

# Accompanying Measures to the EU Regulation on Responsible Mineral Sourcing

Towards an improved governance  
of the artisanal mining sector in the DRC

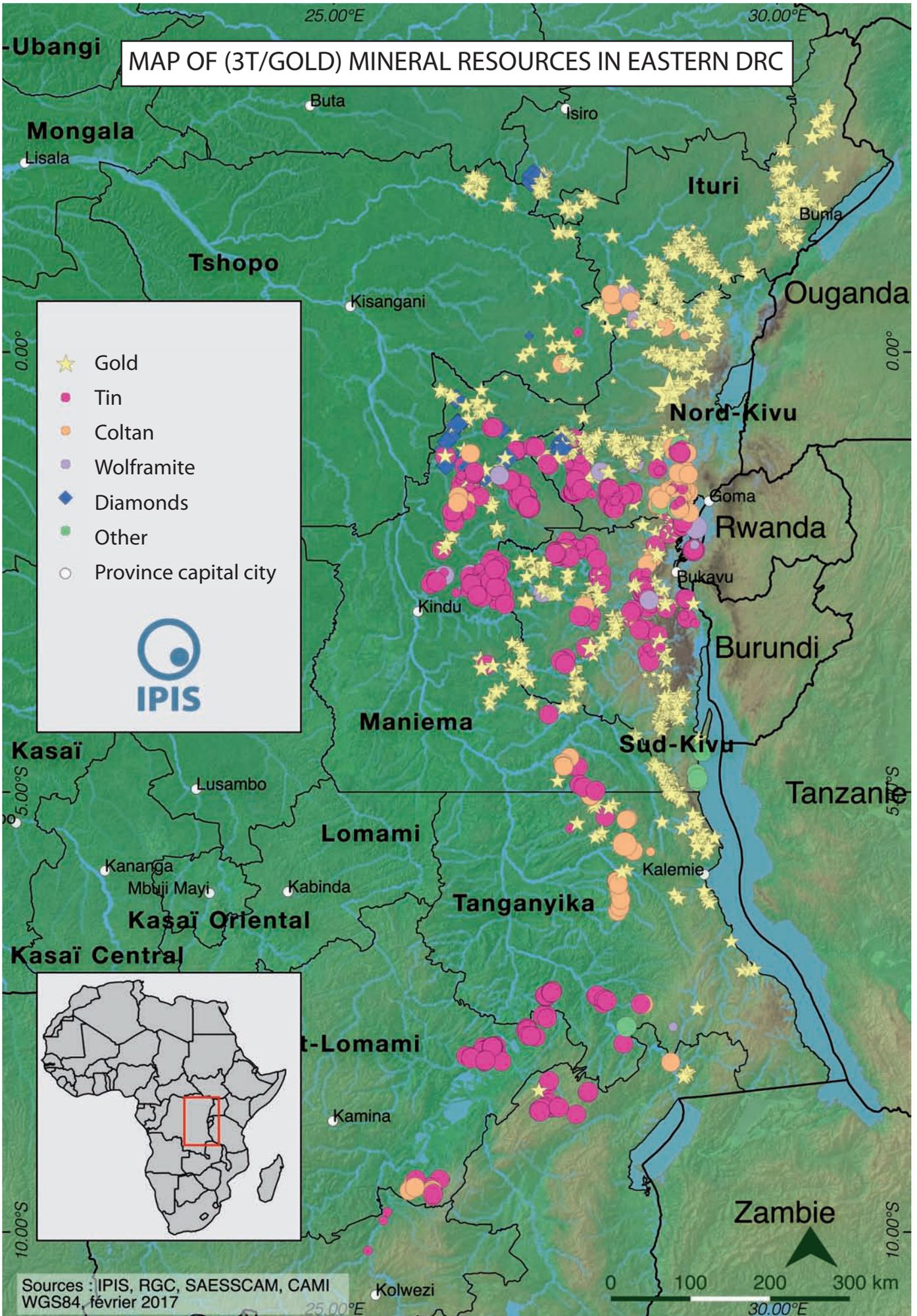


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## List of abbreviations

|                  |   |                 |   |
|------------------|---|-----------------|---|
| <b>3T</b>        | Minerals of tin (cassiterite), tantalum and tungsten  | <b>FDLR</b>     | Front Démocratique de Libération du Rwanda (Democratic Forces for the Liberation of Rwanda)   |
| <b>AGEH</b>      | Association for Development Cooperation (Germany)   | <b>FRPI</b>     | Force de Résistance Patriotique de l'Ituri (Front for Patriotic Resistance in Ituri)  |
| <b>AJWS</b>      | American Jewish World Service (USA)   | <b>GATT-RN</b>  | Groupe d'Appui à la Traçabilité et la Transparence dans la Gestion des Ressources Naturelles (RDC) (Support Group for Traceability and Transparency in the Management of Natural Resources (DRC)) |
| <b>APRODEPED</b> | Action pour la Promotion et la Défense des droits des personnes défavorisées (RDC) (Action for the Promotion and Defense of the Rights of Marginalised People (DRC))  | <b>GCP</b>      | Groupe de Coordination des Partenaires de la RDC (DRC Donor Coordination Group)   |
| <b>ASSODIP</b>   | Association pour le développement des Initiatives paysannes (RDC) (Association for the development of farmer initiatives]   | <b>GIZ</b>      | German Corporation for International Cooperation  |
| <b>BGR</b>       | Federal Institute for Geosciences and Natural Resources (Germany)   | <b>ICGLR</b>    | International Conference on the Great Lakes Region  |
| <b>BSP</b>       | Better Sourcing Programme   | <b>IcSP</b>     | Instrument contributing to Stability and Peace (EU)   |
| <b>CAMI</b>      | Cadastre Minier (RDC) (Mining Cadastre (DRC))   | <b>IFS</b>      | Instrument for Stability (EU)   |
| <b>CEEC</b>      | Centre d'Évaluation, d'Expertise et de Certification des substances minérales précieuses et semi-précieuses (RDC) (Centre for the Evaluation, Assay and Certification of precious and semi-precious mineral substances (DRC)) | <b>IOM</b>      | International Organisation for Migration  |
| <b>CENADEP</b>   | Centre National d'Appui au Développement et à la Participation populaire (RDC) (National Centre for Support to Development and Popular Participation(DRC))  | <b>ITOA</b>     | Initiative de Traçabilité de l'Or d'exploitation Artisanale (Traceability Initiative for Artisanal Gold)  |
| <b>CERN</b>      | Commission Épiscopale pour les Ressources Naturelles (RDC) (Episcopal Commission for Natural Resources (DRC))   | <b>ITRI</b>     | International Tin Research Institute  |
| <b>CPS</b>       | Comité Provincial de Suivi de l'Activité Minière (RDC) (Provincial Committee for the Monitoring of Mining Activity (DRC))   | <b>ITSci</b>    | ITRI Tin Supply Chain Initiative  |
| <b>CTC</b>       | Certified Trading Chains  | <b>NDC</b>      | Nduma Defense of Congo  |
| <b>CTCPM</b>     | Cellule Technique de Coordination et Planification des activités Minières (RDC) (Technical Unit for the Coordination and Planning of Mining Activities (DRC))   | <b>NGO</b>      | Non-governmental Organisation   |
| <b>CREDDHO</b>   | Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (RDC) (Environment, Democracy and Human Rights Research Centre (DRC))   | <b>OECD</b>     | Organisation for Economic Cooperation and Development   |
| <b>CRONGD</b>    | Conseil Régional des Organisations Non Gouvernementales de Développement (RDC) (Regional Council of Non-Governmental Development Organisations (DRC))   | <b>OGP</b>      | Observatoire Gouvernance et Paix (RDC) (Peace and Governance Observatory (DRC))   |
| <b>DEVCO</b>     | European Commission's Directorate-General for International Cooperation and Development   | <b>PAC</b>      | Partnership Africa-Canada   |
| <b>DFID</b>      | UK Department for International Development   | <b>PARJE</b>    | Programme d'Appui au Renforcement de la Justice à l'Est de la RDC (UE) (Support Programme Promoting Justice in the East of the DRC (EU))  |
| <b>DRC</b>       | Democratic Republic of Congo  | <b>PROGRESS</b> | Programme d'Appui à la Réforme du Secteur de la Défense en RDC (UE) (Support Programme for Security Sector Reform – Defence Section (EU))   |
| <b>ECCAS</b>     | Economic Community of Central African States  | <b>Promines</b> | Projet d'Appui au Secteur Minier en RDC (Banque Mondiale) (Growth with Governance in the Mineral Sector project (World Bank))   |
| <b>EDF</b>       | European Development Fund   | <b>RINR</b>     | Regional Initiative against the Illegal Exploitation of Natural Resources (ICGLR)   |
| <b>EEAS</b>      | European External Action Service  | <b>RIP</b>      | Regional Indicative Programme (EU-ECCAS)  |
| <b>EPRM</b>      | European Partnership for Responsible Minerals   | <b>SAESSCAM</b> | Service d'Assistance et d'Encadrement du Small Scale Mining (ou Production Minière à Petite Échelle) (RDC) (Supervision and Assistance Service for Small Scale Mining (DRC))                      |
| <b>EU</b>        | European Union  | <b>SME</b>      | Small or Medium-sized Enterprise  |
| <b>EurAc</b>     | European Network for Central Africa   | <b>UNDP</b>     | United Nations Development Programme  |
| <b>FARDC</b>     | Forces Armées de la République Démocratique du Congo (Armed Forces of the Democratic Republic of Congo)   | <b>UPCP</b>     | Union des Patriotes Congolais pour la Paix (RDC) (Union of Congolese Patriots for Peace)  |
|                  |   | <b>USA</b>      | United States of America  |
|                  |   | <b>USAID</b>    | United States Agency for International Development (USA)  |
|                  |   | <b>USD</b>      | US Dollars  |
|                  |   | <b>ZEa</b>      | Zone d'exploitation artisanale (Artisanal Exploitation Zone)  |



# Introduction

During the first semester of 2017, the European Parliament adopted the Regulation on the responsible sourcing of minerals originating from conflict-affected and high-risk areas. This Regulation aims to change the procurement practices of businesses that import minerals, in particular 3T<sup>1</sup> and gold, coming from those regions, so as to establish a transparent control system in supply chains and one that reduces the risks of financing armed groups and human rights violations. This system is generally referred to as ‘due diligence’. The adoption will conclude a three-year long legislative process, during which time EurAc has argued for the introduction, by means of this Regulation, of a mandatory due diligence system, in line with OECD standards on the matter,<sup>2</sup> for businesses located both upstream and downstream in the supply chain.

Regrettably EurAc’s position has only been followed in part: the new legislation developed within the framework of the trilogue contains numerous flaws.<sup>3</sup> It is not intended, with this position statement, to engage in another discussion of the contents of the new legislation, but rather to concentrate on the ‘**accompanying measures**’ to the Regulation, that is, on the other, non-legislative, measures, which are aimed at ensuring the overall effectiveness of the Regulation. Since

March 2014, when the Commission presented its draft Regulation on responsible sourcing, EurAc has been stressing the importance of these measures to ensure that the Regulation has a positive impact in conflict-affected and high-risk areas. Given that EurAc works exclusively on the African Great Lakes region, our analysis and proposals have been developed in light of the situation of the artisanal mining sector in the Democratic Republic of Congo (DRC).

The impact of the new Regulation should be assessed in two areas. The first is primarily a security one: its effectiveness in terms of combatting the enrichment of armed groups through the mining and trade of minerals. The second area, on the other hand, is socio-economic: its impact in terms of supporting responsible sourcing of minerals from conflict-affected or high-risk areas. From the outset, the EU affirmed that its aim was to avoid the creation of ‘market distortions’ through its Regulation, or in other words to avoid a boycott by international buyers of 3T originating in those regions, including the eastern DRC. It is indeed important to monitor the impact this Regulation will have on the local economy in Ituri, North and South Kivu, Maniema and North Katanga. Aware of this risk, in March 2014 the European Commission committed to strengthening the capacities of third countries affected

<sup>1</sup> Tin, Tantalum and Tungsten

<sup>2</sup> OECD (2013). *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

<sup>3</sup> EurAc (2016), ‘EU: Conflict minerals agreement reached as exemptions added’. 22 November.

**Figure 1** Simplified supply chain



Source: European Commission and European External Action Service (2014), *Joint Communication to the European Parliament and to the Council. Towards an integrated EU approach on the responsible sourcing of minerals originating from conflict-affected and high-risk areas*. JOIN (2014), 8 Final.

by the issue of conflict minerals to meet the due diligence standards established by the Regulation. This is an important commitment that must be kept; it affects the fate of the population of mining areas in the eastern DRC, where artisanal mining continues to be one of the main sources of employment and is the mainstay of economic activity.

In both the security and socio-economic areas, **the risks are all to be found upstream in the supply chain**, i.e. at the local, or micro, level of the mine and its surrounding communities. According to our assessment of the artisanal sector (see Part I), **these risks are primarily fuelled by inadequate support for the sector by State agencies**. This observation applies to both security risks, i.e. the involvement of armed groups in the mining and trade of minerals and in human rights violations in mining areas, as well as to socio-economic risks, namely businesses' lack of confidence regarding the compliance of certain stakeholders in the Congolese mining sector with responsible sourcing standards.

The risks regarding the ineffectiveness of the Regulation in the DRC are thus linked to the realities of local governance, realities over which neither the Regulation nor the companies that import minerals to the EU have real influence. In other words, due diligence aims to ensure transparency in supply chains, but does not create conditions for responsible sourcing. To improve or create these conditions, the EU and its Member States need to promote important and ambitious **accompanying measures** aimed generally at **improving the local governance of the artisanal sector**.

