime “is much more onerous than fiscal regimes in comparable mining jurisdictions”<sup>77</sup>. For example, royalties are significantly increased: up to 10% for any designated “strategic substances” (art. 241 of the code). The government announced that cobalt and coltan would be considered “strategic”<sup>78</sup>, and hence subject to the upper royalty fee; this may have a negative impact on miners by increasing the local prices. Another significant element of the new law is the lack of articulated transparency clauses. Indeed, experts have noted that “the new law’s weak transparency and conflict of interest provisions further do little to prevent dodgy deals from draining revenues from the country’s mining sector”<sup>79</sup>. On a positive note, the law includes social and environmental clauses: requirement to obtain an environmental certificate (art. 42), a minimum spending of 0.3% of the turnover on local community development (art. 258 bis).

A Natural Resource Governance Institute<sup>80</sup> study on the new code concludes that, firstly, it strives to increase economic and tax benefits to the country by including new taxes, simplifying existing ones, and increasing the effectiveness of revenue sharing with local governments. Secondly, the economic impact on investors is very large, which could discourage investment and hamper the development of the mining sector. Thirdly, the code is of immediate application to all mining projects without any transitory measures, which will likely increase conflict with the industry and costly arbitration proceedings. Lastly, implementation will be challenging due to the limited capacity of DRC’s tax authority combined with the complexity of the new code. Indeed, mining companies present in the country did not welcome the new code. The seven largest companies left the *Fédération des Entreprises du Congo* (FEC) the day after the publication of the new code, explaining that they felt it had not properly defended their cause. Instead they created a new entity, the *Initiative pour la Promotion de l’Industrie Minière* (IPM), to engage with the government regarding

<sup>77</sup> Lassourd, Thomas, November 2018), “La fiscalité du nouveau code minier de la République Démocratique du Congo”, Natural Resource Governance Institute, available:

[https://resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo_0.pdf)

<sup>78</sup> Zandi Shabalala, “Cobalt to be declared a strategic mineral in Congo”, Reuters, 14-Mar-2018, available:

<https://www.reuters.com/article/us-congo-mining-cobalt/cobalt-to-be-declared-a-strategic-mineral-in-congo-idUSKCN1GQ2RX>

<sup>79</sup> Global Witness, “New Democratic Republic of Congo mining law could leave the door open to corrupt deals”, press release 12-Mar-2018, available: <https://www.globalwitness.org/en/press-releases/new-democratic-republic-congo-mining-law-could-leave-door-open-corrupt-deals/>

<sup>80</sup> Lassourd, Thomas, November 2018, “La fiscalité du nouveau code minier de la République Démocratique du Congo”, Natural Resource Governance Institute, available:

[https://resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo\\_0.pdf](https://resourcegovernance.org/sites/default/files/documents/la-fiscalite-du-nouveau-code-minier-de-la-republique-democratique-du-congo_0.pdf)

technical discussions in relation to the code, as well as any other relevant matter for the mining industry.<sup>81</sup>

For the ASM sector, the new mining code also implies some specific changes. The new code introduces the term “cooperative”, while the 2002 code only mentioned “group of artisanal miners”, hence reinforcing the cooperative as an institution. The new mining code also introduces the idea of accrued responsibilities of the cooperative with regards to health and safety, including accident prevention in the ZEA where their activities take place<sup>82</sup>. The code also strengthens the cooperatives’ role by clearly stipulating their rights and prerogatives over ZEAs<sup>83</sup>. However, while ASM miners can only work in a ZEA, these are insufficient: only 24 in North Kivu, of which 4 in Lubero territory<sup>84</sup>.

#### 5.1.6 Health and Safety Situation

##### 5.1.6.1 Country Level

The political and economic collapse of the DRC over the past 30 years has had a profound negative impact on the health system: lack of staff and equipment in hospitals and clinics, shortage of critical medicine and supplies, resulting in an estimated 70% of Congolese with little or no access to health care.<sup>85</sup>

The DRC was immersed in a humanitarian crisis for more than two years, due to a series of armed conflicts and inter-community tensions in many provinces. According to the World Health Organisation, at the beginning of 2018 the number of internally-displaced people reached 4.1 million, with an estimated 7.7 million in a situation of severe food insecurity.<sup>86</sup> The situation has got even more difficult with the arrival of 552,000 refugees from Central African Republic, Rwanda, Burundi and South Sudan.<sup>87</sup>

Data from the World Health Organisation (2016)<sup>88</sup> shows a life expectancy at birth of 59 years for men and 61 for women, with an adult mortality rate of 280 for men and 231.5 for women (per 1,000 population). This is very low if compared with OECD members, where life

<sup>81</sup> Desk Eco, “RDC: Initiative pour la Promotion de l’Industrie Minière (IPM), nouvelle association de G7 Miniers”, 27-Aug-2018, available: <https://deskeco.com/rdc-initiative-pour-la-promotion-de-lindustrie-miniere-ipm-nouvelle-association-de-g7-miniers/>

<sup>82</sup> DRC, Mining Code, 2018, Article 112: “The cooperative mining or quarrying products meet the standards of safety, hygiene, use of environmental protection that apply to its operations in accordance with the regulations in force”

<sup>83</sup> DRC, Mining Code, 2018, Article 111.

<sup>84</sup> North Kivu Mines Division, January 2018, “Annual Report - 2017”.

<sup>85</sup> USAID Health Fact Sheet, last accessed 18-Jan-2019, available: <https://www.usaid.gov/democratic-republic-congo/fact-sheets/usaid-drc-fact-sheet-health>

<sup>86</sup> WHO, 16-Feb-2018, Health Cluster DR Congo, available: <https://www.who.int/hac/crises/cod/sitreps/drc-health-cluster-bulletin-16february2018-fr.pdf?ua=1>

<sup>87</sup> WHO, 16-Feb-2018, Health Cluster DR Congo, available: <https://www.who.int/hac/crises/cod/sitreps/drc-health-cluster-bulletin-16february2018-fr.pdf?ua=1>

<sup>88</sup> WHO, DRC country data, last accessed 18-Jan-2019: <https://www.who.int/countries/cod/en/>

expectancy is 77.5 years for men and 83 for women, with mortality rates of 110 for men and 60.5 for women (per 1,000). In DRC malaria remains the main cause of morbidity and mortality, however the epidemics of cholera, measles and Ebola continue to rage, particularly in Kinshasa and the Kivus.<sup>89</sup>

#### 5.1.6.2 Territory Level

The province of North Kivu has 27 health zones (*zones de santé*) with the referral general hospital in Goma. These zones are divided into smaller health areas organised around health centres (*centres de santé*). In these health areas there may also be one or more smaller health posts (*postes de santé*). The quality of care and resources offered by the health centres is low, with under-skilled and underpaid professionals<sup>90</sup>. Oftentimes the centres are far from the households and villages, with 74% of the population living more than five kilometres from a health centre<sup>91</sup>.

There are numerous international organisations and NGOs present in Butembo working to contain and fight the Ebola crisis: Alima, WHO, Oxfam, Save the Children, World Vision, PAM, and UNICEF. The security situation (particularly in Beni area) has resulted in many healthcare professionals not being able to continue their work in the *Centres de Santé*. The attacks conducted by armed groups also disrupt the work of, and pose a threat to, medical staff from the World Health Organisation, the DRC Ministry of Health and other partners in their fight to contain the deadly Ebola outbreak that was declared in August 2018. High insecurity levels and porous borders also allow members of armed groups and their support networks to regularly cross the border between Congo and Uganda, increasing the risk of transnational spread of Ebola<sup>92</sup>.

The DRC Ministry of Health has reported that since the beginning of the new outbreak and up until 16 January 2019, a total of 668 cases have been declared in the provinces of North Kivu and Ituri (619 confirmed and likely another 49), which so far have resulted in 410 deaths (361 confirmed and likely another 49) and 242 successfully healed<sup>93</sup>. The area of Beni claims the highest incidence of Ebola cases, with 132 deaths out of 216 known cases. Butembo area confirmed 49 cases, 35 of which have been fatal. The cases in Butembo have alarmed the

<sup>89</sup> WHO, 16-Feb-2018, Health Cluster DR Congo, available: <https://www.who.int/hac/crises/cod/sitreps/drc-health-cluster-bulletin-16february2018-fr.pdf?ua=1>

<sup>90</sup> Juliet Bedford, August 2018, "Key considerations: North-Kivu Province (180810)", available: [https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP\\_North\\_Kivu\\_context.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP_North_Kivu_context.pdf)

<sup>91</sup> Ho, L., G. Labrecque, I. Batonon et al., 2015, "Effects of a community scorecard on improving the local health system in Eastern Democratic Republic of Congo: qualitative evidence using the most significant change technique". *Conflict and Health*, pp. 9-27, available:

<https://conflictandhealth.biomedcentral.com/articles/10.1186/s13031-015-0055-4>

<sup>92</sup> Juliet Bedford, August 2018, "Key considerations: North-Kivu Province (180810)", available:

[https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP\\_North\\_Kivu\\_context.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/SSHAP_North_Kivu_context.pdf)

<sup>93</sup> DRC Ministry of Health, 17-Jan-2019, available: <https://us13.campaign-archive.com/?u=89e5755d2cca4840b1af93176&id=938227cc36>

authorities and partners working to contain the disease, since the city hosts over 1 million residents while current stockpiles of the vaccine are approximately 300,000 doses<sup>94</sup>.

## 5.2 Local Extraction and Trade Overview in the Lubero Territory

This section presents information and analysis of the mineral extraction and trade in the Lubero territory. It is organised as follows; first a stakeholder mapping including an initial summary table that cites the relative negotiation and bargaining power of each actor. This is followed by a more detailed description of each actor. Second, the gold and 3T ASM mining activity is explained, covering mine sites and production data (where available), risks and challenges in mining areas and mine sites. Finally, a supply chain mapping and trade overview of gold and 3T is presented.

### 5.2.1 Stakeholder Map: Relevant Actors in the Mining Ecosystem

For the purposes of stakeholder analysis actors in the 3TG ASM sector who are present in the Lubero territory are organised into five groups: supply chain participants, private sector associations, government entities, civil society organisations, and women.

Table 3, below, is a summary of the key actors, highlighting their negotiation power / level of influence in local decision-making. The most significant power holders (i.e. those who hold political, financial or other forms of power) in the Lubero territory are the actors involved in the trading of gold. Their considerable financial power has led them to have supremacy in the political arena.

Table 3. Summary of identified negotiation / influence power of mining stakeholders<sup>95</sup>.

Name	Key elements	Negotiation power /influence
<b>Cooperatives</b>	Actors in charge at the extraction level. Not member-driven organisations governed by democratic principles; usually led by traders from Butembo (local strongmen) who depend upon loyal supporters to protect and enrich their personal business interests, structures are hierarchical, centralized, and designed to benefit the leadership rather than the members (ASM miners). According to Congolese legislation, artisanal miners are required to be	Having certain control of the gold trade at the extraction level led them to have some influence in decision making, however the negotiation power is dominated by the main traders. For instance, cooperatives impose the price of minerals to the miners and traders impose to them the price of buying.

<sup>94</sup> AP News, "Ebola spreads to major Congo city as vaccines a concern", 7-Dec-2018, available: <https://apnews.com/86fd89fa73594ed0aa098c6c5a063300>

<sup>95</sup> More in-depth research on power imbalances needed.



