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DIGGING DEEPER:
How the DR Congo's mining policy is failing the country

A Pole Institute report
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CONTENTS

PREFACE

This report represents the result of two years' research. Originally designed as a follow-up study to the Pole Institute study "The Coltan Phenomenon" published in 2002, developments in the Congo led it to grow - into an investigation of the metamorphosis of the Eastern Congo's mineral trade in conjunction with the mining policy being put into place by the transitional government in Kinshasa which took office in summer 2003 and is supposed to lead the DRC to elections in 2006. Dominic Johnson conducted interviews and research in Goma, Kinshasa, Bukavu and Lubumbashi as well as follow-up research in Europe. Aloys Tegera and Sofia Mikolo conducted field visits and follow-up research in North Kivu.

Pole Institute wishes to thank all those who contributed information and viewpoints to this research. Much of this is of a nature which requires sources to remain confidential. It is our policy in this report to acknowledge sources as far as possible, but to keep individual identities anonymous except where the information given is already on public record or was given with a view to being made public.

EXECUTIVE SUMMARY

In our analysis of the situation of the mining sector in Eastern DRC and other parts of the country since the official end of the war, we have reached the following findings and conclusions:

A continuing geological and political scandal.
Bad natural resource management in this part of the world has a long history; it neither started with the DRC war nor does it automatically disappear when peace sets in. Unless local people are allowed to structure their socio-economic environment themselves, their natural resources will always appear in their eyes as a geological and especially a political scandal. Lack of attention to the resource question and to the particularities of conflict in Eastern Congo are major stumbling blocks to the success of the peace process in the DRC.

The legality trap.
The main problem with the mining sector in the DRC is not illegal exploitation but the fact that the people do not derive any benefit from it, apart from short-term gain for some people who are directly involved. The only way to change this is to reorganise the sector, not to close it down or to marginalise it.

Short-term trading interests predominate.
The coltan boom, which Pole Institute examined some years ago, created its own social realities. Talking to the mining population, it becomes clear that there is a complex social hierarchy in which mining is by no means at the bottom of the social scale. There are families in which mining goes back several generations. Farmers go

into mining and hire internally displaced to work on their farms. Schoolchildren prefer mining to studying. The main economic competition is between miners and traders, with traders generally in a privileged position, so that control of trading routes and outlets becomes a major determinant of socio-economic power, whereas the needs of the mining population are not properly addressed. The necessity of invsting in services and the improvement of the productive base of the mining economy is ignored as all efforts are concentrated on securing short-term income and profits.

A general structural problem.
The structure of the coltan economy in the DRC is not unique to coltan. It is not commodity-specific, not is it war-specific. Artisanal mining in Kivu began when it was legalised by the Zairean government in 1983 and it intensified as industrial exploitation ceased; informal trade with neighbouring countries grew in the 80s and 90s well before there was war. Even as foreign interest for Congo's minerals declined, the economic structures which sustained their production and trade remained in place, and they remain the basis of all attempts to revitalise the formal mining economy of the DRC.

Root conflicts remain unresolved.
Everywhere in Eastern Congo, local power relationships govern mining much more than any kind of Kinshasa legislation or rules, often with the use of force as the deciding element. Not only have the living and working conditions in the mining areas of Eastern DRC remained unchanged since the formal end of war. The battles around ownership of mining rights and trading relationships, a motor of war in Eastern DRC, have also not been resolved. Even more than the inability to change

socio-economic realities, the powerlessness to institute political and judicial order in Eastern Congolese mining areas demonstrates the inadequacies of the Congo's transition.

Individual interests backed up by force still rule resource exploitation.

During the war, military power often translated into economic and political power and vice versa. People with military means were able to acquire significant market shares in the exploitation and trading of natural resources, and conventional market operators were forced to seek military allies. Since the official advent of peace, this link is supposed to have been broken. Natural resource exploitation and trading is supposed to be governed by state legitimacy and formal rules instead. But in fact this is not the case. Resource conflicts in Kivu and battles around market shares in mineral trading instead continue to be carried out with military means. This cannot simply be analysed as a failing of the transition which will remedy itself once the transition's institutions become more efficient. The players of the transition are actively involved in the maintenance of disorder in the East and contributing to new resource conflicts. As the processes of institution-building and "brassage" of the former belligerents in a new national army take shape, an economic dimension emerges which runs counter to the professed aims of the transition: Political and military players use their new-found legitimacy to strengthen their own economic activities, sometimes in conflict with each other and sometimes in collaboration with each other. Thus the structures of resource exploitation internationally denounced during the war continue and are even reinforced in what is now called peace.

The state unable to deal with ownership conflicts.
Sominki was the most important mining company in Eastern Congo during peacetime, and the struggle for control of its huge gold and cassiterite/coltan deposits was a key element of the Congo war of 1998-2003. This struggle was carried out on two fronts: on the ground, through military control of mining areas and trading routes; and in the institutions, through concessions and contracts with outside partners. The formal end of the Congo war has not resolved this struggle – on the contrary: it has become more complicated and intractable as the parties involved are now all part of the same state institutions, while the state is structurally unable to clarify contentious issues. As the confusion at the level of contracts and concessions intensifies, the military dimension of de facto control on the ground appears again to be becoming more important. War zones are not the only areas of Eastern Congo's mining economy in which the transitional institutions are failing to institute clarity in disputed cases. The case of Somikivu, which runs the pyrochlore mine of Lueshe in North Kivu, shows how intractable prolonged conflict between outside claimants can become even without a military dimension being involved, and what difficulties Congolese interests face. On a smaller level, disputes around the ownership of artisanal mines fester even outside conflict zones, highlighting the absence of strong judicial institutions – another aspect of the failings of the DRC's transition.

Mining reforms change the rules, but not the reality.
The entire history of the DRC and especially of the rules governing its economy is one of unaccountable, short-lived and arbitrary laws succeeding one another, co-existing in contradiction to one another, applied

selectively and capriciously and at the same time masquerading as immutable, eternal and incontrovertible truths. Mining reform in the DRC today is supervised by the World Bank and is treated less in the framework of natural resource management than in that of public sector reform, seen by donors as a cornerstone of economic reconstruction in the Congo generally. The Mining Code specifies a tight timetable for its application, which has not been followed, so that under a strict reading of the Code no valid mining permits presently exist within the Congo – or, it could be argued, all permits are valid as long as someone has demanded them. The Mining Code gives ample scope for anybody to claim mining rights if they have followed the correct administrative procedures, regardless of whether there has been a government decision, and does not state how competing claims to the same area can be resolved or how the existence of artisanal mining in industrial mining areas should be dealt with.

Diamonds remain bloody.

Despite efforts to regulate diamond exports and extraction, fraud continues on a massive scale. This and systematic under-valuation of exported diamonds from the DRC is recognised by the authorities as a severe problem. Diamond operators denounce the various hassles they encounter in their functions and administrative lethargy in signing documents, especially Kimberley certificates. Additionally there is hassle from different security services and payment of taxes outside the Mining Code and the Mining regulations. The diamond industry is the biggest state employer, but where diamonds are exploited poverty is recurrent. In the Kasai diamond-producing areas, violence has continued since 30 June 2005. “Illegal” artisanal miners and deserters from the police and the army are reportedly clashing more and more frequently in the MIBA mines in spite – or because – of these being theoretically sealed off from the outside world by the army. While diamond production at first increased during the transition and government revenues from it soared, growth rates were soon stalled by political problems, living conditions in the mining areas have, if anything, worsened and popular discontent has risen.

Law of the jungle in Katanga.

The restructuring of the giant parastatal Gecamines in a process of uncontrolled liberalisation has worsened the situation of the people of Katanga: complete lack of protection for the inhabitants of mines, pollution of drinking water, radioactive contamination. The situation in the uranium mine of Shinkolobwe – where irradiation is high and following a UN investigation the closure of the mine was recommended in 2004 – is well-known internationally. Less well known is that the conditions of Shinkolobwe are not regarded as an exception but as the norm. Attempts by the international community and the transitional government to reform Gecamines ignore the local population completely. Since the installation of the transitional government, individuals representing state authority are more powerful and invulnerable in relation to the ordinary population and operate a significantly higher level of violence against critics. Freedom of movement is curtailed not by force of arms, but by a multiplicity of "security bodies" and through private fencing of roads and areas, which is no less effective. Mining and trading contracts are even more opaque than in the East, and the financial and political stakes involved are significantly higher. As mining constitutes a much larger part of economic activity in South Katanga than in

Kivu, mining conflicts are much more important and become much more vicious.

The Congo remains empty-handed.

What has the DRC's mining policy achieved during the transition? Acquiring mining rights in the DRC is now almost laughably easy. If the government had something to show for this approach – investment, jobs, export earnings – there might be something to be said for it. But not even this appears to be the case. No major mining investor has yet actually committed any substantial capital on the ground in the DRC. Major players have acquired rights, especially in Katanga and Ituri. But most of the "new" partnerships regularly announced especially in regards to Gécamines, but also in regards to Sominki and other parastatal mining companies, are either repeat annoucements of existing pre-war projects which have yet to materialise, or exist on paper only. Most contracts and investment partnerships announced regularly by smaller firms appear to have little motive beyond keeping competitors out, securing potentially lucrative deposits for the long-term without short-term commitments and using the claims to fabulous Congolese wealth to boost one's own share prices. It is becoming increasingly clear that while outside partners are encouraged to take over parts of the Congo's mining industry, the populations concerned have no say in the matter and the mining work they themselves do is not regarded as economically useful. The Congolese mostly survive in the informal economy, yet government policy regards the informal economy as only second-best to the formal economy even when the latter does not exist, and does not encourage people to develop their own livelihoods.

RECOMMENDATIONS

It is our contention that a durable improvement in the condition of the Congo's mining areas can only come from the people directly concerned. The central test for any policy of natural resource management has to be whether it improves people's livelihoods, not whether it improves the government balances or the country's investment image. Six fields of action, all linked, appear to us to be crucial in moving from the present situation to a better one:

- *Manage resources locally.* Political decisions regarding mining policy are often taken in the abstract, but as soon as they are applied they have specific local ramifications. Yet the local people concerned are not heard when these decisions are taken and are not seen when they are applied. Local communities should have a right to know about mining policy affecting them and a right of co-decision at the least on the way mining policy is executed on the ground. Revenues from resource extraction must be made available at the local level for uses decided locally.
- *Base mining rules on local realities and universal principles.* Decision-makers must listen to the experiences of local populations with existing mining operators and policy frameworks before committing themselves to one investor over another or one investment idea over another. Any decision they take must be based on this local reality while taking recognised principles of international law and of other existing laws and agreements into account. The appropriation of such principles by the local population is a precondition for their successful application.
- *Take cross-border activities into account.* Congolese resources are the object of cross-border trade, much of

which is fraudulent. Instead of denying the reality of cross-border trade, rules have to be found for it which guarantee transparency and protect all parties' interests.

- *Value artisanal mining.* Without artisanal mining, the Congolese economy's most important sector would not have survived decades of pillage and war. Yet artisanal mining is still regarded as a somewhat dubious activity, tolerated but not encouraged, subordinate to "real" industrial mining and with little or no intrinsic value. This approach devalues the hard work of miners and the survival strategies of mining communities under atrocious conditions who have had to devise their own means of existence with no outside help. Artisanal miners and small traders always know exactly what problems they need to overcome and what needs to be done in order to increase their production and revenue, reduce insecurity in all its aspects, improve their technology and their infrastructure and increase economic activity and well-being in their locality. Fulfilling these very practical demands should be the first priority of public policy in mining areas.
- *Promote local development of mining areas.* The informal settlements which spring up around artisanal mines are generally regarded as transitary camps worthy only of military control. But in the light of what is actually happening, they should be fully recognised as areas requiring development in all its aspects – public services, roads, political administration, the rule of law. And their inhabitants need to be able to develop other economic activities. For this, they may require help in form of training and money. The DRC offers reinsertion programmes for former combatants in its DDR programme of demobilisation, disarmament and

reintegration – but there is no reinsertion for those artisanal miners whose activity is said to have financed the war. Their future is a central aspect of peace-building in the Congo.

- *Think development in an integrated way.* At present, mining policy in the DRC is conceived solely on the national level, ignoring local realities. It is also separated from the rest of the economy. Yet on the local level, resource extraction and other areas of economic activity and local politics are inextricably linked: Mining rights and land rights are linked; mineral trading and consumer goods trading are linked; mining taxes and other business taxes are linked. The challenges of local development in mining areas must therefore be mastered in local structures of public administration which have the capacity to reflect local priorities and can deal with local conflicts of interests. Mining areas have the potential to become poles of local development, because they can earn their own revenue. So they have a unique opportunity to devise their own paths of development. What they need is an enabling political framework.

INTRODUCTION

Mining and mineral wealth have always occupied a special place in Congolese identity. Since the Congo came into existence as a colonial territory at the end of the 19th century, the perception of the country as a "geological scandal" has been central to any definition of its character: the Congo has some of the richest mineral deposits found anywhere in the world, but its population remains one of the world's poorest. This has given the Congolese a certainty that they are naturally rich but that their wealth is being taken away from them – by their own rulers and by the world system. The word "kleptocracy", meaning rule by thieves, was coined to characterise the Mobutu system of rule on the 70s and 80s; the term "illegal exploitation", meaning the organised removal of Congo's natural resources from the country without legitimacy or due return, came into prominence in the debates around the war of 1998-2003. The common thread running through these debates is that control and use of the natural resources of the country, especially its minerals, is the key to the Congo's problems and to the solutions to these problems.

At the height of the Congo war, in 2000-01, Pole Institute chose to investigate the role of natural resource exploitation on a local level in North Kivu – in sustaining conflict, but also in sustaining survival. At this time it had become clear that a specific resource dimension had emerged to the conflict and was also shaping social changes in the region. Between 1999-2001, exports of coltan (colombite-tantalite) became a mainstay of the economy of Eastern DRC. As world demand for tantalum, used for capacitors in mobile phones and computer applications, reached its peak in 2000, prices rose rapidly and exports of tantalite from artisanal mines, slags and cassiterite deposits in Eastern Congo became an attractive business proposition. As Pole Institute demonstrated in its 2001 report "The Coltan Phenomenon", "existing industrial mining concessions have been turned over to informal or artisanal mining, mainly of coltan. This phenomenon has led to a population exodus of all age groups with the aim of finding coltan. As a result, agricultural and pastoral activities are being abandoned in favour of coltan".

It became evident from our investigations that "illegal exploitation" was not a useful concept for understanding what was going on. Judged by the actual rules of conduct pertaining in war-torn North Kivu at the time, most of it was more or less legal, that is to say more or less in accordance with local regulations and etablished procedures or in accordance with unwritten agreements and power relationships, either established or circumstantial. Calling these regulations and relationships "illegal" is meaningless in a country where the illegal, informal economy has been the sole mechanism of survival for large parts of the population even in peacetime and where "legality" has for decades been synonymous with state-organised theft.

The problem with the "coltan phenomenon" was not lack of "legality" but lack of socio-economic benefit for the population, apart from short-term revenues for some people directly involved. The only way to change this is to reorganise the sector, not to close it down. International calls for a boycott of Congolese coltan were detrimental to the cause of improving people's livelihoods in the mining areas.

The coltan boom has since ended, and so – officially – has the war in DRC. But in fact, mineral exploitation is continuing in Kivu, and so is war. Coltan no longer plays the same special role as it did for a brief period five years ago. But coltan mining continues, among other mining activities, and the structures governing mineral extraction and trading remain intact. It is only the context that has changed: the DRC is officially reunified, the former warring factions are now officially at peace with each other and sit in the same government, there is now officially a government for the whole of the country, and the same rules are supposed to apply in Kivu as in Kinshasa or indeed anywhere else in the Congo.

This is causing a lot of confusion. One the one hand, continuing conflict in Eastern DRC is widely cited in UN and NGO reports as evidence that "illegal exploitation" is flourishing under the transition, with informal resource exports financing warlords or arms purchases. On the other hand, the transition in Kinshasa is presumed to offer a valid and functioning framework for economic development and better natural resource management in the East. This is an evident contradiction.

After two years of "transition" in the DRC, it is disingenuous to try and explain this away by assuming that everything will sort itself out eventually given enough time. Rather, this contradiction should be recognised as systemic and analysed as a constituent factor of the way the transition works.

The coming together of the former warring parties in a single administration in Kinshasa may have changed the rules of the conflict between them but has not by itself solved the conflict. Control over different parts of the state apparatus and over the validity of state decisions is at least as important a theatre of conflict as control over private sources of export revenue. The further the transition advances, the more continued domination of informal power structures depends on gaining or maintaining control of various bits of the formal state.

These connections must be taken into account when looking at the dynamics of conflict and the role of resource exploitation in Eastern Congo today. If there is war in Eastern Congo, then people there cannot be expected to behave as if there was peace simply because there is a government somewhere. And just as unfair natural resource management did not originate with the advent of war, it will not disappear with the advent of peace. Unless local people are empowered to structure their socio-economic environment themselves, the natural resources in their area will always appear to them not only as a geological scandal, but also and mainly as a political one.

Lack of attention to the resource question and the particularities of the conflict in Eastern Congo are stumbling blocks for a success of the DRC peace process. Here, Pole Institute is offering material which will serve to focus attention to these two problems and especially to the common ground between them. The developments in the mineral sector of Eastern DRC in general, with a special focus on North Kivu and the mineral trading economy of Goma, since the end of the coltan boom are analysed and used to shed light on the wider debate around natural resource management in the DRC and thus around a major, but neglected element of the Congolese transition.

1. THE STRANGE DEATH OF CONGO'S COLTAN PHENOMENON

The Congo's "coltan phenomenon" of 1999-2001 was remarkable both for its intensity and its short duration. The DRC did not even figure in published statistics of world tantalum production before the year 2000, when suddenly it surged from nowhere into second place with 130 tons, over one seventh of total world production, only surpassed by Australia[1]. Almost all of this came from the Kivu and Maniema provinces. Yet production fell away quickly – to 60 tons (2001 and 2002), 15 (2003) and recovering slightly to 20 (2004). The world market price for tantalum slumped from $220 per pound in 2000 to $37 in 2001, reaching a low of $22 in 2003 before recovering slightly since. Even though such statistics are notoriously unreliable, it can be calculated that with both production and prices sinking to a tenth of their peak, the DRC's coltan export earnings in 2003 cannot have been much more than 1% of those of 2000.

The growth of an informal mining economy in Kivu, favoured by the decline of other forms of economic and trading activity, sustained militias and armies, both Congolese and non-Congolese. At the height of the boom, RCD rebel authorities in Goma were earning $1m per month in taxes on coltan exports alone. Many Congolese businessmen as well as foreign businessmen established in the DRC and dubious intermediaries from various countries made huge amounts of money in a very short time while the Congo war was at its height just before the assassination of President Laurent-Désiré Kabila in

[1] All DRC production figures according to US Geological Surveys, various years.