On the basis of this analysis, this report aims **to evaluate the appropriateness of the accompanying measures currently envisaged by the EU and its Member States** (see Part II). It concludes by making recommendations aimed at ensuring that those measures strengthen the effectiveness of the Regulation on the ground, and thus contribute to increased security and wellbeing for the Congolese population (see Part III).

# Part I Assessment of the 3T and gold artisanal mining sector in eastern DRC

Eastern DRC has considerable mineral resources in its subsoil, a large part of which are exploited using artisanal methods: 25% of the global reserves of tantalum (coltan) and 7% of the tin (cassiterite) reserves.<sup>4</sup> Gold reserves are more difficult to estimate but nevertheless appear equally significant: for example the province of South Kivu alone produces approximately 4800kg of artisanal gold annually.<sup>5</sup> The number of artisanal mining sites in eastern DRC, including both active and as yet unexploited concessions, amounts to 3,279, according to the Congolese government. More than half of these are situated in the former province of Katanga, where artisanal mining also includes copper and cobalt. In North Kivu and South Kivu mines number 602 and 659 respectively, most for the exploitation of 3T and gold.<sup>6</sup>

As we will see in this section, artisanal mining plays **an essential role in the local economy** in eastern DRC. It is fully comparable to the industrial mining sector in terms of employment and redistribution, and also in terms of **economic viability** (return on investment).<sup>7</sup> It is important to keep in mind, in the European context, that the Congolese artisanal mining sector should not be reduced exclusively to the question of 'conflict minerals'.

The challenge of managing this sector is not simply a security question; it is also and primarily one of local development and of the economic survival of millions of people in eastern DRC. Reflecting on the future of the artisanal mining sector in the DRC raises the question of the country's model of natural resource management: will the exploitation of minerals follow a model that promotes employment and wealth redistribution

in favour of the local population, or one that promotes the development of the industrial extractive sector?

This question of the mining model cannot be resolved exclusively from a technical perspective, using technocratic 'good governance' formulae. To respond to it, what is required in the first instance is a political vision regarding the place the artisanal sector should occupy in the future of the Congolese economy. It is also necessary that a sufficient number of key stakeholders – amongst the Congolese authorities, donors, buyers, but also amongst sector actors themselves, such as the artisanal miners, cooperatives, *négociants* – adhere to this vision so that artisanal mining can develop in line with the desired management model.

Despite the largely negative image of the sector transmitted by the media, amongst others, **EurAc** and its members uphold the idea that **it is as legitimate a sector of activity as any other**. It does, of course, pose problems in terms of child labour, health, security and the environment. It must also be acknowledged that from an economic point of view, it does not directly benefit local communities, whose needs are, however, considerable (health centres, schools, land development, roads, etc). A clear political vision regarding the future of the sector and adequate management of it would enable artisanal mining to contribute in a more positive way to local development.

## I.1. Structure and functioning of the sector

### I.1.1. Division of labour

The artisanal sector evolved from its formation through the individual

<sup>4</sup> Kilosho Buraye, J., Kamundala Byemba, G. & Ndungu Mukasa, A. (2013), 'Traçabilité des produits miniers dans les zones de conflit au Sud-Kivu', in *Cahiers Africains/ AfrikaStudies*, n°82, p. 117.

<sup>5</sup> Marysse, S. & Tshimanga, C. (2014), 'Les « trous noirs » de la rente minière en RDC', in *Cahiers Africains/ AfrikaStudies*, n°84, p. 159.

<sup>6</sup> According to the IPIS database. IPIS recognises that this list is not exhaustive.

<sup>7</sup> Kamundala, G., Marysse, F. & Mukotanyi, I. (2015), 'Viabilité économique de l'exploitation artisanale de l'or au Sud Kivu face à la compétition des entreprises minières internationales', in *Cahiers Africains*, n°86, pp. 167-196.

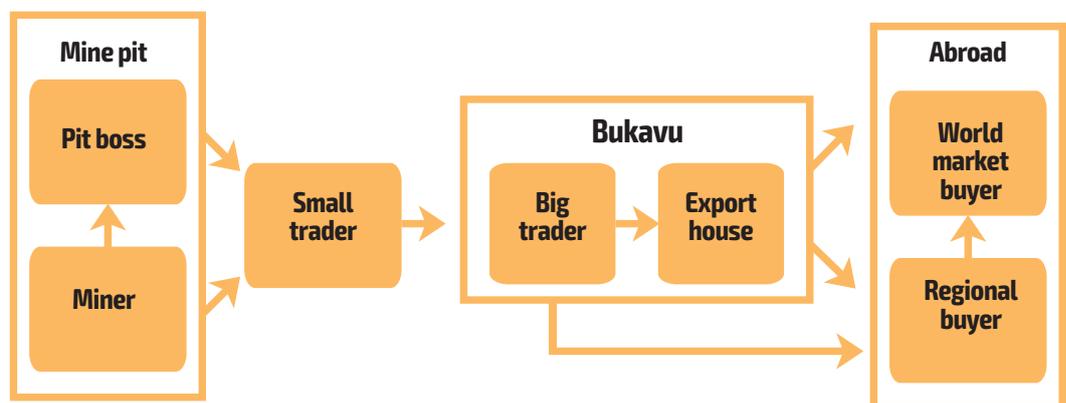
livelihood choices of Congolese people into a progressively more ‘professionalised sector operating through its own established set of norms’.<sup>8</sup> These norms have established a relatively structured division of labour. We will illustrate this with reference to the labour structure of the gold sector in South Kivu, which, albeit with some small variations, resembles those that can be observed in other provinces and in the 3T sector.<sup>9</sup> The artisanal miner who undertakes the exploitation of a pit, and who invests in and manages it, is called the ‘PDG’ (Patron Directeur Général, i.e. CEO). He is not the owner, because the pit belongs to the person who either holds rights to the land, according to customary or state law (the land title issued by the authorities), or holds mining rights (a mining permit). In general, the PDG pays a fixed tax to the owner of the concession and gives him a proportion of the production (10%), once the pit has become operative. The PDG is generally an experienced miner who has accumulated sufficient financial capital to guarantee the necessary start-up costs of investment, labour and taxes (to the traditional chief and to the State). The PDG, not having access to banks, relies in the majority of cases on the sponsorship of a local minerals ‘négociant’ (trader) who provides him with advance payments and other credit needed to launch operations.

The PDG then recruits a team of labourers, amongst whom tasks are distributed according to a **high degree of speciali-**

**sation:** the ‘foreurs’ (drillers) dig the tunnels. The piles of earth and stone created are removed from the shaft in bags by the ‘pelleteurs’ (shovellers). The stability of the pit’s walls is ensured by ‘boiseurs’ (woodworkers), who put in place a wooden structure to prevent the tunnels collapsing. The transportation of wood to the mine is guaranteed by ‘transporteurs’ (carriers). If hard rocks are encountered, explosives are used. This delicate task is carried out by ‘boutefeux’ (blasters). On a day-to-day basis, each team is directed by a ‘capitas’, who is in turn subject to the orders of a ‘conducteur’, responsible for directing the shaft(s) towards the sought-for vein. The preparation and launch of exploitation may take several months, or even years. During that period, the PDG provides the necessary tools (shovels, chisels, pickaxes, torches, water pumps and fuel) and basic subsistence for the labourers (food, clothing, contribution to household expenses).

Once the vein is found, the production phase starts. The *foreurs* extract the rock or rock powder (sand) containing the mineral. The raw material is then put into 25-30 kg bags and transported to the exit of the pit by the *pelleteurs*. Most productive pits operate 24-hours a day with various team shifts (morning, afternoon, and night). A guard assigned with monitoring the pit is also constantly present. A pit can easily reach a width of 250 metres and can in some cases exceed a depth of 150 metres. In addition to water pumps to avoid the flooding of tunnels, such

**Figure 2** Mineral supply chain in South Kivu



Source: De Haan J. and Geenen S. (2016), ‘Mining cooperatives in Eastern DRC. The interplay between historical power relations and formal institutions’, in *The Extractive Industries and Society*, Volume 3, p. 823–831.

<sup>8</sup> Geenen, S. (2016), *African artisanal mining from the inside out: access, norms and power in Congo’s gold sector*, Routledge Studies of the Extractive Industries and Sustainable Development, p. 14.

<sup>9</sup> There are, however, more significant differences where gold panning is concerned.

depths also require oxygen compressors for the transmission of breathable air into the pits. The use of machines requires the services of mechanics responsible for their maintenance and repair. Depending on the phase of operation, a pit can employ between 10 and 100 workers.

In the case of gold mining, the bags carried to the surface are taken by the *transporteurs* to a place called a 'loutra' where their contents are transformed: the rock is turned into powder and the wet sand is dried. This parcel of land is generally owned by a 'loutrier' who pays a guard to ensure its security. The crushing of the mineral rock into powder is generally done by hand by 'twangueurs' (grinders) equipped with metal grinders and basins. On certain sites, such as Kamituga, this work is carried out exclusively by women ('mamans twangueuses'). A *twangueur* or *twangueuse* can crush on average 13-15 kg of rock per day. The powder is then passed through a sieve by a 'tamiseur' (siever) and washed in water to separate waste from the gold residue. This way of treating the gold ore produces a large quantity of residue and waste in sand form. The sand can be sold on by the *loutrier* to other agents specialised in the treatment of residue which still contains a few grams of gold: the 'biporistes' (young men), 'mamans bizalu' (women) or 'tora' (women and children). Once the gold has been cleaned, it is then heated with citric acid to remove the last particles of iron, silver or copper. This gold is then resold to a *négociant* who verifies its purity and weight.

In the case of 3T, which are found in rock form, the treatment process on site is simpler. At the exit of the mine, the ores of tin or coltan are simply transported to a water point where they are washed by people – often women – responsible for that task, and then weighed and resold to a *négociant*. This difference is due in large part to the fact that the refining of 3T requires industrial methods, while gold can already be reduced to up to 90% purity by means of the rudimentary techniques described above.

The *négociants* who buy the minerals from the artisanal miners are present around the sites, operating either as itinerant traders or through 'buying houses'. It is important for them to be on site in order to build and maintain relationships of trust with the miners. It is a relationship of interdependence and reciprocity: *négociants* need miners to access production and miners need *négociants* to sell their production and, if necessary, access credit (which is usually paid back in minerals). *Négociants* generally operate as middlemen on behalf of commercial *comptoirs* (trading houses) based in large cities in the DRC (e.g. Goma, Bukavu) or neighbouring countries (Kigali, Bujumbura, Kamapa).

### **I.1.2. Informality, legal framework and State services**

Artisanal mining and trade of minerals has been carried out in the DRC for almost 50 years, and has been recognised as a legal activity since the 1980s.

Nonetheless, artisanal mining is still a largely informal sector. This informality is characterised by considerable worker mobility, illustrated by the increasing shift of artisanal miners from the 3T to the gold sector since 2011.<sup>10</sup> According to data collected by IPIS from a sample of 1615 mines visited between 2013-2015, approximately 80% of artisanal miners in the eastern DRC currently work in the gold sector, and 16% in the 3T sector.<sup>11</sup> The remaining 4% are involved in the artisanal mining of diamonds and tourmaline.

A trend brought about by a variety of factors has affected the 3T sector: a reduction in the reserves in some large mines that makes the minerals more difficult to access, low prices on the international market, and attempts to regulate (formalise) mining and trading that have had some results in the 3T sector but have also made export from registered *comptoirs* more expensive and more restricted (see section I.4 for more on this). In comparison, gold has a much higher market value, especially since its 2008-2013 price increase, for a much lower volume. This makes gold mining

<sup>10</sup> Geenen S. (2016), *op. cit.*, pp. 7-8.

<sup>11</sup> Weyns, Y., Hoex, L. & Matthyssen, K. (2016), *Analysis of the interactive map of artisanal mining areas in eastern DR Congo: 2015 update*, IPIS, p. 4.

much more profitable than that of 3T, and facilitates fraud (illegal taxation) and contraband trading with neighbouring countries (namely Burundi and Uganda).

Even though informal, artisanal activity is legal insofar as it respects the framework for mining and trading of artisanal minerals established by the **Congolese Mining Code adopted in 2002** and by the **Mining Regulation adopted in 2003**. These two regulations assign responsibility for the oversight of artisanal mining to **several Congolese administrative services**. At the top of this structure sits the 'Ministère des Mines' (Ministry of Mines), which is responsible for applying the various regulations relating to the sector at a national level. After this come a variety of specialised services: the 'Cellule Technique de Coordination et de Planification des activités Minières (CTCPM)' (The Technical Unit for the Coordination and Planning of Mining Activities), the provincial Division des Mines (Mines Division), the 'Cadastré Minier (CAMI)' (Mining Cadastre), the 'Direction de la Géologie' (Geology Division), the 'Direction des Mines' (Mines Directorate), the 'Département en charge de la Protection de l'Environnement Minier' (Department responsible for the Protection of the Mining Environment) and the 'Service d'Assistance et d'Encadrement du *Small Scale Mining* (ou Production Minière à Petite Échelle) (SAESSCAM)' (Supervision and Assistance Service for Small Scale Mining), the 'Centre d'Évaluation, d'Expertise et de Certification des substances minérales précieuses et semi-précieuses (CEEC)' (Centre for Evaluation, Appraisal and Certification of precious and semi-precious mineral substances). Not to forget the 'Police des Mines' (Mines Police), whose mission is to guard mining sites and who are supposed to be the only Congolese security service with a presence at artisanal mining sites. Most of these services are devolved to a provincial level, and have an office and staff in every provincial capital, for the purpose of overseeing artisanal mining activity on the ground.