Name	Key elements	Negotiation power /influence
	members of a cooperative.	
<b>Main gold traders</b>	The gold traders based in Butembo oversee the gold trade in the territory. They control the legal and the illegal trade of gold.	Holders of significant financial power, which led them to have a substantial political power at the territory level.
<b>3T exporters</b>	Pre-finance their affiliated 3T traders who will purchase on their behalf the minerals at the local level. Export their shipments from Butembo or Goma.	Significant power over their affiliated traders and 3T cooperatives as they provide the cash (up front) to purchase the minerals and allow them to access the market. But given that the 3T extraction and trade is relatively low in this territory their influence is rather limited.
<b>Government</b>	Including Ministry of Mines, Mines Police, Mines Division, SAEMAPE, CEEC	In general, State agents exercise their position of power to amass profit from the illegal trade of ASM minerals, for instance through bribes or direct engagement in the minerals trade. State agencies that are operational at the local level (Mines Police, Mines Division, SAEMAPE) are characterized by a lack of financial capacity (revenue) which makes them easily corruptible.
<b>Civil Society Organisations</b>	Several local civil society organisations based work on ASM related issues. In general, however, they have little knowledge of the due diligence process and its requirements, which does not allow them to efficiently contribute to risk identification and mitigation. Budget deficiencies and the very difficult access to mine sites are aggravating factors.	CSOs have an important role to play in advocacy. Also, in creating synergies with State agencies through the CPS or CLS or creating a discussion platform. However, we notice that a CSO's relative influence is higher when it is part of a network of CSOs, particularly if they are related to the influential Catholic church, and not politicised.
<b>Women</b>	Mostly involved in prostitution activities and the sale of goods (food, etc.) around the mine sites.	Their influence is quite limited.



Name	Key elements	Negotiation power /influence
	The few that are involved in mining activities rarely do heavy work: they rather work on washing and crushing minerals.	

### 5.2.1.1 Supply Chain Participants

#### Cooperatives

Beginning in 2003 in an effort to promote greater regulatory reach over the artisanal sector, the DRC mining law requests artisanal miners to be members of a cooperative in order to engage in legal mining activities in designated artisanal mining sites (ZEA: *Zone d'Exploitation Artisanale*). While some ASM cooperatives are working, many tend to exist in name only and not in function.

Most cooperatives present in the Lubero territory are not member-driven organisations governed by democratic principles. Instead, they are characterized by the lack of a clear structure and are managed by local strongmen who depend upon loyal supporters to protect and enrich their personal business interests. In most cases the founders of the cooperatives are not representatives of the miners but traders from Butembo, who are usually based in Butembo (although in the case of cooperatives that are operational in the area of Manguredjipa, it was reported that these usually have an office in the area). As a result, most cooperative structures are hierarchical, centralized, and designed to benefit the leadership rather than the members. Most of them do not play their role of defending interests and reinforcing the capacity of their members: the artisanal miners. In addition, and similar to what happens in other mining areas in DRC, the cooperatives generally impose a high tax on the miners, which may vary depending on the level of production.

According to official documents provided by the SAEMAPE, there are nine cooperatives working in the gold sector of the Lubero territory<sup>96</sup>. However, some of them are not currently active. In the 3T sector five cooperatives are active in the mining area of Manguredjipa. Three of them have an agreement with the Ministry of Mines, namely MACOMIN (active in coltan, wolframite and gold), COMINECO (active in wolframite) and CEMADECO (active in wolframite). The two other cooperatives, COMINEC (active in coltan and gold) and COMINEANKE (active in wolframite) are operational but do not have an agreement<sup>97</sup>.

<sup>96</sup> Annex 2 - SAEMAPE cooperatives list for gold.

<sup>97</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

### Deep Dive: the cooperative COMIBEL

- During the field mission the president of the COMIBEL cooperative explained that the cooperative is active in gold sites in both the Lubero and Beni territories. He is a local trader from Butembo, same as the other cooperative founders (11 in total).
- In the Lubero territory, the cooperative is present in the gold sites of Lima and Kaheku, located around 44 km from the local trade centre of Ninjapanda. According to the President, in each of their controlled sites the cooperative has an organized structure and comprises nine representatives (DG of the site, secretary, inspector, “*chef de chantier*” (sub-site chief), security agent, anti-fraud agent, etc.). These two sites employ around 120 miners in 12 active pits, with an approximate production of 22 gr of gold per week - which after cross checking with other sources appears to be an underestimation of the real production. The grade of the gold varies between 87% and 89%, and around 80% of the miners hold a miner card.
- In terms of tax, the cooperative requests a tax to the miners that depends on the level of production and varies between 10% and 40%. For example, during the prospection period the cooperative only takes a tax of 10%, while in the production period the more they produce the more the cooperative increases the tax. In the case of the Lima and Kaheku sites, the cooperative requests 30% of the miners’ production but in counterpart the cooperative is in charge of supporting payment of the (irregular) taxes requested by the local authorities and the traditional authorities. Additionally, the miners pay 10% of their production to the SAEMAPE, leaving them with only 60% of the production.
- COMIBEL is also active in the Beni territory, more specifically in the gold site of Mununze, which counts around 120 miners and is currently doing some prospection for new productive sites around Beni.
- Finally, in relation to trading, a cooperative representative brings the gold to the cooperative president based in Butembo, who will then sell the gold to main traders in Butembo.

### Local traders

Local traders are key actors in the 3TG supply chain, as they are the middlemen between the cooperatives or the local managers, and the exporters (whether officially or not). Local traders are usually pre-financed by exporters.

In 2017, 151 local trader cards were issued: one for coltan, nine for wolframite and 141 for gold<sup>98</sup>. And in 2018, the SAEMAPE reports identify 103 local traders in the Lubero territory (including six working in the 3T trade). According to State agent representatives<sup>99</sup>, this

<sup>98</sup> North Kivu Mines Division, January 2018, “Annual Report - 2017”.

<sup>99</sup> Government official - SAEMAPE. Interviews with BetterChain. Goma and Butembo, DRC, Dec-2018.

number is too low and does not reflect the reality on the ground. To renew their card, local traders need to pay annually a fee of 375 USD, split as follows: 295 USD for the bank, 60 USD for the receipt and associated administrative fees (to be deposited in the provincial Mines Division), 10 USD to request the form to order the trader card, and 10 USD for the receipt from the revenue collection agency DGRAD.

#### Exporters or “entités de traitement”

There is only one gold exporter officially recorded by the Ministry of Mines and active in the Lubero territory: Glory Minerals, or commonly known as Glorym house. This exporter has been operational since 2009.

With regards to the 3T trade, five entities have been identified. Among them two were operational but stopped in September 2016 and January 2017, and three are still operational nowadays. Among the three still active, one is also present and active in South Kivu and another is active also in other territories of North Kivu and in the provinces of South Kivu and Maniema.

#### 5.2.1.2 Private Sector Associations

Two private sector associations were identified in the Lubero territory:

- *Association des Négociants de Butembo (ANNOB)*: this association aims to support the work of *négociants* and to defend their rights; including the discussion around taxes, lobbying around legal and regulatory provisions affecting the mining sector, and to help members obtain required documents. Note that the president of the association is also the president of the influential cooperative COMIBEL.
- *Fédération des Entreprises au Congo (FEC)*: the federation is a platform for Congolese enterprises to discuss and cooperate. It has representatives in the Lubero territory, even if 3T trade in the territory is not significant and most of the gold trade is illegal. The representative for 3T is also the representative of the one of the 3T exporters in Butembo. The representative for gold is a gold trader who is based in Butembo.

#### 5.2.1.3 Government

There are five main State agencies working in the mining sector: the Ministry of Mines, the Mines Police, the Mines Division, SAEMAPE (*Service d'Assistance et d'Encadrement de l'Exploitation Minière Artisanale à Petite Échelle*), CEEC (*Centre d'Expertise, d'Evaluation et de Certification des substances minérales précieuses et semi-précieuses*).

The **Ministry of Mines** is the country's authority that regulates and oversees mining activity. It is responsible for applying the regulations relating to mining at a national level. Main functions include granting mining rights and permits, carrying out and following up on technical supervision controls, and updating the geological map of the country.

The **Mines Police** has the mission to guard mining sites. Overseen by the Ministry of Defence, the Mines Police are supposed to be the only Congolese security service with a presence in artisanal mine sites.

The **Mines Division** is the mining authority at the provincial level. It is represented all over the country by its local offices.

The **SAEMAPE** was created as a public service in March 2003 and is charged with ensuring inter-ministerial coordination in order to assure the development of artisanal and semi-industrial mining. Officially, this agency provides technical and economic support to local mining communities and artisanal miners. It aims to create better working conditions for artisanal miners and encourages them to better organise themselves in cooperatives / labour unions. However, the operational budget of SAEMAPE does not allow them to carry out their mandate.

The **CEEC**, also created in March 2003, provides technical support to the Ministry of Mines. It includes a centre of national data, research and certification for mineral extraction and trade. The CEEC is also active in the context of the ICGLR Regional Certification Mechanism by issuing the certificates within the DRC. At provincial level, the CEEC is also in charge of anti-fraud and represents the CNLFM - DRC Mining Fraud Commission (*Commission nationale de lutte contre la fraude minière*).

While the CEEC is known to have a significant budget for operations allowing them to undertake their mandate, the Mines Division and the SAEMAPE suffer from serious budget issues. The latter two agencies face several challenges, which are highly noticeable in the Lubero territory:

- A low number of agents, which prevents them from efficiently covering the entire supply chain, and specifically the mineral extraction points.
- Low remuneration, and even a high presence of unpaid agents, which fuels their participation in the illegal trade of minerals.
- Lack of equipment to efficiently carry out their mandate.

For illustration purposes, in terms of workforce by the end of 2018 the Mines Division had only 46 agents to cover all the Lubero territory (around 18,000 km<sup>2</sup>): 19 for Lubero and 27 for Butembo, including seven women<sup>100</sup>. Most agents are unpaid and based in the main villages. As for SAEMAPE, the number of agents for Beni and Butembo is 17, split as follows: 3 in Beni territory, 5 in Lubero territory and 9 in Butembo<sup>101</sup>. The majority of SAEMAPE agents are also unpaid, and only present in the area where there is also a local administrator. Instead, the CEEC, which is mainly involved in the export process of minerals, counts three agents based in Butembo including an anti-fraud agent<sup>102</sup>.

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<sup>100</sup> Government official – Mines Division 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>101</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>102</sup> Government official - CEEC 1. Interview with BetterChain. Goma, DRC, Dec-2018.

#### 5.2.1.4 Civil Society Organisations

Several local civil society organisations based in the Lubero territory are working on ASM related issues. Four entities are identified (this is not an exhaustive list):

- *Justice et Paix Butembo*: focuses on carrying out research on ASM issues, such as mine sites mapping and mapping of the involvement of armed groups in the mining sector. They also conduct advocacy activities.
- *Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO)*: headquartered in Goma, they also have an office in Butembo. Their work is focused on supporting community structures in Manguredjipa such as the Local Monitoring Committee (CLS – *Comité Local de suivi des affaires minières*). They also advocate for the return of finances from the provincial level to the Lubero territory.
- *Agro Industrie Rural (AGIR)*: their main activities within the ASM sector relate to the support of cooperatives in Manguredjipa and to advocacy activities in order to increase the number of mine site qualification missions.
- *Groupe d'Associations de Défense des Droits de l'Homme et de la Paix (GADHOP)*: it comprises 16 Congolese organisations active in the promotion of human rights and peace in the territories of Beni and Lubero, and more widely in the DRC and the Great Lakes Region.

The general assessment is that CSOs present in the territory have very little knowledge of the due diligence process and its requirements, which does not allow them to undertake the most efficient role in that process, that is, risk identification and mitigation - OECD steps 2 and 3. Their role in the due diligence implementation for 3T supply chains relates mainly to supporting the local committees, while for gold they have very little involvement because there is currently no gold due diligence system in the territory.

The lack of budget and the difficulty in accessing mine sites (remote areas and high level of insecurity) also aggravate this situation, by complicating the task of conducting efficient and regular monitoring of mineral supply chains. In addition, the lack of structured methodologies and tools to collect data result into poor and unreliable information collected on the ground.