January 2001. One feature of the coltan boom which was often remarked upon was the way that Rwanda's army and also Rwandan Interahamwe militia in Eastern Congo were involved in mining and/or trading of coltan and other mineral products, as was everybody else in the region. UN investigations estimated in April 2001 that Rwanda's army may have earned $250m over 18 months from the reseale of coltan bought in the DRC[2].

This gave rise to international calls for a boycott of Congolese coltan. At that time, however, demand was already slowing and prices were falling drastically. Since 2002, the DRC has been largely squeezed out of the international tantalum trade. Mineral traders in Goma are convinced that they were the object of an informal international embargo in which they lost their external markets. The work of the UN Panel, which ended in 2003, together with parliamentary inquiries in Uganda and Belgium, put the coltan trade with Congo under an unprecedented spotlight and encouraged the players in the industry to turn their attention elsewhere.

However, the structure of the coltan economy is not specific to coltan. It is not commodity-specific, nor is it war-specific. Artisanal mining in Kivu began when it was legalised by the Zairean government in 1983 and it intensified as industrial exploitation ceased; informal trade with neighbouring countries grew in the 80s and 90s well before there was war. Even as foreign interest in Congo's minerals declined, the economic structures which sustained their production and trade remained in place, and they remain the basis of all attempts to revitalise the formal mining economy of the Congo. How this happened, what happened to the players of the coltan

[2] UN Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC, April 2001 Report, §130.

boom in Eastern Congo after its end and what future they face is the subject of this section of the study.

1.1 The world market

Tantalum production has declined worldwide since the boom of 2000-01 and is unlikely to recover in the short term. However, the steep decline of 2001-03 appears to have been halted and there are prospects of rising demand in the medium term. The sector is disorganised, however, with the collapse of the world's biggest tantalum mining firm in 2005 possibly leading to a major reorganisation in which emerging competition between US and Asian interests may be decisive. The DRC has been largely pushed out of the market, at least officially.

The statistics: not bouncing back

The coltan boom of 2000-01 was short-lived and led to a prolonged period of low prices and low demand, but it is typical for the highly secretive and decentralised tantalum industry that precise figures are rare and often contradictory. A Roskill report "The Economics of Tantalum" published on 1 February 2002 said that global demand grew by 24% a year in the 1990s to reach a total of over 2600 tons in 2001[3]. According to the world leader in tantalite mining, Sons of Gwalia (Australia), "tantalum demand rose steadily from just under 3m lbs of tantalum in 1993 to over 6mlb in 2000. In 2001, as a result of the global economic slowdown, demand fell quite dramatically to 1999 levels of approximately 4m lbs."[4] The

[3] „The Economics of Tantalum", Roskill Reports 2002, website presentation.
[4] Tantalum Overview, Sons of Gwalia Ltd, 2003.

source for these figures was the Tantalum Institute, a global organisation of tantalum producers, traders and users. "Unfortunately, in 2002 for legal reasons one of the world's largest refiners of tantalum decided to no longer supply this information, so even this limited source of information is now no longer available."
US government figures for world tantalum production and prices are as follows[5]:
Production: 836 tons (2000), 1300 tons (2001), 1540 tons (2002), 1210 tons (2003), 1270 tons (2004, est.)
Prices: 220 USD/pound (2000), 37 USD (2001), 31 USD (2002), 27.5 (2003).
In Goma, the known world market price is said to have recovered from a low of 22 USD/pound in 2003 to 32 USD/pound at the beginning of 2004 and to have remained at that level until recovering significantly in the summer of 2005[6].
The production peak passed the DRC by. Detailed figures for DRC tantalum production are[7]: 130 tons (2000), 60 (2001), 60 (2002), 15 (2003), 20 (2004, est.). These figures are not gross coltan volumes, but net tantalum content and should be multiplied by three on average to arrive at an estimate of the actual volume of coltan extracted from Congolese mines and recognised as such. Rwandan tantalum production is given as 95 tons (2001), 53 (2002), 14 (2003), 15 (2004, est.). In 2004, the largest producers were Australia (800t), Brazil (200) and Mozambique (75t). Canada, Ethiopia, Namibia and Nigeria also each mined more tantalum than the DRC.

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[5] US Geological Survey, Mineral Commodity Summaries, various years.
[6] Price information by the North Kivu Provincial Mining Division. Latest information: September 2005
[7] All figures in this and the following paragraph are taken from US Geological Surveys, various years.

It should be noted that the US government through its Defense Logistics Agency occasionally releases strategic stockpiles of tantalum onto the world market: 242 tons in 2000 and 216 tons in 2003. Both had the effect of lowering prices. The 2003 may point to a perception that demand was beginning to rise again while production was falling and that any price rise should be forestalled before it happened. It was also the first in a series of annual releases. In 2004, the release was even bigger: 351 tons, much more than the planned 274 tons. For 2005, again 274 tons in planned sales were announced.

The main international body monitoring developments in this field, the Belgium-based Tantalum-Niobium International Study Centre, reported in an overview of 2003: "There is no reason for tantalum raw materials to be in short supply in the foreseeable future. Estimates of supply requirements indicate growth at 7% per annum, and these can be covered by the raw materials suppliers. They can also be covered by the processing companies which refine the metal from the minerals... There is also recycling... With expansion of existing mines, and new potential sources, there should be no shortage of tantalum even if growth increases to two or three times the forecast 7% per annum"[8]. Besides Australia, the report names Brazil and China as main producers, with a new mine in Ethiopia and an even newer one in Mozambique, known reserves in Egypt and Saudi Arabia, Greenland and Canada and other South American and African countries.

Demand for tantalum does appear to have risen in 2004. The latest US Geological Survey, published in January 2005, states: "Apparent consumption of tantalum in 2004 rose slightly owing to increased demand from the

[8] Tantalum-Niobium International Study Center: „Developments in the Tantalum Market“, presentation by secretary-general Judy Wickens

electronics sector."[9] The Roskill Report of 2002 had already said that "there are a number of new markets for tantalum capacitors that will maintain the growth in demand for tantalum, the most important being under-hood applications in automobiles. Growth in tantalum capacitors is expected to average 9-10% per year through to 2005."[10] Bayer, the German chemicals giant which owns H.C.Starck, the world's biggest supplier of tantalum products, reported in April 2005 that "the market for HC Starck's tantalum powders used in products for the electronic component and device industries was especially buoyant in the first half of 2004, driven by demand for digital appliances, notebook PCs and mobile phones. However, demand slowed in the second half."[11]

However, other players are less optimistic. Cabot, a major tantalum miner and processor, stated: "The tantalum industry has seen a continued movement toward the use of ever smaller tantalum capacitors in electronics devices resulting in significantly less tantalum powder being used in each capacitor. This development, along with continued high inventory levels that exist in the supply chain, is putting significant pressure on tantalum powder volumes and prices".[12]

The analytical service Metals Place reported in June 2005 that "except for a brief spike to $240/lb in late 2000, spot prices for tantalum have been in the $40-50/lb range since 2000. However, the bottom range of the market price has just slipped to $30". This is "because capacitor producers are reducing per-unit volume of materials. Also, tantalum

[9] US Geological Survey 2005

[10] See Note 3.

[11] „Bayer in Japan Announces FY 2004 Results", press release 13 April 2005.

[12] „Cabot Announces 2nd Quarter Operation Results", press release 27 April 2005.

is losing market share to such other materials as ceramics, aluminium and niobium".[13]

On the other hand, Reed Business Information in September 2005 estimated that "the tantalum capacitor market will post slow, but steady growth over the next several years because of healthy demand from cell-phone, computer and networking equipment manufacturers. The global tantalum capacitor market will rise from about $1.78bn in 2004 to $1.85-$2.08bn in 2009". This will not, however, stop "further price erosion, although suppliers say that prices will be stable"[14].

The players: an empty market

To understand the tantalum industry, one should distinguish between tantalum or coltan mining, tantalum processing and capacitor manufacture[15]. The largest tantalum miner in the world is Sons of Gwalia in Australia (75% of confirmed world reserves and 55-60% of world supply). Others are Metallurg (USA/Brazil), Cabot Corp. (USA/Canada), Thaisarco (Thailand), Nigerian Mining Corp or NMC (Nigeria), and companies in China and Ethiopia. Gwalia, Metallurg and Cabot operate tantalum mines. Thaisarco and NMC derive their tantalum mainly from tin slags and export tin as well as tantalum – a combination known from the DRC, where tin ore is known as cassiterite and is usually found together with coltan.

The largest tantalum processor in the world is HC Starck (Germany), a subsidiary of the Bayer group, with

[13] Market Place, 30 June 2005.

[14] Purchasing Magazine Online, 15 September 2005.

[15] This paragraph and the following are based on information published by Commerce Resource Corp: Identification and Development of 21th Century Metals and Minerals, 2004.

production facilities in Germany, Japan and the US and a subsidiary in Thailand. In second place comes Cabot Corp (US), followed by Ningtxia (China), Ulba Metallurgical (Kazakhstan), Mitsui Mining & Smelting (Japan), Silmet (Estonia), Metallurg (USA/Brazil). The largest tantalum capacitor manufacturer is Kemet Electronics Corp (US), which in October 2005 announced the purchase of the tantalum division of its German competitor Epcos.

There has been a shake-up in the industry centred around the problems of Sons of Gwalia. This Australien company, world leader in tantalite mining through the mines of Greenbushes and Wodgina, went into a severe crisis in summer 2004 after its founders handed over control after 22 years at the helm to new management. Sons of Gwalia is now in administration, facing creditor claims in excess of $900m[16]. Various reasons have been reported for the company's collapse, from hedging operations, the "steadily rising cost of producing tantalum"[17] or "the discovery that the gold it thought it had in the ground wasn't there"[18] to the purchase of an overvalued gold mine and personal problems of the managers[19]. Another was a pricing dispute with its main customer, the US firm Cabot; arbitration hearings between Gwalia and Cabot were due to begin in September 2005 in the US[20]. The administrators of Sons of Gwalia, Ferrier Hodgson, have taken the firm's auditors to court and sold all its non-tantalum assets; the tantalum division of the firm cannot be sold while the dispute with Cabot remains. Thus since July 2005 the world's largest source of tantalum is in the

[16] Sydney Morning Herald, 23 March 2005.
[17] Financial Review 3 August 2004.
[18] Sydney Morning Herald 10 November 2004.
[19] For an overview see „Digging the Dirt on SoG", The Australian 31 August 2005, and also the Administrators' Report published on 16 August 2005 and available on the company website.
[20] Metals Place 19 August 2005.

hands of an Australian place-holder which doesn't yet know what to do with the assets[21]. Cabot Corp and "Tantalum Australia", part-owned by Kemet, the world's largest maker of tantalum capacitors, are bidding for Gwalia's largest tantalum mine Wodgina[22]. Cabot and the German firm HC Starck are the traditional main clients of Gwalia, having bought all its tantalum production since 1991, but whether Cabot will remain a customer beyond 2005 depends on the outcome of the arbitration hearings. HC Starck and Gwalia agreed on 17 December 2004 that Starck would buy 800.000 lb tantalum per year from Gwalia until 2008[23]; this covers less than half of production capacity.

Parallel to this major shake-up on the supply side, in which US interests are emerging as predominant, the most pronounced rise in demand is coming from China, as is the case with all minerals and hydrocarbons. The Kazakhstan company Ulba (Ulba Metallurgical Plant or UMP) is expanding into China, creating the joint venture Ulba-China Co Ltd in August 2004 "to sell beryllium and tantalum products manufactured by UMP JSC in the market of China and Asian countries"[24] and views tantalum processing as one of its most promising activities; in 2000 it first announced a $20m investment programme for tantalum and niobium processing of up to 250 tons per year, "to be assimilated by tantalum production within five years"[25]. Ulba has been linked to coltan exports from Butembo in the formerly Ugandan-controlled part of North Kivu; China as an export market for Congolese coltan is also mentioned by Goma traders.

[21] „Gwalia Placed In Limbo", The Australian 31 August 2005.
[22] The Australian 5 May 2005.
[23] „HC Starck annouces agreement securing tantalum raw materials supplies", Starck press release 17 December 2004.
[24] Ulba press release 15 September 2004.
[25] Information on the company website www.ulba.kz

The spectre of growing US-Chinese competition for the world's natural resources is likely to shape natural resource politics in Africa in the future, with tantalum only one of a number of relevant commodities. A US Congressional Subcommittee was told in March 2005 by Milton R. Copulos, head of the conservative think tank National Defense Council Foundation, that "competition for non-fuel minerals is intensifying, and as with oil, the primary reason for this intensification is the stunning increase in China's appetite for these commodities".[26] The US relied on foreign imports for 100% of 17 key minerals and for 80% or more of a dozen more, Copulos said; among the latter group he cited tantalum, "essential to the manufacture of corrosion-resistant chemical equipment and micro circuitry". He pressed for the consolidation and maintenance of stockpiles, which would require large-scale imports following the strategic tantalum sales of recent years.

One aspect of the US-China rivalry which is relevant for the tantalum industry is the perception that China is less scrupulous than the US or Europe in choosing its sources of natural resources. Thus the US-based "Pinnacle Resources", whose subsidiary Titan Processors Ltd runs a tantalum refinery in Johannesburg in South Africa, stated in February 2005: "Finding suitable and acceptable tantalite feedstock for the tantalum plant has become a challenge recently. Tantalite, like diamonds, that originates from the DRC still carries the taint of blood in the war-torn area of Central Africa, meaning that the proceeds from the sale of these products finance revolutionary war efforts. Internationally, 'blood tantalite' has received such negative press that buyers in Europe and the US have shied away from buying it and insist on a

[26] Mineweb, 18 March 2005.

certificate of origin on product they do buy. To further complicate the selection of tantalite ore sources, the EU and the US have banned the importation of material containing even minimal amounts of radioactive elements. They have set the allowable levels so low that most African tantalite ores don't qualify without first being processed to remove the undesirable elements. However, China seems impervious to these constraints". The company goes on to say that it has developed a "qualified supply source" on the African continent which is verifiably "not DRC derived"[27].

Allegations are coming from inside the industry today that Ulba and Ningtxia are continuing to buy Congolese coltan, but paying only half the market price. Their two home countries, Kazakhstan and China, are among the four main official import sources of tantalum into the US for the period 2000-03 despite having no known significant own tantalum production.

1.2 The local market

The decline of the DRC as a recognised source of tantalum in the world markets has not meant the end of coltan mining in Congo. In North Kivu, coltan production initially declined sharply following the end of the coltan boom, but it has stabilised at a low level. Local prices remained low until 2005; recently, price rises have been observed again. This translates into a high level of fluctuation regarding traders active in coltan. Today fewer major players control the coltan sector than during the boom, with rivalry between Goma-based and Kinshasa-based traders emerging.

[27] „Pinnacle Negotiates Tantalite Supply", press release 14 February 2005.

The statistics: scraping the barrel

North Kivu's registered coltan production has gone down sharply: 89.576 tonnes in 2001, 27.952 tonnes in 2002, 17.81 tonnes in 2003[28]. However, officially registered coltan exports exceed officially registered coltan production. This may mean that official production figures are understated, or it may simply reflect the fact that coltan from other provinces is exported from DRC via North Kivu - only 69% of coltan exported from North Kivu in 2003 came from the province itself.

Since the end of the tantalum price collapse, DRC coltan exports from North Kivu have risen slightly. According to official figures, 26 t of coltan were exported from North Kivu in 2003, 41.6 t in 2004 and 23 t in the first half of 2005. In addition, 11.4 t of coltan were transferred from North to South Kivu in 2003, but none at all in 2004 and 2005 (possibly reflecting increased tension between the two provinces), so that the actual increase is small. Outside the official records in Goma, large quantities of coltan were also exported from the "Grand Nord" of North Kivu (Beni/Butembo) – 33.95 tonnes in 2003, more than the Goma exports. Thus 37.4 tonnes of coltan left North Kivu via Goma in 2003 and 41.6 tonnes in 2004; from North Kivu as a whole, 71.35 tonnes of coltan were exported in 2003. All these figures cover declared trade only, and the exact tantalum volume within the coltan is not specified. No verifiable information is available on the size of undeclared trade.

Regarding prices, it is important to understand that there is no single "coltan price" on the local market. The price varies according to the tantalum content of the mineral offered for sale. Thus if 1% tantalum is valued at $1, 1kg of

[28] These and subsequent figures according to North Kivu Provincial Mining Division.

coltan containing 1% tantalum will be worth $1, 1kg of coltan containing 30% tantalum will be worth $30. At the height of the coltan boom, the local price reached $3 per %, giving $90/kg or more for 30% grade coltan.

In August 2003 the price was given as $0.48 per %, giving a local price of $14.4/kg for 30% grade coltan and $16.8 for 35% grade[29]. The price falls between 2001 and 2003 pushed many small traders out of the market. "The small exporters have gone; only the big ones are left", one major Goma trader said in August 2003[30]. According to him, the local buying price was higher at that time than world market prices - $19-20 per kg for local buying as against $14-16 for his own exports to Europe. Because of this, he said, he was no longer buying local coltan. He spoke of a possible "black market" with "dirty money" being laundered.

Prices only started rising again in 2005. In April 2005, traders quoted a price of $12 to $15/kg for 30% coltan – the same as in 2003[31]. By September 2005, the local price had risen to $26 [32]. Thus the world market price rises have belatedly pushed through to the local level.

The players: a shake-out

The mineral trading sector continues to be marked by high volatility, with trading companies appearing practically overnight and disappearing just as fast[33]. In the year 2000, when the coltan boom moved towards its peak, the main exporters were GBC (56.14 t), Kaferege (24.001 t), Mwangachuchu/MHI (11.714 t), Cocotrade (4.664 t)

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29 Interviews in Goma, August 2003.
30 Interview in Goma, August 2003.
31 Price quoted by North Kivu Provincial Mining Division, April 2005.
32 Ibid, September 2005.
33 All information on traders in Goma in this section is based on interviews in Goma in 2003 and 2004.

Tshamulg (4.6 t), GLM (3.45 t), Mukabuteza (1.9745 t), with the short-lived RCD-based monopoly Somigl coming in in December with 3.4322 t. Of these, only MHI was still operational in 2003.

GBC ceased trading in September 2002. Formerly controlled by the business empire of the German trader and entrepreneur Karl-Heinz Albers who managed the niobium mine of Lueshe (see below), it had as one of its main clients the German tantalum processing firm HC Starck, a world leader in the sector. But attempts by Congolese rebels to monopolise coltan exports 2000-01 squeezed Albers out of the export trade, and international protests against "illegal exploitation" caused HC Starck to publicly proclaim first that it only sourced African tantalum from reputable traders[34], and then that it no longer sourced tantalum from Central Africa at all – the cut-off point was given as August 2001[35]. Starck CEO Peter Kählert even claimed in November 2002 that when the first UN panel report came out in April 2001 "we were taken completely by surprise since, at that point in time, we knew nothing about the situation in Eastern Congo"[36] – although at that time HC Starck had already had occasion to comment publicly and privately on its business dealings with that part of the world. Following discussions with the UN Panel on the Illegal Exploitation of the Natural Resources of the Congo about coltan supposedly purchased in Mozambique in 2002, the company admitted "that HC Starck had obviously been

[34] Eg „HC Starck weist UN-Vorwürfe zurück", Goslarsche Zeitung (Germany) 10 May 2001.