The current regulations have established '**zones d'exploitation artisanale**' (ZEA) (**artisanal exploitation zones**) for sites where the nature of the deposits is not suitable for industrial mining (required technological capital and return on investment). In order to legally carry out their activities, workers in the artisanal mining sector must register with the authorities (*Division Provinciale des Mines*) who provide them, upon payment, with a '**carte de creuseur**' (artisanal miner's card). To obtain official access to a ZEA, artisanal miners must be organised into **a mining cooperative**, which then needs to be officially recognised through the issuing of an approval by the 'Ministre des Mines' (Minister of Mines) in Kinshasa. Once the approval has been granted, the cooperative can request a mining permit for a ZEA. The cooperative and its members are, in return, required to comply with rules regarding security, hygiene, water usage and environmental protection.

Artisanal miners are required to sell their production to *négociants* who are registered with the provincial authorities and in possession of a '**carte de négociant**' (trader's card), issued by the Provincial Governor. The sale of minerals to *négociants* is supposed to take place in 'centres de négoce' (trading centres) under the supervision of State services (SAESSCAM and the *Division des Mines*), which control operations, collect taxes, and issue official documents. The *négociants* for their part are required to sell their merchandise to 'comptoirs d'exportation' (export houses) that have been officially approved by the authorities. In the eastern DRC, these approved *comptoirs* are mostly based in the towns of Goma, Bukavu, Bunia, Butembo and Kalemie.

Besides the 2002 Mining Code and the 2003 Mining Regulation, in 2012 the Congolese Minister of Mines adopted an '**Arrêté**' (**order**) **establishing a new mineral certification mechanism** in the 3T and gold sectors<sup>12</sup> (for more details, see I.4.2). In article 8, the *Arrêté* makes it obligatory for all actors in the 3T and

<sup>12</sup> Arrêté ministériel n° 057/ CAB.MIN/MINES/01/2012 du 29 février 2012 portant mise en œuvre du mécanisme régional de certification de la Conférence Internationale de la Région des Grands Lacs « CIRGL » en République Démocratique du Congo.

gold sector supply chains to adhere to the due diligence standards established by the OECD. Also in 2012, the *Ministre des Mines* adopted another *Arrêté setting up procedures for the certification of mining sites* of the gold and 3T industries.<sup>13</sup> Together, these provisions create a control system for the supply chain in the DRC covering the production, trade, and transport of minerals from the mine all the way to customs. This system is described in detail in two *Certification Manuals*<sup>14</sup> and one *Manual on Traceability Procedures*.<sup>15</sup>

Finally it should be pointed out that in 2012 the Congolese government began a *revision of the 2002 Mining Code*, an initiative supported by Congolese civil society (Cenadep, Asadho, Cepas, Ocean, LICOCO, CERN, SARW, ACIDH). From the government's perspective, the revision aimed to review those provisions in the Code which were not beneficial for public finances, either in the industrial mining sector or in the artisanal sector. For NGOs, its primary purpose was to strengthen the governance of these sectors. Indeed it was expected that the revision would allow provisions on due diligence, certification and traceability, which until that point had been regulated by the *Arrêtés*, to be included directly in the Code. Alas, under pressure from large industrial sector businesses in particular, the government announced on 10 February 2016 that it was suspending its revision of the Code:<sup>16</sup> a suspension that continues until today, despite protestations from around 40 Congolese civil society organisations.<sup>17</sup> As a result, changes to the legislative framework governing the artisanal sector, especially needed in order to combat the 'conflict minerals' phenomenon more effectively, remain frozen to this very day.

In general, it should be highlighted that many of the provisions relating to the operation and management of the artisanal sector **have only partially, if ever, been put into practice**: on the one hand artisanal miners and *négociants* have had few incentives to comply with the legislation; on the other the Congolese government

has not created proper conditions to enable them to comply.<sup>18</sup> For example, the recognition of cooperatives and their authorisation to mine in the ZEA remain largely inadequate (see also I.1.4). One of the major obstacles to the formalisation of the sector is the "lack of opportunity for ASM [artisanal and small-scale] miners, in the form of cooperatives, to acquire secure and exclusive title to land".<sup>19</sup>

Another striking example of the inadequacies of State agencies in relation to the management of the sector can be seen with SAESSCAM which, as highlighted by numerous Congolese and international actors and observers, is far from fulfilling its many essential objectives, namely: to clean up the artisanal sector through financial and technical assistance and through the supervision of artisanal miners in order to improve their productivity and wages and thereby to promote the implementation of integrated community development projects at a local level. to channel the production of artisanal mining into official channels in order to combat fraud in mineral substances and maximise government revenues.

On the ground, SAESSCAM **does not offer any assistance or supervision to artisanal miners**, with its agents focusing on 'tax and revenue collection'.<sup>20</sup> Although ensuring the collection, from miners, of taxes and duties owed to the State is indeed one of its objectives, SAESSCAM does not fulfil its other objectives linked to the provision of services to artisanal miners (see also section I.1.4). Thus, the establishment of SAESSCAM has not so far added any value to the sector, and actually provokes discontent and mistrust amongst miners who perceive the service as, above all, 'predatory'. It is evident on the ground that SAESSCAM illegally collects many taxes from miners and *négociants*.<sup>21</sup> One of the key problems is that SAESSCAM agents do not have enough material and financial resources (sufficient staff, payment of salaries, logistics) or capacity (trained and competent agents) to carry out their duties.<sup>22</sup> These agents are sent

<sup>13</sup> Arrêté ministériel n° 057/ CAB.MIN/MINES/01/2012 du 29 février 2012 portant mise en œuvre du mécanisme régional de certification de la Conférence Internationale de la Région des Grands Lacs « CIRGL » en République Démocratique du Congo.

<sup>14</sup> Ministère des Mines (2011), *Manuel de certification des minerais de la filière stannifère en RD. Congo. Principes, Lignes Directrices et Standards*; Ministère des Mines (2011), *Manuel de certification des minerais de la filière aurifère en RD. Congo. Principes, Lignes Directrices et Standards*.

<sup>15</sup> Ministère des Mines et Ministère des Finances (2014), *Manuel des procédures de traçabilité des produits miniers : de l'extraction à l'exportation*, 2<sup>ème</sup> édition.

<sup>16</sup> See Radio Okapi (2016), 'RDC : le gouvernement renonce à réviser le code minier' [DRC : the government gives up its revision of the Mining Code], 11 February.

<sup>17</sup> CERN/CENCO & SARW (2016), *Mémoire des organisations congolaises de la Société civile œuvrant dans le secteur des ressources naturelles relatif au processus de la révision du code minier*, 9 Mars 2016.

<sup>18</sup> Geenen, S. (2016), *op. cit.*, p. 26.

<sup>19</sup> Levin, E. & Cook, R. (2015), *Comparative study of certification and traceability systems*, Estelle Levin Ltd, p.vi.

<sup>20</sup> République Démocratique du Congo – Ministère des Mines – Unité d'Exécution du Projet « Promines » (2013a), *Audit du cadre institutionnel et organisationnel régissant le secteur des mines – Rapport sur l'organisation et le fonctionnement du SAESSCAM*, p. 16.

<sup>21</sup> iTSCi (2013), *Governance assessment. Payments and taxation in the Democratic Republic of Congo (Katanga, Maniema and South Kivu provinces) and Rwanda*.

<sup>22</sup> Geenen, S. (2016), *op. cit.*, p. 75.

to the field without any resources to carry out their tasks and are left to do their work on their own without the guarantee of a fixed salary. Yet the law stipulates that the financing of SAESSCAM, and thus the payment of its agents' salaries, is to be covered by the dues levied at export houses (1% of the value of exports) and *centres de négoce* (part of the contributions of artisanal miners and *négociants* towards the centres' operating costs).

It has thus become clear to many experts that the organisation and **functioning of SAESSCAM is a key problem for the sector.**<sup>23</sup> This observation also applies to other specialised services, such as the *Division Provinciale des Mines* and the *Police des Mines*, also due to the lack of means and capacity to properly carry out their designated objectives.

Therefore, despite the existence of the legal requirements described above, and of several other initiatives aimed at the formalisation of the sector set up with international donor support (see section I.4), artisanal activity still remains largely informal, particularly in the gold sector. As discussed in the next section, this informality is characterised by generalised fraud across the spectrum of mineral mining and trade. This fraud constitutes one of the main obstacles to the proper functioning of the sector in general and to the fight against the 'conflict minerals' phenomenon in particular (see also I.3).

### **I.1.3. The thorny issue of illegal taxation and fraud**

In addition to the high levels of mobility amongst artisanal miners, the informality of mining and trade in artisanal minerals can also be seen in the fact that this sector **contributes almost nothing to government revenue, while still generating a large amount of 'illegal' taxes.**<sup>24</sup>

The **estimates** speak for themselves: almost half of the eastern DRC's artisanal production of tin and coltan and 90% of its artisanal production of gold are said to go undeclared<sup>25</sup> and to be illegally exported to **neighbouring countries**

(Rwanda for 3T, Uganda and Burundi for gold). The value of illegal exports of artisanal gold amounted in 2013 to between USD 383 million and USD 409 million.<sup>26</sup> According to data gathered by IPIS between 2013 and 2015, the artisanal gold sector in the eastern DRC generates at least USD 437 million annually,<sup>27</sup> whereas official exports of artisanal gold only reached 254 kilos in 2015.<sup>28</sup> Across the whole of the artisanal sector, fraud would appear to result in an annual shortfall of about USD 100 million for the State coffers.<sup>29</sup>

Gold is primarily exported to Burundi, Uganda, Tanzania and South Sudan, and then onwards to Dubai, one of the main global hubs for trade in gold.<sup>30</sup> For example, 'grands commerçants' (large traders) in Bukavu have been described in the United Nations Group of Experts' reports as purchasing gold from territories controlled by different armed groups, in order to sell it to other traders based in Bujumbura or Kampala.<sup>31</sup> As for 3T, the United Nations state that although smuggled minerals continue to be brought to Uganda and Burundi, Rwanda remains the destination of choice for smugglers because of the large price difference between the DRC and Rwanda<sup>32</sup>.

In addition to illegal taxation by various State agencies, **massive fraud through neighbouring countries is indeed encouraged by tax and price differences at a regional level.** According to several on-the-ground sources, the purchase price for coltan in Rwanda is systematically higher than that paid by *comptoirs* based in the DRC. According to the same sources, the price differential can be as much as USD 7.50 per kilo. The same applies to tin: in October 2013, for example, one kilo of cassiterite was selling at USD 4 in mines in South Kivu, compared with USD 8 in *centres de négoce* in Bukavu and USD 15 in Kamembe in Rwanda. The price per gram of gold in Bujumbura is on average 1 USD higher than in Bukavu.<sup>33</sup>

In relation to tax, the regimes applied by neighbouring countries are also clearly unfavourable to the DRC. For example,

<sup>23</sup> République Démocratique du Congo – Ministère des Mines – Unité d'Exécution du Projet « Promines » (2013a), *op. cit.*, p.2.

<sup>24</sup> Geenen, S. (2016), *op. cit.*, p. 5.

<sup>25</sup> United Nations Group of Experts on the DRC (2014), S/2014/42, p. 171.

<sup>26</sup> *Ibid.*, p. 188

<sup>27</sup> Weyns, Y., Hoex, L. & Matthysen, K. (2016), *op. cit.*, IPIS, p. 17.

<sup>28</sup> Ministère des Mines (2016), CTCMP, *Statistiques minières : Année 2015*.

<sup>29</sup> Marysse, S. & Tshimanga, C. (2014), *op. cit.*, p. 162.

<sup>30</sup> Martin, A. and Taylor, B. (2014), All that Glitters is not Gold: Dubai, Congo and the Illicit trade of Conflict Minerals, Partnership Africa Canada.

<sup>31</sup> United Nations Group of Experts on the DRC (2012), S/2012/843, p. 187; United Nations Group of Experts on the DRC (2014), S/2014/42, p. 172.

<sup>32</sup> United Nations Group of Experts on the DRC (2014), *op. cit.*, p. 45.

<sup>33</sup> Geenen, S. (2016), *op. cit.*, p. 159.

Rwanda, unlike DRC, does not tax coltan exports, which constitutes ‘a clear economic incentive to smuggle coltan to Rwanda rather than export it legally from the DRC.’<sup>34</sup> Burundi has set a 2% tax on the export of precious minerals. Uganda for its part has set an export tax of 5% on gold produced on its territory, while the export tax on gold from other countries is 1%. In comparison, the official Congolese taxation system for the artisanal sector, from the mine to export, is extremely complex and seems relatively burdensome (for more details, see I.4.5). We can nevertheless affirm that export taxes in neighbouring countries are lower than those in the DRC (5% customs duties + 16% VAT). The price and tax differentials thus make crossing the border attractive ‘even for small quantities’.<sup>35</sup>

This differential benefits the DRC’s neighbouring countries, since these minerals generate activity and profit margins for export houses as well as revenues from export taxes. In the case of Rwanda, Kigali’s interest also lies in supplying the mineral processing plants built on its territory, thus increasing the commercial value of these minerals before export. For coltan, for example, the ore imported from DRC is declared as having been produced in Rwanda when it undergoes a treatment that increases its value by 30%. And a new mineral processing plant is planned to come into operation in Rwanda in 2017.<sup>36</sup>

Congolese *négociants* and export houses nonetheless continue to dispose of part of their merchandise through official channels in order to benefit from a façade of legality and protection.<sup>37</sup> In the east of the DRC, cross-border mineral trafficking is also encouraged by **the behaviour and strategies of some State agents** (the administration and security services): in exchange for part of the profits, they grant ‘preferential treatment’ to some businessmen – such as protection against administrative red tape, the levying of official taxes or the confiscation of merchandise, and the side-lining of competitors. Such practices allow these businessmen to control

the traffic centrally,<sup>38</sup> and they place some State agents ‘at the heart’ of illegal cross-border trading to neighbouring countries.<sup>39</sup> As in other sectors, State agents take advantage of their position to exploit opportunities to access profits, acting as intermediaries between local and international actors.<sup>40</sup>

This situation pushes actors in the minerals trade in the DRC to channel the majority of their merchandise illegally to neighbouring countries, and **incentivises international buyers to get their supplies from those countries rather than from the DRC.** The practice of illegal taxation and fraud is such that it constitutes one of the principal factors hindering the contribution of the artisanal mining sector to local development: the majority of revenue escapes the coffers of the State and provinces, benefitting criminal networks instead of being used to construct schools, roads, health centres, etc. In addition, as will be explained further on, fraud constitutes a significant obstacle to effectively combating the ‘conflict minerals’ phenomenon (see section I.3).