#### **Multi-stakeholder platforms**

Besides purely civil society organisations, there are also multi-stakeholder committees composed of representatives from the private sector, civil society and government. Committees are held at the provincial level through the Provincial Monitoring Committee (CPS – *Comité provincial de suivi des affaires minières*), and at the local level through the Local Monitoring Committee (CLS). They are established to support the management of ASM issues. During the CPS/CLS sessions members exchange current information on mining activities, report potential incidents and develop and agree actions to mitigate identified risks or incidents typically by including a time frame and a person responsible for the action(s).

At the local level the CLS can be seen as a monitoring structure. However, in the case of Mangueredjipa this local structure lacks in training on due diligence, particularly in relation to reporting, monitoring and mitigation of incidents. The CPS, which is held in Goma for the North Kivu province and does not benefit from the presence of a Lubero territory representative; therefore, issues and challenges from the territory are rarely discussed in this provincial committee. This is particularly important because the CPS manages the “basket fund”, an instrument intended to support local community development through the levy of taxes on mining activities<sup>103</sup>.

In the Lubero territory the production and legal trade of 3T is very low, and practically all gold is illegally traded and smuggled out of the country. Therefore, the Lubero territory has typically contributed very little to the basket fund (Community Development Fund). Because the money from the basket fund is distributed among the territories based on how much each territory has contributed, up to date the Lubero territory has received no funding from it. However, in other territories such as the Walikale territory, the money from the basket fund has been used for the construction of solar panels and has supported the construction of a hospital<sup>104</sup>. Also, the funds are “not managed transparently and are subject to misuse”<sup>105</sup>, so few communities benefit from them.

However, the new mining code (2018) cancels the basket fund: the Minister of Mines argues that in the new code there is a mandatory tax to support local development (art. 258 bis) and an additional amount to be paid by mine title holders to the decentralised territorial entity (*entité territoriale décentralisée*) that may be used for local development (art. 242), hence keeping the tax for the basket fund would constitute double taxation<sup>106</sup>. Now the taxes previously allocated to the basket fund will go directly to the local and provincial levels with no direct objective on local development.

#### 4.2.1.5. The Role of Women

As in most developing countries, women do not have a predominant or significant role in DRC’s mining sector activities. There are very few women holding relevant positions in the private sector: an example is the female CEO of the export entity Rush Rush based in Goma; she is also the representative of the FEC for the North Kivu province. Other than her and a few other women, the industry is dominated by men.

<sup>103</sup> In 2017, the North Kivu Province got 592,900.00 USD through the basket fund from the mining operators as a contribution for the local development. This contribution is based on 360.00 USD per tons of Ta and 180.00 USD per tons of Tin (“Annual Report - 2017” from the North Kivu Mines Division, p.39).

<sup>104</sup> Government official – Mines Division 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>105</sup> EurAc, March 2017, “Accompanying Measures to the EU Regulation on Responsible Mineral Sourcing - towards an improved governance of the artisanal mining sector in the DRC”, p. 31, available:

[https://www.eurac-network.org/sites/default/files/position\\_paper\\_-\\_eng\\_accompanying\\_measures\\_to\\_the\\_eu\\_regulation\\_on\\_responsible\\_mineral\\_sourcing\\_-\\_march\\_2017.pdf](https://www.eurac-network.org/sites/default/files/position_paper_-_eng_accompanying_measures_to_the_eu_regulation_on_responsible_mineral_sourcing_-_march_2017.pdf)

<sup>106</sup> Laprunelle, 11-Feb-2019, “Kivu: la société civile demande au ministre des mines de sursoir la mesure portant suppression du Basket Fund”, available: <http://www.laprunellerdc.info/2019/02/11/kivu-la-societe-civile-demande-au-ministre-des-mines-de-sursoir-la-mesure-portant-suppression-du-basket-fund/>

Consistent with studies and research work on other geographical areas, women and very young girls in the mining areas of the Lubero territory are mostly involved in prostitution activities and the sale of goods such as food around the mine sites. The few that are involved in mining activities per se rarely do heavy work: rather they work on washing and crushing minerals; it is very uncommon to see women digging.

There are several women's associations that try to promote the rights of women in the mining industry, and that typically also provide legal assistance to women who are victims of sexual violence or scams:

- *Dynamique Femmes Mines (DYFEM)*: based in Goma, this association's mission is to promote female leadership in Congolese mining governance. Their work areas include governance of natural resources, community development, gender and economic justice, women autonomy, and citizen empowerment.
- *Lysistrata / SAFDF*: Lysistrata is an international association created in 2006 with the mission to defend the dignity and rights of women around the world, with a special emphasis in supporting the autonomy of women victims of violence. In DRC they created a platform of associations, the SAFDF (*Solidarité des Associations Féminines pour les Droits des Femmes*), that groups various associations present in North Kivu providing medical, psychological, legal and economic support for women victims of sexual violence. A notable example of these local associations is:
  - *Femmes Juristes pour les Droits de la Femme et de l'Enfant (FJDF)*: this association, based in Butembo, has recently developed the project "*Droit? Les femmes et l'exploitation des ressources naturelles en République Démocratique du Congo*" targeting the 5 mining sites of the Bapere sector.
- *Ligue des Organisations des Femmes Paysannes du Congo (LOFEPACO)*: promotes the interests of women farmers and peasants. It is organised as a platform that groups many smaller associations from North Kivu. Their work areas include food security, the rights of rural women, training and capacitation.

### 5.2.2 Mining and Circumstances of Mining Activity

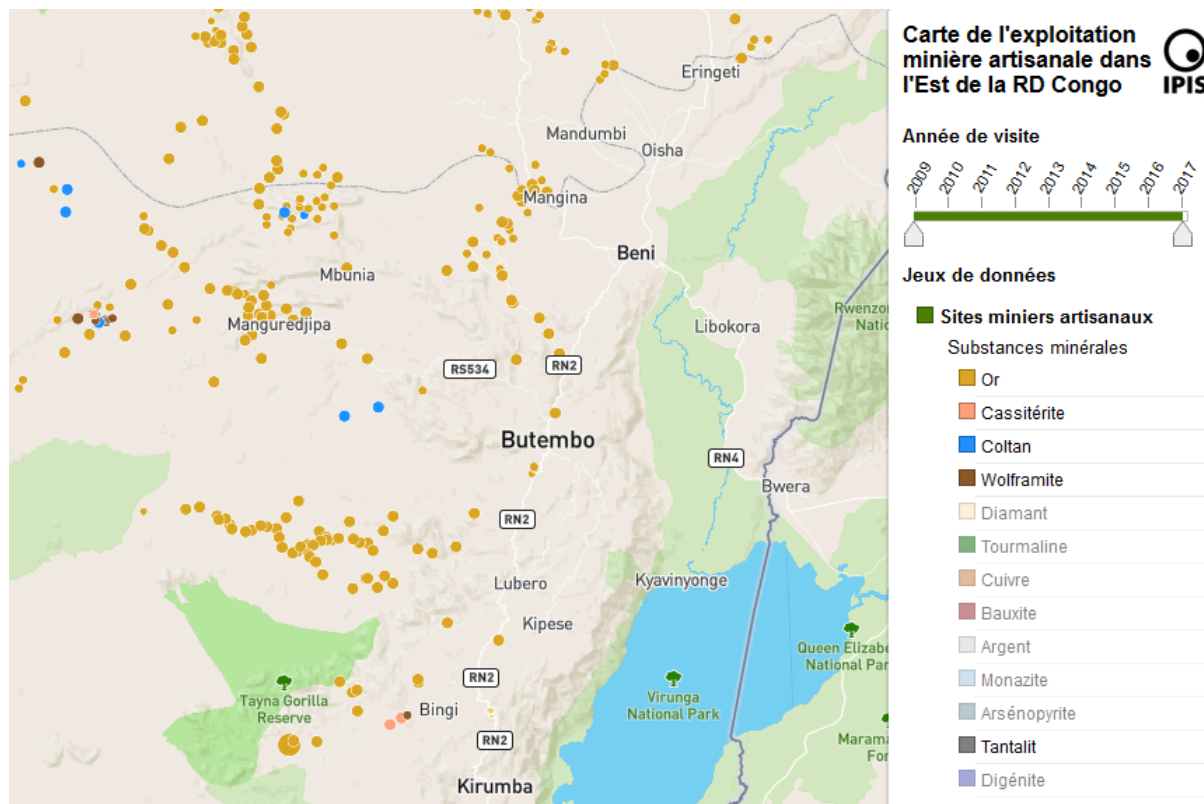
Due to the high level of militarization of the mining areas in this territory and the difficult access to the sites, State agencies and civil society organisations have very little capacity to obtain reliable data on the number of 3TG sites. By reconciling data from multiple sources, including the Mines Division, SAEMAPE, Ministry of Mines, civil society organisations and iTSCI, it was possible to identify 179 "*chantiers*" (sub-sites) in this territory, mainly in the Bapere collectivity. Among them, 122 are producing gold exclusively, and 57 produce 3T minerals, mainly wolframite<sup>107</sup>.

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<sup>107</sup> See Annex 3 - List of mine sites for a detailed list of all the sites. (Not exhaustive).



ASM exploitation in Lubero Territory<sup>108</sup>:



### 5.2.2.1 Understanding the ASM Gold Activity

#### Mine Sites

According to the North Kivu Mines Division, currently there are four areas of artisanal exploitation or ZEAs in the Lubero territory, corresponding to numbers: 202, 197, 203, 204, that extract gold, located in the Batangi sector<sup>109</sup>. These ZEAs are all active, under the control of armed groups.

Due to the informal nature of the artisanal gold mining sector in the DRC in general, and particularly remote territories such as Lubero, it is difficult to obtain reliable data on the number of miners working on gold ASM. In addition, the community of miners is very mobile, with miners changing location according to the level of production at the sites.

Governmental agencies do not have reliable data either: the information provided by the Mines Division is based on the number of miner cards that they have issued, which do not reflect the reality on the ground. In 2017 a total of 1,055 miner cards were issued: 50 for

<sup>108</sup> See IPIS interactive map of artisanal mining exploitation in Eastern DRC, snapshot taken in December-2018: <http://ipisresearch.be/publication/interactive-map-artisanal-mining-exploitation-eastern-dr-congo-2018-update/>

<sup>109</sup> North Kivu Mines Division, January 2018, "Annual Report - 2017", p.84.

wolframite and 1,005 for gold<sup>110</sup>. To renew their card, miners need to pay an annual fee of 35 USD<sup>111</sup>.

The official number estimates that around 320 miners work on 3T validated sites, while the estimated number we have reached after reconciling data from the identified sites is 4,311 miners (3TG combined). Some sites more productive are attracting a larger workforce, for instance the gold sites *Gbado 2*, which counts 180 miners, *Kyatembo* with 112 miners and *Lata bien* with 126 miners<sup>112</sup>. In addition to these sites, productive gold sites uncontrolled by armed groups were identified. These are located in the Beni territory but at the border with the Lubero territory:

- Mununze mine site, under the supervision of the cooperative COMIBEL, which currently comprises four active pits and counts around 300 miners.
- Beni Mbao located close to the road between Beni and Butembo, which counts 10 active pits and around 100 miners.

#### Production Data

Due to the complexity of this remote territory, coupled with the lack of staff in relevant State agencies to effectively control the gold extraction and trade, most of the gold extracted in the territory is officially out of the control of State authorities.

The official gold production in Lubero is insignificant: only 4.70 kg were reported in 2017<sup>113</sup> and 19.55 kg in 2018 up to October (data recorded by the Mines Division based in Butembo until October 2018<sup>114</sup>). According to a Mines Division representative<sup>115</sup>, their data on gold production is based on the miners' declarations and is far lower than the reality. One SAEMAPE official admits that "gold is easy to smuggle, and the majority of gold sites are under the control of armed groups, so a large majority of gold escape from their control"<sup>116</sup>.