[35] „HC Starck weist Anschuldigungen erneut zurück", press release 24 May 2002.

[36] „Coltan – Are There Easy Ways Out in Dealing with a Conflict Commodity? " Speech by Kählert to German government conference on „the economic dimension of conflict" as reported in HC Starck Newswire, April 2003.

misled with regard to the origin of the material"[37]. Trading records seen by Pole Institute show that the H.C.Starck subsidiary in Thailand sourced tantalum directly from Dara Forest, a Ugandan-Thai company in North Kivu, in March 2001; Dara Forest has been named in numerous reports as one of the most dubious trading companies active in the DRC.

Just three trading firms were active in coltan exports from Goma in 2003, with total registered exports of 26t. According to the official records, they were Mwangachuchu/MHI (9t); Sominki, whoever that might have been precisely at that point (10t) and a company called Telecel (7t). Telecel, which has since disappeared, was a Nigerian outfit resident in a part of Goma with a heavy military presence. According to its chairman Kayodi Kamara and his collaborator Oliver Kola, it moved to Congo at the beginning of 2003, having traded in Nigeria for five years. Their clients were Chinese[38].

Official sources at that time gave a different list of trading firms active in coltan in 2003: MHI, Telecel and Munsad. The last was described as a new firm which had only appeared since the volcano eruption of 2002 and whose mother house was the German company H.C.Starck. One source said that Munsad works with the Belgian trading firm Tradmet which supposedly does business with H.C.Starck. In the official North Kivu export records, Munsad appears only as a cassiterite exporter, the second biggest in 2003 and the third biggest in 2004. It was and is however widely alleged that coltan is occasionally declared as cassiterite for export purposes or mixed with cassiterite whose export quantities are much larger. One official alleged that minerals continued to leave the country by night, when the border between Goma and

[37] Company statement 27 May 2003.
[38] Interview in Goma, August 2003.

Gisenyi is closed and no controls take place."The stuff left the country, accompanied by soldiers, sometimes for the benefit of foreigners", one official claimed. "Tons and tons left like this, including gold and diamonds. This is continuing today. In our registers you will never find gold or diamonds.[39]"

By 2004, the picture regarding coltan exports had changed somewhat. Only two trading companies were still left on the official coltan export register: MHI with 15.6t and Clanab with 26t[40]. The latter firm is said to belong to the son of Rwakabuba, an influential Rwandophone businessman in Goma.

In 2005, competition from Kinshasa arrived in Goma: Gemico, Erotrade and Sodex Mines[41]. Gemico belongs to Shabani, a founder of the MLC rebel movement of Jean-Pierre Bemba. Erotrade is the only company in possession of a valid coltan and cassiterite trading licence issued by Kinshasa. Sodex Mines, represented by the Lebanese-born British businessman El Ali Bassem, is linked to the gold and diamond trading form "Millennium" in Kinshasa and is praised in Goma as the leader in developing the cassiterite trade. Sodex Mines and Clanab were the only ones to have paid or promised to pay their mining royalties by December 2004, while MHI was engaged in trying to validate purchases of land in Masisi where coltan was being mined. Sources in Goma explained that as MHI had bought land belonging to the "chefferies", thus public property which could not be bought and sold privately without government permission, there were ownership problems. MHI's owner Edouard Mwangachuchu told Pole Institute that "Kinshasa is trying to destroy our business by reverting to the pre-Mobutu system",

[39] Interviews in Goma, August 2003.
[40] North Kivu Provincial Mining Division, 2004 Annual Report.
[41] Interviews in Goma, March and September 2005.

meaning presumably the situation before the land reform of 1973 when land was still vested in the "chefferies". "Coltan is finished" he said while simultaneously attempting to woo investors for the idea of a coltan processing factory in Masisi[42].

In fact, however, Mwangachuchu is emerging more and more strongly as a monopoly trader. During the first half of 2005, his firm MHI exported 17,5 t of coltan from Goma; the only other registered exporter was Erotrade with 5,5 t, but according to official sources Erotrade have since closed their Goma office, leaving MHI as the only recognised exporter[43].

The transitional government in Kinshasa apparently hopes to end or reduce coltan exports. Victor Kasongo, head of the CEEC (Centre d'Evaluation, Expertise et Certification), said in February 2005 that by next year the DRC would no longer export raw coltan but only semi-processed concentrate[44]. When President Joseph Kabila visited China and South Korea in April 2005, his delegation, which included Kasongo and a large number of mining representatives from Congo, presented projects to build a coltan processing factory[45]; this may be linked to the idea of building a tin smelter in Bukavu which regularly crops up in discussions on the future of mining in Kivu.

At the same time, the DRC government is looking for foreign investors for coltan mines in North Katanga. The Mining Ministry's list of investment projects for which foreign partners are sought, published in March 2005, contains the tantalite and cassiterite mines of Manono and

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[42] Interview in Goma, November 2004.
[43] Information provided by the North Kivu Provincial Mining Division.
[44] Business Report (Johannesburg), 11 February 2005, Reuters 9 February 2005.
[45] Digitalcongo, 14 April 2005.

promises, for investments of $155m in three separate projects, 380 tons of tantalite per year and 6.000 tons of cassiterite. This would be far more than the rest of the Congo's coltan and cassiterite production put together. As a vehicle for a joint venture, the firm "Congo-Étain" is named as partner.

1.3 The local reality

In North Kivu's mining areas, artisanal coltan production is continuing under the same conditions as during the boom, and with prices beginning to rise again in 2005, it appears again to be flourishing. For those active in the mines, the lack of viable alternatives forces them to continue mining, even when the benefits are much smaller than before. The owners of artisanal mines have no alternative to trying to dig the last remaining coltan from their carrières, whether there is money to be earnt with it or not.

The socio-economic changes wrought by the coltan boom are still visible and their consequences are not being addressed: many people who invested heavily in the coltan boom are now ruined, others who were displaced during the war have to scramble for a livelihood, and generally the speculative coltan profits of 2000-01 have not been invested for the public good. There is no political structure which could guarantee this even in the future anyway. Instead, the coltan boom has created its own social reality. Talking to the mining populations, it becomes clear that there is a complex social hierarchy in which mining is by no means at the bottom of the social scale. There are families in which mining goes back several generations. Farmers go into mining and hire internally displaced to work on their farms. Schoolchildren prefer mining to studying. The main economic competition is between miners and traders, with traders generally in a privileged position, so that control of trading routes and outlets becomes a major determinant of socio-economic power, whereas the needs of mining are not properly addressed. Again, the necessity of investing in services and the improvement of the productive base of the mining economy is ignored as all efforts are concentrated on securing short-term income and profits.

"Trade pays better than work": A field visit to Mumba/Bibatama

D2 in Mumba/Bibatama in North Kivu is a huge opencast mine in the Ngungu area of Masisi territory, in a deep gorge snaking between several hills, where 1000 young miners worked during the coltan boom and 300 to 500 today. Pole Institute visited the mine and spoke to its manager[46].

- Mr Manager, would you present yourself?
- My name is Bazimaziki. I am 39 years old and have a family. My father worked in this mine for Sominki until it closed in 1983. I was born here and I am continuing the same kind of work as my father, except that today I manage 50 professional miners who each have an artisanal miners' licence costing $50.
- You have lived through the coltan boom. What is left of that today?
- In 2000 and 2001 business was good and we managed to sell a kilo of coltan for up to $150. I had more than 1000 miners here. In spite of the crisis, we never stopped work and at the moment I have 330 miners of whom 50 are professionals. Most of the others are internally displaced coming from Katoyi and Mahanga.

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[46] Visit in July 2005.

- Can you tell us about the life of these young people who work for you?

- Most of them are between 14 and 21. They have never been to school and live with the $10 cash they earn every day when they have worked well. They work in small groups in this huge hole with a precise division of labour between carriers and washers. Digging this hole with pickaxes caused landslides in the mountain, and in this way the miners discovered a white rock layer around 30 metres below the ground which looks like chalk, and it contains 30% grade coltan. The carriers break up the rock, others divide it up into small bits, others again turn this into sand and leave it next to a water reserve. These carriers, as we call them in this mine, earn $1 per day. The washers work in a row down a steep incline, mixing the sand with water which, when it runs off, takes away mud and other light impurities and leaves a heavy black sand deposit behind. They gather this in basins and clean it further with water. Then they treat the black sand to remove the iron, and the remaining product, coltan, is ready for sale to the different traders waiting patiently on site.

- What arrangements do you have with the traders?

- They use plastic measuring tubes which hold 250g each. A washer who collects one kilo of coltan gets $10 cash in the mine. When the traders bring it to Goma, the current price is around $12 to $15.

- Do you own the mine?

- Several people claim ownership to sections of this huge hole, around two to five square metres each. This is the result of complicated negotiations between local farmers involving compensation paid by traders or intermediaries, and all this under the supervision of the manager who connect the world of the miners to the world of mine owners.

- You said that your own father worked here?
- Since Sominki left Mumba/Bibatama in 1983, generations of miners succeed each other from father to son to mine cassiterite or coltan by hand according to world market demand.
- How many hours a day do the miners work?
- They come early in the morning and leave late at night to spend what they earned during the day in the market next to the mine. There you get Primus beer and other drinks, restaurants, hotel rooms, hairdressers, manufactured goods of all kinds like radios, clothes and so on.
- You mean they spend all the money they earn in the market?
- The traders in the market manage to take all the miners' money, so the miners' life is one of starting all over again every day, going back and forth between the mine and the market. Trade seems to pay better than the hard work of a miner, and it is often dominated by managers and traders who connect the rural mines to the trading firms of Goma. They bring consumer goods and organise food and lodgings. They run the mineral trade between the mines and the towns as well as the consumer goods markets around the rural artisanal mines.
- What are your biggest problems?
- We don't have enough water reserves for artisanal mining in these mountains which are 2500 metres high. The owners of Mumba/Bibatama have tried to divert a water source around four kílometers away, building a canal which they have tried to improve using water pipes. But there is still not enough water for the tons of sand which need to be washed. During the rainy season the miners try to stock water. This is the time when they produce and earn the most money.
- Looking at this village you don't see any evidence of the coltan boom, apart from your own nice house.

- During the boom period the traders invested some of their money in houses in Goma. They have 120 houses built of wood and 12 villas made from solid materials.
- What is your relationship with the authorities?
- The authorities's presence in Mumba/Bibatama is minimal and reduced to the taxes paid by those running the mines: $0,7/kg for the commune, $0,2/kg for the zone, $0,2/kg for the mining division in Goma.

"Having a mine next to the school is a curse": A field visit to Luwowo mine and Mishavu primary school

Luwowo is around 50 km from Goma and 6 km from Rubaya village in Masisi territory. It is a former Sominki concession which was abandoned in the 1980s. During the coltan boom, the Luwowo mines attracted large numbers of artisanal miners, traders and buyers of mining concessions. Today not much is left. On entering the village the visitor is struck immediately by the terrible state of Mishavu primary school, which is separated from the mines just by the river Luwowo giving the impression that it is part of the mines. Pole Institute spoke to school director Hakizimana Buregeya. During the interview, his teachers joined in: Ntibantunganya Francois, Safari Ngirabanzi, Bizimungu Rukingi, Ndayambaje Karuganda, Ntawukira Munyakazi, and Mvungingoma Déogratias representing the NGO "Upaderi"[47].
- Director, your school is pratically in ruins.
- Before I was transferred here I worked in Matare primary school in Ngungu, and when I came here I was surprised myself. The famous coltan boom has had no impact here given the deterioration of our buildings. Most classrooms have no roof, others are so demolished that the teachers have to put their pupils in the few rooms which

[47] Visit in July 2005.

are still usable, even if there is no furniture. In March 2005 an earthquake further damaged what is left of this school.
- When did the school reopen?
- The school closed during the coltan boom. The coltan fever pushed pupils into becoming miners, a trade where they earned more than their parents ever did. Only three pupils in the upper grade wanted to finish their primary school; they were transferred to Matanda primary school 15 km from here. After the coltan price drop, our primary school reopened. It now has 291 pupils of which more than a third are in their first year because of the years when there was no school. Some of these would be in their fourth year today if there hadn't been easy coltan money.
- This village doesn't look rich despite the mines next door.
- Family revenues have not changed at all. Parents still have problems paying their childrens' school fees, equivalent to $4.5 per term. At the moment only 30 pupils have paid. Those who are sent down because they couldn't pay go back to their village, take up their shovel and start mining coltan again. They are even happy to go back to the mines which are more attractive than school. Also parents who work in coltan prefer to use their children as workers rather than sending them to school.
- So it is difficult for you to keep your pupils interested in their studies?
- Having a mine next to the primary school is a curse for our youth. The pupils are more interested in cash which they can earn mining coltan than in schoolwork. An undisciplined pupil who is sent out of class will go home and pass in front of the classroom a few minutes later with a shovel to go mining, and so his punishment turns into a chance to earn a few dollars.
- Don't any of them regret having left school?

- During the coltan boom several pupils who brandished lots of money got married. Today most of them are divorced because they couldn't sustain and feed a family. Others borrowed money from traders and couldn't pay it back after the drop in coltan prices. They ran away and their parents are in prison, even selling their fields to pay the debts. Of those who have problems like that, some regret having abandoned their studies for an adventure which went wrong.
- Considering the disastrous state of the school and the quality of life in the village, what happened to the profits from the coltan boom?
- It was invested in houses in Goma and in Rubaya trading centre. You have seen that although Rubaya was destroyed in 1996 during the AFDL war it is now full of beautiful new houses built with semi-durable materials.
- So only the traders profited from the coltan boom?
- Yes, generally they were the ones who profited from the coltan fever, as well as some traders and especially those who moved out of coltan trade at the moment when prices dropped and who invested their profits in cattle or other goods. We know a trader who bought a 60ha farm with the money he made from coltan, and since then he has bought a second farm of over 100ha and earns no less than $2000 a month with milk products like cheese and milk. But not everyone got out of the coltan trap in time. As prices dropped gradually, some continued to lend money to the miners or the small traders in the hope of seeing prices rise again on the market. But prices sank even further and many of them were left with coltan stocks bought at a high price which they could no longer sell. As some of them had gone into a lot of debt, they mortgaged or sold their houses or fields and today they are ruined. For example Mr Ruzihitiramo who sold his fields for $2000 to a Goma trading firm which was doing mining

prospection; today he no longer has a field to feed his family. Or Mr Mwemezi who sold his field in Luwowo to a woman trader from Goma for $60.000; he bought a house in Goma and four minibuses with the money. After less than a year he had lost everything and today he is back in the village with no house and no field to feed his family.

- And you, the teachers? Has coltan mining never tempted you?

- None of us has dropped chalk for coltan. But our wives trade around the Luwowo mines, where unfortunately trade has dropped to zero following the coltan price drop.

- What is the role of the internally displaced in coltan mining?

- There were a lot of population movements following the wars of 1996 and 1998. Most of the workforce in the Luwowo mines consists of internally displaced from villages like Katoyi, Ruki, Nyambisi, Mahanga etc. Some of them have built nice houses in Rubaya and are involved in trade. Others still mine coltan although market conditions are unfavourable, or they work in the fields of local farmers who have become miners themselves and spend all their time in the mines.

- But the displaced are not all in the mines.

- No, the phenomenon of the internally displaced is noticeable even in urban centres like Goma which has practically doubled in population, and also in rural trading centres where the displaced are involved in trade and have settled for good. In Masisi territory many of them were expelled from their land by the traditional chiefs. Today they are going back to their former land, but the traditional chiefs have often sold it, for example to cattle herders who turn it into grazing land and register it as such. So land conflicts in Masisi are starting again like before the ethnic wars of 1993.

Trading relationships and power relationships: Impressions from South Kivu

Everywhere in Eastern Congo, local power relationships govern mining much more than any kind of Kinshasa legislation or rules, often with the use of force as the ultimately deciding element. From Shabunda territory, whose abandoned Sominki concessions were one of the most fought-over parts of South Kivu with large-scale involvement of military factions from all sides of the conflict in artisanal mining during the war, 17-year old miner Patrice Kyantenge tells his story[48]:

"During the school holidays we go into the mines. We have to live. I am an artisanal miner, I dig coltan. But there are no roads, so I have to carry the stuff on my head and walk 150 km to get to Bukavu. Can I carry 200 kilos of coltan on my head to Bukavu? No, it's impossible.

We don't know who is governing us. In Shabunda territory we have had Mai-Mai militia, Interahamwe, RCD rebels, and there are roadblocks everywhere. You have to pay at each roadblock: passage, vignette, road tax etc. You pay by weight: 50 Congolese francs per kilo for example. There are ten or twenty roadblocks, and then there are soldiers on the road who ask for money.

Mining doesn't work any more the way it did under white rule. There is no material, no organisation. There are plenty of minerals, but we earn nothing. Those who earn are those who don't work. We don't have enough to eat and no proper place to sleep. When important people come here they require us to work for them for a week without pay, otherwise they will put us in prison.

When I reach Bukavu, I go to my brother. Together we go to the trading firm and talk to the director. He takes the

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[48] Contribution from the floor to an INICA conference on mining in Kivu, Kinshasa, 28 July 2004.

coltan, tests it and says that the tantalum content is too low, only 5%. He says that even if actually it's 20% or 30%. So you have to share your money with those who have the testing machines to be given the correct price."

The local artisanal miners' association Coopemasha (Coopératives des Exploitants Miniers et Agriculteurs de Shabunda) similarly characterises the situation as "total disorder". A report published in January 2005 spells out: "The mining system, set up during the period of dictatorship, has been installed in anarchy and without regard for the law; those in charge of mines have no minng title or any traditional right but they claim to exercise power in the mine and call themselves land chiefs simply by virtue of collecting revenue, in the form of illegal taxes which they collect in complicity with the local authorities of the Mining Services. As for the production of these mines, this is none of their business; they do not know where it goes and have no control over it"[49].

The report goes on to say that "no official trading post is installed" but that traders from Bukavu transport consumer goods to the urban centres of Lulingu and Shabunda, where they are sold to local traders who then sell them in exchange for food – "manioc, rice, dried fish" which they then offer to artisanal miners "who have no choice but to exchange gold, cassiterite, coltan or even diamonds and amethysts. Afterwards, these small-scale trading posts send minerals to the Bukavu trading firms and in return these send waxed cloth, radios, salt and the trading circle continues. In this way the poor artisanal miner has no access to the trading firms and is kept to his little hole".