#### I.1.4 The challenge of mining cooperatives

The establishment of mining cooperatives in the artisanal sector is a measure set out in the 2003 Mining Regulation. However its implementation remained patchy for several years, until President Kabila suspended the export of minerals extracted by artisanal mining in the provinces of North and South Kivu and Maniema between 11 September 2010 and 10 March 2011. According to the authorities, this suspension was aimed at cleaning up the sector. At the end of 2010, the authorities made it clear that after the suspension was lifted, membership of a mining cooperative would be obligatory for miners wanting to work in the artisanal sector. The incentive to set up cooperatives was intended to enable ‘a degree of control to be established’ over the sector and production, in particular to ‘reduce the number of intermediaries and collect taxes’.<sup>41</sup> There has thus been a rapid increase in the numbers of

<sup>34</sup> BGR, Raw Material Group, Fraunhofer & HCSS (2013), *Coltan, Congo & conflict*, Polinaires Case Study, The Hague Centre for Strategic Studies n°21/03/13, p. 51.

<sup>35</sup> Geenen, S. (2016), *op. cit.*, p. 159.

<sup>36</sup> Agence Ecofin (2016), ‘La première usine de traitement de coltan en Afrique verra le jour au Rwanda’, 26 August. [Agence Ecofin (2016), ‘The first mineral processing plant will see the light of day in Rwanda’, 26 August]

<sup>37</sup> Geenen, S. (2016), *op. cit.*, p.1 41.

<sup>38</sup> *Idem*, p. 151. See also Raeymaekers, T. (2010), ‘Protection for sale? War and the transformation of regulation on the Congo-Uganda border’, in *Development and Change*, 41/4, p.563-587; Titeca (2012), ‘Tycoons and contraband: Informal cross-border trade in West Nile, north-western Uganda’, in *Journal of Eastern Africa Studies*, 6/1, pp. 47-63.

<sup>39</sup> Titeca (2012), *op. cit.*, p. 55.

<sup>40</sup> Hibou, B. (1997), ‘The ‘social capital’ of the state as an agent of deception, or the ruses of economic intelligence’, in Bayart, J., Ellis, S. & Hibou, B., *The criminalization of the state in Africa*, Oxford, James Currey and Indiana University Press, p. 81. Cited in Geenen, S. (2016), *op. cit.*, p. 161.

<sup>41</sup> Bashizi, A. & Geenen, S. (2015), ‘Les limites d’une gouvernance par le bas : les logiques des coopératives minières à Kalimbi, Sud-Kivu’ in *Cahiers Africains/AfrikaStudies*, n°86, pp. 246-247, 252.

artisanal miners forming cooperatives since 2010: of the 195 mining cooperatives listed by COSOC-GL, only 29 were created before 2010.<sup>42</sup>

The creation of cooperatives was expected to strengthen the position of artisanal miners vis-à-vis other actors in the sector (State agencies, landowners, *négociants*, export houses). In general terms, a cooperative can be defined as ‘an autonomous association formed of individuals who voluntarily come together with the aim of meeting their aspirations and their common economic, social and cultural needs, by means of an organisation which is collectively owned and in which power is exercised democratically’.<sup>43</sup> Members of a cooperative are expected to contribute an equitable share of the required start-up capital and to accept a fair share of the risk, as well as remuneration based on the work they carry out (and not on their financial contribution). Secondly, for local communities, the setting up of cooperatives is a ‘means by which to come together in order to ensure better management of common resources, (...), uniting different actors around a common objective: that of organising the management of resources to which all have access. [Cooperatives] are thus meant to be effective instruments of ‘bottom-up governance’.<sup>44</sup> The aim of a cooperative is not therefore to increase the profits of ‘shareholders’ but rather to satisfy the needs of its members and improve their quality of life. To summarize, in order to be considered a cooperative, this type of association must function according to the following principles:

- \* Voluntary membership
- \* Democratic, autonomous and independent decision-making by members
- \* Economic participation by members
- \* Capacity-building of its members (education, training and information-sharing)
- \* Distribution of profits among members
- \* Commitment to the community (management of resources and

income in a way that benefits the community)

Several **EurAc** field missions undertaken since 2012 have led us to ascertain that the activities of the vast majority of mining cooperatives established in the eastern DRC do not conform to these principles. On the contrary, we share the analysis of M. Garrabé that ‘in reality, it is the elites that often benefit from cooperatives’, since the latter are mostly subject to elite control of resources and mining income.<sup>45</sup> **Several factors explain this phenomenon of ‘elite capture’** through cooperatives.

**First of all** let us consider the process by which cooperatives were set up. While most of those set up before 2010 were started through a ‘bottom-up’ process, in other words through a relatively democratic process initiated by artisanal miners themselves, those cooperatives set up after 2010 were generally done so by means of a hasty, ‘top-down’ process, under the pressure of the presidential suspension, without ‘a clear vision of how they would work, of the purpose of a cooperative and of the [democratic logic] that should underpin it’.<sup>46</sup> In many cases, artisanal miners were not involved in the election of leaders and they barely participate in meetings and decision-making. These cooperatives **do not function democratically** and have little legitimacy in the eyes of artisanal miners.<sup>47</sup> In such cases it is clear that they were set up by members of the political, customary, or economic elite, with the aim of enabling them to access, or continue to access, mining rights (mining permits).

This elite capture of cooperatives can be explained by the fact that after 2010, mining permits for the ZEAs mentioned above were only to be issued to registered mining cooperatives. Access to resources thus depended on the setting up of a cooperative and/or membership of one. The control of a cooperative is therefore synonymous with the control of resources; a situation which has sometimes led to competition

<sup>42</sup> COSOC-GL, *List of mining cooperatives in eastern DRC*.

<sup>43</sup> Garrabé, M. (2007), ‘Les organisations de l’économie sociale et solidaire (OESS)’ in *Économie sociale*, chapter 2/18, p.1. Cited in Bashizi, A. & Geenen, S. (2015), *op. cit.*, p. 241.

<sup>44</sup> Bashizi, A. & Geenen, S. (2015), *op. cit.*, p.241

<sup>45</sup> *Ibid.*, p. 242

<sup>46</sup> *Ibid.*, p. 254

<sup>47</sup> De Haan, J. & Geenen, S. (2015), ‘Mining cooperatives in South Kivu: saviour or extortionist?’, in *Analysis & Policy Brief - University of Antwerp - Institute of Development Policy and Management*, n°14, p. 2.

between cooperatives created before or after 2010 for access to certain concessions, and has manifested itself in sometimes violent tensions, around the question of which cooperative really represents artisanal miners.<sup>48</sup> This competition has been aggravated by **the reduced number of cooperatives being approved** by the *Ministre des Mines* in Kinshasa and by **the limited availability of ZEAs**.

According to data collected by COSOC-GL, up until 2015 the *Ministre des Mines* in Kinshasa had recognised 193 cooperatives in the eastern DRC, 122 of which were in the former province of Katanga. In the 3T and gold sector there were 133 cooperatives, 62 of which were in Katanga (and of which some are also linked to the diamond, copper and cobalt industries), 37 in South Kivu, 20 in Maniema, 11 in North Kivu and three in the former Orientale province (gold, exclusively).<sup>49</sup> These figures may appear significant, but they only reflect part of the reality. In the province of South Kivu alone, there were no fewer than 117 cooperatives that had filed a request for approval with the provincial *Division des Mines* in South Kivu.

**Secondly**, access to a ZEA by cooperatives is problematic. During our field missions, it emerged that cooperatives, even registered ones, rarely have access to a ZEA. In some cases, this is because they are not connected to economic and political elites, and do not therefore have the necessary support to guarantee the success of their requests. In the majority of cases, it is simply because there are not enough ZEAs that are both rich in minerals and recognised by **Ministerial Decree**: ‘artisanal miners interviewed believe that the ZEAs are set up in areas lacking in minerals, without prior feasibility studies confirming the presence of mineral substances. They also state that an insufficient number of ZEAs have been created. This situation pushes artisanal miners to invade industrial mining zones where artisanal mining is usually prohibited.’<sup>50</sup> For example, only

7 of the 14 ZEAs originally identified in the 3T sector in South Kivu have actually been set up,<sup>51</sup> and fewer than 3% of the total gold sites in the DRC have been declared as ZEAs.<sup>52</sup>

**Thirdly**, most cooperatives **do not fulfil their role of defending the interests and strengthening the capacity of artisanal miners**. To be a member of a cooperative, miners have to contribute about 10% of their production as a membership fee. Some of these contributions are used to pay the taxes imposed on all registered cooperatives: USD 2500 in annual fees, a USD 5000 deposit and USD 500 in administrative fees. However, ‘very few services (access to credit, training, technical support, provision of equipment) are offered in return’<sup>53</sup> for their contribution. Neither do cooperatives enable artisanal miners to sell their production at a better price.

These findings are explained by the fact that **elites control the cooperatives**, because these cooperatives have become a tool by which to access ‘not only mining rights, but also revenues through the various contributions of their members’.<sup>54</sup> Leaders of cooperatives manage these revenues according to their own interests; interests which often converge with those of *négociants* and *grands commerçants*, that is, ensuring access to minerals at the lowest possible prices. Once again this has to do with the issue of ‘top-down’ cooperative formation, without any real democratic basis.

The same applies to the capacity-strengthening of artisanal miners, which is not a priority for cooperative leaders. In this regard, we must also highlight the **shortcomings of SAESSCAM**, one of whose principal tasks is precisely to provide technical and financial assistance to mining cooperatives and miners from the artisanal sector. SAESSCAM is indeed made up of four departments whose missions are to provide direct assistance and capacity-strengthening to miners organised into cooperatives (see extracts below).

<sup>48</sup> Geenen, S. (2016), *op. cit.*, p. 186.

<sup>49</sup> COSOC-GL, *List of mining cooperatives in eastern DRC*.

<sup>50</sup> République Démocratique du Congo – Ministère des Mines – Unité d’Exécution du Projet « Promines » (2013a), *op. cit.*, p. 35.

<sup>51</sup> Geenen, S. (2016), *op. cit.*, p. 26.

<sup>52</sup> Levin, E. & Cook, R. (2015), *op. cit.*, p. ix.

<sup>53</sup> De Haan, J. & Geenen, S. (2015), *op. cit.*, p. 4.

<sup>54</sup> Bashizi, A. & Geenen, S. (2015), *op. cit.*, p. 253.

Unfortunately, these missions are not put into practice on the ground, for the reasons already mentioned: lack of resources and capacity (see section *I.1.b*).

**Département de l'Artisanat Minier**  
(Department for Artisanal Mining)

- \* To ensure **technical support for artisanal miners** in particular in relation to compliance with the environmental code of conduct, and security and hygiene regulations;
- \* To assist mining cooperatives in **developing funding applications** to other financing bodies;

(...)

**Département Formation et Vulgarisation**  
(Department for Training and Dissemination)

- \* To **train artisanal miners, members of cooperatives** and miners from the small mine sector;
- \* To organise and ensure **the dissemination of artisanal mining techniques**;
- \* To participate in **the dissemination of the Mining Code, the Mining Regulation and other mining sector regulations**;

- \* To **disseminate information about techniques and equipment** appropriate to each type of mineral deposit;
- \* To develop **training modules**;

(...)

**Département Équipements Miniers**  
(Department for Mining Equipment)

- \* To support miners in the selection and **assembly of appropriate equipment, adapted** to the conditions of the deposit;

(...)

**Département Prospective et Méthodes**  
(Department for Prospecting and Methods)

- \* To elaborate, together with other agencies, specific **guidelines and technical information** relating to small mine exploitation and artisanal mining;

(...)

It appears therefore that, on the whole, artisanal miners have not benefitted from the setting up of cooperatives. The cooperatives have not succeeded in transferring more power, income or skills to them. On the contrary they have maintained or even concentrated power and income in the hands of a broad network of interconnected political, customary and economic elites.<sup>55</sup>

Not everything is negative, however. **Cooperatives have also enabled some improvements** in terms of traceability, security, working conditions and the registration of artisanal miners.<sup>56</sup> If they functioned according to democratic principles, they could play a more positive role in the governance of the sector and the empowerment of artisanal miners, particularly in relation to access to credit (to purchase equipment aimed at improving security and productivity) and the negotiation of mineral sales prices. Cooperatives should also be **used to disseminate Congolese regulations relating to the artisanal sector** as well as to **train artisanal miners** to comply with international standards for responsible sourcing. In other words, the governance of the Congolese artisanal sector by means of cooperatives has limits but it also presents opportunities. If the Congolese government and international donors do not endeavour to strengthen the truly 'cooperative' nature of these organisations, the implementation of policies aiming to clean up the sector 'will not be favourable to "small miners."<sup>57</sup>

## **I.2. Economic role of the artisanal sector**

The artisanal mining economy is a large-scale **survival economy**. In 2008, the World Bank identified nearly 2 million artisanal miners in DRC<sup>58</sup> and estimated that another 10 million Congolese, i.e. 16% of the population, depended directly or indirectly on artisanal mining.