#### Main Risks / Challenges at the Mine Site Level

There are two main risks affecting productive gold mine sites. The first is the high militarization of these sites: productive gold mine sites are very coveted, and in the Lubero territory most of them are under the control of armed groups<sup>117</sup>.

The second risk, already mentioned, is illegal taxation. It reaches very high levels and becomes a significant burden at all levels of the supply chain. Taxes are usually related to access and

<sup>110</sup> North Kivu Mines Division, January 2018, "Annual Report - 2017".

<sup>111</sup> Annual fee of 35 USD is splitted as follows: 20 USD for the bank, 10 USD for the receipt and associated administrative fees (to be deposited in the provincial Mines Division), and 5 USD for the receipt from the revenue collection agency DGRAD.

<sup>112</sup> Civil society organisation 2. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>113</sup> North Kivu Mines Division, January 2018, "Annual Report - 2017", p.17.

<sup>114</sup> Annex 4 - Production data of Lubero territory (Mines Division).

<sup>115</sup> Government official - Mines Division. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>116</sup> Government official - SAEMAPE. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>117</sup> Several: Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018; Government official - Mines Division. Interview with BetterChain. Butembo, DRC, Dec-2018; and Due diligence program agent. Interview with BetterChain. Butembo, DRC, Dec-2018.

authorization to work on a gold site, to the production as a production-based tax, or to the right of passage as a *tax de passage*.

However, the level of tax requests, the number of irregular taxes and the number of actors involved in those taxes is also highly variable and depends on the level of production of each site. The greater the production the more it attracts various types of actors who want to extract their illegitimate taxes, tariffs and rents:

- FARDC are known to establish illegal checkpoints on the roads between the mine sites and the trading points, where they request a fee of usually around 1,000.00 CDF (equivalent to 0.50 USD) per passage. This is the case for the Masingi gold site, located in the Baswagha *chefferie*<sup>118</sup>.
- The cooperative present at Masingi also collects an illegal tax that usually depends on the level of production, and the Mines Police requests around 1,000.00 CDF (equivalent to 0.50 USD) to each miner when there is production at the site.
- High involvement of representatives of State agencies in the illegal trade: a State agent representative in Goma admits the difficulty they have to control their own agents<sup>119</sup>. For example, in order “to survive”, a State agent from SAEMAPE has reported that he is also involved in the gold trade at his level (i.e. he is getting small pieces of gold that he resells to gold houses in Butembo)<sup>120</sup>. The low level of salaries, and obviously even more the complete lack of remuneration of State agents creates incentive for them to participate in the illegal trade. A government official<sup>121</sup> indicates that most of Mine Division agents based in the Lubero territory are “*non matriculés*” (not registered), which means that they are not officially registered as such in Kinshasa and have little opportunity to receive any salary. As a side note: in the DRC there are three types of staff: 1) registered and paid, 2) registered and unpaid, 3) not registered, the latter representing most agents working at the several Mines Divisions.

This research identifies mainly alluvial sites, where the presence of bottom dredger machines controlled by illegal forces (usually the property of individuals from South Kivu) can be observed. Production data on these alluvial sites was not available:

- Lubero river: located in the national park Maiko, six dredgers under the control of the Mai-Mai NDC have been identified. The armed group requests an illegal tax to the miners, who are paid either in gold or in cash. The frequency of the tax depends on the level of the production.
- Lindi river: located in the west of the territory, eight dredgers under the control of the Mai-Mai NDC were identified. In addition to the illegal tax requested by the militia, the miners also pay a tax to the FARDC at checkpoints located at approximately 2 days of walk from the dredgers (around 1,500.00 CDF per passage).

<sup>118</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>119</sup> Government official - Mines Division. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>120</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>121</sup> Government official - Mines Division. Interview with BetterChain. Goma, DRC, Dec-2018.

- Taina river: in the Batangi *chefferie*, one dredger under the control of the Mai-Mai Mazembe was identified.
- Bunia Kisenge gold site: this site is characterized by a significant presence of FARDC. The military are involved in small businesses, for instance selling food and drinks to the miners. On payment day, any miner not able to pay (whether cash or gold), is tied up by the soldiers to force the miner to pay. It has been reported that those soldiers were coming from the limit of the Lubero and Beni territories<sup>122</sup>.
- Bilulu site: this highly productive site is located on the axis of Njiapanga – Lubumbashi, in the area of Mangaredjipa, and is under the control of the Mai-Mai Simba.

Additionally, it has been reported recently that Mai-Mai groups have attacked and / or required illegal taxes to miners in the following sites located in the Bapere collectivity<sup>123</sup>:

- Mine site Mangwale (gold and coltan) which was attacked by the Mai-Mai Simba
- Mine site Poussa Bango (gold and coltan) which was under the control of the Mai-Mai Simba
- Mine site La vue (gold and coltan)
- Mine site Robinet

In relation to working conditions, gold miners face many challenges including lack of appropriate and safe equipment, the common use of mercury which poses a serious health threat, the lack of protection in and around pits that creates a high risk of landslides, and the extremely remote location of the sites which hinders access to health centres in case of injury.

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<sup>122</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>123</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

Photos. Left: view on the Musigha hills. Right: miner carrying a pump to bring pure air into a mine pit locally known as Mungoti.



#### 5.2.2.2 Understanding the 3T ASM Activity

##### Mine Sites

Based on the reconciliation work, 57 *chantiers* were identified in the Lubero territory producing 3T minerals. The most extracted mineral in these mines is wolframite, followed by coltan and cassiterite.

Out of these 57 sub-sites, 44 have a green qualification, while the other 13 have not been qualified. The 44 qualified sub-sites are organized into six sites: Etaeto Droite, Kigali, Mambilee, Masingi, Etaeto Gauche and Malimbenze. 34 of the green sub-sites and 2 of the non-qualified sub-sites are located in areas where the Canadian mining company Loncor Resources Inc. has research permits.

The remaining validated sub-sites (10) are located on geological research areas.

##### Production Data

The 3T ASM production is very low in this territory in comparison with other territories such as the Masisi territory (also located in the North Kivu province). For instance, in 2017 the official production data shows for the Lubero territory: 6,365.0 kg of tin, 1,705.0 kg of tantalum, and 16,976.0 kg of wolframite<sup>124</sup>. In the same year at the Masisi territory the

<sup>124</sup> North Kivu Mines Division, January 2018, "Annual Report - 2017", p.17.

production was around 337,677.0 kg of tin, 991,058.1 kg of tantalum, and 1,482.0 kg of wolframite<sup>125</sup>.

In 2018 SAEMAPE statistics of 3T production, which are based on iTSCI logbooks, in the qualified sites from January to November<sup>126</sup> indicate 15,668.00 kg of wolframite, 1,737.00 kg of tantalum and 664.00 kg of tin.

The mine site with the highest production by far is Etaeto Droite<sup>127</sup> with 14,107.00 kg of wolframite produced. Etaeto Gauche<sup>128</sup> and Kigali come next, with 1,551.00 kg of wolframite and 1,273.50 kg of tantalum respectively. Malumbenze<sup>129</sup> site reports 463.50 kg of tantalum. Another 664.00 kg of tin reported do not mention any mine site of origin. The sites Masingi and Mambilee show zero production during the 11 months. Viewing production by month, there are significant peaks in January, July and October, while June and August report the lowest production. This low production can be explained by the rainy season where most pits are full of water and the miners do not have the appropriate equipment to evacuate the water.

It is important to note here that while SAEMAPE has recorded these production figures<sup>130</sup>, the CEEC reports no 3T exports from the area in the same period<sup>131</sup>.

#### Main Risks / Challenges at the Validated Mine Sites

While the gold sites are characterized by a very high level of insecurity, 3T sites are also affected by insecurity<sup>132</sup>.

According to an iTSCI representative, the green sites are located close to the triangle of Lubero, Walikale, Bafuasende, known for the presence of several armed groups which are highly mobile and could eventually be involved in the mineral extraction<sup>133</sup>.

In addition, irregular / illegal taxation in relation to 3T extraction has been reported by civil society organisations<sup>134</sup>. Similar to gold, the number of illegal taxes depends on the level of production, so the more production, the more the number and / or level of taxes increases.

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<sup>125</sup> Idem, p.19.

<sup>126</sup> See Annex 5 - SAEMAPE 3T statistics 2018.

<sup>127</sup> More specifically the following sub-sites: *Paris soir, Nickel, Monde Arabe, Bulongoand Poto Malili*

<sup>128</sup> All the sub-sites have been reported to be productive.

<sup>129</sup> More specifically the following sub-sites: *Moyenne, Malimbenze and Lunango*.

<sup>130</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>131</sup> Government official - CEEC. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>132</sup> Several: Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018; Due diligence program representative. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>133</sup> Due diligence program representative. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>134</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.



- The cooperatives, who are generally responsible to pay the tax to the traditional authorities and the different State services, including the Mines Police, usually request substantive tax to the miners who operate in their area of intervention.
- Local transporters of mineral bags are requested to pay tax to the State services representative (passage tax). Likewise, several local authorities, for example the “*chef de secteur*”, requests an illegal fee of around 1,000.00 CDF per motorbike transporting minerals between Manguredjipa and Bulemba.
- Local traders are also requested to pay a tax, representing around 10% of the production, to State services during the transaction of minerals between them and the managers / pit managers. This tax, which is an ordinary practice in the mining area of Manguredjipa and the local hub trade of Bandulu, is commonly known as the “*tax poids et mesure*”.

### 5.2.3 Mineral Trade and Supply Chain Mapping (3TG)

The following sections present the results of the supply chain mapping and highlight the typical routes and parties involved in the trade of gold and 3T.

#### 5.2.3.1 Understanding the Gold Trade

##### Gold Supply Chain Mapping

The gold extracted in the mine sites is generally purchased by “*négociants*” who sell their gold to local traders in trading towns like Butembo. While the gold traders based in Butembo do not need pre-financing from their buyers as they have enough cash flow, they pre-finance their local traders who will buy the gold in the local trading hubs. There are eight local trading hubs for gold in Lubero territory: Bandulu, Ombole, Manguredjipa, Kambau, Njiapanda, Kitshumbiro, Kimbulu and the axis of Njiapanga – Lubumbashi.

In some cases, when a cooperative is present at the mining area, members of the cooperative buy the gold directly from their miners and bring it to their headquarters in Butembo before re-selling it to main traders based in Butembo.

The gold traded in Butembo is coming from a vast area: from the Lubero and Beni territories, from Oninga and from Kisangani, even from some areas located in the Walikale territory such as the Oso river<sup>135</sup>.