In the mineral-rich territories of Kasongo and Kabambare in Maniema province, an artisanal miner has to talk to the

[49] Coopemasha Activity Report, 17 January 2005.

traditional Babembe and Babulu chiefs in each area to be able to work – the best thing is to talk to both, as the areas richest in minerals are on the border between the areas controlled by the respective chiefs, says a local trader. "You will be protected if you try and talk to both"[50].

An NGO activist in Bukavu specialising in the mining economy says: "The biggest problem is the activity of armed groups. Even though the armies are supposed to be reunifying the Mai-Mai are not integrated and do their own thing in the mines. There are also mine managers – owners and traditional chiefs – who tax the miners. But the military also raise taxes and certain mines are under their control. They take young people and women into servitude"[51].

In areas of South Kivu where the Rwandan Interahamwe (FDLR) are strong, it has been reported that the FDLR forces have banned the local population from artisanal mining areas except under their own authority. This weill be examined more closely in section 1.4.

Artisanal mining regulation: a mess

The immediate question for state authorities in Eastern Congo after the end of the war regarding mining was whether extraction and trading licences granted by the RCD authorities during the war were still valid after reunification. As far as mining concessions are concerned, this question is still open and is giving rise to a host of new conflicts (see below). But as far as artisanal mining rights and small-scale trading rights are concerned, the answer was simple: A new licencing regime was now in force, and this had to be obeyed.

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[50] Interview with a trader from Maniema in Goma, November 2004.
[51] Interview in Bukavu, December 2004.

The RCD had sold cassiterite trading rights for $2500, but under new rules from the DRC mining ministry the price rose to $9400. These rules were published only on 14 April 2004[52]. The easiest way for traders to avoid hassle was to pay both. MPC did so, "but other trading firms, incapable of paying the new state duties allowing buying and export of cassiterite, have been forced to close"[53]. Thus the increasing concentration of mineral trading in Goma is not only due to market developments but also, and possibly mainly, due to the increased burden of the Kinshasa-based state as it tried to make its presence felt.

A disincentive for traders to switch was that the RCD licence was valid for 12 months from the time of purchase whereas the new government licence was valid only until the end of 2004, whenever in the year it was bought. For coltan, the mining royalty was fixed by the government at $30.000, up from $5000 under RCD. "In Kinshasa they thought that coltan fever was still there"[54].

The incompetence of the new mining regime made itself felt at lower levels too. The traders' card for intermediate traders has been fixed at $300, the artisanal miners' card at $25. But by the end of 2004, no traders' cards had yet arrived in Goma, and no artisanal miners' cards for cassiterite mining, by far the most popular mining activity.

[52] Interview with North Kivu Provincial Mining Division, November 2004.
[53] North Kivu Provincial Mining Division Annual Report 2004.
[54] Interview with North Kivu Provincial Mining Division, November 2004.

1.4 Beyond coltan: A cassiterite phenomenon

The eyewitness accounts given above have already gone beyond coltan. The situation in Kivu denounced by the international community regarding coltan – mining in bad working conditions, accompanied by military force; unclear ownership of mining interests leading to a combination of violent struggle for control and ad-hoc trading arrangements involving opposed interests; an export structure skewed towards powerful interests in- and outside the Congo, again backed by military force; an internal trading structure which works to the detriment of the population of mining areas and favours those with access to and/or control of trade routes; lack of benefits from mineral revenues for the local community in mining areas – remains in place, although the coltan boom has ended.

It is clear that what was being denounced was not unique to coltan mining, but is a general feature of mining in Eastern DRC and, it can be argued, of all economic activity in Congo's war zones, if not of informal natural resource economies throughout the world. Thus when coltan from the Congo gained a bad name, an incentive arose for mineral traders in Congo to trade other goods instead, but no incentive was given for production and trading practices to change. The problems of resource extraction and trading are not commodity-specific.

Since the end of the coltan boom, North Kivu has witnessed something of a cassiterite boom whose scale and consequences are reminiscent of that of coltan, replicating the familiar structures and problems of Eastern Congo's mineral export industry with a less contentious mineral than coltan and thus raising no international debate. Tin being less fascinating as a metal than tantalum with all its high-tech applications, cassiterite has not excited the public's imagination in the way that coltan did five years ago.

Cassiterite is the mineral from which tin is derived, and it is often found together with coltan. Historically, tin was more interesting than tantalum, which used to be considered an unwanted impurity of tin; but when tantalum found industrial uses, it was tin slags which provided the first sources of tantalum on a large scale. In Eastern DRC, the early development of coltan mining began in abandoned tin mines of Sominki. Generally, in the mines of the region cassiterite, coltan and ferro-oxides coexist in the same mineral and are separated manually, using pans and sifting. In 2003 and especially 2004, cassiterite production in North Kivu exploded.

The statistics: Instant boom

Tin mining is one of the big winners of the worldwide commodities boom of recent years, driven by China's economic growth. In 2004, tin prices on the world market rose faster than those of any other industrial raw material – by 74%[55]. Between the beginning of 2002 and the beginning of 2004, the tin price on the London metal Exchange had already risen from $3500 to $9000 per ton, reaching a high of $9500 in June 2004 and falling again later.

Since 2003, miners in North Kivu have massively abandoned coltan in favour of cassiterite. Cassiterite production started rising sharply in 2003[56]. Official figures for North Kivu state total production as 550t in 2001, 497t in 2002 and 646t in the first seven months of 2003 alone.

[55] Le Monde (Paris), 18 May 2005.

[56] All production and trading figures in this section are given as provided by North Kivu Provincial Mining Division.

Final figures for 2003 give a cassiterite production volume of 151t, which must be either a typing error or an indication of massive statistical manipulation. The same set of figures indicates that North Kivu exported 938t of cassiterite in 2003 and transferred a further 488t to South Kivu. Using the lower official production figure of 151t, the report concludes that local cassiterite production in North Kivu constituted only 16% of registered exports from the province. "The other 84% came from Katanga (Manono), South Kivu (Nyabibwe in Kalehe territory) and Maniema (Kalima and Punia)"[57].

The precise figures involved may be object of debate, but the boom of 2003 continued and strengthened in 2004 and completely changed the economic dynamic of North Kivu in that year. Official exports from Goma quintupled from 939t in 2003 to 4672t in 2004. And while in 2003 only 16% of exports were said to have come from North Kivu itself, in 2004 the proportion was "85 to 90%", according to the Mining Division.

In 2005 exports continued at a high level but no longer increased. 2090.8 t of cassiterite were officially exported from Goma during the first half of 2005, with a further 178.55 t being traded via Bukavu[58]

The players: Thinking big

Cassiterite arriving in Goma is generally exported to Rwanda and processed in the factory of the "Metal Processing Association" (MPA) in Gisenyi just across the border, which appears to be booming: the MPA buildings were in November 2004 observed to have been freshly painted, and the smelting process to extract tin was seen

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[57] North Kivu Provincial Mining Division Annual Report 2003.

[58] Information obtained from North Kivu Provincial Mining Division in September 2005.

to go on even on Sunday evenings. MPA is locally regarded as a South African firm. Founded in 2001 and managed by South Africans, it produces 200 tons of tin ingots per year[59] and owns "Mining Processing Congo", MPC, the main exporter of cassiterite from Goma and a major buyer of artisanal mining products in Kivu.

MPA tin and tantalite exports from the Gisenyi smelter were first announced by Hochschild Partners, an arm of the French steel giant Arcelor, in August 2002[60]. MPA's South African CEO David Kovarsky was quoted in the same announcement as saying that raw materials are sourced "from license holders in Rwanda" – a way of putting things which does not specify the origin of the raw materials themselves. MPC itself says it began trading in the Congo in December 2002 and that its produce ended up in South Africa[61]. By August 2003, its depot in Goma was the busiest in town and its staff the most hostile to unannounced visitors; the Mining Division in Goma at the same time accused MPC of not having paid any taxes[62].

In 2003, of 938.349t registered cassiterite exports from North Kivu, 475t were effected by MPC, followed by Munsad (219t) and Orfap – created from the remnants of GMC - (72.18t). No other firm exported more than 50t. Of the 487.674t registered transfers of cassiterite from Goma to Bukavu, 407.723t were effected by Muyeye and 50.45t by MPC.

In 2004, of 4672t registered exports, 1550.4t were effected by MPC, 1081.3t by Clanab, 675t by Munsad, 608.6t by Sodex Mines and 367.1t by Orfap; all other firms were at

[59] Accordintg to the Global Witness Report „Under-Mining Peace", June 2005.

[60] „Hochschild to sell metal from Rwanda venture", Reed Business Information, 8 August 2002.

[61] Interview with MPC staff in Goma, August 2003.

[62] Interview in Goma, August 2003.

under 80t. Of the 715.2t registered transfers to Bukavu, 414.9t were effected by Muyeye and 139.1t by MPC.

In the first half of 2005, of 2090.8 t registered exports, only 314 t were effected by MPC, which lost its predominant position to Sodex Mines, a firm with Kinshasa backing (see above) which exported 518.6 t. A further major exporter was Amur (344 t), followed by Clanab (289 t), Munsad (165 t) and WMC (160.6 t). All other firms were at under 150 t. Of the 178.55 t registered transfers to Bukavu, 94.2 t were effected by Muyeye and 25 t by MPC.

Sodex Mines is praised by the Goma authorities as being the only firm to use purification equipment to increase the tin content of the cassiterite to up to 78% before export, the end clients being Belgian[63]. "Only Sodexmines has made an effort to acquire cassiterite purification machinery, especially two pulverisers, a magnetic separator, a pneumatic table and an elutriation spiral. The other firms export minerals conditioned manually containing between 50 and 80% SnO2 (tin oxide), with an average of 55 to 60% tin."[64] The firm is said to be linked to the Kinshasa gold and diamond trading firm Millennium which has extensive business plans in Eastern Congo, including the construction of a "Banque d'Investissement de l'Afrique Centrale" as well as the reconstruction of the Kisangani-Beni road[65].

In South Kivu there are many other cassiterite traders, of which Groupe Olive has business links with North Kivu and Maniema. 18.45 t of cassiterite were transferred by Olive from Goma to Bukavu during the first half of 2005[66]. Groupe Olive's director Mudekereza confirmed to Pole Institute that he buys cassiterite from Kalima in Maniema

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[63] Interview with North Kivu Provincial Mining Division, November 2004.
[64] North Kivu Provincial Mining Division Annual Report 2004.
[65] Interview in Goma, September 2005.
[66] Figures form North Kivu Provincial Mining Division.

and various parts of South Kivu, and complained that due to the lack of local industry or investment possibilities there was no alternative to the Gisenyi smelter[67].
The cassiterite boom of 2003-04 was accompanied by a sharp rise in prices, which has since been followed by a sharp drop, indicating that this particular boom is as short-lived as its predecessor, the coltan boom. At the height of the boom, traders in Walikale paid $2.5 per kg of cassiterite.

Next, a diamond phenomenon?

Some traders in Goma consider that cassiterite is no longer interesting and that attention may shift back to coltan again. Contrasting price developments for the two minerals in 2005 are bearing this out. Another mineral whose price is rising strongly is gold, which since pre-war times has been a smuggling commodity in the whole of Eastern Congo. And in Maniema, there are first signs that the cassiterite boom has ended and that artisanal miners are switching to yet another commodity: Diamonds, for which world demand is again growing strongly.
Thus in the summer of 2005 it was reported that cassiterite flights from Punia in Northern Maniema to Goma had ceased. “The population and the traders have left Punia for the more clement skies of Makanio’s diamond mines”, Radio Okapi reported[68]. Up to a third of Punia’s 15.000 inhabitants had left. “The Makanio miners are often victims of hassle by the military”, the report continued. At the same time, an epidemic of bloody diarrhoea was reported from Libaku Ya Suka, 85 km from Punia, where over 10.000 people had streamed into a newly opened artisanal diamond mining area. Up to 1.000 people were

[67] Interview in Bukavu, December 2004.
[68] Radio Okapi website 2 August 2005.

reported infected with an unidentified disease which killed several dozen[69]. Thus even if coltan and cassiterite mining were to cease and be replaced with diamond mining, which is much more strictly regulated by the Congolese state, this would not automatically result in an improvement in people's conditions.

[69] News agency reports, 5 August 2005.

2. NEW RESOURCE WARS IN KIVU

Not only have the living and working conditions in the mining areas of Eastern Congo remained unchanged since the formal end of war. The battles around ownership of mining rights and trading relationships, a motor of war in Eastern DRC, have also not been resolved. The powerlessness to institute political and judicial order in Eastern Congolese mining demonstrates the inadequacies of the Congo's transition and its mining policy.

During the war, military power often translated into economic and political power and vice versa: People with military means were able to acquire significant market shares in the exploitation and trading of natural resources, and conventional market operators were forced to seek military allies. Since the official advent of peace, this link is supposed to have been broken: Natural resource exploitation and trading is supposed to be governed by state legitimitacy and formal rules instead. But in fact this is not the case. Resource conflicts in Kivu and battles around market shares in mineral trading continue to be carried out with military means, as this section demonstrates.

This cannot simply be analysed as a failing of the transition which will remedy itself once the transition's institutions become more efficient. Disturbing evidence is emerging that the players of the transition are actively involved in the maintenance of disorder in the East and contributing to new resource conflicts.

The political dimension of the transition was the formation of the transitional government in Kinshasa. The military dimension was and is the ongoing process of "brassage", in which the former belligerents unite their fighting forces into a new national army FARDC (Forces

Armées de la République Démocratique du Congo). As these processes gradually take shape in Kivu, an economic dimension emerges which runs counter to the professed aims of the transition: The political and military players use their new-found legitimacy to strengthen their own economic activities, sometimes in conflict with each other and sometimes in collaboration with each other. Thus the structures of resource exploitation internationally denounced during the war continue and are even reinforced in what is now called peace.

2.1 The resource dimension of Kivu's war

This section examines the story of two areas of conflict: Walikale and the ex-Sominki concessions.
Walikale territory in North Kivu was the centre of the cassiterite boom which in 2003-04 took the place of the coltan boom of 2000-01. At the height of the boom, war broke out around the control of cassiterite trading. This was not only a resource war; it was linked to the aftermath of the Nkunda rebellion in Bukavu in June 2004 and the tensions around Kanyabayonga in North Kivu in December 2004. But it had an important resource dimension whose understanding is crucial for an analysis of the way that the DRC's mining policy actually developed in the course of the supposed extension of Kinshasa state authority to the East.
Sominki (Société Minière et Industrielle du Kivu) was the most important mining company in Eastern Congo during peacetime, and the struggle for control of its huge gold and cassiterite/coltan deposits was a key element of the Congo war of 1998-2003. This struggle was carried out on two fronts: on the ground, through military control of mining areas and trading routes; and in the institutions, through concessions and contracts with outside partners.

The formal end of the Congo war has not resolved this struggle – on the contrary: it has become more complicated and intractable as the parties involved are now all part of the same state institutions, while the state is structurally unable to clarify contentious issues. As the confusion at the level of contracts and concessions intensifies, the military dimension of de facto control on the ground appears again to be becoming more important.

Walikale, cassiterite capital

Most cassiterite production in North Kivu comes from Walikale territory, the westernmost part of the province, which has been a war zone continuously for longer than any other part of the DRC. The first "ethnic" conflicts in North Kivu between Banyarwanda and Bahunde in 1993 began in Walikale territory, and Walikale remains in conflict in 2005. Walikale town itself has been cut off by road from the rest of the country since 1996, and what remains of the road has been turned into an improvised airstrip through which precious minerals leave the area and arms and soldiers come in.

Since the two wars of 1996 and 1998, control of Walikale territory has been strategically important because the main roads of Eastern Congo, from Goma and Bukavu to Kisangani, run through it and because military forces stationed along these roads (or what is left of them) are surrounded by a clique of traders and transporters from whom they take large commissions – "security and facilitation payments" and road taxes, estimated at $1 to $1.50 per kilo of minerals. Today, despite the supposed progress in peace and reunification, the military are no longer content with collecting taxes; they also employ workforces who dig in mines situated far off the road in the forest and who transport the mineral products to Mubi

trading centre. All this makes the area a key battleground for control of eastern DRC's mineral trade.
The cassiterite found in Walikale territory has a special reputation. In Goma it is known as "Main Rouge" because of its high iron content, as much as 25%, in form of ferro-oxides, giving it a red colour. The tin ore content is around 60%, giving a pure tin content of 45-55%. Normally, buyers want a tin content of at least 60-65%, but they accept the "Main Rouge" because of the iron.
The fight for control of mines and trading centres was at the heart of the war around Walikale during 2004. The warring parties were former RCD forces now under command of the 8th military region of the DRC based in Goma, former FAC and Mayi-Mayi forces now under command of the 9th military region of the DRC based in Kisangani and led by the former Mayi-Mayi General Padiri, local Mayi-Mayi groups and Rwandan Interahamwe militia (FDLR).
Following the official integration of RCD and Mayi-Mayi forces in Walikale in February 2004, Walikale became the main source of cassiterite for Goma and thus for export to Rwanda. This tendency was reinforced when RCD took sole control of Walikale in June, pushing out the Mayi-Mayi to Itebero in the south-west, where they set up a parallel administration.
From June 2004 onwards, according to a source based in the area, ten to twenty planes carrying 2.5t of cassiterite each could be seen leaving Walikale airstrip every day bound for Goma. This trade was mainly controlled by MPC. In return, consumer goods would be flown in, for exorbitant prices – a bottle of Primus beer retailed for $2.5, equivalent to two weeks' per capita GDP in the DRC and presumably much more in Walikale itself. The RCD administration in Walikale controlled the road to Kisangani and the main cassiterite mine of the area, Bisiye,

located in the forest 45km north-east of this road, According to a humanitarian worker based in Walikale in 2004: "RCD controlled the mine in Bisiye. Everybody was allowed to mine if they gave half to RCD. Then you either carry it yourself or get other people to carry it. Taxis take it to Mubi where you have pans and scales and trucks, and then it is taken to Walikale"[70].

The Bukavu traders did not appreciate their Goma rivals taking control of the Walikale cassiterite trade. In September 2004 the 10th military region in Bukavu, under the command of pro-Kinshasa generals, pushed northwards towards the North Kivu border and Walikale. This caused a five days' break in mineral flights from Walikale, but finally the North Kivu RCD held its positions and even took control of Mubi. RCD finally lost Walikale only in December 2004, when the Kinshasa government flew more troops into North Kivu to fight against the local ex-RCD army in the context of panic about a military intervention by Rwanda. Walikale was taken by pro-Kinshasa forces and has remained under their control ever since.

Initially, cassiterite flights from Walikale to Goma stopped and were replaced by flights to Kisangani and Bukavu. However, from there the mineral continued to be sold to MPC which brought it to the MPA foundery in Gisenyi (Rwanda) just as before.

In the course of 2005, direct cassiterite flights from Walikale to Goma resumed. Local sources claim that trading has been concentrated in the hands of the military and especially the commander and deputy commander of the 8th military region based in Goma, General Amisi ("Tango Fort") from RCD and his deputy who hails from the Mai-Mai[71]. They are said to enjoy wide-ranging rights

[70] Interview in Goma, November 2004.