The **distribution of income** generated by artisanal activity is determined

<sup>55</sup> De Haan, J. & Geenen, S. (2015), *op. cit.*, p. 2.

<sup>56</sup> *Ibid.*, p. 3.

<sup>57</sup> Bashizi, A. & Geenen, S. (2015), *op. cit.*, p. 253.

<sup>58</sup> World Bank (2008), *Democratic Republic of Congo. Growth with governance in the mineral sector*, report no. 43402, p. 8.

according to professionally established norms, following the division of labour described above (see I.1.a). In this section we will describe the distribution of income in the gold sector, which on the whole corresponds to that of the 3T sector. Only the amounts vary between the two sectors, given the difference in prices paid: an artisanal miner will receive around USD 4 per kilo of cassiterite (tin ore), between USD 10-25 per kilo of coltan (depending on its estimated mineral content), whereas he will receive about USD 45 per gram of gold (for an international market price of USD 54/gram). In general, the sector's workers are paid either in cash (USD or Congolese Francs), particularly before the pit becomes productive, or in kind (minerals extracted), once the mine has started to produce.

The general principle for distribution is as follows: one third of the production is used to reimburse the fixed costs of exploitation and to pay 'taxes' (to the traditional chief, the landowner), one third goes to the PDG, and the remaining third is divided between the other pit labourers, either in equal parts or according to their specialisms. Some workers with very specific functions (the *boiseurs*, mechanics, and the *boutefeux*) receive a fixed amount; the others divide up the part of the production which is theirs. The division of production between the PDG and the workers varies from one site to another. In Misisi, for example, 30% goes to the PDG and 70% to the miners.<sup>59</sup>

In the gold sector, some artisanal miners rely on *twangueurs* to grind and sieve the ore before it is sold to *négociants*, others sell the ore directly to *négociants* without reworking it. A PDG's monthly income in the gold sector varies between 1000-6000 US Dollars. The income of miners responsible for the mine's different fixed tasks generally varies between 40-130 US Dollars, but can rise to 500 US Dollars if the vein is particularly rich. The daily wages for grinding vary according to type: the *twangueuses* are paid between 1.5-2 US Dollars a day,

while *twangueurs* are paid 5 US Dollars a day. For the treatment of residues (sand), daily income varies between 9-30 US Dollars for the *biporistes*, between 3-6 US Dollars for the *mamans bizalu* and 1-3 US Dollars for the *tora*.

In the 3T sector, the average annual income of a miner is estimated at 800 US Dollars, comparatively less than in the gold sector, but the same sources report that daily remuneration can reach 100 US Dollars when the vein being exploited is very productive.<sup>60</sup>

Compared with average incomes in other sectors, such as agriculture (USD 17), small business (USD 20), or administration (USD 25), artisanal mining appears to be more profitable. One of the main negative aspects of artisanal mining from an economic perspective is **the difficulty miners face in saving** part of their income, since they quickly tend to spend any money earned. In addition to impulse consumption (alcohol, prostitution), it is also necessary to take into account the higher price of goods in mining zones (largely due to transport costs), requiring a downward adjustment in miners' 'real' incomes. This situation leads some to describe artisanal mining as a 'poverty trap'. Nonetheless, we should note that some miners do manage to save, and invest those savings in the purchase of a house, cultivable land or livestock.

Artisanal mining provides **a livelihood not only for miners, but also for a whole range of other actors that provide services** such as transport, hospitality, leisure, tool-making, and local retail. The economic impact of artisanal mining thus goes beyond the remuneration of those who work in the sector. By comparison, the industrial mining sector provides only 20,000-30,000 direct and indirect jobs in the DRC,<sup>61</sup> in an economically active population of around 30 million.

As a result, artisanal sector activity is one of the **key factors supporting the consumption of goods and services**

<sup>59</sup> Kamundala, G., Marysse, S. & Mukotanyi, I. (2015), *op. cit.*, p. 191.

<sup>60</sup> BGR, RawMaterial Group, Fraunhofer & HCSS (2013), *op. cit.*, p. 52.

<sup>61</sup> Marysse, S. & Tshimanga, C. (2013), 'La renaissance spectaculaire du secteur minier en RDC. Où va la rente minière?' in *Cahiers Africains/AfrikaStudies*, n°82, p. 28.

**at a local level.** It enables access to currencies and more generally, **stimulates trade** and thus **the circulation of money** in the large cities and the many landlocked territories in the eastern DRC. Many villages are usually only accessible by foot, after several days of walking. The artisanal minerals trade has made it profitable to travel to these areas from large cities (Goma, Bukavu) by small aircraft, which are loaded up with basic goods (salt, soap etc.) and return carrying minerals. The minerals trade is linked to trade in other products in the eastern provinces, but also at a regional level, since Congolese traders travelling abroad to sell minerals use the opportunity to bring back everyday consumer goods (fish, fuel, alcohol, clothes, building materials), which are supplied to markets in the large cities and are then transported to more remote areas. In addition, minerals are frequently used as a means of payment and exchange. Artisanal mining is thus at the heart of a circular economy at local and regional levels on which the economic survival of hundreds of thousands of people depends.

This essential function of artisanal mining was highlighted when the export of minerals from the provinces of North Kivu, South Kivu and Maniema was suspended, following President Kabila's decision, between 11 September 2010 and 10 March 2011. As a result, flights by small aircraft to landlocked areas were interrupted, the volume of commercial trade at a regional level fell, and the market price of products in the affected provinces soared. For instance, exports from the province of North Kivu fell by two-thirds during this period, and the consumption of petrol dropped by half.<sup>62</sup> This slowdown in the local economy also created a problematic shortfall in provincial revenues.

The artisanal sector thus stimulates the local and rural economy and is a **driver of significant socio-economic impact**, more so than large mining companies 'that operat [...] as enclave economics',<sup>63</sup> disconnected from the local economy.

Thus, despite numerous problems in relation to security, health, environmental impact and fraud, we cannot overlook the fact that that artisanal mining 'improve the livelihoods of a considerable part of the population',<sup>64</sup> in the DRC, because it offers 'ample opportunities for flexible employment and local livelihood support and being well connected to the local economy and society'.<sup>65</sup> In comparison to the industrial sector, artisanal mining has definite **advantages in terms of inclusive development**, because 'the added value of the artisanal industry remains almost entirely in the DRC, not in the hands of the State, in the form of taxes, but rather in the form of income in the hands of artisanal miners and the numerous other intermediaries involved in the artisanal industry'.<sup>66</sup> Lastly, the artisanal sector appears economically viable, its short-term profitability (return on investment) being considerably better than that of the industrial sector, in particular due to a much shorter amortization period for capital invested.<sup>67</sup>

For all these reasons, **EurAc** and its members are at one with academic and civil society critics in opposing the promotion of industrial mining on the pretext that it creates higher government revenues and is easier to control than artisanal mining. In order to attract private investment into the mining sector, governments like that of the DRC grant large concessions to mining industries, with the effect of replacing the labour with capital (mechanisation of the means of production),<sup>68</sup> and privatising land to the detriment of local people, who do not have formal land rights by which to resist expropriation.<sup>69</sup>

### **1.3 Links with conflict and security dynamics**

It is a well known fact, documented over the last 15 years by the United Nations<sup>70</sup> and by NGOs,<sup>71</sup> that various national and foreign armed groups active in the DRC are financed through artisanal mining and trade, in particular of 3T and gold. However, the adoption of the Dodd-Frank Act by

<sup>62</sup> According to Aloys Tegera from the Pole Institute in Goma, who we met a few months after the lifting of the presidential suspension.

<sup>63</sup> Geenen, S. (2016), *op. cit.*, p. 12.

<sup>64</sup> *Ibid.*, p. 5.

<sup>65</sup> *Ibid.*, p. 14.

<sup>66</sup> Kamundala, G., Marysse, F. & Mukotanyi, I. (2015), *op. cit.*, p. 193.

<sup>67</sup> *Idem.*

<sup>68</sup> Beddington *et al.* (2008), 'Contention and ambiguity: mining and the possibilities of development', in *Development and Change*, n°39/6, pp. 887-914; Gordon, T. & Webber, J.R. (2008), 'Imperialism and resistance: Canadian mining companies in Latin America', in *Third World Quarterly*, n°29/1, pp. 63-87; Heynen, N. & Robbins, P. (2005), 'The neoliberalization of nature: Governance, privatization, enclosure and valuation', in *Capitalism, Nature, Socialism*, n°16/1, pp. 5-8. Cited in Geenen S. (2016), *op. cit.*, p. 14.

<sup>69</sup> Harvey (2005), *The new imperialism*, Oxford, Blackwell. Cited in Geenen, S. (2016), *op. cit.*, p. 14.

<sup>70</sup> Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2001/357; United Nations Group of Experts on the DRC (2016). S/2016/1102.

<sup>71</sup> Global Witness (2004), *Same Old Story: A background study on natural resources in the Democratic Republic of Congo*; Global Witness (2016), *River of Gold*.

the US Congress in 2010 has provoked controversy regarding the role of minerals in the conflict dynamics that affect the eastern DRC, with numerous experts contending that minerals are not the primary cause of conflict. It is true that the multiple conflicts and armed violence that have affected the eastern DRC have several determinants: ‘National and regional political struggles over power and influence as well as issues such as access to land and questions of citizenship and identity are just some of the more structural drivers of conflict.’<sup>72</sup>

**EurAc** – like many other Congolese and European civil society organisations – has never asserted that competition for the control of minerals was the root cause of conflict and instability in the region, but rather an incentive to perpetuate them.<sup>73</sup> This continues to be true today since, as we will see in the following paragraphs, the exploitation of and trade in minerals still constitute a source of income for the various armed groups active in the DRC. Thus, we agree with the finding that ‘mineral exploitation and trade constituted an important dynamic of the conflict.’<sup>74</sup>

The role of minerals in conflict dynamics in the eastern DRC has evolved since the ‘second Congolese war’ (1998-2003). In 2010, the United Nations Group of Experts concluded that the exploitation of natural resources merely enabled armed groups to sustain their efforts towards political objectives,<sup>75</sup> meaning that access to and control of these resources **no longer constituted the main economic driver of the conflict**. Today, armed groups have access to other sources of financing:<sup>76</sup> illegal trade in timber, ‘makala’ (charcoal) and cannabis; poaching; agriculture, and other types of illegal extortion (roadblocks, taxes on agricultural production, etc). This evolution highlights the ‘militarisation’ of the economy in the eastern DRC.

The principal means by which armed actors profit from artisanal 3T and gold is through the **illegal taxation** of actors

in the chain (miners, *négociants*, etc).<sup>77</sup> Armed groups also derive income from their **involvement in the minerals trade** and, in some cases, through their **direct involvement in the exploitation of mines**.<sup>78</sup>

Thanks to IPIS’s work mapping artisanal mining sites (see section I.4.1), we have access to a relatively detailed picture of armed groups’ degree of influence in the sector. Of the 1615 sites IPIS visited between 2013 and 2015 in the provinces of Ituri, North and South Kivu and Maniema, and in the north of ex-Katanga, 56% have an armed group presence.<sup>79</sup> The **Congolese Armed Forces (FARDC) is the armed group most involved**: it has a permanent or regular presence in 38% of sites visited by IPIS. In more than two-thirds of these cases (27% of sites visited) this presence results in the FARDC’s interference in mining activity, while in the remaining cases (11%), the FARDC’s presence does not result in any interference. We should nevertheless point out that the FARDC’s presence at artisanal mines is, in theory, illegal, since it is the *Police des Mines* that should be responsible for security at these mines. The other, **non-state, armed groups** are present in 25% of sites visited by IPIS. The two largest groups are the Mai-Mai ‘Raia Mutomboki’ and the ‘Nduma Defense of Congo’ (NDC and NDC-Rénové), each present in 5% of sites. The remaining 15% are mainly attributable to the FDLR, the Mai-Mai ‘Yakutumba’, the UPCP, the Mai-Mai ‘Simba’, and the FRPI. Combining the sites with either the presence of FARDC or of non-state armed groups together, 47% of those visited by IPIS face interference by at least one armed actor.

Several differences between provinces are evident:

- \* In areas visited by IPIS in the **former Orientale province** (Ituri), nearly the only mineral exploited using artisanal methods is gold. In the neighbouring territories of North Kivu and Maniema, more than 90% of miners interviewed by IPIS in 2015

<sup>72</sup> Vogel, C. & Radley, B. (2014), *An Open Letter*.

<sup>73</sup> EurAc et al. (2013), *Breaking the links between natural resources and conflict: the case for EU regulation. Joint civil society position paper*. Position statement signed by 58 civil society organisations.

<sup>74</sup> Geenen, S. (2016), *op. cit.*, p. 6.

<sup>75</sup> United Nations Group of Experts on the DRC (2010), S/2010/596, p. 75.

<sup>76</sup> Laudati, A. (2013), ‘Beyond minerals: broadening ‘economies of violence’ in eastern Democratic Republic of Congo’, in *Review of African Political Economy*, n°40, pp. 32-50.