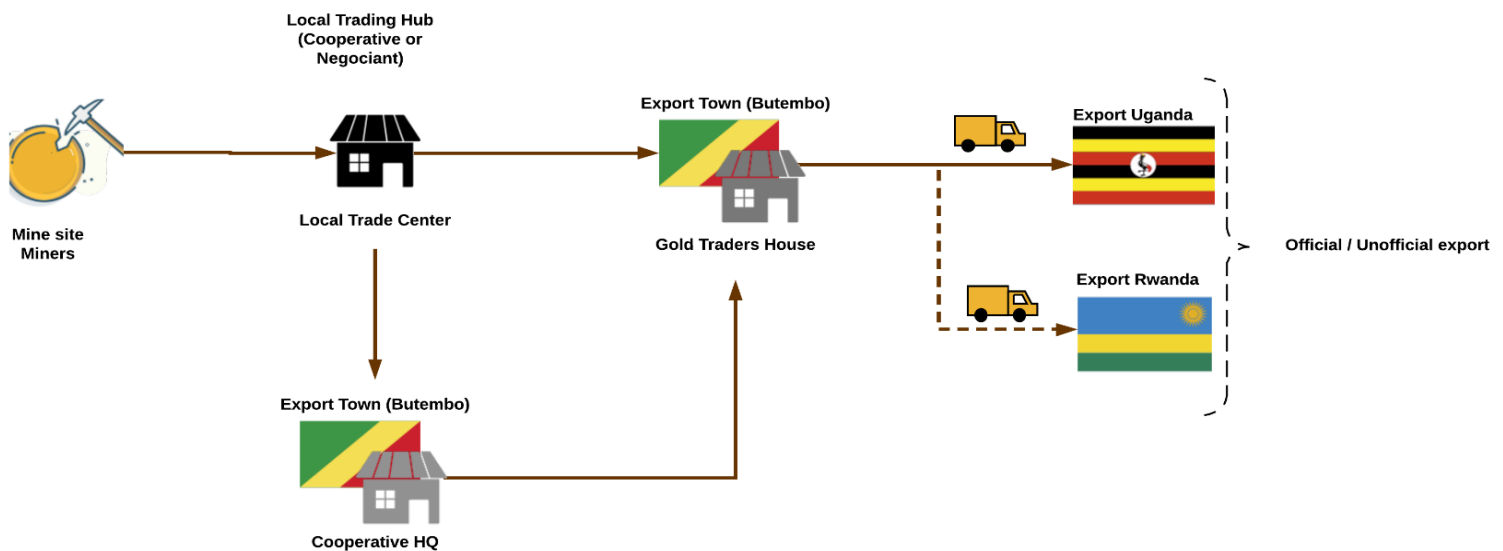
The higher price of gold in Butembo in comparison to the price applied in the trading towns such as Bunia creates an incentive for traders to sell their gold in Butembo. Civil society representatives and government officials indicate that the gold is bought at 40 USD/*kitchele*<sup>136</sup> in the mining area of Manguredjipa and re-sold in Butembo at 40 - 41 USD/g

<sup>135</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018

<sup>136</sup> Local measurement unit, 1 kitchele equals 1.2 grams



for alluvial gold<sup>137</sup> and between 39 - 40 USD/g for gold from the rock<sup>138</sup>. Before it is officially exported or smuggled to Uganda, the gold purchased in Butembo is smelted by the main traders.



### Butembo: a Famous Gold Trading Hub in the Region

For many years Butembo has been a major gold trading town in the eastern part of Congo, dominated by traders from the Nande ethnic group. Historically, the Nande were involved in all types of trading in the region, for example the trade of goods such as potatoes or beans, which created the basis of their huge influence in the business sector. The Nande network has an influence that spreads from Butembo to Mombasa. They are infiltrated in the Nork Kivu and Ituri provinces, where they also control the ASM gold trade. However, the traders based in Mombasa prefer to smuggle the gold from Bunia directly to Uganda instead of passing through Butembo.

The gold trade in Butembo is based on well-established relations between the major traders, the cooperative leaders and the local authorities (incl. Chef de la Mairie, FARDC, PNC, DGM, OCC, Mines State services), the majority of them being from the Nande ethnic group. It can be seen as an unofficial alliance and very influential network, which allows them to control everything and to threaten anyone who disagrees with them. For instance, government officials report to have been threatened by major traders in Butembo when they disagreed on a illegal gold trade transaction<sup>139</sup>.

Glory Minerals is the sole official “*comptoir d’achat d’or*” in Butembo. This company exports all the (little) quantity officially exported from Butembo. However, there are numerous illegal

<sup>137</sup> It is common to apply a higher price for alluvial gold due to its higher level of purity.

<sup>138</sup> Several: Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018; Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>139</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

houses buying gold in Butembo, owned by major traders who illegally export most of the gold traded in Butembo.

Kababange Muny, the Secretary or the “chief of the Glorym house”, oversees the current affairs. He represents the 5 founders of the company namely

*Glory Minerals can be considered as “a window, a showcase” used by the trader members of the house to hide their illicit activities.*

Katima Mayaye Dido, Katohelio Edmond, Vikalwe Edward, Katembo Kamuhi. This association regroupes the majority of gold traders based in Butembo, representing around 100 traders. As reported by the UN GoE<sup>140</sup>, the local traders based in Butembo are using their association with Glory Minerals as a cover to smuggle gold.

Every three to four months, a few quantities of gold are exported officially from the Glorym house. This strategy allows the traders to justify officially that they are active in the gold trade and enables them to renew their *négociant* ID card, since the renewal requires proof that the *négociant* is officially active in the business. In addition, to facilitate their illegal business and smuggle the gold to Uganda, the company provides punctually some money to various local authorities. In 2016, the UN GoE reports that Glorym bank records show a large discrepancy



between the declared value of the exported gold and the funds received from Dubai, where it sells its gold, during the same period<sup>141</sup>. For smuggling the members of the house are also working independently from each other through their personal network with Ugandan-based traders<sup>142</sup>.

Photo. The Glory Minerals house in Butembo.

In terms of pricing, the Glorym house fixes the price for their network, which is usually the world market price plus 2 USD. They make their margin by playing with the scale difference.

Besides the trader members of the Glorym house, there are also major traders who do not belong to the house, as it appears that their network is sufficiently strong and ample to not require protection by the official gold export house. Their significant influence allows them, together with the founder of Glorym, to set-up the rules in Butembo. Examples of these traders identified during this research: Caltex Mbanga, Mutsambuli Ndivito Murefu, Kahindo

<sup>140</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 28 December 2016, S/2016/1102.

<sup>141</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 28 December 2016, S/2016/1102.

<sup>142</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

Muhirwa, Moise Yotama, Mumbere Lusende, Kahindo Kalekya, Kalule Muhiwa, Odela Bwambale<sup>143</sup>.

In Butembo most transactions related to gold trade are made in cash, with almost no transaction made through banks, which increases the difficulty of overseeing and monitoring trading activities. To launder their money, traders often reinvest their cash into properties in Butembo. Another common practice is the barter, meaning gold is exchanged against various other goods.

#### Smuggling Gold from Butembo to Uganda

Most of the gold traded in Butembo is smuggled to Uganda, according to various sources<sup>144</sup>. The official export data is far lower than the reality. The artisanal gold exports registered by the CEEC, the State agency responsible for the export of minerals, amounted to 3.29 kg of gold exported in 2017 through two different exports (respectively 1.70 kg in February 2017 and 1.59 kg in April 2017). In 2018 it was even less, only 2.63 kg, through an export carried out in March, and a second export of 3.24 kg was reported to be on-going in December<sup>145</sup>. Official and unofficial data differ greatly, since government officials have indicated that major traders in Butembo smuggle around 40 - 50 kg of gold per week to Uganda<sup>146</sup>.

The village at the border, Kasindi, is the key transit point to smuggle gold from Butembo to Uganda. To hide their minerals, a common practice used by smugglers is to put the gold in the spare tires to cross the border<sup>147</sup>. In addition, due to their relations with the local authorities the gold smuggled is rarely controlled at the borders by the authorities.

Key drivers of the illicit trade of ASM gold include lack of State agents to control the gold trade, underpaid State agents (leading them to participate in the illegal trade in exchange for financial returns), existing close collaboration between gold traders and the local authorities, high level of taxation over the gold trade in comparison to neighbouring countries. As stated in other research papers<sup>148</sup>, taxation is widely accepted as one of the biggest drivers of smuggling in many extractive industries in Africa, including ASM gold. All of that, coupled with an old habit of trading gold through illegal networks, makes the illegal trade of gold more profitable than via legal structures.

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<sup>143</sup> Several: Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018; Congolese expert in natural resources 2. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>144</sup> Several: Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018; Congolese expert in natural resources 2. Interview with BetterChain. Goma, DRC, Dec-2018; Monusco representative. Interview with BetterChain. Goma, DRC, Dec-2018; UN Group of Experts (S/2016/1102 ; S/2017/672/Rev.1).

<sup>145</sup> Annex 6 - Export data from the CEEC Butembo for 2017- 2018.

<sup>146</sup> Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>147</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>148</sup> Alan Martin and Hélène Helbig de Balzac, January 2017, *The West African El Dorado: Mapping the Illicit Trade of Gold in Côte d'Ivoire, Mali and Burkina Faso*, Partnership Africa Canada.

## Uganda-based Buyers: a Well-organized Gold Trading Hub

While the official export data from Butembo indicates Dubai, and more specifically Dubai Rafiki General Trading or the *souk N°101 Gold Market* (ref. ICGLR certificate n°CD005588<sup>149</sup>) as the destination of gold, the illegal trade is dominated by opaque networks of buyers based in Uganda. As reported by the UN GoE, the Ugandan authorities lack a coherent policy to combat smuggling<sup>150</sup>.

Several networks are established in Uganda and buy the smuggled gold from the eastern part of DRC, mainly from Butembo and Bunia. This research confirms the findings from previous investigations on the topic<sup>151</sup> but it seems that the dynamics and the smuggling practices have slightly changed:

- **Barnabas Taremwa** is considered one of the main buyers of gold from DRC based in Uganda. The UN GoE reports that he trades illegally trafficked gold from Congo<sup>152</sup>. Barnabas is a relative of the Ugandan president Yoweri Museveni, who has most likely helped him set-up his business and operate in a fairly safe environment. During the last months of 2018 he set-up a gold refinery in Uganda that will create a direct competition to his former associate, the Belgian Alain Goetz, who is indirectly the owner of the Kampala-based refinery AGR<sup>153</sup>. As detailed in the Sentry report (2018), Barnabas is currently associated to another significant buyer named Radju Vavya.
- **Radju Vavya** works directly with exporters based in Bukavu, such as Miracle and Kavichi, and with around 30 local traders from Butembo and 20 local traders from Bunia. From the official *négociants* lists from the Lubero territory, a natural resources expert was able to identify at least a dozen *négociants* working directly with this Uganda-based buyer. For example, Katembo and Katohelio who are two of the founders of Glorym<sup>154</sup>. Radju supplies the new refinery of Barnabas with his gold bought illegally from the DRC.
- **CHUMI**: a buyer based in Uganda who sells directly his gold purchased to local traders based in Bunia and Butembo to Dubai
- **A.P. Bhimji Ltd** is owned by Sameer Bhimji who sells to AGR.
- **United Commercial Impex Ltd (UCI)** or Minerals Impex, owned by the Lodhia family, is a commercial company and sanctioned entity that has been extensively involved in sourcing uncertified gold from eastern Congo for more than a decade<sup>155</sup>. The Lodhia

<sup>149</sup> Annex 7 - ICGLR certificate for official gold export 2018.

<sup>150</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 16 August 2017, S/2017/672/Rev.1.

<sup>151</sup> The Sentry, October 2018, *The Golden Laundromat: The conflict gold trade from Eastern Congo to the United States and Europe*, Enough Project and Not On Our Watch.

<sup>152</sup> UN Security Council, *Final Report of the Group of Experts on the Democratic Republic of the Congo*, 12 January 2016, S/2015/19.

<sup>153</sup> Congolese expert in natural resources 2. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>154</sup> Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>155</sup> The Sentry, October 2018, *The Golden Laundromat: The conflict gold trade from Eastern Congo to the United States and Europe*, Enough Project and Not On Our Watch, p. 2.

family also owns the Bullion Refinery located in Kampala, in the industrial area of Nakawa.