[71] Information from several concordant sources in Goma.

to transport minerals from Walikale to Goma and then across the border to Rwanda without controls. Thus the "brassage" of formerly opposed military forces in North Kivu into the newly unified Congolese national army FARDC has found an economic dimension, in which the top brass of pro-Kinshasa military, RCD and Mai-Mai collaborate in mineral trading instead of fighting around it.

This works to the detriment of Rwandan Interahamwe (FDLR) forces, who formerly under protection of pro-Kinshasa forces used to control important mines in Walikale territory. They have now been chased out, causing them to move eastwards into Masisi and Lubero territories, closer to Goma and Rwanda, where FDLR attacks have increased significantly since mid-2005. To end that, a FARDC-MONUC operation against FDLR positions in Virunga National Park began at the end of October 2005.

Four aviation companies in Goma operate mineral flights with Walikale today: Kivu Air, Comair, Bunakima and Goma Express. As everywhere in Eastern Congo's mining areas, traders based in the towns have profited from coltan and cassiterite trading and built houses or expanded into other commercial activities. But Walikale's local population has lost nearly everything in the series of wars since 1993. The artisanal miners hardly ever leave the forest and live in lamentable conditions. Some die when the mines they work in collapse. In an area of 12 up to 40 km around Walikale town there are still a few schools or health centres, but further away there are no basic services at all.

Cassiterite trading from Walikale was badly affected by the ban on Antonov flights imposed by the Kinshasa government in September 2005 following a series of air crashes. The number of daily flights between Walikale and

Goma dropped from 8 to 12 a day prior to September to three at the end of the month.

From Sominki to MPC: „Congo Holding"and the origins of the cassiterite economy

As the MPC trading company and the MPA factory in Gisenyi play a central role in the mineral economy of Kivu today, it is important to investigate how MPC got involved in the mineral trade in Eastern DRC. This is also a key to understanding the ongoing power struggles around mining interests in the former Sominki concessions of Kivu, whose carve-up lies at the origin of the way the coltan boom and then the cassiterite boom developed[72].

Sominki, formed in 1976, traditionally owned most of Eastern Congo's mining concessions, with gold mining constituting four fifths of its activities and tin mining (cassiterite being the ore from which tin is extracted and with which coltan deposits are generally found) the rest. In 1996, the Canadian mining company Banro became the majority shareholder in Sominki; in 1997, Sominki was officially liquidated and Banro created two successor companies, Sakima (Société Aurifère de Kivu et Maniema) for gold and RMA (Ressouces Minières Africaines) for tin, led by prominent Kivu businessmen. On 29 July 1998, just before war again started in Congo, President Laurent-Désiré Kabila annulled the Banro deal and gave ex-Sominki to a newly created Congolese state company called Somico (Société Minière du Congo) led by a Kivu traditional leader. Much of the subsequent fighting around Eastern Congo's mining pitted Banro supporters, mostly supporting the RCD rebels and backed by business

[72] This section is based on information obtained in Goma in 2003 and 2004.

interests, against Somico supporters, mostly consisting of Mai-Mai and supported by the Kabila government.
On 2 June 2000, RCD in its turn annulled the Banro partnership and set up a Provisional Management Committee to manage ex-Sominki. This was part of a general strategy to set up front companies of RCD. In 2001, when in the wake of the coltan boom businessmen from all over the place came to Goma to sign contracts with RCD, the RCD administration set up the private company „Congo Holding Development Company" (CHDC) to act as a partner for outside investors, who were brought in especially from South Africa using RCD connections there. According to the RCD's internal arrangements, 98% of CHDC was registered in the name of its director Félicien Ruchacha, a former Gécamines mining engineer now based in Goma; 2% went to RCD politician Gertrude Kitembo, formerly RCD governor of Maniema (and since 2003 Minister for Post and Telecommunications in the Kinshasa transitional government).
CHDC also took over 37 of the 47 ex-Sominki concessions, mostly gold mines; of the other ten, nine (mostly cassiterite) were run by the RCD's Provisional Management Committee while one belonged to the businessman Kallé from Kasai. South African investors obtained a mining contract for the 37 CHDC concessions and proposed to raise capital on the Toronto stock exchange, but RCD rejected their bid.
Instead of relaunching mining, CHDC earned money in other ways. It sold stocks of cement from Kalemie, where RCD was a creditor of the firm Ciment Lac. It manufactured new number plates which RCD attempted to impose on the population in order to raise money, and the North Kivu provincial authorities apparently ran up a debt of $200.000 with CHDC for these number plates

which they were unable to sell to the population in sufficient numbers – in South Kivu the new number plates were almost completely boycotted, but in North Kivu they never really caught on either.
Put under pressure by the UN panel investigations, CHDC tried to recycle itself by creating more new firms: MOBITEL telephone services, GLAS airline, PROSEC private security, SOGECAR insurance, KCB commercial bank. These firms never actually saw the light of day because in the meantime RCD left Goma to enter the transitional government in Kinshasa which was formed in July 2003 and never signed the necessary authorisations before leaving.
Meanwhile, in a contract signed in July 2003 (but predated to December 2002), RCD gave the 37 ex-Sominki concessions held by CHDC to Metal Trading Society, a company with Rwandan and South African shareholders. This was strange, because the very same ex-Sominki concessions had years before been given back to Banro by the Kinshasa government which RCD was now becoming part of. After losing ex-Sominki in 1998, Banro had taken the DRC to court in Washington and won the gold mining titles back on 21 December 2001. On 18 April 2002, Kabila legally recognised Banro as the rightful owner of the majority of Sominki concessions. This was after the creation of Congo Holding by RCD in Goma as manager of these very same concessions, but long before RCD passed them on from CHDC to MTS.
CHDC ceased business on 15 October 2003 and director Ruchacha passed on his post to his successor Dieudonné Shindano for winding up on 18 December 2003.
Regarding the nine ex-Sominki concessions not covered by CHDC, the RCD Provisional Management Committee in charge of them signed a contract with the Gisenyi-based Metal Processing Association (MPA) on 7 April 2003.

According to the contract, Sominki would sell cassiterite to MPA for $900/ton, giving income of $45.000 per month for Sominki's Provisional Management Committee and thus for RCD on the basis of 50 tons per month.
In July 2003, RCD ordered the Committee to annul the MPA contract and replace it with a similar contract with Mining Procession Congo (MPC) – which, as we have seen, is basically identical with MPA. The contract stipulated that Sominki would not receive $45.000 for 50 tons of cassiterite per month but only $9000. The contract was predated to 2 June 2003, before the installation of the transitional government in Kinshasa.
Thus when the transitional government in Kinshasa took office, conflicting contracts covering ex-Sominki remained in place and ownership of ex-Sominki's mining concessions remained unclear.

Banro, Somico, MPC: The seeds of war

At least three parties contesting the same mining interests and each counting on different political allies – this was the state of affairs regarding Sominki at the start of the DRC transition in the summer of 2003. And more than two years later there is no sign of clarification. Instead, war around the mining areas has continued.
The first claimant is the Canadian mining firm Banro, which since a US court ruling of 2001 and an agreement with Kinshasa in 2002 is officially recognised by the Kinshasa government as owner of the ex-Sominki gold deposits.
The second is a group of firms with South African capital, led by MPC, which acquired rights over ex-Sominki concessions and production from the RCD rebels through the dissolution of their own firm Congo Holding; they appear to have unofficial ex-RCD support on the ground.

The third is the Congolese state firm Somico which from 1998-2001 had been recognised by Kabila as the successor to Banro and which, despite the series of partnerships signed between the Congolese government and Banro, never completely gave up its ghost; it may have local support from FDLR.

A formal agreement between Banro and the DRC government was signed on 18 April 2002, giving 35 ex-Sakima concessions (gold mining in Twangiza, Kamituga, Lugushwa, Namoya) to Banro under a revived 30-year mining convetion, while 12 ex-RMA concessions (cassiterite) stayed with the government which would look for investment partners. The 2002 agreement was confirmed in five presidential decrees on 13 March 2003 which provided for the creation of the holding company "Banro Congo Mining" as well as Kamituga, Lugushwa, Twangiza and Namoya Mining. The Kabila decree of 29 July 1998, throwing out Banro and creating Somico, was officially annulled by decree on 15 May 2003. Banro formally wound up Sakima on 30 September 2003, transferring its Sakima shares to the DRC governement after Sakima'a titles in the gold deposits had been transferred to these new companies. It should be recalled that while all these decisions were being taken, the ex-Sakima concessions were in fact being run by the RCD front company Congo Holding and the ex-RMA ones by the RCD's own Provisional Management Committee, and that in the course of 2003 both of these bodies passed their interests on to South African firms. Again this should not obscure the fact that the actual mining areas were not under anybody's exclusive and regular control; they were conflict zones, fought over by several armed groups.

On the ground, Banro in its 12 concessions conducted site surveys in March 2003 whose results were published in September, indicating substantial gold deposits in

Twangiza[73]. On 21 November 2003, the Transitional Government's Portfolio Minister Joseph Mudumbi, an RCD stalwart from Bukavu, presided over the official relaunch of Banro's activities in Kivu at a ceremony in Bukavu.

Banro said that it aimed to prospect in an area of 11.000 square kilometres, stretching southwest from Bukavu[74]. An exploration area of similar size was acquired towards the end of 2003 in Lubero district of North Kivu[75]. A $10 million exploration programme in the 210 km long Twangiza-Namoya belt was announced in October 2004 and the start of core drilling was announced in August 2005[76].

The Banro relaunch in Bukavu and the concomitant removal of Somico was, however, contested. A Somico delegation from Kinshasa occupied the ex-Sominki offices in Bukavu in the days following the ceremony of 21 November 2003, removing the Banro signs which had been freshly put up. Led by one Kakisingi Kya Biseko, it lobbied South Kivu's governor Xavier Ciribanya, "explaining to the provincial authority that it was recognised as manager of ex-Sominki by the Congolese state"[77]. Apparently, this report continued, the governor decided to continue recognising Banro, but "the staff of the company no longer know who their employer is as the Somico delegation refuses to leave the ex-Sominki offices".

On 21 June 2004, Cabinet in Kinshasa proved unable to reach a consensus on whether the decree of 1998 setting up Somico was still valid or not and postponed a decision until the Mining and Portefeuille ministries had reached

[73] Banro press release 16 September 2003.
[74] Banro press release 17 December 2003.
[75] Banro press release 23 December 2003.
[76] Banro press release 17 August 2005.
[77] „Confusion autour de la gestion de Sominki", Digitalcongo 30 December 2003.

agreement[78]. On 5 July 2004, in an attempt to end the stalemate, somebody in the government gave all ex-Sominki rights which it had not already given to Banro to Sakima[79]. But the Energy Ministry in Kinshasa, which is controlled by Joseph Kabila's party PPRD, subsequently announced plans to rehabilitate Lutshurukuru power station in Kalima, the former seat of Sominki, in order to bring power to Maniema's capital Kindu and also to restart Somico's activities. And in August 2004 the South Kivu provincial government, freshly strengthened by the victory of Kinshasa's forces over Laurent Nkunda's pro-Rwandan rebels in June, set up a new "transitional structure" to run the ex-Sominki concessions in Kamituga which are part of the Banro concession[80]. And in the current list of investment projects for which the Mining Ministry is seeking foreign partners, published in March 2005, Sakima is named as the local partner for investors for cassiterite and coltan deposits in Lulingu in South Kivu, while Somico is named for diamond mining in Kasai.

All these decisions have merely served to institutionalise confusion. It is not clear which of them, if any, carries legal force; and it is not clear what effect, if any, they have on the ground. In the mines, the work is done by none of the above players but by artisanal miners who are at the mercy of whoever claims exlusive mineral purchasing rights and can back this claim up with military force.

According to the civil society monitoring umbrella organisation CENADEP, the South Kivu gold mines officially given back to Banro in fact remained under RCD/CHDC control at the end of 2003[81] and even at the

[78] Cabinet minutes as published in Congolese newspapers, 22 June 2004.
[79] Information from Kindu.
[80] Information from Bukavu.
[81] Cenadep South Kivu report March 2004, dated 20 February 2004.

end of 2004[82]. CHDC "continues to run the airports in the former mines, especially Twangiza, Mobale, Kamituga, Lugushwa, Namoya, Salamabila, Luntukulu, Walikale", the 2004 report specifies for 2003. Minerals from these mines, it continues, were taken out by Swala and Kivu Air for Shenimed trading company based in Bukavu. Cenadep names the main trading companies involved in bringing coltan and cassiterite from the mines to Bukavu's Kavumu airport in South Kivu as Groupe Olive (Mudekereza), Ogefrem (Muyeye), and in a less visible way MPC and Shenimed (Gulamali)[83]. A Cenadep source said: "The RCD military who controlled the Kamituga mines with CHDC, which is no longer very active on the ground, are still there. We call it the Opération Divisé Par Deux. The military watch over the miners and take half of what they produce, or even all of it.[84]" This is a common practice throughout mining areas in Eastern Congo.

In the ex-Sominki cassiterite mines of Maniema the main conflict has been about the extent of control exercised by MPC, with its links to South Africa and Rwanda and the contracts it signed with the RCD rebels in 2003. On the strength of these contracts, MPC claimed a monopoly on cassiterite produced by artisanal miners. For this purpose, it created its own trading firm CAR (Central African Resources); other traders offered higher proces than MPC/CAR but the authorities tried to protect MPC's position[85].

In September 2004, while further north armed conflicts began around Walikale, conflicts also broke out in Kalima, the Maniema town in which Sominki is officially based. On 22 September 2004, the police in Kalima confiscated

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[82] Interview, December 2004.
[83] Interview, December 2004.
[84] Interview, December 2004.
[85] Information from Kindu, October 2004.

the cassiterite stock of Medard, the main competitor of MPC, and arrested Medard's representative. There was a popular revolt and the CAR/MPC depots were looted by the population in that very night. According to Radio Okapi, two civilians and three policemen were injured[86]. On 30 September, a trade union called for a general strike against CAR which was widely followed[87].

The Maniema provincial government has criticised both Banro and MPC/CAR. Pointing out that the former head offices of Sominki on the ground were in his province, provincial governor Sumaili Koloso told a local newspaper in February 2005 that Banro was operating in parts of Maniema "without telling me" and that "I have not been told of the terms of the contract with CAR"[88]. He also said he wanted gold exports to be taxed in his province rather than in Bukavu as at present. Later, the provincial government said that CAR was acting as a trading firm although it officially possessed an exploitation licence. Increasingly, Maniema miners are selling their cassiterite to traders acting in the name of the former ex-Sominki arm Sakima as a government-supported structure which is presented as the local branch of the partnership between Banro and the DRC government and even collects taxes directly. Concordant information from Goma and Kindu indicates that MPC has lost a lot of ground, a development borne out by the export statistics.

An investigation by the Maniema NGO Maniema-Libertés (Mali) in August 2005 found that Banro was the sole private operator in the Salamabila and Namoya areas of Maniema, confirming the strengthening of this firm as the

[86] Radio Okapi 24 September 2004.
[87] Information from Kindu, October 2004.
[88] Interview in „L'Étendard" (Goma), 3 February 2005

legal owner of the mines there[89]. Army, police, secret service and agents of the mining administration were present in the mines, "hassling the population in order to have more" and "extorting money from the population". Banro-Congo, present there since December 2004, exported minerals via Bukavu using Swala and Kivu Air, totalling 11.275 tons for the period December 2004 to February 2005, the report continued and echoed the provincial governor's complaint that "the Provincial Mining Division has not received papers from Banro-Congo. The latter says it is regularised by Kinshasa."

In Kabambare territory generally, artisanal miners selling gold to Somico began to be expelled from the mines in August 2005 by the Maniema authorities under the pretext that the mines now belonged to Banro. "Today Banro has been authorised by Kinshasa to exploit these concessions, and so it is normal that everyone else disappears", the UN radio quoted Maniema's Mining Division Chief Omari Ombadelo[90]. However, miners complained that they had legally bought artisanal mining licences. Banro's representative in Kinshasa said shortly afterwards that it had nothing against artisanal miners in its concessions "for the simple resson that our firm Banro, being in the exploratory phase, does not yet mine gold and does not market it either"[91].

Thus Banro/Sakima has gradually extended its influence to Maniema to the detriment of MPC, while Somico, as a rival of MPC in cassiterite trading, has re-emerged in South Kivu. It is said by local sources to be close to certain traditional leaders (Mwami) in South Kivu, using the

[89] „Rapport de la mission effectuée à Salamabila en territoire de Kabambare", Mali-ONGDH, Kindu, August 2005.

[90] Radio Okapi 22 August 2005.

[91] „Climat d'apaisement entre les exploitants artisanaux et la firme Banro", Le Potentiel 26 August 2005.

Rwandan Hutu ex-Interahamwe group FDLR as an armed wing against the interests of the local population[92]. It is especially strong in Luhwindja, part of Banro's gold mining concession, where it is supported by the son of the local Mwami who already in 1998 had been installed as director of Somico when it was first founded by Laurent-Désiré Kabila.

According to sources in Kinshasa, the rivalry between Banro and Somico interests extended to the top of the South Kivu authorities. Governor Augustin Bulaimu, representing the "political opposition", supported Banro; Vice-Governor Didace Kaningini, representing the "civil society", supported Somico. On 12 April 2005, police acting under orders of the governor occupied the ex-Sominki housing estate in Bukavu and expelled the inhabitants, among them leading former Sakima exployees; it was rumoured that he had sold the land to his friends[93]. Bulaimu was then sacked by the Kinshasa government following massive corruption allegations and his successor has been asked by the Parliamentary Commission investigating war-time contracts "not to get involved"[94].

The important thing about all this is that alliances and power relationships are constantly shifting, just as during the war, and that these realities evolve quite independently of formal legality and outside the horizon of possible action by the Kinshasa administration. All players are recognised in one way or other by the government or at least by different members of the government, but they are not able to coexist on the ground. MPC is allied to powerful RCD and pro-Rwandan

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[92] Interviews in Bukavu.

[93] Declaration by the human rights group „Héritiers de la Justice" in Bukavu, 14 April 2005.

[94] Interview with Commission member in Kinshasa, June 2005.

forces, Somico is allied to powerful FDLR forces and Banro relies on the strength of institutional legality which is supposed to find expression in protection by the new Congolese army FARDC. For ordinary people in the mining areas, this situation is opaque, and they remain at the mercy of whoever happens to impose his will in a particular area at a particular time.