<sup>77</sup> Geenen, S. (2016), *op. cit.*, p. 6.

<sup>78</sup> IPIS (2015), *Mineral supply chains and conflict links In eastern Democratic Republic of Congo. Five years of implementing supply chains due diligence*, OECD, p. 10.

<sup>79</sup> Weyns Y., Hoex L. & Matthysen K. (2016), *op. cit.*, p. 19.

reported working in mines where armed men were present. The main armed actors active in that province are FARDC elements. There were also instances of Mai-Mai Simba and FRPI interference.

- \* In **North Kivu**, 3T are a significant source of income for many artisanal miners: 32% of them work in the 3T sector, while 68% work in the gold sector. The whole of the province's mining sector is affected by the interference of armed groups, even though two large sites – Omate and Bisie – have been demilitarised in recent years. In addition to FARDC elements, FDLR and NDC combatants derive revenues from the mining sector in North Kivu. For example, according to IPIS, the FDLR earns USD 6000 a week from the illegal taxation of gold in the region of Lubero.
- \* Gold is by far the mineral most exploited using artisanal methods **in South Kivu**; in 2015, 87% of the province's artisanal miners were employed in gold mining. 77% of gold mines visited by IPIS in that province had an armed group presence, compared with 46% of 3T mines. The FARDC are by far the main armed actor involved in the artisanal mining sector in the province, followed in second place by Raia Mutomboki (in particular at Shabunda).
- \* The mining sites of **Maniema** are largely free of militarisation. It is the same in **ex-Katanga** (provinces of Tanganyika, Haut-Lomami and Haut-Katanga), where reports of interference by armed actors in 2015 were rare.

We cannot fail to notice the **dominant role played by the FARDC** in terms of military interference in the artisanal sector. A second trend also seems to be emerging: **'gold remains by far the mineral most used to finance armed elements and criminal networks.'**<sup>80</sup> This finding is shared by IPIS, who note less interference by armed actors in the 3T sector compared with the gold sector: around 21% of artisanal miners of

3T interviewed between 2013 and 2015 reported working under the influence of armed actors, compared with 64% of those in the gold sector.

This situation has been denounced for several years, but unfortunately has largely gone unaddressed by the Congolese authorities. While the United Nations Group of Experts on the DRC, in their most recent report, note 'the launch of investigations into the involvement in natural resources of some Congolese military officers', they also observe that 'some senior officers continue to be implicated in gold exploitation and trade, on occasion in collaboration with private companies'.<sup>81</sup> **The FARDC appears to enjoy total impunity.** For example, when the Congolese army launched investigations, in September 2016, into three generals and two colonels for their alleged involvement in South Kivu mines, just a month later they announced there would be no prosecutions.<sup>82</sup> Thus **EurAc is** also fully convinced that 'the development of a comprehensive strategy **to reduce FARDC presence at mining sites**, including through prevention and supporting military justice, thus emerges as a clear – but so far neglected – priority.'<sup>83</sup>

At the same time, any initiative aiming to change the FARDC's behaviour and attitude towards artisanal mining will require the issue of **illegal taxation** to be addressed in its entirety, because criminal networks that facilitate this activity will continue to make it lucrative for FARDC units with the capacity and motivation to take part in it.<sup>84</sup> Indeed, as mentioned above, State agents have positioned themselves at the heart of the illegal minerals trade (see I.1.3). In other words, the FARDC are not the only state actors profiting from the illegal taxation of the artisanal minerals sector. This sector is regulated by 'an informal administration, the taxes and other charges generated specifically benefiting the 'chef de colline' [traditional chief], military officers, as well as some administrative services that

<sup>80</sup> United Nations Group of Experts on the DRC (2016), S/2016/1102, p. 2.

<sup>81</sup> *Idem.*

<sup>82</sup> CERN/CENCO (2017), 'Sud-Kivu : l'ONU veut une enquête sur des gradés congolais accusés de trafic d'or' (South Kivu : The UN wants an investigation into Congolese officers accused of gold trafficking), January.

<sup>83</sup> Weyns, Y., Hoex, L. & Matthyssen, K. (2016), *op. cit.*, p. 19.

<sup>84</sup> IPIS (2015), *op. cit.*, pp. 27-28.

<sup>85</sup> Bucekuderhwa, C., Bidubula, G. & Balemba, E. (2013), 'Vulnérabilité et stratégies de gestion des risques dans les zones d'exploitation minière artisanale. Le cas des creuseurs d'or de Mukungwe, Burhinyi et Luhwindja' in Cahiers Africains/AfrikaStudies, n° 82, p. 107.

‘suck out’ revenues that should accrue to the Treasury.’<sup>85</sup> Unarmed actors benefitting from this fraud also profit from the insecurity around mining zones, some even contributing directly to it through recourse to the support of armed groups when conflicts of interest emerge.

A striking example of this situation can be found at the Mukungwe mine where the local and national authorities are partly responsible for the violence at the site, having recognized the concession rights to it of different users, who are now in dispute amongst themselves over ownership, exploitation and income. Thus confusion about land ownership has deliberately been caused by these authorities, which ‘have granted different access rights, sometimes incompatible and contradictory, to users, with the exclusive aim of maintaining control over the site for themselves.’<sup>86</sup> For several years, this dysfunctional governance situation has led the main actors to resort to armed violence: ‘in the end, it is (political) violence and militarisation that determine access to and exclusion from land, as well as the process of property creation (...) The various stakeholders seek to strengthen their positions by joining armed groups, or even creating them.’<sup>87</sup>

In conclusion, addressing the ‘conflict minerals’ problem requires taking into consideration issues that go beyond the mere financing of armed groups. In order to break links between natural resource exploitation and the financing of armed groups, it is necessary to (re-)position the question of **the governance of the artisanal mining sector** at the heart of any measures envisaged by the DRC and its international partners.

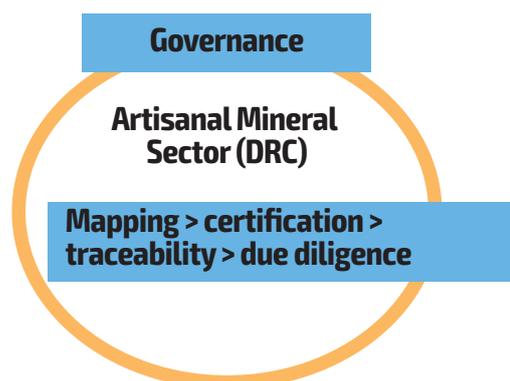
#### 1.4 Key initiatives aimed at combatting ‘conflict minerals’ on the ground

Numerous initiatives have been undertaken in the DRC in recent years to tackle armed group influence and human rights violations in the artisanal sector.<sup>88</sup> Generally speaking, they focus

on **three distinctive but complementary approaches**:<sup>89</sup> the **certification** of the origin of minerals and of exploitation conditions’ compliance with standards regarding the absence of links to armed group financing and respect for human rights; the **traceability** of minerals from the mine of origin to export; and the **due diligence** process by which every company involved in the commercial chain introduces a system for verifying mineral origin and mitigating the risks of using minerals that have contributed to financing armed groups or violating human rights. In other words, certification and traceability are not necessary conditions for the exercise of due diligence by companies but they can facilitate its implementation, provided they can be considered sufficiently reliable.

There is also a **fourth approach**, which underlies the other three: the **mapping** of artisanal mining sites. Less often addressed than certification and traceability, mapping nonetheless constitutes a fundamental process, for it is indeed impossible to account for the origin of minerals and to monitor their commercial route if one does not have access, from the beginning, to a relatively precise and detailed means of identifying and locating the production sites from which they were extracted. A **fifth approach**, which cuts across the other four, relates to **strengthening the capacity of actors involved in the governance of the artisanal mineral sector**, whether state (see section I.1.b) or non-state (mining cooperatives, businesses, civil society).

**Figure 3** Depiction of approaches towards combatting ‘conflict minerals’



<sup>86</sup> Geenen, S. & Claessens, K. (2012) ‘De l’autre côté de la colline. Le contrôle contesté de Mukungwe, Sud-Kivu’ in Vandeginste S., Verpoorten, M. (eds.), *L’Afrique des Grands Lacs, 2011-2012 Yearbook*, p. 181.

<sup>87</sup> *Idem*, p. 202.

<sup>88</sup> Verbruggen, D., Francq, E. & Cuvelier, J. (2011), *Guide to current mining reform initiatives in eastern DRC*, IPIS.

<sup>89</sup> Global Witness (2011), *Congo’s minerals trade in the balance: opportunities and obstacles to demilitarisation*, 18 May 2011, pp. 6-7.

Here we will only look at the first three and the fifth approaches, considering that due diligence constitutes the core of the European Regulation on responsible mineral sourcing and is widely discussed elsewhere. The accompanying measures, whose objective is to ensure the effectiveness of the Regulation, logically require particular attention to be paid to the other four approaches, since these can support the exercise of due diligence by companies that source from the DRC. These four approaches together are part of a process aimed at ‘formalising’ the sector, or in other words at situating artisanal activity within a State-sponsored and implemented legal framework. As well as addressing each approach separately, this section concludes with the key cross-cutting challenges related to formalisation.

#### 1.4.1 Mapping of artisanal mining sites

A number of initiatives in this area have been launched particularly in order to support the work of the *Cadastré Minier* (CAMI), the Congolese authority responsible for collecting cartographic data relating to concessions. The 2002 Mining Code stipulates that a map of mining permits and quarry licences be made available to the public and interested investors. Since October 2011, the website of the *Cadastré Minier* has provided a map of titles granted and those being processed for the whole of the DRC,<sup>90</sup> on the basis of information collated in a *Registre minier* (Mining Registry). This map is updated on a monthly basis.

The **Carter Centre** in particular has supported this work, through the development of industrial mineral mining maps.<sup>91</sup> Belgium has also invested in this area by means of two projects. The first, entitled ‘GECO mapping’ (Geology for an economical sustainable development), was launched on the initiative of the Royal Museum of Central Africa of Tervuren and aims to make an extensive database available to the authorities, to investors and to the wider public. The GECO project website includes an inter-

active map which contains information on the known deposits in the former and now disestablished Katanga province.<sup>92</sup>

The second project is that of ‘Conflict Mapping’, launched in 2005 by IPIS (International Peace Information Service) with financial support from the Belgian Ministry of Foreign Affairs. Since then, the project has successively benefitted from the support of the World Bank (Promines) and IOM. The project has enabled the production of a series of interactive maps that aim to study the links between the conflicts on the one hand, and their underlying causes on the other. These causes include (but are not limited to) the presence of natural resources in conflict regions, in particular in the Kivus and surrounding areas.<sup>93</sup>

The most recent interactive map produced by IPIS shows the location of 253 trading centres and 2026 mining sites, 1615 of which have been visited by IPIS teams since 2013. It provides information on the on-site presence and activities of armed groups, as well as indicators regarding the relative importance of sites. It also shows whether mining sites have been certified as ‘green’ (see following section I.4.2) by the Congolese government and if they are included in the iTSCi traceability initiative (see section I.4.3). The information collected by IPIS as part of this project is passed on to the *Cadastré Minier* to support the updating of the *Registre minier*. It is also used by SAESSCAM, which has developed its own database and maps.

#### 1.4.2 Certification

The German government was the first actor to become involved in the certification of minerals in the eastern DRC, through the **Certified Trading Chains** (CTC) initiative launched in 2008 by the Federal Institute for Geosciences and Natural Resources (BGR). This programme aims to develop a system of certification for production sites in Rwanda and the DRC, which includes some twenty criteria linked to transparency, security, human rights, the environment and the contribution

<sup>90</sup> <http://portals.flexicadastre.com/drc/fr/>.

<sup>91</sup> <http://www.congomines.org/map/>

<sup>92</sup> [http://edit.africamuseum.be/geco\\_website/geco\\_webgis/htdocs/geco.html](http://edit.africamuseum.be/geco_website/geco_webgis/htdocs/geco.html).

<sup>93</sup> <http://ipisresearch.be/home/conflict-mapping/maps/conflict-mapping-drc/>.

of artisanal mining to community wellbeing. Five criteria underlie this set of labour standards:

- 1 Mineral origins and transparency;
- 2 Prohibition of child labour and fair working conditions (including the continuous improvement of health and safety measures);
- 3 Security on site, without undermining respect for human rights;
- 4 Consultation with communities before and during mining operations (including a continuous dialogue on gender-specific, socio-economic and development aspects affected by these operations);
- 5 Continuous improvement of environmental performance.

The CTC approach requires mining operators to undergo an independent audit (on-site inspection and the elaboration of detailed assessment reports) in order to evaluate performance against each of the criteria. In 2011, the CTC method and standards were incorporated by the Congolese authorities into two certification manuals, one for the tin industry and the other for the gold industry.<sup>94</sup> This process led to the creation, by the Ministry of Mines and with the support of the BGR, of a working group on certification (*Groupe de Travail Certification* or *GTC*) responsible for putting the CTC standards into practice. The GTC is made up of agents from the *Administration des Mines* and the various technical services of the Ministry of Mines.