- **Africa Gold Refinery (AGR)** is the biggest gold refinery in the region, with operations in Uganda since 2015. In 2017 AGR exported more than 99% of the gold officially exported from this country<sup>156</sup>. AGR is part of a complex network of companies based in Uganda, Dubai, Belgium and Luxembourg, all linked to the Belgian citizen Alain Goetz<sup>157</sup>.
  - A. Goetz recently obtained an agreement with the Rwanda government to establish a gold refinery in the country. It can be expected that this refinery will have an impact on the illicit trade of gold and that some gold that was traditionally smuggled through Uganda will go directly to Rwanda. The UN GoE<sup>158</sup> notes that Rwanda is now becoming a major gold exporter in the Great Lakes region in the amount of 1 ton per month.
  - AGR has recently been targeted by many organisations (international NGOs, UN GoE) and governments (Belgium and Uganda) for money laundering issues<sup>159</sup>. Additionally, the refinery is not in compliance with international requirements for responsible mineral sourcing and international anti-money laundering (AML) practices. At the end of 2017 the refinery was removed by the Responsible Minerals Initiative (RMI) from their list of gold refiners conformant with the Responsible Minerals Assurance Process assessment protocol; AGR has also been delisted by the Dubai Multi Commodities Centre (DMCC) from its Good Delivery List, and it was never listed on the Good Delivery List of the London Bullion Market Association (LBMA). Technically, the refinery is no longer covered by any industrial scheme conformant with the OECD Due Diligence Guidance.
  - Growing pressures on the Goetz group have led to recent changes on the top management: Alphonse Katarebe was recently appointed as the new CEO of AGR replacing Alain Goetz.
  - In terms of gold procurement from the Lubero territory, while most of the gold smelted at AGR comes from associated buyers based in Uganda, it is more interesting for traders in Butembo to sell directly their small gold quantities to the A. Goetz network, instead of going through intermediaries<sup>160</sup>. However, it was reported by traders in Butembo that Goetz has the practice to delay payment up to two weeks, which creates an incentive for traders to sell elsewhere.

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<sup>156</sup> Idem.

<sup>157</sup> Ibid.

<sup>158</sup> UN Security Council, *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531.

<sup>159</sup> Several: Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018 ; *Final report of the Group of Experts on the Democratic Republic of the Congo*, 4 June 2018, S/2018/531; The Sentry, October 2018, *The Golden Laundromat: The conflict gold trade from Eastern Congo to the United States and Europe*, Enough Project and Not On Our Watch.

<sup>160</sup> Several: Congolese experts in natural resources 1 and 2. Interviews with BetterChain. Goma, DRC, Dec-2018.

In relation to smuggling practices, buyers based in Uganda are now using the official South Sudan production declaration documents to justify that the gold is only in transit in Uganda traveling mainly to Dubai and India. Likewise, it has been observed recently that local traders in Butembo are also using South Sudan's official gold declaration papers. Once their smuggled gold from DRC arrives to Uganda, they use the South Sudan declaration to justify that the gold is only in transit<sup>161</sup>.

### 5.2.3.2 Understanding the 3T Trade

#### 3T Supply Chain Mapping

Just as for gold or 3T trade in other regions of DRC, the 3T trade in the Lubero territory is based on a pre-financing system. Two or three middlemen are usually identified in the supply chain between 3T miners and exporters: miners are working for a pit manager who sells the production in the local trading hubs to a local trader (*négociant*). The local trader then sells the minerals to exporters based in Butembo. The exporters pre-finance their affiliated local traders who, in turn, pre-finance the pit managers.

Two 3T exporters were identified; one of them<sup>162</sup> reported working with three affiliated local traders. The other<sup>163</sup> reported only one trader.

Typically, those *négociants* keep the minerals until they have enough quantity to sell to their affiliated *comptoir*. This system of pre-financing supports the miners while they are in a pre-production period or extraction work, with the aim of encouraging the miners to continue working even if the pits are not productive. An exporter representative<sup>164</sup> has indicated his interest to continue to support the pit managers to keep them active, which will assure him access to bigger volume.

The majority of 3T traded in the Lubero territory originates from the mining area of Manguredjipa, more specifically in the collectivities of Bapere, Baswagha and Batangi. Based on our research, known selling points or local trading hubs are Bandulu, which is close to Manguredjipa, and Byambwe, located between Butembo and Manguredjipa at approx. 60 km from Butembo. There is also another selling point in the area of Kasugho (south of Butembo) but there is no available data on the specific location.

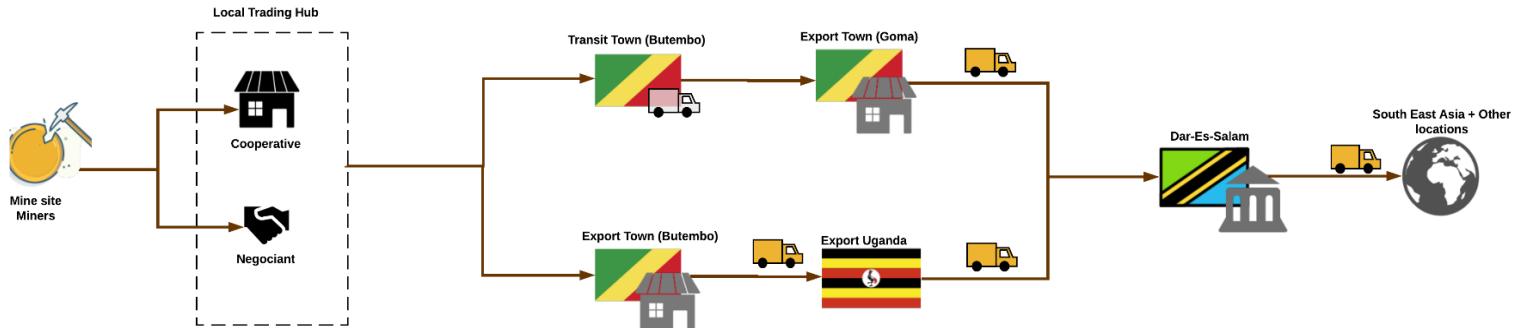
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<sup>161</sup> Several: Congolese expert in natural resources 2. Interview with BetterChain. Goma, DRC, Dec-2018; Local natural resources expert. Interview with BetterChain. Butembo, DRC, Dec-2018; Monusco representative. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>162</sup> 3T exporter 1. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>163</sup> 3T exporter 2. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>164</sup> 3T exporter 1. Interview with BetterChain. Butembo, DRC, Dec-2018.



Like with other minerals, the price of 3T minerals depends on the grade. The difference between the price paid at the local trading hubs and the resell price to the exporter is around 1 or 3 USD/kg. In the local hubs around Manguredjipa, 3T minerals are sold at 4 - 6 USD/kg for Sn, 5 USD/kg for Wo (from 62% of grade) and 24 - 25 USD/kg for Ta<sup>165</sup>. In Butembo, two 3T exporters indicated that they pay 7 USD/kg for Sn (from 62% of grade), 8 USD/kg for Wo (from 62% of grade) and around 25 - 26 USD/kg for Ta. For Ta the price is calculated based on 0.9 USD per grade, for instance if the grade is 40% it will be 36 USD/kg, in average the grade is 28% so around 25 USD/kg.

#### Low Level of Commercialization of 3T Minerals

The main 3T mineral exported from the Lubero territory is wolframite. In 2017, government export statistics reported 18.627 tons of Wo and 4.324 tons of Ta exported. However, due to the low level of production in 2018 there was no export of minerals extracted from this territory.

In 2017 only two export entities were active. During the month of May 2017, the first entity exported 4.324 tons of Ta (25% grade) directly through Uganda. In the same month, the second entity sent 18.627 tons of Wo to Goma. A representative from the latter entity indicated that they usually send their purchases to Goma and mix them with minerals from other territories to complete lots to be exported<sup>166</sup>. For 2018, the second entity reports<sup>167</sup> to have purchased only 5 tons of wolframite from this territory and an additional 1.25 tons are waiting with their affiliated local trader.

<sup>165</sup> Several: Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018; Government official - SAEMAPE. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>166</sup> 3T exporter 2. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>167</sup> Ibid.



Photo: 3T exporter stock.

There is no official export data for tin, while according to the official production data and the iTSCI data, the mining area of Manguredjipa produced 6,365.0 kg of tin in 2017 and 664 kg in 2018. In total, since the 3T mine sites validation, iTSCI has indicated that only 5 exports were carried out from this territory. An iTSCI official admits that they were only able to control around 40% of the 3T production in this territory, the rest being smuggled out to Uganda<sup>168</sup>. iTSCI complains that the 3T extraction and trade is like a mafia, where traders are working in close collaboration with State agents to falsify their documents to smuggle the minerals directly to Uganda<sup>169</sup>.



Although one of the contacted entities did not process any export in 2017 and 2018, the entity is active in the 3T trade in the Lubero territory since 2015. The company indicates<sup>170</sup> that they currently have in their possession a stock, known by the authorities, of 10.65 tons of Wo ready to be exported, unprocessed stocks of 5,071.0 kg of Wo, 200 kg of Sn and 568 kg of Ta and 6 tons of Wo in Bandulu with their affiliated local traders. However, the export of material is currently on hold due to the lack of an environmental certificate, which is from now on requested to proceed with any export. This delay (already of 6 months as of the publication of this report) has a significant impact on their business. Typically, the company directly to Uganda via Kasindi and the minerals are then sent to Dar-Es-Salam<sup>171</sup>.

### 5.3 Due Diligence Implementation

Due diligence requirements on responsible sourcing of 3T minerals have been in place for several years now. In 2010 the United States passed legislation, known as the *Dodd Frank Act Section 1502*, requiring US-listed companies to carry out due diligence on minerals sourced from the Democratic Republic of Congo and neighbouring countries. Also, in 2010 the OECD published guidance on what constitutes responsible management of minerals sourced from conflict-affected and high-risk areas, including the DRC and adjoining countries. The OECD Due Diligence Guidance is the most widely recognized standard for due diligence on conflict minerals.

<sup>168</sup> Due diligence program representative. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>169</sup> Ibid.

<sup>170</sup> 3T exporter 1. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>171</sup> Ibid.

Several African countries in the Great Lakes Region, including the DRC have passed laws requiring companies to check their supply chains. The Lusaka Declaration, signed on December 2010 by 11 Heads of State of the International Conference of the Great Lakes Region (ICGLR), states that the processes and standards of the OECD Due Diligence Guidance will be integrated into the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR). The governments of Burundi, the Democratic Republic of Congo, and Rwanda have integrated it into their legal frameworks.

In China, the CCCMC (China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters), which is a subordinate unit of the Ministry of Commerce of China, launched in 2014 the CCCMC Guidelines for Social Responsibility Outbound Mining Investment. The guidelines contain requirements such as the clause 2.4.6 “conduct risk-based supply chain due diligence in order to prevent engagement with materials that may have funded or fuelled conflict”. Subsequently, the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains were published in 2015 in order to operationalize this clause.

More recently, in May 2017, the European Union adopted Regulation (EU)2017/821. The Regulation lays down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas in accordance with the 5 steps of the OECD Guidance. The EU Regulation will enter into force in January 2021. Implementation of the EU Regulation is still pending, however since the Regulation’s focus is on the upstream section of the supply chain, the accompanying measures also focus on this area, which is particularly relevant for countries known to produce conflict minerals such as the DRC.

Indeed, in late 2017 the EU Commission presented a first Development Cooperation Instrument (DCI)-funded accompanying measure, the Action Document for “Promoting Responsible Supply Chain in the Area of Conflict Minerals (3TG)”<sup>172</sup>, to be implemented through the European Partnership on Responsible Minerals (EPRM). This accompanying measure draws upon the joint communication from March 2014 titled “Responsible sourcing of minerals originating in conflict-affected and high-risk areas: Towards an integrated EU approach”<sup>173</sup>, where the EU Commission and the High Representative committed to the implementation of accompanying measures aimed at the promotion of implementation of, and compliance with, due diligence for the minerals’ countries of origin. The joint communication presented a number of accompanying measures to encourage the responsible sourcing of minerals, listed under five headings and 14 different areas of work.