Waging war on FDLR

Beneath all the ownership problems, military force decides on the ground. Thus Luhwindja in South Kivu, a mountainous area from where the Mwami came who was appointed head of Somico at its fouding in 1998, has for years been a stronghold of FDLR and thus of armed Rwandan Hutu groups who exploit the local population with the blessing of the traditional authorities. This extends to control of the mining areas, as the following document from Luhwindja attests.
"Spurred on by poverty, some brave people break the prohibitions and go to look for gold and other minerals in the forest. They leave Luhwindja on Mondays, walk for three days and three nights before reaching the mines where they work for no less than three weeks and find whatever is there. Every week they have to give part of what they find to the Warugaruga (Rwandan Hutu fighters). At the roadblocks on the way home they have to give up one kilogram in every five. If they are lucky they leave 10% at each roadblock and bring the rest to Bukavu. If the miners find any cassiterite it is better for them to sell to the friends of the Rastas (dissident FDLR faction) who buy in the latters' name at a low price. If a miner does not have the cassiterite the Rastas demand, he is killed straight away. If he is lucky he has to carry the mineral packets confiscated by the Rastas to their camp. If the unfortunate

carrier weighs less than 50 kg and has to carry 100 kg which he can’t easily lift, the Rastas kill him with a well-aimed bullet”[95]. The report goes on to say that the FDLR/Rastas have allies on all sides: The mineral product confiscated or bought by the Rastas is exported via helicopter to Rwanda; the Mwami of Luhwindja has an FDLR bodyguard.

In July 2005, a joint FARDC-Monuc offensive against FDLR positions in South Kivu began. This dislodged FDLR from Luhwindja, and a new Mwami was installed. But it did not bring peace to the region. The UN radio reported that “after having chased away the Rwandan Hutu fighters, the FARDC are hassling the inhabitants of this locality. The soldiers destroy the houses, occupy the church, raise taxes and steal”[96]. Tens of thousands of civilians fled from the Luhwindja area once FARDC arrived, including the local administration. It was also reported that FDLR combattants were moving from South Kivu into Maniema province and Northern Katanga[97].

However this turns out, it cannot be argued by any stretch of the imagination that the introduction of procedures of institutional legality has served either to clarify the ownership and control of ex-Sominki or to improve the security and living conditions of miners in the ex-Sominki areas.. On the contrary, the series of military conflicts in the region, culminating in the UN/FARDC offensive against FDLR, has made clear that ultimately disputes around Eastern DRC’s mining rights are still settled by military force, whether there is war or peace in the Congo as a whole. This raises the question of whether the

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[95] „Le cri des habitants de Luhwindja et de Burinyi“, Open Letter published by Misna News Agency in June 2005.
[96] Radio Okapi 3 August 2005.
[97] UN Ocha Humanitarian Situation Reports, 22-29 July and 30 July-5 August 2005.

procedures of institutional legality are of any use, and whether there are any possible alternative ways of settling disputes – for example, ways which take account of the concerns of the local population.

2.2 How ownership conflicts in North Kivu prevent local development

War zones are not the only areas of Eastern Congo's mining economy in which the transitional institutions are failing to institute clarity in disputed cases. The case of Somikivu, which runs the pyrochlore mine of Lueshe in North Kivu, shows how intractable prolonged conflict between outside claimants can become even without a military dimension being involved, and what difficulties Congolese interests face. On a smaller level, disputes around the ownership of artisanal mines fester even outside conflict zones, highlighting the absence of strong judicial institutions – another aspect of the failings of the DRC's transition.

Somikivu: outside players exploit the weaknesses of the "legality" concept

One of the strangest and bitterest resource conflicts in Kivu concerns Congolese a lot, but involves them only at the margins. The struggle between German and Austrian interests for control of the niobium mine of Lueshe in North Kivu, which has now landed before the German courts, has shown up the limitations of Congolese powers in mining sector reform. All it has achieved for the Congolese is that the only industrial mine in Eastern Congo which worked during the war was forced to close during peace. But it offers a prime example of how unscrupulously outside interests can exploit attempts to regulate Congolese natural resource managements using concepts and processes of institutional legality, and how easy it is to test the limits of these concepts and processes, leaving behind only a trail of damage and confusion[98].

Niobium (also called colombium) is the sister material of tantalum in coltan and is becoming increasingly attractive as an alternative to tantalum in technological applications. It is extracted from coltan or from a different ore called pyrochlore. The Lueshe mine in Rutshuru district in North Kivu is one of the main pyrochlore mines in the world with estimated reserves of over 33 million tons, giving 808.700 tons of niobite[99]. In 1982, the then government of Zaire founded the "Société Minière du Kivu" (Somikivu) with the exclusive rights to the niobium mine of Lueshe. The Zairian state held 20% of Somikivu, the German company GfE (Gesellschaft für Elektrometallurgie), a wholly owned subsidiary of the US firm Metallurg, held 70%, and the Belgian Cofimines held 10%.

Work at Lueshe proceeded normally until July 1993, when war in North Kivu caused production to cease. The machinery used at Lueshe was brought to Goma and stocked in the depots of the airline TMK, from where it disappeared during the AFDL rebel take-over in November 1996.

These events caused GfE to withdraw from Lueshe; the firm kept its majority stake in Somikivu but withdrew from its operations. Somikivu Chief Executive Karl-Heinz Albers, a GfE geologist, left GfE in 1996 and laid down his post as Chief Executive on 16 May 1997; however, he stayed on as de facto manager of the firm. In 1996, he had founded his own trading firm Masingiro which turned

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[98] This section is based on written documentation and interviews obtained in Goma and Germany in 2004 and 2005.

[99] DRC Mining Ministry (Kinshasa) statistics.

into the hub of an international trading empire, exporting coltan and niobium from North Kivu using Congolese and outside partners. GfE was able to say it had nothing to do with this, while Albers was the de facto Somikivu manager. GfE was partly compensated by the German government for part of its losses in Lueshe, which has caused confusion as to whether GfE or the German government is now responsible for the 70% share still nominally held by GfE.

On 15 May 1997, two days before the AFDL took Kinshasa; Somikivu wrote to AFDL leader Laurent-Désiré Kabila and said it wanted to restart production at Lueshe. However, Kabila's new Mining Minister Frédéric Kibassa Maliba – member of the unarmed opposition against Mobutu previously – refused. Because Somikivu had ceased production in 1993, the firm had "silently renounced its rights" to the mine, he wrote on 16 May 1998 and annouced that he had decided "to liberate the mine of Lueshe and to dissolve Somikivu".

As with other Kabila announcements regarding mining in Eastern Congo, this decision was not effected: In August 1998, the RCD rebellion took control of Eastern DRC; a former Somikivu representative, Emmanuel Kamanzi, became RCD Mining Commissioner. Work recommenced in Lueshe in July 1999 under the management of Albers. Production was officially restarted on 14 July 2000.

According to official statistics, Lueshe pyrochlore production was as follows: 274t in 2000, 691 in 2001, 1346 in 2002, 733 in 2003. At the same time, Albers through Masingiro and his local trading firm GBC established himself as one of Congo's biggest coltan traders. Only the short-lived RCD monopoly on coltan trading established at the end of 2000 broke his hold on the coltan trade.

While Lueshe was booming, the Kabila government in Kinshasa gave the Lueshe concession to a rival firm from

Austria. Johannes and Edith Krall, who had previously been active in Uganda's copper mines. Krall visited Lueshe before the AFDL war started in 1996 and according to his associate Thomas Eggenburg would have taken control of the mine afterwards "easily, if Uganda's army had been there"[100].

On 6 April 1999 Kabila's Mining Minister Kibassa annulled all Somikivu concessions and dissolved the firm, and subsequently the rights to the mine were turned over to Krall. A firm "Krall Metal Congo" (KMC) was founded by decree in Kinshasa on 2 November 1999. A further decree on 15 November 1999 gave "Edith Krall Consulting" the rights not only to Lueshe, but also exclusive prospection rights to a large part of North Kivu stretching from the hills of Masisi to the town of Butembo.

So now there were two "Conventions Minières" for Lueshe: that of 1982 for Somikivu and that of 1999 for Krall Metals Congo. The difference was that that of 1999 was granted during wartime by a government which did not control the areas in question, and thus according to all the principles laid down in DRC peace negotiations – in which administrative acts by warring parties are valid for the areas they control but not for the rest of the country – it is meaningless. This is disputed by Krall Metal Congo's Chief Executive Thomas Eggenburg, who since 2003 also owns "Congo Mining Holding" which holds KMC.

After the official end of the Congo war in 2003 Krall Metal Congo attempted to wrest control of Lueshe from Albers. He was helped by the fact that Albers had got into increasing difficulties in North Kivu: He had apparently pocketed $87.500 life insurance money which should have been paid out to the family of one of his closest Congolese associates after he died in a car accident in Uganda in

[100] Telephone interview, January 2004.

January 2003, but instead in August 2003 the money went to Masingiro.

On 15 January 2004 Albers' German technician in Lueshe, Johannes Wontka, was arrested in Goma and put under house arrest. The reason was "pillage of natural resources" – a claim brought by Krall. Albers was put under house arrest on 27 January. Prosecutors told Wontka that his form had illegally traded in Krall's property. Both were soon freed and left the country.

On 29 March, Albers delegated all his powers to Julien Boillot, French head of the British-based Niobium Mining Company (NMC), which is linked to Albers' trading empire. Boillot is said in Goma to be a creditor of Albers. On 30 March Albers informed the GfE board of directors in writing that he had "resigned with immediate effect" and empowered Boillot "to take all necessary decisions" for Somikivu. On 3 April, Boillot in turn delegated his powers to Modé Makabuza, a rich Goma businessman, well-connected to the local RCD leadership. Thus Somikivu and the control of Lueshe practically went over to the business elite of Goma.

In the meantime, the DRC government in Kinshasa also attempted to reassert its control. Senzeyi Ryamukuru was named as the government's new representative on the Somikivu board and Maitre Clément Mushengezi as its new vice-president on 24 March, and was charged with calling a Somikivu Board meeting and a General Assembly, which he did, for 16 August 2004. On the board meeting's agenda were the "resignation of Karl-Heinz Albers as Administrator-Delegate", "management irregularities by Karl-Heinz Albers and Dr Johannes Wontka", "annulment of the pyrochlore sale contract with Masingiro" and so on. The DRC government thus contested Albers's decisions.

GfE Chief Executive Thomas Jobsky, invited to this meeting, politely declined per letter in the following terms: “We have received your invitation of 17 July 2004 without knowing either whether Somikivu still legally exists or has been dissolved; or whether somebody is exploiting the firm and above all who is financing it... Neither do we have any useful information concerning the situation of the firm”. He pointed out that the DRC Justice Ministry had written to Somikivu on 19 January informing it that the firm had been dissolved in 1999, but that five days later the Mining Ministry had confirmed that the Lueshe concession was held by Somikivu.

The situation was thus as follows: The GfE declined all participation in Somikivu’s activities; Albers had left the country; the persons mandated by Albers to continue his activities were not recognised either by GfE or by the Congolese government, and as a result, as Ryamukuru concluded in a letter to Boillot on 16 June 2004, the DRC was “for the moment the only shareholder still active and present in Goma”. The DRC government formally recognised Somikivu as “only holder of the mining rights” in Lueshe in a cabinet meeting on 6-8 September 2004.

Ryamukuru subsequently presented a report demanding an audit of Somikivu’s books and claiming to show that Albers had defrauded the DRC to the tune of $13,292,115 by selling Lueshe’s production to NMC-Kigali at $2.05/kg while the Kigali market price, at which NMC-Kigali exported to NMC-London, fluctuated between $5.50 and $6.50/kg.

Despite this scathing criticism of Albers’ management, Krall Metal Congo, through its Chief Executive Thomas Eggenburg and through lawyers, has rejected Ryamukuru’s findings because he is acting in the name of Somikivu whose continued existence Krall does not recognise. The Austrian firm has threatened legal proceedings against anyone buying Lueshe niobium, and denies that the Congolese government has any right to do anything about Somikivu at all. In one of the firm's letters, it is claimed that "Krall Metal Congo is the one and only owner of Lueshe", Ryamukuru is a "robber and murder gang member" and "any member of the DR Congo who has a dissenting opinion has to go either to prison or back to school"[101].

Albers himself also disputes the report. His exports, he says, went via Uganda, not Rwanda; the market price was lower than indicated by Ryamukuru; the DRC government had "binned" Ryamukuru's report; and far from defrauding the Congo, he himself had lost all his money in Somikivu[102]. That Albers is in huge financial difficulties is clear. The Krall camp claims he has had to give up his car and Masingiro's office equipment as collateral for an loan from a German friend.

Albers has even lost the flagship of his investment empire: the tantalum mine of Morrua in Mozambique for which his form KHA International acquired the rights in 2002 through its subsidiary Companhia Mineira de Morrua (CMM). The Mozambican government took his mining rights from him and gave them to the Swiss-based Highland African Mining Company (HAMC) after CMM defaulted on a loan; Albers took the government of Mozambique to court, and an administrative tribunal in the Mozambican capital Maputo ruled against him in August 2005. CMM has now closed down[103].

Lueshe itself has been closed since October 2003. The DRC Mining Ministry on 4 March 2005 published an

[101] Letter of 23 December 2004 to the South African lawyer Johan Louw.
[102] Telephone interview, June 2005.
[103] „Mozambique grapples with coltan controversy", Mail & Guardian (Johannesburg), 12 August 2005.

investment and partnership appeal for $11.5 million for Somikivu with a view to rehabilitating the mine in order to produce 1.800 tons of niobium pentoxyde (pyrochlore) per year. But as long as the quarrel with Krall Metal Congo persists, no investors are likely to be forthcoming.

Land insecurity in Masisi: how local players exploit institutional weaknesses

In Masisi, a very small but very mineral-rich piece of land has set two farmers against one another[104]. On 29 May 1998, Bayose Senkoko bought a piece of Mataba hill measuring 5 by 12 metres from Seburo Basharira for $200. On 5 May 2001, Bayose sold a portion of this land measuring 6 by 8 metres to Mbonigaba Buhoro. But in the meantime, an industrial coltan mining permit of the RCD Mining Department (no. 001/DTME/01) for Mataba hill had been given to the MHI firm of mineral trader Edouard Mwangachuchu. The Departmental Decision No 33, signed by the head of department Nestor Kiyimbi, covered an area of 5 km^2 called Bisunzu-Bibatama for five years with the possibility of renewal. Mwangachuchu paid Seburo Basharira $40.000 for Mataba hill which was part of the new concession.

In September 2001, Bayose Senkoko and Mbonigaba Buhoro took Seburo to court, accusing him of having sold the same land twice: first to them, then to MHI. After a public session of North Kivu provincial court in Goma on 20 June 2002 Seburo was found guilty. His sale to MHI of the piece of land he had sold to Bayose Senkoko and Mbonigaba Buhoro was annulled and MHI was ordered to leave the site. Damages of $80.000 for Mbonigaba and $10.000 for Bayose were awarded against Seburo.

[104] This section is based on interviews in Goma in June and July 2005.

On 2 November 2002, Seburo appealed against the ruling. On 5 May 2004, the Supreme Court rejected his appeal. However, Mbonigaba and Bayose still have not got back their land.

"There was even an attempt to give us back our land rights in December 2003", says Mbonigaba Buhoro[105]. "But the police officer charged with this was maltreated by the armed soldiers in the service of Mwangachuchu's MHI who are guarding the concession." He accuses: "I am a customs agent myself and I know that since MHI has chased us from our land in 2001 until today in June 2005 he has exported 158 tons of minerals, and given the local price of $25 per kg he has earnt $3950, partly from land which belongs to us. As the court has annulled his land purchase from Seburo, I think half of his profits belong to me."

Mwangachuhu says that he bought an industrial mining licence following all the rules and that the Congolese state has since granted him another 150 mines. He says he never bought anything from Seburo but just compensated him according to the law for mining on his land[106].

There are a growing number of land disputes in Masisi, and judicial cases are piling up at the prosecutor's office in Goma. Land conflicts around mines contribute to a further deterioration in a situation which is already unstable because of land conflicts between farmers and cattle ranchers.

[105] Interview in Goma, June 2005.
[106] Interview in Goma, June 2005.

3. CHANGING RULES BUT NOT REALITY: THE FUTURE OF MINING POLICY IN THE CONGO

Officially, peace came to the DRC with the Pretoria agreement of December 2002, ratified in Sun City in April 2003 and giving rise to a transitional government including all major warring factions and some non-armed groups of the country in August 2003. With this, the DRC was officially reunified, even though in practice reunification has not yet been completed and the transition has continued past its original end on 30 June 2005.

For the mining sector, reunification of the country means harmonising legislation and regulations so that different rules no longer apply in Goma, Bukavu, Butembo and Kinshasa and that different authorities no longer contradict and fight each other. There is a consensus among national observers that the Congo's natural resources need to be managed differently in peace than they were in war, in a way that conforms to international standards and is at the same time transparent for foreign investors and – at least up to a point - equitable for the local population.

There is however a common misperception in Kinshasa and among large parts of the international community that legality in the DRC can only emanate from a central government in the capital, that there was no state in Eastern DRC during the RCD rebellion and that with peace and reunification state authority would only come to the East if brought afresh from Kinshasa. While this may have been true for some parts of the country, it was not true for Goma and some of the other areas where rebel movements were based and set up their own system of administration. Structures in Goma were less organised than in Kinshasa, but more organised than in the areas of other rebel movements of Eastern DRC. Important parts of the state administrative apparatus continued to function throughout the country during the war – other important parts didn't function anywhere in the country – and the rebel movements regularly presented their decisions as acts of the Congolese state. The Lusaka Peace Agreement of 1999, the first of the many peace agreements for the DRC, explicitly gave all parties "equal status" – which has been interpreted as giving equal legitimacy to administrative and legal acts of all parties.

The Mining Division and other departments of the North Kivu provincial government continued to function autonomously during the war, with their powers reduced to collecting revenue, but acting as agents of the state separate from the Departments of the RCD nevertheless.

A member of the Parliamentary Commission of Inquiry in Kinshasa examining the legality of contracts signed in the name of the DRC State during the war puts it as follows: "Problems are found on all sides, but there are differences. The government-held part functioned according to laws, even if they were all broken. There are archives, there are staff who have been in place for thirty years, ministers with addresses. Over there (in the East) it worked according to the law of the jungle. The RCD split into three groups: those more or less organised, with departments and ministries, in the RCD-Goma; RCD-National worked according to the will of its leader Roger Lumbala, but there are no archives; RCD-Kis-ML also worked according to the will of Mbusa Nyamwisi. He said: "Today all vehicles enter without customs duties! The businessmen are happy, but lots of money is lost. I went to Beni and Butembo, it's a disaster. People present you with IOUs. Planes were requisitioned by phone.

While here (in Kinshasa) it's easy to find archival records, and there are archives in Goma"[107].