The CTC standards also served as a basis for the development of the **Regional Certification Mechanism** of the International Conference on the Great Lakes Region (ICGLR). This mechanism is one of the six tools of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)<sup>95</sup> adopted by the 11 heads of state that are members of the ICGLR. The purpose of this mechanism is to issue a certificate identifying the minerals' mine of origin and guaranteeing that operating conditions comply with the CTC standards. In order to assess compliance, in 2011 the Congo-

lese authorities set up a '**certification mechanism**' for artisanal mining sites, with financial support from the United States and Germany, and technical assistance from the BGR and IOM. This mechanism assesses operating conditions at mining sites in terms of three categories: red (unsatisfactory situation, no certification); yellow (satisfactory situation but does not meet certification standards), and green (fully satisfactory situation). The site certification procedure is carried out in each of the eastern provinces. If sites are located in a conflict zone, assessments are carried out by joint multiparty certification missions, made up of a dozen experts appointed by the various project stakeholders (*Ministère des Mines, Cadastre Minier, Division des Mines, SAESSCAM, Police des Mines, BGR, IOM, Fédération des Entreprises Congolaise* (the Congolese Business Federation)). If sites are outside conflict zones, mines inspectors carry out the assessment. In each province, a provincial committee for the monitoring of mining activity (*Comité Provincial de Suivi de l'Activité Minière* or *CPS*)<sup>96</sup> deals with any incidents that may have occurred on 'green' sites, especially those reported by the iTSCi. The CPS can recommend corrective action or, if the incidents reported call into question the mine's compliance with the certification criteria, the suspension of the site's 'green' status. Multiparty (provincial *Division des Mines, SAESSCAM, GTC, civil society*) audit missions may also be carried out on site.

Following their launch in June 2011 and up until November 2016, 20 certification missions were carried out and a total of 408 mining sites were certified, of which 379 were certified 'green'. This progress is remarkable if we consider that only 86 sites had been certified 'green' by the end of 2014. The table below shows the data by sector (3T and gold) and by province of sites visited. From this table we can see that the 3T sector accounts for the large majority of sites visited (355) and of 'green' certifications issued (337). Most of the 'green' sites are in the former Katanga province (146, all in the

<sup>94</sup> Ministère des Mines (2011), *Manuel de certification des minerais de la filière stannifère en RD. Congo. Principes, Lignes Directrices et Standards*; Ministère des Mines (2011), *Manuel de certification des minerais de la filière aurifère en RD. Congo. Principes, Lignes Directrices et Standards*.

<sup>95</sup> These six tools are 1) the regional certification mechanism; 2) the harmonisation of national legislations; 3) a regional database on mineral flows; 4) the formalisation of the artisanal mining sector; 5) the promotion of the Extractive Industry Transparency Initiative (EITI) peer learning mechanism; 6) the whistle-blowing mechanism.

<sup>96</sup> The CPS is generally made up of officials from the *Division des Mines, SAESSCAM, CEEC, the Mines Police, CAMI, the Public Prosecutor*; representatives of traders, carriers and of diggers; representatives of provincial civil society (in particular PACT), MONUSCO, DGM, and IOM.

3T sector). Given that the gold sector has overtaken the 3T sector in terms of labour force and numbers of sites, it is clear that the certification process encounters greater difficulties in the former: only 42 gold sites (of the 53 visited) have been certified 'green' to date.

In the DRC, only minerals from mining sites with a 'green' certification can be issued with an ICGLR certificate. The **issuing of ICGLR certificates** is carried out by the *Centre d'Expertise, d'Évaluation et de Certification* (Centre of Evaluation, Appraisal and Certification) of precious and semi-precious mineral substances (CEEC, by its French acronym). This has become mandatory in the DRC for any consignment of minerals exported through official channels. In other words, only minerals originating from a mine classified as 'green' can be exported from the DRC. Between July 2013 and the end of 2016 the DRC issued 1235 ICGLR certificates in the artisanal sector, 792 for tin, 321 for tantalum, 110 for gold,<sup>97</sup> and 12 for tungsten.

Certainly, we may still have doubts about the compliance of some certified consignments of minerals with ICGLR standards, which are themselves informed by the CTC and the OECD Guidance. In particular, we were informed several times during our missions of the risk of 'contamination' of production from 'green' mines by minerals from 'red' sites. This contamination primarily concerns the 'traceability' process, through the fraudulent use of the mineral tagging

system (see section I.4.3 below). The question of the cost of the certification process also raises some doubts as to its viability. Each joint mission costs around USD 20,000. This may appear a high price, but it should be stressed that on average around a dozen sites are certified during each mission. The cost therefore seems quite reasonable in light of the desired objectives and the positive effects of certification on the ground (the resumption of mineral mining and trade). The continuous progress that has been noted in the certification of 3T sites over recent years is encouraging, since it creates **real opportunities** for responsible sourcing from the DRC. The certification of sites should be supported further in order to continue expanding mining areas that comply with international standards. Still, the issue of the **governance** of the artisanal sector must again be raised because 'monitoring and certifying the artisanal mining sector cannot be sustainable in the long term without heightened capacity of the local, provincial and national administration.'<sup>98</sup>

### I.4.3 Traceability

As mentioned above, the DRC has produced a *Manuel des procédures de traçabilité* (Manual of traceability procedures).<sup>99</sup> In practice, the most up-to-date traceability initiative is that launched in 2010 by the International Tin Research Institute (ITRI), a consortium representing in particular the key tin smelting companies and which is therefore a major player in the global tin market. The ini-

<sup>97</sup> By comparison, 4972 certificates were issued for industrially mined gold.

<sup>98</sup> Matthysen, K. & Zaragoza Montejano, A. (2013), 'Conflict Minerals' initiatives in DR Congo: Perceptions of local mining communities, IPIS/EurAc, p. 42.

<sup>99</sup> Ministère des Mines & Ministère des Finances (2014), *Manuel des procédures de traçabilité des produits miniers: de l'extraction à l'exportation*, 2<sup>ème</sup> édition.

**Table 1** Summary of statistics of mining site classification in the DRC

| Province     | Green       |             | Yellow     |            | Red        |            | Not qualified | Total        |
|--------------|-------------|-------------|------------|------------|------------|------------|---------------|--------------|
|              | 3T          | G           | 3T         | G          | 3T         | G          |               |              |
| Katanga      | 146         | -           | 2          | -          | 1          | -          | 149           |              |
| Maniema      | 63          | 8           | -          | -          | -          | -          | 71            |              |
| Nord Kivu    | 96          | 4           | 3          | -          | 4          | -          | 1             | 107          |
| Sud Kivu     | 32          | 11          | 8          | 5          | -          | 6          | 4             | 62           |
| Orientale    |             | 19          |            | -          |            | -          |               | 408          |
| <b>Total</b> | <b>337</b>  | <b>42</b>   | <b>13</b>  | <b>5</b>   | <b>5</b>   | <b>6</b>   | <b>5</b>      | <b>408</b>   |
| <b>%</b>     | <b>82,6</b> | <b>10,3</b> | <b>3,2</b> | <b>1,2</b> | <b>1,2</b> | <b>1,5</b> |               | <b>100,0</b> |

Source: Ministère des Mines et GIZ, *Résumé des missions conjointes de qualification et de validation/inspection en RDC de Juin 2011 à Novembre 2016*, Bulletin ECQ. [Ministère des Mines and GIZ, Summary of Joint Certification and Validation Missions in the DRC between June 2011 and November 2016, Bulletin ECQ]

tiative in question, the ITRI Tin Supply Chain Initiative (iTSCi), consists of the implementation of a tagging system for bags of 3T minerals, also called ‘bag and tag.’ This system requires each bag of minerals produced in the mine to be weighed and provided with a tag with a bar code enabling the mine of origin to be identified. In theory, this operation takes place under the supervision of SAESSCAM and the *Division des Mines*: the former checks that the bag tagging is carried out correctly while the latter records statistical details (product volumes, etc.) and passes them to the provincial Division based in the provincial capital. The operation is carried out a second time at the *centre de négoce* when the minerals are sold to the *négociant*: a second, ‘*négociant*’ tag is issued and attached to the bag of minerals, again under the supervision of SAESSCAM and the *Division des Mines*. Information gathered during these two stages is then entered into a database to which the auditors and the authorities have access. In order to support monitoring and implementation, a *Comité provincial de pilotage du système iTSCi* (provincial iTSCi System Pilot Committee) was set up, within the framework of a cooperation agreement with the Congolese government.

Following its initial development, in 2010, through pilot projects in Katanga and South Kivu, the iTSCi system is now operational throughout the DRC: almost two-thirds of artisanal miners working in the 3T sector do so on a mining site covered by the iTSCi.<sup>100</sup> The iTSCi is now the only traceability system used for 3T products on ‘green’ certified sites in the DRC. The system is also in use in Rwanda and Burundi. The issuing of iTSCi certificates is thus intrinsically linked to the issuing of ICGLR certificates for official exports of 3T from the DRC. ITRI is not directly involved in the implementation of iTSCi activities in the DRC; it is the American NGO Pact and its local partners who manage the programme on the ground.<sup>101</sup>

However, as mentioned in the previous section, **the establishment of the**

**iTSCi system has not prevented the ‘contamination’ of the production of some ‘green’ sites** by that originating from ‘red’ sites: ‘it is surprising that since 2014, the non-iTSCi covered part of the production no longer appears in the *Ministère des Mines*’ official **export statistics**. Whereas in 2013 iTSCi covered cassiterite exports were 65 % of total exports, this amounted to 104 % in 2014. The same goes for coltan (...) As neither statistical errors nor existing stockpiles seem to account for the difference between production and export of non-iTSCi covered 3T minerals, this difference could indicate the possible contamination of legitimate supply chains and cross border smuggling.’<sup>102</sup>

**103**

During our field missions, several well-informed sources reported the contamination of the 3T supply chain in the DRC and in Rwanda through the ‘**manipulation**’ of the iTSCi tagging system, corroborating a number of reports by the UN Group of Experts on the DRC.<sup>104</sup> Firstly, the 3T ores from non-iTSCi covered sites are said to be ‘tagged in town’, namely in Bukavu, as originating from ‘green’ sites. There are thus iTSCi tags circulating in the DRC, outside official channels, which would seem to facilitate the channelling of minerals from sites that have not been certified, or have been certified ‘yellow’ or ‘red’, through official routes.<sup>105</sup> The circulation of tags for Congolese 3T mining sites on the Rwandan black market has also been noted, enabling bags of minerals smuggled over the Congolese border to enter official channels in Rwanda. Another fraudulent practice is the tagging of 3T products from the DRC as originating from mines located in Rwanda. Such practices would explain how Rwanda came to be the largest global exporter of coltan in 2013,<sup>106</sup> even though its known coltan reserves are far less than those of the DRC.<sup>107</sup>

The iTSCi system thus appears to face **a reliability problem** when it comes to combatting mining fraud in the DRC and to neighbouring countries. Of course we must acknowledge that, given

<sup>100</sup> Weyns, Y., Hoex, L. & Matthysen, K. (2016), *op.cit.*, p. 18.

<sup>101</sup> iTSCi, *ITRI Tin Supply Chain Initiative: iTSCi Membership Programme*, p. 1.

<sup>102</sup> Weyns, Y., Hoex, L. & Matthysen, K. (2016), *op. cit.*, p. 18.

<sup>103</sup> See in particular the United Nations Group of Experts on the DRC (2015b), *S/2015/797*; United Nations Group of Experts on the DRC (2016), *S/2016/466*, 23. See also ITRI’s *comments* on this subject.

<sup>104</sup> United Nations Group of Experts on the DRC (2012), *S/2012/84*, p. 46; United Nations Group of Experts on the DRC (2015a), *S/2015/19*, p. 34; United Nations Group of Experts on the DRC (2015b), *S/2015/797*, p. 2.

<sup>105</sup> See for example RFI (2016), ‘Fraude minière en RDC : le rôle du ministre provincial en question’, 31 January.

<sup>106</sup> International Mining (2014), ‘Rwanda tops the world’s coltan (columbite-tantalite) exports’, 18 December.

<sup>107</sup> It is widely acknowledged that 80% of global coltan reserves are found in Africa, with the DRC representing 80% of these African reserves. See Raeymaekers, T. & Cuvelier, J., European companies and the coltan trade: an update. Part 2, IPIS, September 2002, p. 4.

the numerous difficulties in managing the sector already mentioned, such failings are inevitable. But the use of the iTSCi tagging system to cover up illicit trade in minerals is nonetheless regrettable, whether or not this trade is linked to the financing of armed groups.

In addition to the issue of reliability, we must point out some other ‘problems’ created by the establishment of the iTSCi system in the DRC, in particular **its economic impact** on Congolese supply chain actors. Originally, the iTSCi system was to be financed mainly by end-buyers in the tin industry, located downstream in the supply chain. In a letter published in December 2015 by iTSCi, the system was presented as a programme ‘financed by industry and implemented by governments’.<sup>108</sup> It appears that companies downstream in the supply chain, i.e. those that market finished or semi-finished 3T products, have contributed less than 2% towards the financing of the system, while upstream companies cover 80% of its implementation costs.<sup>109</sup> In 2014, Congolese actors alone contributed 42% towards the financing of the iTSCi.<sup>110</sup>

The iTSCi is thus ‘largely self-funded by a levy on volumes of minerals traded’.<sup>111</sup> This situation seems unethical, since downstream companies, which in comparison to Congolese actors have enormous resources, benefit hugely from the iTSCi: the system allows them to source 3T from the DRC and Rwanda ‘in a responsible way’, benefitting their image, as well as at a lower cost, as will be seen below. Taxes that finance the iTSCi are levied at export houses, at USD 450 per tonne of 3T exported from the DRC. These export houses reflect the iTSCi surcharge in the prices at which they buy minerals from artisanal miners. In other words, it is the artisanal miners, and not the multinationals that process and market minerals, who ultimately bear the cost of the iTSCi.