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<sup>172</sup> EU Commission, “Action Document for: “Promoting responsible supply chain in the area of conflict minerals (3TG)”, December 2017, available: [https://ec.europa.eu/europeaid/sites/devco/files/commission-implementing-decision\\_c2017\\_-\\_8725\\_-\\_annex\\_4\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/commission-implementing-decision_c2017_-_8725_-_annex_4_en.pdf)

<sup>173</sup> EU Commission, “Responsible sourcing of minerals originating in conflict-affected and high-risk areas: towards an integrated EU approach”, 5-Mar-2014, available: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014JC0008&from=en>

However, this first accompanying measure (Action Document) only covers some parts of the 14 areas of work listed in the 2014 joint communication, so stakeholders have raised the question whether the Commission intends to present additional accompanying measures to cover all other areas<sup>174</sup>.

### 5.3.1 Supply Chain Due Diligence

There are two due diligence systems in place in the area: the Regional Certification Mechanism (RCM) and the iTSCI system. In general, we find that:

- There is a low level of knowledge and awareness in relation to the due diligence process, and this problem affects the main actors involved in the process. This likely stems from a lack of information about the due diligence initiatives, and from a lack of sensibilisation and capacitation activities toward civil society organisations. This situation limits civil society participation, implication and scrutiny over the monitoring process and certification procedures.
- The RCM mechanism lacks legitimacy: the majority of ICGLR certificates are issued without fulfilling the main requirements.
- As for the iTSCI system, used for 3T, there are major process and data inconsistencies on the ground.
- For gold there is currently no due diligence system in place: most of the gold traded in Butembo originates from non-validated mine sites.
- Civil society organisations do not have any significant role in the due diligence implementation: it is non-existent for gold, and in 3T their key activities relate to supporting local committees. In general, CSOs lack knowledge and funds to conduct an efficient monitoring of mineral supply chains.
- Locally-available information is not properly organized, and there is no grievance mechanism.

#### 5.3.1.1 Regional Certification Mechanism (RCM)

The Regional Certification Mechanism is one of the six tools<sup>175</sup> of the Regional Initiative Against the Illegal Exploitation of Natural Resources (RINR), which is led by the ICGLR. It was created following the signature of the “Pact on Security, Stability and Development in the Great Lakes Region” in Nairobi on 15 December 15, 2016.

The RINR was adopted officially by the ICGLR members during the Lusaka Declaration on December 15, 2010. The government of DRC has integrated it into their legal frameworks in February 2012<sup>176</sup>. The RCM includes the following main elements: (1) Mine Site Inspection and Certification; (2) Mineral Chain of Custody (CoC) Tracking; (3) Mineral Export and

<sup>174</sup>Question raised on 20-Feb-2018 by Linda McAvan on behalf of the Committee on Development to the EU Parliament, available: [http://www.europarl.europa.eu/doceo/document/O-8-2018-000016\\_EN.html](http://www.europarl.europa.eu/doceo/document/O-8-2018-000016_EN.html)

<sup>175</sup> The six tools being: 1. Regional Certification Mechanism 2. Harmonisation of National Mineral Legislation 3. EITI 4. Early Warning System 5. Mineral Database 6. Formalisation of ASM

<sup>176</sup> Ministerial decree n°0057/CAB.MIN/MINES/01/2012 of February 29, 2012.

Certification; (4) Mineral Tracking Database; (5) Third Party Audits (TPA) and (6) the Independent Mineral Chain Auditor (IMCA).

Following several critiques notably regarding cost, the complexity of the RCM and more specifically the slowness of the Mine Site Inspection and Certification, the ICGLR, with the support of the international consultancy firm Levin Sources, is currently reviewing its certification manual.

#### a) Qualification of Mine Sites

By the end of December 2018, the North Kivu province had 69 qualified sites whose 62 were qualified “green”, 3 “yellow” and 4 “red”. Table 4, below, summarizes the situation in that province:

Table 4. Qualification of sites in North Kivu.

N°	Territory	Green	Yellow	Red	Total
1	Beni	-	-	-	-
2	Lubero	6	-	-	6
3	Masisi	37	3	4	44
4	Nyiragongo	-	-	-	-
5	Rutshuru	-	-	-	-
6	Walikale	19	-	-	19
<b>Total</b>		<b>62</b>	<b>3</b>	<b>4</b>	<b>69</b>

According to the national decree n°0260/CAB.MIN/MINES/01/2015 of 30 March 2015 issued by the Ministry of Mines, six 3T sites and their related *chantiers* were qualified “green” by the qualification mission held in March 2015 in the Lubero territory<sup>177</sup>. It appears that this qualification mission of mine sites was pushed by the governor who wanted to have qualified sites in the “big north” of his province. The sites that have been qualified are: Masingi, Mambilee, Kigali, Etaeto gauche, Malimbenze and Etaeto droite. While according to the decree those sites only produced 3T, it was reported that some of them were also producing gold such as Kigali<sup>178</sup>.

As per Regional Certification Mechanism requirements, a green mine site should be requalified after 12 months, however, those qualified sites were never revisited. Due to the

<sup>177</sup> Annex 8 - Decree of Qualification Lubero.

<sup>178</sup> Annex 3 - List of mine sites.

high level of insecurity in the area, no qualification mission is planned soon in the territory which is putting into question the value of these qualification.

The validated sites are very remote from the local trade centre of Bandulu

- It can take 5 to 8 hours of walk to reach Bandulu from the mine sites
- Transporters carry by foot bags of around 50 kg of minerals
- The qualification status can be put under question due to the presence of armed groups in the area, the remoteness, etc.

#### ***b) Export process and the ICGLR Certificate***

While all the conditions required to issue an ICGLR certificate are difficult to be completed in this territory, several ICGLR certificates have been issued by the CEEC.

For all 3T official exports, an ICGLR certificate is issued. For example, in 2017 two certificates were issued. It was reported by iTSCI and the CEEC that some 3T smuggling may be done by *négociants* who smuggle it to Uganda.

With regards to gold, for every official gold export an ICGLR certificate is issued. However, most conditions to issue the certificates are not fulfilled, raising concerns around the legitimacy of such certificates. There is no traceability system or chain of custody system for gold implemented in this territory. Consequently, there is no way to identify the mine sites of origin. In addition, no gold sites were qualified by an official qualification mission.

Additionally, as reported by previous research<sup>179</sup>, gold sold in the Dubai's gold souk (as it is the case for the last gold export with ref. ICGLR certificate CD005588) can easily bypass the due diligence systems created by the Dubai Multi-Commodities Centre (DMCC) - the government entity responsible to promote and regulate the trade of precious minerals. In 2017 two certificates were issued for a total of 3.29 kg of gold exported and in 2018, only one was issued for a total of 2.63 kg of gold exported.

In terms of capacity, the State agencies involved in that certification process have very little knowledge of the due diligence process and requirements. The way they issue the ICGLR certificate without knowing the mine sites of origin is a relevant example. During the interviews no one has mentioned any training on Due Diligence principles / process.

#### ***5.3.1.2 The iTSCI 3T Due Diligence System***

The ITRI<sup>180</sup> Tin Supply Chain initiative (iTSCI) was conceived as a traceability and due diligence program to address concerns over conflict minerals (tin, tantalum and tungsten) from the

<sup>179</sup> Alan Martin and Hélène Helbig de Balzac, January 2017, *The West African El Dorado: Mapping the Illicit Trade of Gold in Côte d'Ivoire, Mali and Burkina Faso*, Partnership Africa Canada, p.16.

<sup>180</sup> ITRI (International Tin Research Institute) is the world's foremost authority on tin with over 80 years' experience in tin related technologies. It is a membership-based organisation representing major tin producers and smelters and is the premier source of tin related information. ITRI has specialist knowledge of tin use in all

DRC and adjoining countries. The iTSCI system was established by ITRI, now called the International Tin Association, and TIC, who represent the governance committee for the iTSCI program.

The international NGO Pact works in the DRC as the field implementation partner of iTSCI, in collaboration with the government, industry and communities. In the Lubero territory the organisation has currently only one representative due to the low level of production / exports from this territory. According to a Pact agent, iTSCI activities in the Lubero territory are directly subsidized by the organisation as the revenue generated by the exports<sup>181</sup> is not sufficient to cover their costs.

During the field mission we collected stories, reports and observations from various sources on the implementation of the iTSCI system in the Lubero territory. The following are the main findings:

#### Presence

- Everyone agreed that there is no agent from iTSCI present at the sites or at the trading hubs, and that instead they rely on informants to obtain the required data and information; they do not even have an office in Manguredjipa. However, precisely the remoteness of the 3T sites in this area calls for an increase and reinforcement of the mine sites monitoring.
- An agent from iTSCI Butembo<sup>182</sup> confirmed that the organisation controls only the sites that are productive.

#### Tagging process

- The tagging process implemented by iTSCI does not properly mitigate the risk of contamination of minerals from uncertified sites / 3T sites that are not covered by iTSCI, according to a Congolese trade association<sup>183</sup>.
  - The mine tags, which should be attached on the bags of minerals at the mine sites, are instead put on bags at the local trade hub, for example in Bandulu<sup>184</sup>. Additionally, the names of the validated sites are mentioned in the logbooks without having any real proof of origin. As a civil society organisation representative said “they are tagging everywhere with no consideration for the origin, they just put the name of an official green site”<sup>185</sup>.

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the major sectors as well as groups responsible for technology, statistical and market information, regulatory affairs and sustainability. ITRI is the tin representative to the iTSCI programme Steering Committee and Secretariat of the programme.

<sup>181</sup> For each export validated by the iTSCI system, the exporter has to pay a fee to iTSCI which is generally dependent on the volume exported.

<sup>182</sup> Due diligence program agent. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>183</sup> Provincial trade association representative. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>184</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>185</sup> Ibid.



- As for local trader bags, these are usually tagged with the local trader tag in the houses of local traders in Manguredjipa.
- An iTSCI agent<sup>186</sup> reported that to reduce / avoid trafficking of tags, they have implemented a new strategy, as follows: 1) Pact and its partners conduct an assessment to better estimate the number of tags needed per mining area; 2) Only the amount of tags determined as necessary during the assessment are delivered to SAEMAPE; 3) Create a tripartite team including the cooperative, SAEMAPE and mine title holders, to manage the tags. However, none of the civil society entities see any success of this strategy, and instead continue to claim that the tags are illegally traded.
- We noticed inconsistencies in relation to information reporting in an iTSCI logbook that we examined. The logbook n°DRC1064241 showed that 124 kg of Sn were tagged in May 2018 with a *négociant* in Bandulu showing a specific 3T exporter. However, this exporter claims<sup>187</sup> that they did not buy any Sn from the Lubero territory in 2018.

#### Government involvement

- The government is supposedly involved in the iTSCI system through SAEMAPE agents. However, this involvement is deemed inefficient by many stakeholders including Creddho and even Pact, iTSCI's implementing partner.
- In general, there is a lack of SAEMAPE agents to implement the iTSCI system, and similarly to other territories or provinces, the agent responsible to implement it at the mine level often requests an illegal tax to the miners to put the mine tag.

#### Other

- The iTSCI system is extremely costly. As an example, one of the 3T exporters<sup>188</sup> is paying USD 150,000.00 / year to iTSCI for all their activities.
- In general, the actors involved in the ASM sector have a low level of understanding of the due diligence process<sup>189</sup>, and there is a lack of outreach / awareness on the due diligence process.

#### 5.3.2 Effects of 3T Due Diligence Deployment, Risks and Community Impacts

Part of this research aims to understand the effects of due diligence deployment to date. However, it is important to keep in mind that such deployment has been minimal for 3T and quasi non-existent for gold in the Lubero territory. Therefore, many of the findings are not an effect of due diligence deployment but rather the consequence of systemic conditions (lack of rule of law, State fragility, low governance) topped with the lack of any efficient due diligence system, creating incentives for State and non-State actors to take advantage of these issues.

<sup>186</sup> Due diligence program agent. Interview with BetterChain. Butembo, DRC, Dec-2018.

<sup>187</sup> 3T exporter 2. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>188</sup> 3T exporter 2. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>189</sup> Provincial trade association representative. Interview with BetterChain. Goma, DRC, Dec-2018.