Reunification here meant either replacing Goma rules with Kinshasa rules or adding new Kinshasa rules to existing Goma rules. One example is an incident in December 2003 when SCAR, a local insurance company created by the RCD, was threatened with closure by Kinshasa and a crisis between the Kinshasa and Goma authorities ensued, including a short-lived closure of Goma airport. The crisis was resolved at a meeting in Kinshasa during which President Kabila apologised to a delegation of Goma businessmen. Usually, the Kinshasa rule-makers would be unaware of the existing rules in Goma as they never went there, communication between the Eastern and Western parts of the country is slow and restricted to a privileged elite, and those members of the former RCD authorities who took up posts in Kinshasa didn't care about this in any way, not having really bothered to enforce their own rules in the first place. And even when they were aware of this, any decision taken in the East would be dismissed as "illegal" and in need of correction by a "legal authority". Thus, Kinshasa thought that by setting up rules in the mining sector it was "putting order" into a system of "illegal exploitation" ripe with corruption and foreign plunder. Having said this, an undeniable impact of reunification has been that taxes collected locally are sent to Kinshasa, at least in part, by the local central bank. This does not mean that they are automatically put to better use than they would be if they remained at the local level, and the debates on "federalism" during the transition were mainly debates on the level at which state revenues should be kept.

[107] Interview in Kinshasa, June 2005.

Usually, reunification has meant simply setting one arbitrary system next to another and leaving those on the ground to sort out the resulting mess without clear guideline or judicial and financial means. Of course this is not the first time this kind of thing has happened – it happened when RCD took control in 1998, when AFDL took control in 1996/97, and when Mobutu decreed "Zairianisation" in the 70s. The entire history of the DRC and especially of the rules governing its economy is one of unaccountable, short-lived and arbitrary laws succeeding one another, co-existing in contradiction to one another, applied selectively and capriciously and at the same time masquerading as immutable, eternal and incontrovertible truths.

Mining reform in the DRC is practically supervised by the World Bank and is treated less in the framework of natural resource management than in that of public sector reform, seen by donors as a cornerstone of economic reconstruction in the Congo generally. The assumption appears to be that better natural resource management will flow naturally from better economic management. Additionally, specific measures to deal with presumed illegal exploitation are being put in place with a view to attract investors into export-led extractive industries. The main thrusts of mining policy as instituted by the transitional government in Kinshasa are the following:

- Applying the Mining Code of 2002 and other pertinent legislation to the regulation of mineral exploitation and trading in order to formalise the existing informal economy in artisanal mining. This means reinvigorating the relevant administrative structures, disseminating knowledge about the Code ("vulgarisation"), setting up a new licensing regime for miners and traders and rephrasing the distinction between legal and illegal exploitation to coincide with the distinction between formal conformity or non-conformity with the law.

- Reviewing existing contracts and mining concessions, and reorganising existing parastatals in the mining sector, with a view to creating legal security and providing the right conditions for investors. This means setting out clearly for the first time in years who owns what and who has which rights, reforming state-owned enterprises such as Gécamines (copper and cobalt mining in Katanga), MIBA (diamond mining in Kasai), and attracting capital and equity investment.
- Strengthening the Kimberley Process , used to certify diamond exports and applied in the DRC since the beginning of 2003, and developing adaptations of it for other minerals.

This section will examine these areas of mining policy in turn.

The Mining Code

The DRC's Mining Code came into existence during the time of optimism following the replacement of Laurent-Désiré Kabila by his son Joseph as President in 2001 and the restarting of international cooperation with the DRC in 2002 after eleven years. On 26 May 2001, the Kabila government had started an economic reform programme, the Programme Intérimaire Renforcé (PIR), running until 31 March 2002 and destined to put the DRC's finances on a footing permitting international aid and loans to flow: foreign currency trading was liberalised, the system of different parallel exchange rates abolished, state revenues centralised with the Central Bank, an internationally accepted accounting system for the state budget installed and the currency devalued by 84.1% against the US dollar.

In further measures, the state monopoly on diamond and petroleum product trading was abolished and new investment, forestry and mining codes were written. These were drafted by World Bank consultants, and the Mining Code, governing mineral extraction and trading, officially came into force on 11 July 2002 throughout the DRC.

It should be recalled that at this time half the country was not under the Kabila government's control but under that of rebel movements; the peace agreement leading to the formation of an all-inclusive transitional government was only signed in Pretoria in December 2002 and ratified by the Inter-Congolese Dialogue in Sun City on April 2003. At this time, the PIR had already been successfully completed, permitting the entry of the DRC into the HIPC debt relief initiative, and been replaced by a three-year Programme Économique du Gouverment (PEG) running from mid-2002 to mid-2005. The parameters of the PEG and thus of economic policy in general therefore lie outside the scope of action of the transitional government - which was originally designed to leave office on 30 June 2005 before its own procrastination forced a prolongation of the transition. The Mining Code, internationally praised for its liberal thrust, is part of these parameters.

The Mining Code reaffirms that "the deposits of mineral substances... are the exclusive, inalienable and imprescriptible property of the State. However, the holders of mining or quarry exploitation rights acquire the ownerhip of the products for sale" (§3). Part of the Code details the mode of acquisition of such rights and also of prospection or exploration rights, which can easily be converted into exploitation rights.

In crucial areas, it appears that there is no way for the State not to grant such rights if somebody wants them. Thus "mineral prospecting is free over the entire national territory" except where specifically forbidden, subject only to a "preliminary declaration with the Mining Registry" (§17). If the Registry doesn't issue a Prospecting Certificate within five days of such a declaration, "the declaration of prospection will be deemed as a Prospecting Certificate" (§18). Similarly for exploitation rights: "Should the competent authority not send its decision.... the decision to grant the mining or quarry right will be deemed to have been given" (§43).

There is a precise definition of roles within the administration. The President has jurisdiction over the classification of mineral substances and the designation of areas out of bounds for mining (§9), the Mining Minister over the granting of mining rights, trading and export authorisations and the creation of artisanal mining zones ($10), the Provincial Governor for issuing traders' cards for artisanal mining procuts, the Provincial Mining Division for the issuing of artisanal miners' cards. Additionally, a Mining Registry administering the granting of mining rights is created under the joint authority of the Ministries for Mining and Finance (§12), partly contradicting §10. There is also a Geology Directorate, a Directorate of Mines to "control and inspect" mining exploitation and a Department of Protection of the Mining Environment.

The Code regulates aspects of mining which were not clearly regulated before. One is the exploitation of tailings, meaning the left-overs of formerly industrial mining in the areas of Gécamines, Miba and Okimo. Another is small-scale mining, as distinct from industrial mining. A clear division is attempted between industrial and artisanal mining, contradicting reality in most of the country: "A mining perimeter covered by a valid mining title cannot be transformed into an artisanal mining area... As long as an artisanal mining area exists, no mining title can be granted over the area, except for an exploration licence applied for by a group of artisanal miners who are working in the area" (§109). Further rules for artisanal mining and the sale of artisanal mining products stipulate that only Congolese nationals may have a traders' card delivered by the Provincial Governor and that artisanal mining products may only be sold to holders of such a card (§116-120).

Royalties payable by holders of mining rights are fixed as follows: 0.5% of sale value for iron or ferrous metals, 2% for non-ferrous metals, 2.5% for precious metals, 4% for precious stones, 1% for industrial minerals and solid hydrocarbons (§241). "The mining royalites are paid by the holder of the mining exploitation title to the Public Treasury. The latter is in charge of distributing the receipts of the mining royalties as follows: 60% remains in the hands of the Central Government, 25% is paid into an account designated by the Provincial Authority where the project is located and 15% into an account designated by the Town or the administrative territory in the area where the exploitation activities take place" (§242).

Product sales are generally taxed at 10% (§259, 262). Exporters are obliged to repatriate 40% of their export earnings into the DRC and to report monthly on their transactions to the Central Bank (§269-271). Regarding taxes and customs, the regime of the Mining Code may be changed by law – but only in the direction of "more favourable tax or customs provisions than those contained in the present code" (§222).

The Code specifies a tight timetable for its application, which has not been followed. Thus, the Mining Ministry was supposed to draw up a list of existing mining permits held by state enterprises within 45 days of the promulgation of the code (11 July 2002), failing which all these permits would lapse; private title holders were supposed to request renewal within three months. The "Règlement Minier", in which the operational rules for the application of the Code are set out, was to be published within six months, during which time all permit renewal demands were put on hold to allow for the establishment of the Mining Cadaster and the sorting out of existing titles.

None of this has been done within the specified periods, so that under a strict reading of the Code no valid mining permits presently exist within the Congo – or, it could be argued, all permits are valid as long as someone has demanded them. As with all other legislation of the DRC, reality proved stronger than timeframes. Most mining concessions were not confirmed until November 2003, and some of the more intractable disputes have not been resolved yet due to their political nature. The Mining Code gives ample scope for anybody to claim mining rights if they have followed the correct administrative procedures, regardless of whether there has been a government decision, and does not state how competing claims to the same area can be resolved or how the existence of artisanal mining in industrial mining areas should be dealt with.

Mining reforms and undermining reforms

On 18 June 2003 the World Bank released the Mining Sector Tranche of its Economic Recovery Credit of June 2002. This loan was worth SDR 20 million and governs practical policy in the DRC mining industry. The objective is "to create the foundation for improved governance in the management of mineral resources in the DRC; and to increase the contribution of the sector to the country's reconstruction and economic growth on a socially and environmentally sustainable basis"[108]. It has two "key building blocks": "i) reforming the legal and regulatory framework, and ii) enterprise reform. The enterprise reform of greatest urgency concerns the collapsed copper sector parastatal, Gécamines, the largest employer and provider of social services in Katanga. A strategy for the still-operational diamond producing parastatal MIBA will be developed as part of more general parastatal reforms in preparation" . Legal and regulatory reform means applying the new Mining Code and sorting out mining titles.

When the transitional government provided for in the Sun City agreement took office in Kinshasa in August 2003, the Mining Ministry was given to Eugène Diomi Ndongala of the Démocratie Chrétienne as a representative of the unarmed political opposition. In a long presentation to a local newspaper, Diomi Ndongala set out his priorities: after internal and administrative reforms, first, "to look for foreign investors", second, "to elaborate documentation on the mining sector in DRC", third, "to travel abroad and look for partners"[109]. Soon after taking office he specified: "The objective is to relaunch the mining industry by inviting large foreign companies"[110].

However, huge problems have emerged with this programme of reform. The main one is the multiplicity of decision-makers and the opacity of structures in Kinshasa which bedevils all aspects of the transition anyway. When Diomi Ndongala took office, he found first that his Ministry, originally the Ministry of Mining and Hydrocarbons, had been amputated and that

[108] This and subsequent citations: World Bank: DRC Economic Recovery Credit Cr. 3660-DRC, Release of the Mining Sector Tranche, June 2003

[109] „Eugène Diomi Ndongala relance le secteur minier", La Libération 26 December 2003.

[110] Intreview in Kinshasa, February 2004.

Hydrocarbons had been set up as a separate ministry under control of Kabila's outgoing Minister of Mines. Various public bodies whose work is integral to the work of the Mining Ministry had also been hived off and set up as separate entities, mainly the Mining Cadaster (controlled by Kabila's outgoing Vice-Minister of Mines) which determines the validity of mining concessions, and the certification body CEEC which among other things delivers Kimberley Certificates for diamond exports.
The Mining Cadaster CAMI, which began work on 26 June 2003 and registered all incoming claims of mining concessions, including numerous competing claims to the same area, subsequently lost its function of confirming the validity of titles. This was given by the Minister to a "Commission de Validation", including representatives of various ministries, the Presidency, Civil Society and entrepreneurs. It is unclear whether this Commission ever actually existed, because the necessary Presidential Decree was never signed. However, following a dispute with the World Bank, CAMI Director-general Mbaka Kawaya was suspended by Diomi on 3 May 2004 and resigned on 12 June[111]. Mbaka Kawaya was taken to court by the Ministry for "financial mismanagement, giving undue advantages to members of the board of directors and paying irregular expenses during his suspension"[112]. The Mining Cadaster was closed and did not resume operations until 30 March 2005. Thus deliberate confusion has continued over the validity of mining titles – a major cause of instability in Eastern Congo and also in Katanga.
The main adversary of Diomi Ndongala was Vice-President Jean-Pierre Bemba, leader of the MLC rebel movement and the vice-president in charge of economic

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[111] „Cadastre Minier: Mbaka Kawaya jette l'éponge", Le Phare 13 May 2004.
[112] „CAMI: Le directeur général suspendu appelé à comparaitre devant la justice", Le Potentiel 21 August 2004.

affairs, thus with extensive decision-making powers in the transitional government. Much of Diomi's drive against export fraud was seen in Kinshasa as being directed against the diamond export circuits used by Bemba via Brazzaville[113]. Bemba had repeatedly annulled decisions taken by Diomi. Thus, one of the most important mining contracts signed by the transitional government for a Gécamines joint venture in Katanga, the Ruashi/Etoile mine, was annulled by Bemba shortly after its signature. Already on 9 September 2003, Diomi had in one of his first decisions banned 16 mining companies; Bemba demanded the retraction of this, and most of them were later alleged to have remained in operation[114]. Bemba's MLC gained the directorship of the diamond export certification authority CEEC when the DRC's public bodies were shared out amongst the parties of the transitional government on 10 August 2005.

In November 2004, Diomi Ndongala was one of six ministers suspended by President Kabila because of alleged corruption detailed in the report of a parliamentary Commission of Inquiry. It was never made entirely clear what the precise allegations against him were; the report of the Commission of Inquiry has never been published and no judicial proceedings which would have required public accusations were ever effected.

In an interview after his dismissal, Diomi Ndongala spoke of a struggle "between the force of law and the law of force" and "mafia networks" who had worked against him, and he said: "A whole series of strategic decisions adopted by Cabinet on my initiative were never implemented because of the lack of promulgation of the decree by the head of state or because of obstacles in the

[113] See eg: „Le diamant de l'Équateur échappe à l'État congolais", Le Potentiel 6 August 2004.

[114] Information from Kinshasa, August 2004.

presidential circles"[115]. Diomi Ndongala was replaced by Ingele Ifoto, previously Minister for Welfare, whose activities against fraud and illegal exports have been less visible.

Revenue collection is proving as difficult as ever. In May 2005 it was announced that Gécamines owes the Mining Cadaster $14m in unpaid mining royalties and Malta Forrest over $20m. Theoretically, firms not paying their dues can lose their mining titles after 45 days, but such a measure has not been taken in these cases[116].

Diamond scams are for ever

The clearest example of the ambiguity of mining reforms in the DRC during the transition is provided by the diamond sector, the DRC's biggest export earner.

Here the old Kabila government had tried to fix things for its own interests before the transition. For the most important diamond parastal MIBA (Minière du Bakwanga), operating the mines around Mbuji-Mayi in Eastern Kasai over an area of 78.000 square kilometres, the Kabila government had signed a secret contract in April 2003. This gave the Panama-based diamond trading firm Emaxon, linked to the Isreali Company IDI which during the war allegedly arranged Israeli military support for Kabila, the exclusive rights to 88% of MIBA diamond production until 2007 at a 5% discount[117]. Lucrative parts of the MIBA concessions had already been ceded in

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[115] „Le Potentiel va plus loin avec Eugène Diomi Ndongala", Le Potentiel 28 February 2005.

[116] „Les entreprises minières insolvables sommés de se mettre en ordre", Digitalcongo 12 May 2005.

[117] Details were reported by IPIS and criticised in the international press at the time, eg „Power Struggles and Transparency in the Sale of MIBA Diamonds", IPIS Editorial, Antwerp 10 September 2003; „Africa's conflict diamonds: is the UN-backed certification scheme failing to bring transparency to the trade?", Financial Times 29 October 2003.

wartime to Sengamines, a joint venture set up by a private company owned by Laurent-Désiré Kabila and another owned by generals from Zimbabwe in 2000 and later ceded to Libya; this was bitterly opposed by MIBA and the Kasaian population.

Diomi Ndongala tried unsuccessfully to have the Emaxon contract revoked, and during his tenure other strange mining contracts in other sectors were signed outside his ministry. He had great trouble in fighting fraud in diamond exports, often putting himself at loggerheads with people close to President Kabila, for example around the clandestine export of a 822 carat diamond valued at $17m via Brazzaville to Belgium in May 2004. This triggered a Kimberley Process investigation of the Brazzaville diamond transit trade which led to the exclusion of the Republic of Congo from the Kimberley Process in July 2004.

Diomi has since claimed that he reduced fraud in mineral exports, estimated at USD 450m per year, by half during his tenure[118]. The exclusion of Brazzaville from the Kimberley Process led to record diamond export earnings of $81.4m for the DRC in July 2004[119] and diamond production rising from 1.6m carats worth $46m in June 2004 to 2.715m carats worth over $72m in July 2004[120]. However, official exports declined again subsequently, reflecting continued power struggles[121].

All in all, the DRC's official diamond export revenues as published by CEEC rose from $203m in 2001 to $321m in 2002, $643m in 2003 and $726m in 2004. In the first nine months of 2005, revenues were $679m. However, not all

[118] See Note 115.
[119] AFP 2 August 2004.
[120] UN News Centre 4 August 2004.
[121] „La baisse des recettes du diamant perturbe le circuit economico-financier", Digitalcongo 18 September 2004.

was what it seemed. According to Kimberley Process figures, DRC diamonds sold for $33 per carat on average in 2004, compared to $100 for South Africa and $166 for Angola; thus the DRC earned as much by selling 30 million carats as Angola did selling 6 million. Emaxon buys MIBA diamonds for only $13,40 per carat, less than the price paid to artisanal miners[122]. Export tax revenues represent 4% of DRC diamond production, compared to 11% in South Africa and 14% in Angola [123]. Continuing fraud in some parts of the country and systematic under-valuation of exported diamonds from the DRC is recognised as a severe problem.

The recovery of the industry has thus been compromised. According to MIBA director Gustave Luabeya, the firm's profit threshold lies somewhere between 7.5m and 8m carats per year; in 2002, MIBA produced 5.5m carats, in 2003 6.7m and in 2004 7m carats[124]. Luabeya said in the same interview that of MIBA's 78.000 km², until now only 40 km² had actually been exploited, giving huge development potential. For that he forecast joint ventures with foreign partners giving "three or four firms the size of MIBA". It is well known in the industry that since before the war the world diamond market leader De Beers from South Africa has wanted to take over MIBA and thereby strengthen its hold on the industry. On 28 October 2005, Cabinet in Kinshasa gave MIBA green light to seek foreign partners and specifically approved partnerships with De Beers and two other companies.

On a more practical level, the continued problems of the diamond sector were detailed by diamond operators at a

[122] „L'industrie congolaise du diamant en perte de vitesse", Le Potentiel 23 September 2005.

[123] „Fausse note dorée pour le diamant congolais", Le Potentiel 6 August 2005.

[124] „Le PAD Gustave Luabeya: Avec les nouvelles acquisitions de la MIBA, l'avenir de l'entreprise est plus que garantie", Digitalcongo 4 June 2005.

seminar in Kinshasa on 25 February 2005. "The diamond operators together denounced the various hassles they encounter in their functions and administrative lethargy in signing documents, especially Kimberley certificates. Additionally there is hassle from different security services and payment of taxes outside the Mining Code and Mining Regulations", it was reported from this seminar. "The participants unanimously recognised that the diamond industry is the biggest state employer, but in the provinces and communities where diamonds are exploited poverty is recurrent".[125] One example: In 2004 in Kasai Oriental the diamond trading licence, official price $500, was sold to some traders for $3000 and the buyers were wrongly told that this gave them an export licence; when they later complained and wanted their money back, they were told to ask the Finance Ministry in Kinshasa[126].