We look first at the risk of potential adverse impacts, and then at community-level changes and impacts (socio-economic development).

### 5.3.2.1 Risk of Adverse Impacts

Table 5, below, shows key findings of the field mission in relation to mining activity in the Lubero territory, specifically in the Manguredjipa mining area where the 3T due diligence system ITSCi is in place. The findings are grouped by category and have an associated risk level. This risk level corresponds to a combination of likelihood (how often the risk materialises) and impact (the cost of the risk when it does occur, in terms of loss of life, loss of revenue, etc).

Table 5. Risk of adverse impacts.

Focus Area	Description of Findings	Risk Level
Security / Conflict	<ul style="list-style-type: none"> <li>- High insecurity created by the presence of several armed groups: the green sites are located close to the triangle of Lubero, Walikale, Bafuasende, known for the presence of several armed groups which are highly mobile and could eventually be involved in the mineral extraction.</li> <li>- Involvement of FARDC in the mineral trade.</li> <li>- Kidnappings are a common practice, generating revenue for armed groups and bandits.</li> </ul>	High
Human Rights abuses	<ul style="list-style-type: none"> <li>- Many documented cases of child labour in gold sites, likely more as these cases are not always reported due to insecurity and difficult access to mine sites.</li> <li>- Significant number of human rights abuses reported by the United Nations in the territory: 986 documented violations and Human Rights infringements between January 2017 and October 2018 across the territory. The violations relate mainly to killings and sexual violence, the latter affecting mostly women and children. Around 54% allegedly attributable to non-State armed groups (mainly NDC-R) and the rest to State agents (prominently FARDC)<sup>190</sup>. While the ASM activities represent the main economic activity in the territory, this substantial number of abuses represents a major risk for the sector.</li> </ul>	High

<sup>190</sup> Bureau Conjoint des Nations Unies aux Droits de l'Homme, December 2018, "Détérioration de la situation des droits de l'homme dans le Masisi et le Lubero (Nord-Kivu) et défis relatifs à la protection des civils entre janvier 2017 et octobre 2018", available: [https://monusco.unmissions.org/sites/default/files/bcnudh\\_rapport\\_masisi-lubero\\_19\\_decembre\\_2018\\_-\\_final\\_1.pdf](https://monusco.unmissions.org/sites/default/files/bcnudh_rapport_masisi-lubero_19_decembre_2018_-_final_1.pdf)

Focus Area	Description of Findings	Risk Level
Corruption, bribery and fiscal fraud	<ul style="list-style-type: none"> <li>- Corruption permeates from the national level to the provincial and local levels, which is particularly tangible in Lubero territory. Illegal taxation by State agents and by customary authorities stands out as common practice, particularly in relation to mineral extraction and trade. As is the case in most mine sites in North Kivu (including validated sites), mining activity in Lubero is affected by illegal taxation and bribery by armed groups, State agents and army members, as well as by customary authorities.</li> <li>- The low formalisation of the sector represents a favourable ground for illegal practices.</li> <li>- Underpaid State agents have an incentive to participate in illegal taxation. Bribery practices are common also for local authorities.</li> </ul>	High
Mineral fraud	<ul style="list-style-type: none"> <li>- High risk of contamination of minerals from uncertified sites / 3T sites that are not covered by iTSCI: there is currently no traceability system operating at mine sites level and existence of illegal trade of traceability tags which allow to tag bags of minerals without the assurance of mine site of origin</li> <li>- Due to the lack of familiarity with traceability systems and / or control of the implementation of the system, the risk of traceability errors or malpractice is substantial. Inconsistencies in relation to information reporting in iTSCI logbooks were reported.</li> <li>- Discrepancies in the 3T minerals production and export data: production data do not reflect the amount of minerals exported for the same period.</li> </ul>	Moderate
Working conditions (H&S)	<p>Poor working conditions and equipment compromise workers' safety:</p> <ul style="list-style-type: none"> <li>- Most reported incidents relate to landslides: SAEMAPE has reported cases in the gold sites of Lelemia and Guado that resulted in the death of diggers.</li> <li>- Miners do not have access or do not use H&amp;S equipment.</li> <li>- The pits are usually very deep (reaching depths as low as 25m) and not properly protected.</li> <li>- There are no health and safety policies or procedures in place.</li> </ul>	Moderate

### 5.3.2.2 Socio-Economic Conditions of the Local Community

Our research reports that globally, the iTSCI due diligence system does not have any positive impact on the social and economic conditions of the mining communities in the Lubero territory. People are still poor, and in the case of Manguredjipa the system has not improved access to the mining area either: the roads are almost impracticable, and the area is very remote, which is created a favourable ground for insecurity. “The local situation doesn’t improve, while there are all these national, regional and international regulations” <sup>191</sup>.

Additionally, upstream due diligence costs deriving from downstream expectations are fully passed on by midstream operators to mining communities. Even though the iTSCI due diligence system has organized a bit the sector, a government official admits that its heavy cost has a negative impact on the local communities<sup>192</sup>. On a positive note, however, iTSCI implementation potentially improves the quality and reliability of statistics: for example, in the Masisi territory there is now more certainty that the majority of coltan production originates in Rubaya<sup>193</sup>.

The following table shows our findings in relation to the current social and economic conditions of the mining communities in the Manguredjipa mining areas, with specific focus on the impact of mineral trade on the local community.

Table 6. Key findings on socio-economic conditions.

Focus Area	Description of Findings
Livelihoods	<ul style="list-style-type: none"> <li>- ASM activities provide substantial livelihoods for the Manguredjipa mining area and surrounding local trade hubs, despite the uncertainty related to this activity (security, illegal taxation, etc.). Additionally, ASM workers provide a market for local farmers and small businesses.</li> <li>- The local community in Manguredjipa represents around 30,000 people. Only in the local trade centre of Bandulu there are around 10,000 people<sup>194</sup>.</li> <li>- Since the implementation of the iTSCI system in Manguredjipa, civil society organisations do not report any improvement in the local community. However, it is worth noting again that iTSCI is only vaguely operational in the area, as mineral production is low and hence not profitable for iTSCI.</li> </ul>
Infrastructure, Energy and	<ul style="list-style-type: none"> <li>- Remoteness of Manguredjipa mining area:</li> </ul>

<sup>191</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>192</sup> Goma government official - CEEC 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>193</sup> Goma government officials - Mines Division 1 and 2. Interviews with BetterChain. Goma, DRC, Dec-2018.

<sup>194</sup> Due diligence program agent. Interview with BetterChain. Butembo, DRC, Dec-2018.

Focus Area	Description of Findings
Water Resources	<ul style="list-style-type: none"> <li>• Manguredjipa is located at 100 km from Butembo – 10h by motorbike.</li> <li>• The local trade centre of Bandulu is located at 60 km from Manguredjipa and at 160 km from the town of Butembo. Reaching the mine sites from the local trade centre of Bandulu takes between 1 to 10 hours by foot, depending on the mine site (some are farther away than others from the local trade centre).</li> </ul> <p>- Limited access to electricity in the village of Manguredjipa and no electricity reported at mine sites level: with funding from provincial government and the mining company Loncor, a micro-dam with a capacity of 8 KW was installed on the Lenda river, 3 km from the centre of Manguredjipa. Another micro-dam with a 2 KW capacity was installed on the Lubititi river in the village of Ntoyo, 7 km from Manguredjipa. The electric power produced by the dams is used only for the population in the villages of Manguredjipa and Ntoyo and does not reach mine sites. Residents in Manguredjipa have also installed two power generators with 1 KW of capacity each. For the rest of the villages there is no electricity. The most commonly used (artificial) sources of light flashlights and candles<sup>195</sup>.</p> <p>- No access to running water: water access is coming from rivers. The villages in the area are surrounded by rivers, with several capture and storage points installed by the church in 2014. In the mine sites, artisanal miners have channelled water from the multiple rivers in the area towards the sites<sup>196</sup>.</p>
Education	<p>- Presence of school infrastructures in Manguredjipa mining area, but the school enrolment rate is affected by the appeal of young kids to generate revenue through ASM activities: there are several schools in Manguredjipa, but it was reported that many children aged 12 - 18 do not go, instead they go work mostly at the gold mine sites<sup>197</sup>.</p> <p>- No improvement related to education infrastructure and school enrolment rate since the implementation of the iTSCI system<sup>198</sup>.</p>
Health	<p>- There is a hospital and several health centres in the area of Manguredjipa. However, there is no health centre close to the mine</p>

<sup>195</sup> Civil society organisation 1. Interview with BetterChain. Goma, DRC, Dec-2018.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

Focus Area	Description of Findings
	<p>sites so in case of accident the injured need to walk by foot for long hours<sup>199</sup>.</p> <ul style="list-style-type: none"> <li>- Limited access to drinking water: in the centre of Manguredjipa there are 4 water points for which an access fee is requested (500 CDF for each access, equivalent to approx. 0.31 USD). Another 4 water sources are not maintained which create an uncertainty about the quality of the water. In the mine sites, artisanal miners use the same water for both cleaning of minerals and drinking<sup>200</sup>.</li> <li>- Low level of sanitation: only around 40% of the population in Manguredjipa (estimated at 22,386 people) has access to latrines conforming to proper hygienic conditions. In the mine sites, people do their needs in the bushes<sup>201</sup>.</li> </ul>
Vulnerable groups and discrimination against them	<p>Women<sup>202</sup>:</p> <ul style="list-style-type: none"> <li>- The main economic activities carried out by women in the Manguredjipa mining areas are small business (e.g. food, collection of taxes and other fees on behalf of government) and prostitution. Practically no woman owns mine pits or works as a miner.</li> <li>- They face multiple abuses and problems, including scams, rape and sexual slavery, forced prostitution, underage marriage, HIV, unwanted pregnancy, physical violence, and a general stigmatisation and exclusion.</li> <li>- No improvement reported since the implementation of the iTSCI system.</li> </ul>
Community Impact funds	<ul style="list-style-type: none"> <li>- CPS in North Kivu manages the basket fund of that province, financed through the levy of taxes on mining activity, and aims at funding local development. However, the Lubero territory has low production and little legal trade of 3T, and practically all gold is illegally traded. Therefore, the territory barely contributes to the fund, and hence receives almost nothing from it for local development. In any case, the basket fund has now been cancelled (beginning of 2019) due to the interpretation of the clauses in the new mining code regarding taxation and local development.</li> <li>- Besides little investment from Loncor, there is no local development investment reported by mining companies.</li> </ul>

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

## 6 Conclusion

The DRC is highly dependent on the mining sector as a source of revenue, and in particular artisanal mining is vital for people's economic survival. However, it is affected by several challenges: armed group interference, widespread illegal taxation, fraud and illegal export to neighbouring countries, and limited impact in terms of economic development and local communities' wellbeing. These issues seem largely rooted into the country's structural issues (e.g. lack of governance and rule of law, and insufficient mining sector governance).

Current market regulations and due diligence initiatives have been designed to improve transparency, better sourcing practices and legalise economic exchange. In reality, however, they seem to rather provide the wrong incentives for sector formalisation and legalisation, with no tangible benefit for local communities.

In the context of upcoming implementation of the EU regulation on conflict minerals, insights and recommendations from this report are meant to provide a basis for advocacy and promotion of better and more effective engagement with DRC's mining sector, particularly in relation to ASM and the Lubero territory in North Kivu.

## 7 List of Annexes

Annex 1 - List of interviews

Annex 2 - SAEMAPE cooperatives list for gold

Annex 3 - List of mine sites

Annex 4 - Production data of Lubero territory (Mines Division)

Annex 5 - SAEMAPE 3T statistics 2018

Annex 6 - Export data from the CEEC Butembo for 2017- 2018

Annex 7 - ICGLR certificate for official gold export 2018

Annex 8 - Decree of Qualification Lubero