Regarding the MIBA parasite Sengamines, the parliamentary commission examining state contracts signed during the war has concluded that the Sengamines contract should be dissolved and the concession revoked[127]. Sengamines officially announced that it was closing down in the middle of August – in any case, staff had by then been on strike for months and production had all but ceased because fuel had run out five months earlier.

In the middle of 2005, much of the main diamond mining area in Kasai was in more or less open revolt against the Kinshasa government. The opposition party UDPS (Union pour la démocratie et le progrès social), whose stronghold

[125] „Diamant: les opérateurs d'accord sur la mise en place d'un cadre de concertation", Le Potentiel 28 February 2005.

[126] „Kasai Oriental: Les diamantaires et la division des Mines à couteaux tirés pour la carte de négociant", Le Potentiel 11 January 2005

[127] Interview with Commission member in Kinshasa, June 2005.

is in Kasai, made the regions around the diamond mining areas of Mbuji-Mayi and Tshikapa into the main centres of the hoped-for nationwide uprising against the prolongation of the transition beyond 30 June 2005. On that day, more violent deaths were recorded in these two towns than anywhere else in the DRC. Violent clashes between government forces and UDPS supporters preceded 30 June and continued afterwards. Commentators have not failed to point out that the reasons for violent protest lay as much in socio-economic underdevelopment as in political grievances[128].

Violence has continued in the Kasai diamond-producing areas since 30 June. "Illegal" artisanal miners and deserters from the police and the army are reportedly clashing more and more frequently in the MIBA mines despite – or because – of these being theoretically sealed off from the outside world by the army. Some reports claim that there are different armed groups, each with their own allies in the security services and their own miners, originating from different parts of Mbuji-Mayi and fighting for access to the mines, with deaths running at 30 per month, 10 killed on 18 October 2005 and 22 at the beginning of November[129].

The development of the diamond mining sector throws into stark relief one of the central claims usually made by those hoping that better regulation is the key to improve conditions in mining areas. While diamond production at first increased and government revenues from it soared, growth rates were soon stalled by political problems,

[128] See „Mbuji-Mayi, un volcan en ébullition latente", Le Potentiel 8 June 2005.

[129] „Dix creuseurs de diamant tués dans le polygone de la Miba", Le Potentiel 22 October 2005, „Mbuji-Mayi: 22 creuseurs clandestins de diamant abattus", Le Potentiel 5 November 2005.

living conditions in the mining areas have, if anything, got worse, and popular discontent has risen.

Katanga, the law of the jungle

The failure of the DRC's mining policy to improve living conditions in the mining areas is even more evident in Katanga, the DRC's most important mining area. The parastatal Gécamines, historically the biggest firm of the country and cornerstone of the Congolese economy over decades, holds around 30.000 square kilometres of mining concessions around Lubumbashi, Likasi and Kolwezi in Katanga containing the highest concentrations of minerals in the world. However, during the Mobutu dictatorships its earnings were regularly siphoned off by the President for private purposes instead of being reinvested, leading to almost total collapse of production by the mid-90s. Large numbers of foreign investors, some serious and many not, have since entered into contracts for parts of the Gécamines concessions; the legal basis of many of these contracts is unclear, and the parliamentary commission investigating state contracts since 1996 has dealt with no less than 162 separate and partly conflicting contracts signed on behalf of Gécamines[130]. At the same time, the population of the mining areas, mostly settled there during colonial times, was left to itself and resorted to artisanal mining to survive, just as in Eastern DRC.
In Eastern Congo armed conflict between warring parties governs the way artisanal miners could produce and sell minerals, and in the eyes of most foreign observers this serves to explain the legal wrangles and violently exploitative conditions in the mining areas. In the Gécamines area of Katanga there is no such excuse: it has never been a war zone. But conditions are no better than

[130] Interview with Commission member in Kinshasa, June 2005.

in Eastern DRC – in fact, in many respects they are worse[131]. Individuals representing state authority are more powerful and invulnerable in relation to the ordinary population and operate a significantly higher level of harrassment an violence against critics. Freedom of movement is curtailed not by force of arms, but by a multiplicity of "security bodies" and through private fencing of roads and areas, which is no less effective. Mining and trading contracts are even more opaque than in the East, and the financial and political stakes involved are significantly higher. As mining constitues a much larger part of economic activity in South Katanga than in Kivu, mining conflicts are much more important and become much more vicious.

Obscure Congolese and foreign businessmen corrupting and manipulating local populations and organisations are a common and much-lamented factor of Katanga politics, and many observers point directly to the "famille présidentielle" and friends of President Kabila as main players. As the power-brokers of Katanga have always gone through the recognised government authorities, they have no trouble with presenting themselves as "legal" or "legitimate" and therefore have no problem with behaving in forms which would disgrace any "illegal" operator. At the same time, social services and basic infrastructure is lacking as much as in Kivu, if not more, while pollution, environmental destruction and resulting health problems are much more prevalent. Amongst civil society in Katanga, unlike in Kivu, there is a pronounced

[131] The following observations are based on interviews with Katangese civil society and human rights organisations and field visits to Lubumbashi, Likasi and Kambove in June 2005. Many Katangese organisations have produced detailed reports spelling out what is briefly summarised here. See especially „Le pillage s'intensifie", Asadho/Katanga,

feeling of powerlessness and forlorn battling against impossible odds with no outside recognition or support.
"Copper, cobalt, tin, gold, uranium are today exploited in total anarchy which benefits only a handful of speculators. Lubumbashi, the second city of the DRC, offers practically no employment to its inhabitants who survive in the informal sector. Gécamines, the former flagship of the Congolese economy, is bankrupt. Fraud has replaced legality. There is generalised corruption from the top of the state to the politicians, including local administrators. The Mining Code and laws, which were voted over a year ago, are neither applied nor respected"[132].
Environmental and health issues feature strongly in the work of NGOs in the Gécamines areas. The complete lack of protection for the inhabitants of mines; the general pollution of drinking water; toxic emissions from factories; radioactive contamination in the mines to the point that according to popular rumour child miners are so irradiated that TV sets go out automatically when they walk past – conditions of this kind are criticised by all groups. The situation in the uranium mine of Shinkolobwe, where irradiation is high and following a UN investigation the closure of the mine was recommended in 2004, is well known internationally, but what is less known is that the conditions of Shinkolobwe are not regarded as an exception but as the norm. A group of NGOs in the mining city of Likasi has highlighted how sulphuric emississions and radioactivity contaminate air and water in the town and its environs, leading to high levels of toxicity in the ground and in local agricultural produce. Typically, their report culminates in the attempt

[132] „Le secteur minier congolais gangrené par la corruption", Le Potentiel 19 April 2004.

to find which firm is doing what where – information not generally available to the general public[133].

What is important for the purposes of our report is that attempts by the international community and the transitional government to reform Gécamines ignore the local population completely. In the context of the release of the Mining Sector Tranche in 2003, the World Bank said that it would "support capacity building at the government level for the enforcement of the new Mining Code, the on-going restructuring of Gécamines and a further social safety net for the Gécamines workers choosing to leave the company "[134]. In accordance with this, Gécamines restructuring to date consists mainly of the "voluntary departure" of 9240 redundant staff, many of which found themselves penniless and turned to artisanal mining instead or sent their families into the mines to earn money, using the inside knowledge they had about mining deposits[135]. In this way, a central bank of World Bank policy ended up undermining the policy itself.

In 2004, a Committee for the Piloting of Reform of Public Enterprises (Copirep) was set up in Kinshasa to run Gécamines reform and ultimately that of all state enterprises in DRC. Its work is closely supervised by the World Bank which asked the British consultancy firm IMC (International Mining Consultants) to lay out options for the future of Gécamines. In accordance with an IMC proposal, Gécamines management was then contracted out; in November 2004, the French consultancy "Sofreco" won the contract to run Gécamines for 18 months "with

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[133] „Assainissement du milieu: Cas de la ville de Likasi et Kambove", report by ADDL Likasi (Actions pour le développement durable de la ville de Likasi), August 2004.

[134] World Bank: Background Paper to the Release of the Mining Sector Tranche, 18 June 2003.

[135] Interviews in Lubumbashi, June 2005.

the mission of assuring the stabilisation and protection of Gécamines assets, putting into place mechanisms which permit Gécamines to begin a relaunch of its productive activities, and studying mechanisms of taking over its social sector"[136]. Typically, nothing happened after that for a long time until the Sofreco partnership was approved by cabinet on 19 July 2005. According to press reports, Sofreco will renegotiate all existing contracts and obligations – which are in any case being audited with World Bank support and also being investigated by the DRC National Assembly – and create a new firm, provisionally called "Gécamines A", uniting the most profitable bits of the old Gécamines; in this, Gécamines as hitherto known will hold 25% and investors will be sought for the other 75%. This new firm could then gradually take over the other former Gécamines activities – or not, as the case may be[137].

In August 2005, the Gécamines trade unions met in Likasi and "observed the veiled liquidation of the firm" which they fear is likely to lead to "Gécamines being dismantled and centred in Likasi where only 10% of its assets are found"[138]. This slimmed-down Gécamines would have to shoulder the bad debts of the past while profitable investors get the rest of the Gécamines concessions debt-free and personnel-free.

How the new Gécamines administrators will deal with all the firms from all over the world, from Canada through China to Australia, which think they have already acquired rights to parts of Gécamines is unclear. According to the Parliamentary Commission investigating all parastatal contracts signed during wartime, there are

[136] Digitalcongo, 29 November 2004.

[137] „Réforme des entreprises publiques: flou artistique autour de la restructuration de la Gécamines", Le Potentiel 29 July 2005.

[138] Declaration of „Congrès des Peuples du Katanga", 5 September 2005.

162 such contracts for Gécamines alone, and since the war many more have been added. The challenge of finding out who has given what rights to whom in exchange for what and with which consequences alone could take many years – during which the conditions of the population are likely to worsen.

"Gorilla-friendly coltan": a mirage

One of the avowed aims of the transitionsl government in Kinshasa is to regulate all precious mineral exports along the lines of the Kimberley Process for diamonds. This has been announced on many occasions by the relevant political leaders and is part of the idea behind the DRC's adherence to the British-led Extractive Industries Transparency Initiative (EITI) which was announced in May 2005 and reaffirmed in October 2005. Especially interesting in this context, given the debates about illegal exploitation, would be a certification regime for coltan.

Opinion is divided as to whether this is feasible. Tantalum as such cannot be sourced, but specific coltan deposits may be traceable to their origin due to their specific mineral make-up. It is argued that if there was a way of delivering certificates of origin for coltan, this would stop Congolese coltan from being traded as produce of neighbouring countries, provide a disincentive for smuggling and force traders to declare their activities and pay the relevant duties, just as is theoretically the case with the Kimberley Process.

The German firm HC Starck, which claims to have stopped using Congolese coltan, has expressed interest in a certification regime and has teamed up with the British-based Dian Fossey Gorilla Fund (DFGF) to look into socially and environmentally coltan mining in or around the Kahuzi Biega National Park in South Kivu. In April

2003 the Dian Fossey Gorilla Fund (DFGF) published a "Scoping Study on the Artisanal Mining of Coltan in the Kahuzi Biega National Park" which argued that while "it would be unethical to advocate and impossible to implement a complete ban on coltan mining in the region" the goal should nevertheless be that mining should cease in the park, that miners should be enticed back to agriculture, that the mining sector should be formalised and that the focus should be "to alleviate poverty by providing financial betterment and empowerment to local communities and assist in rural development"[139]. In the same month, the HC Starck Newsletter said the company was supporting the DFGF proposals[140]. In May 2003, a joint conference in Durban set up the so-called "Durban Process" to translate these propsals into action. This was officially launched at the end of July 2003. A second meeting took place in Arusha, Tanzania in April 2004, a third was planned for Kinshasa in May 2005.

At the Tanzania meeting, HC Starck's head of environmental affairs, Ernst Joachim Martin, said that Starck would be happy to be back in the DRC[141], but that coltan had to be "ethically produced, without polluting or destroying the environment or using child labour", "marketed in accordance with international law" and that "to this end, his company would always demand some kind of certification"[142]. Thus the process appears designed to secure sources of coltan which are beyond criticism. Greg Cummings of DFGF suggested that a separation plant like that of MPA in Gisenyi could be built in the DRC[143]. It remained unclear what difference it

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[139] Scoping Study on the Artisanal Mining of Coltan in the Kahuzi Biega National Park, DFGF, April 2005.

[140] HC Starck Newsletter, April 2003.

[141] Durban Process 2004 Meeting Report, p. 18

[142] ibid., p. 12

[143] ibid., p. 12

makes to the welfare of miners whether their product crosses the border to Rwanda before or after some pre-processing.

The Durban meeting had recommended four "priority steps":

- "enforcement and dissemination of the new DRC mining code emphasising its potential for capacity building within the mining sector""
- "strengthening the monitoring capacity of the Kahuzi-Biega national park wardens"
- "a pilot project combining agricultural and artisanal mining initiatives as well as the identification and evaluation of land and mining deposits outside of the park"
- "a micro-finance system for small to medium sized enterprises as alternatives to artisanal mining"[144].

The second meeting in Arusha heard that not much had happened since Durban and that security problems and practical problems related to the dissemination and implementation of the Mining Code continued. Various time-tables were proposed for further actions, none of which have apparently been met. The final resolutions had not yet been circulated to participants in December 2004, eight months after the meeting[145].

The pilot project had not yet got off the ground and no site had yet been selected, despite assistance from MONUC. A site visit by Dian Fossey in January 2004 had been unable to reach the mining areas in question due to logistical problems and security concerns. One mine visited was ruled out of the question for a pilot project as the main product there was cassiterite, not coltan – a clear indication that the concern of the Durban Process is not

[144] Durban Process 2003 Meeting Report.

[145] Interview with ICCN Chief Warden Iyomi Iyatsho in Bukavu, December 2004.

mining in Eastern Congo as such but the creation of an internationally acceptable source of coltan in Kivu.

The Durban Process appears to have stalled. One of its main conceptual problems appears to have been that it did not link in with the work being done on the ground in Kahuzi-Biega National Park to discourage artisanal mining in environmentally protected areas. According to the ICCN Chief Warden Bernard Iyomi Iyatsho, at the height of the mining boom there were 90 artisanal mines (carrières) in the park, of which 33 have since been closed[146]. The mining areas are concentrated in Nzovu on the southern fringe of the park and Itebero on the northern fringe. The mining, Iyomi explained, is done by the local population, together with FDLR forces who sell the produce and traders from Bukavu who go there and buy it.

The closure of mines, he explained further, was the result of a "collective process", in which the Durban Process played only a marginal role – ICCN, represented locally by the German cooperation body GTZ, has kept the park running at least in part during the entire war even when officially foreign assistance for this was suspended. "It's a combined effort of the German development cooperation which pays money, the local authorities who do sensitisation, the army, and also since November 2004 DFGF in the Durban process which has injected $10.000 to strengthen our action"[147].

ICCN and GTZ together with the Environment Minister of the DRC (who comes from the Mayi-Mayi), are strongly opposed to any Durban Process project which would legitimise artisanal mining inside the park. Currently, according to Iyomi, the idea appears to be to set up a pilot project near Itebero outside the park's borders. The choice

[146] Interview in Bukavu, December 2004.
[147] Interview in Bukavu, December 2004.

of Itebero is surprising given that it was a stronghold of the Mayi-Mayi forces who left Walikale in June 2004 following fighting with RCD and seat of their own rival district administration.

The GTZ representative responsible for the park, Carlos Schuler, maintains that progress is being made in discouraging mining inside the park without using the Durban Process, with park rangers reaching the lowlands of the park in 2004 for the first time in years, and that the number of gorillas has reached a record of 163. From his point of view, the Durban Process is an attempt to gain access to coltan without going through the proper environmental procedures of the government, and could prove disastrous as it increases the attractiveness of coltan again by holding out the prospect of renewed HC Starck purchases[148].

All observers locally concur that it is not clear what precisely the Durban Process is supposed to achieve from the point of view of the people concerned. A local representative of the natural resources network Cenadep says: "Ther is no clear idea regarding the population. There is the local population and the autochtonous people who have land problems with the park, and the idea is to discourage coltan mining in the park and encourage it outside. But people are wondering: isn't it possible to develop alternatives to mining – agriculture, small trading? People need cash in hand"[149].

The Congo remains empty-handed

What has the DRC's mining policy achieved during the transition? "Acquiring mining rights in the DRC is now almost laughably easy", a South African specialist media

[148] Interview in Bukavu, December 2004.
[149] Interview in Bukavu, December 2004.

outlet reported the DRC government's presentation of its mining sector at an African economic conference in Mozambique last year. "Provided nobody has title yet, you simply fill in an application firm and wait 30 days for the Mining Ministry to rule. If there's no rapid response from the bureaucrats, the application is automatically granted. Mining Minister Kitshunku (actually deputy minister Jean-Louis Nkulu Kitshunku) explains: No decision by the Ministry within 30 days is a decision in favour of the investor. The principle is first in, first out. If the area is free, you can go in. However, we are keen to get new mines working very fast, so we require a time commitment from investors. If the deadline is not respected, the concession will be taken away and given to someone else"[150].

If the government had something to show for this approach – investment, jobs, export earnings – there might be something to be said for it. But not even this appears to be the case. According to a specialist South African newsletter, "to date, the Congolese government has granted exploration rights in 38 areas that comprise a total size of 412.000 km2" and „by granting these rights, the country has, to date, attracted foreign investment of about $520 million"[151]. However, no major mining investor has yet actually committed any substantial capital on the ground in the DRC. Major players have acquired rights, especially in Katanga and Ituri. But most of the "new" partnerships regularly announced especially in regards to Gécamines, but also in regards to Sominki and other parastatal mining companies, are either repeat annoucements of existing pre-war projects which have yet to materialise, or exist on paper only. Most contracts and

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[150] „Mining the DRC", Mineweb, 7 June 2004.

[151] „Turning Congo's mineral 'curse' into a rainbow of hope", Mining Weekly, 19 September 2005.

investment partnerships announced regularly by smaller firms appear to have little motive beyond keeping competitors out, securing potentially lucrative deposits for the long-term without short-term commitments and using the claims to fabulous Congolese wealth to boost one's own share prices.

It is becoming increasingly clear that while outside partners are encouraged to take over parts of the Congo's mining industry, the populations concerned have no say in the matter and the mining work they themselves do is not regarded as economically useful. The Congolese mostly survive in the informal economy, yet government policy regards the informal economy as only second-best to the formal economy even when the latter does not exist, and does not encourage people to develop their own livelihoods.

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