In reality, due to this cost and the pressure the iTSCi puts on prices at the expense of Congolese actors in

the supply chain (artisanal miners, *négociants*, *grands commerçants*, export houses), many actors we met during our field missions would prefer to use a traceability system other than that of the iTSCi. The problem is that the iTSCi has a monopoly in the DRC: Congolese export houses are obliged to be part of the iTSCi in order to have access to buyers who are ITRI members. This situation was already observed in 2014 by the UN Group of Experts: ‘the Group notes that because it is the only system in place, buyers will only purchase minerals from mine sites certified by the initiative. Mining authorities and representatives of mining companies told the Group that they favoured having alternative options to that system.’<sup>112</sup> This monopoly situation deprives artisanal miners, *négociants* and export houses of the benefit of competition, and prevents them from accessing better prices via official channels.<sup>113</sup> To access better prices they must resort to smuggling, in particular into Rwanda.

However, alternatives to the iTSCi that could break up this monopoly do exist:<sup>114</sup>

- \* Pricewaterhouse Coopers GeoTraceability: this system provides the technology for traceability based on tagging of minerals with barcodes and tracking them along the supply chain using a technology combination of mobile phones, GPS and GIS. Tagging and bagging can start either at the level of the mine site or at the pit or tunnel, depending on the configuration of the mine site and the prior risk assessment conducted by the due diligence operator. GeoTraceability signed an MoU with the Government of DRC in 2014, and has agreed a partnership with Better Sourcing Programme (BSP) as a traceability service provider. BSP is no longer operational in the DRC, despite discussions with exporters, international buyers and smelting companies.
- \* MetTrack: MetTrak is a software solution that allows real time tracking and tracing of minerals from all scales of mine to the end consumer

<sup>108</sup> ITRI (2015), ‘L’iTSCi lance un appel de financement dans une lettre ouverte aux entreprises en aval et aux bailleurs de fonds’, p. 1.

<sup>109</sup> ITRI (2016), iTSCi joint industry traceability and due diligence programme, p. 17.

<sup>110</sup> ITRI (2014), *iTSCi Programme Review 2014*, p. 14.

<sup>111</sup> World Bank (2015), *Mobility and transparent artisanal mining in the Democratic Republic of Congo*, 13 August.

<sup>112</sup> United Nations Group of Experts on the DRC (2014), S/2014/428, p. 22.

<sup>113</sup> See also Weyns, Y., Hoex, L. & Matthysen, K. (2016), *op. cit.*, p. 19.

<sup>114</sup> These descriptions are taken from the report by E Levin and R Cook (2015), p. iii.

and can be integrated into database management systems. MetTrak has not been implemented in the DRC to date, but was tested and is operational at Rutengo, a semi-industrialised cassiterite mine in Rwanda, since 2011.

- \* IBIS AG's SERCAM: SERCAM is a special technological solution to support certified raw material flow for mining, which includes tagging and tracking minerals in the upstream supply chain from the mine to the refiner. It consists of advanced hardware components for remote monitoring of mineral transports, mobile handhelds for semi-automated process documentation and a powerful central web application for administration and reporting.

**The iTSCi has clearly contributed to cleaning up the 3T sector and restoring industry confidence** in 3T production from the DRC. These results should be underlined. But it seems that the iTSCi **benefits downstream supply chain actors (end buyers) above all**, without offering a strong enough economic incentive to join the formal sector to those upstream in the chain (artisanal miners). Artisanal miners and cooperatives we met in the field believe that the purchase price for their 3T is too low. Their perception is that this price is fixed 'by foreign partners of export houses', in other words, when all is said and done, by the ITRI. However, the fact that **actors in the DRC's artisanal mining sector do not see a sufficient (economic) advantage to joining the formal sector** poses questions regarding the system's viability. Introducing other traceability systems, thus breaking up the iTSCi's monopoly, would enable healthy price competition benefitting artisanal miners and therefore the formalisation of artisanal activity. Ideally the **cost of traceability**, as with other initiatives facilitating due diligence, should be **distributed more evenly across the supply chain**. Without this, the establishment of such initiatives in the 3T sector will increasingly resemble what Raf Custers describes as a 'protectorate' of mining resources in the DRC.<sup>115</sup>

In the case of gold, the situation is different: apart from some pilot initiatives (see below), systems for **the traceability of gold have not yet been put in place**.<sup>116</sup> However, as discussed in section I.4.2, several gold mining sites have been certified 'green'. As previously explained, the characteristics of gold render most traceability methods used for 3T impracticable: gold can be transported much more discreetly, and can be melted on the spot using quite basic techniques. Consignments of gold from different mines can therefore easily be mixed together along the supply chain. These particular characteristics severely hamper the verification of the mineral's origin, and its traceability from the mine to export. Since the gold sector is clearly the one most affected by armed group interference (see section I.3), **the introduction of gold traceability should be a priority** for any stakeholder concerned with strengthening the oversight of artisanal mining.

The most sophisticated initiative for gold traceability appears to be the 'Just Gold' pilot project run by the NGO PAC (Partnership Africa-Canada). This project, funded in particular by the US, Canada and the United Kingdom, is being implemented in Ituri, in Mambasa territory. The project encourages gold sector miners to sell their production through legal channels by offering them technical assistance in exchange for legal sales. PAC teaches miners improved exploitation techniques and offers them the use of project equipment. In exchange, all gold produced must be traced and sold legally, through the 'Model Trading House' (Maison d'achat modèle), which buys gold at competitive prices, packages and sells it to an approved export house linked to the project. All stages, from production to sale and then to export, are monitored using forms. PAC is currently preparing for the replication of the project in South Kivu and in Butuzi (Walungu territory).<sup>117</sup>

<sup>115</sup> Custers R. (2013), *Chasseurs de matières premières*, Couleur Livre, pp. 201-2016.

<sup>116</sup> United Nations Group of Experts on the DRC (2016), S/2016/1102, p. 2.

<sup>117</sup> See Partnership Africa-Canada (2016), *Just Gold: A conflict-free gold artisanal pilot project*.

**Other gold traceability initiatives** are also being developed:<sup>118</sup>

- \* Artisanal Gold Traceability and Certification Initiative (ITOA): being developed by the CEEC, envisaged as a model scalable nationally. It functions on the basis of security bags with sequential serial numbering. This project has developed software that has already been successfully tried and tested in the industrial gold sector. It is interesting to the extent that it proposes to use existing government resources and include capacity strengthening for relevant institutions: CEEC, SAESSCAM and the Administration des Mines. It is presented as ‘a Congolese solution to a Congolese problem.’
- \* ARM Gold traceability system: a system involving ‘a secure pocketable transparent security bag with features of tamper evident seals and sequential serial numbering.’
- \* MineralCare’s GoldCare: a technology-intensive system, which has a proven track record in the traceability and certification of diamonds in Angola. A pilot project is planned in Orientale Province for 2015.
- \* A joint BGR/CTC, Geotraceability and Better Sourcing Programme (BSP) project: a pilot project is planned for Maniema.

#### **1.4.4 Support for sector governance and capacity strengthening.**

As previously explained, the **shortcomings in the governance** of the artisanal mineral sector present a major obstacle to combating the ‘conflict minerals’ phenomenon, and more generally to the formalisation of the sector. There are shortcomings in terms of capacity, both means and resources,<sup>119</sup> but also in terms of the competence, and even the will, of those agents responsible for managing the sector.

The different funding partners of the DRC, including the EU and some Member States, established a DRC Donor Coordination Group (Groupe de Coordination des Partenaires or GCP),

which until 2010 was headed up by the World Bank and the UNDP. In 2013, an Executive Committee of the GCP was set up. It is made up of two multilateral partners (the EU and UNDP) and two bilateral partners (the UK and the US). More recently, Belgium and Germany joined the GCP Executive Committee. These donors are in dialogue with the DRC’s *Ministère des Mines*, specifically through a ‘mines thematic group’ set up by the Ministry. It thus appears that the **necessary structures for planning and coordinating support to artisanal mining sector governance already exist**. However, it is still difficult to understand, at least for **EurAc**, who the stakeholders are who are directly involved in strengthening the capacity of State services responsible for the management of the sector. The information below on this issue is therefore most likely to be incomplete.

Various organisations, such as the OECD, IOM, Pact and Germany (GIZ/BGR), have assisted the government and sector actors to develop their competencies through **training**. The OECD disseminates guiding principles on due diligence amongst a wide range of stakeholders in the mineral (3T and gold) supply chain, particularly amongst governments of states that are members of the ICGLR. IOM has held trainings for the *Police des Mines* on the minerals traceability mechanism. The NGO Pact, which implements the iTSCi system, organises trainings on traceability and due diligence. The BGR also organises trainings for State agents responsible for the process of validation/certification of mining sites, in particular for those who participate in joint missions to conflict areas and for mines inspectors in non-conflict areas. Almost 80 mines inspectors thus appear to have received training from BGR, including officials from SAESSCAM, the *Division des Mines*, CAMI, CEEC and CTCPM.

In addition to these trainings, there is another programme in place to improve governance in the artisanal sector: the Growth with Governance

<sup>118</sup> These descriptions are taken from the report by E. Levin and R. Cook (2015), *op.cit.*, p. v.

<sup>119</sup> IPIS (2015), *op. cit.*, p. 36.

in the Minerals Sector (*Projet d'Appui au Secteur Minier or Promines*) project, developed with funding from the World Bank and the UK (DFID). Through supporting good governance in the mining sector, Promines aims to increase its contribution to economic growth and sustainable development at local, provincial and national levels. The project specifically aims to strengthen the capacity of public agencies to manage the sector in an efficient and transparent manner, and to improve the Congolese government's capacity to channel revenues and other benefits accruing from the mining sector towards sustainable economic development. The provinces of Katanga, Maniema, Kasai Oriental and Occidental, North and South Kivu, and Orientale, were selected as pilot areas. The initial budget of Promines is estimated at around USD 90 million.<sup>120</sup> Actual disbursement of funds did not begin until 2012. The World Bank, currently the main funder of Promines, has guaranteed the extension of the project until the end of 2018.

Numerous activities have been implemented under Promines since 2013. They include **material support**, such as supplying CAMI with hardware, printing secure ICGLR certificates, providing senior officials and divisional heads from the *Administration des Mines* with vehicles, and providing the iTSCi with essential fieldwork equipment (for communication, transport, etc). Promines has also supported the consultation process for the **revision of the Mining Code**, with the specific aim of enabling civil society participation in the revision. The project has also assisted IPIS to produce maps of artisanal mining sites in the eastern DRC provinces.

One of the main and most important elements of the Promines project relates to the optimisation of **human resource management within the Congolese administration**. For example, in 2013 the project organised training on the regional mineral certification mechanism and procedures for the DRC, in partnership with the ICGLR

and with the support of BGR. Without doubt one of its most useful activities, from our perspective, was an '*Audit du cadre institutionnel et organisationnel du secteur minier*' (**Audit of the Institutional and Organisational Framework of the Mining Sector**) carried out between 2012 and 2013 by PricewaterhouseCoopers. This audit led to the publication of two reports, one on the *Ministère des Mines*,<sup>121</sup> and the other focussed exclusively on SAESSCAM,<sup>122</sup> identifying the key gaps and capacity needs in relation to the public management of the artisanal sector. These reports culminated in the publication of a final report presenting a *Plan d'Action du Secteur Minier* (Action Plan for the Mining Sector).<sup>123</sup> More recently, this work was succeeded by the elaboration of a *Plan Stratégique de Développement du Secteur Minier 2016-2021* (Strategic Plan for the Development of the Mining Sector 2016-2021). In response to the audit carried out in 2013, Promines is also supporting the development of an appropriate policy and strategy for training mining sector service providers, in particular officials and agents of the *Administration des Mines* and specialised services.

We should also note that in terms of the sector's governance, some of the above-mentioned donors have provided **support for cooperatives**. According to the information we were able to gather, this support involved Germany (BGR/GIZ), the US, the UK (DFID) and the World Bank (Promines). We were however unable to access much detail about the type of support provided, the budgets allocated, or the number of cooperatives concerned, but it would appear to have involved capacity-strengthening of some cooperatives in traceability procedures (trainings), in the development of business plans to facilitate access to funding (trainings), and in securing access to mining sites (support in the negotiation of agreements with property title holders).

Finally, we should highlight that GIZ **worked with local NGOs** to support

<sup>120</sup> IPIS (2012), *The formalisation of artisanal mining in the Democratic Republic of the Congo and Rwanda*, CIFOR, p. 20.

<sup>121</sup> PricewaterhouseCoopers (2013), *Audit du Cadre Institutionnel et Organisationnel régissant le Secteur des Mines - Rapport sur l'organisation et le fonctionnement du Ministère des Mines*.

<sup>122</sup> République Démocratique du Congo – Ministère des Mines – Unité d'Exécution du Projet « Promines » (2013a), *op. cit.*

<sup>123</sup> République Démocratique du Congo – Ministère des Mines – Unité d'Exécution du Projet « Promines » (2013b), *Projet de Rapport Final : Proposition de Plan d'Action du Secteur Minier*.

improved governance in the artisanal sector. This is the case with COSOC-GL in particular, which was funded from September 2014 to 30 June 2016 to carry out awareness-raising with the military, in order to encourage them to withdraw from mining activities in South Kivu, especially in the Fizi, Mwenga and Shabunda territories. Within the framework of the project, GIZ also supported CENADEP to train 75 soldiers of the 33rd FARDC military region.

**Other local NGOs have worked with State agencies** responsible for managing the artisanal sector, but without direct aid from international public institutions. OGP received financial support from Oxfam NOVIB to provide training to officers from the 10th FARDC military region on the mineral traceability process. In 2014, the NGO CREDDHO carried out training on the 2002 Mining code and the 2003 Mining Regulation for agents from the *Police des Mines* and SAESSCAM operating in Walikale territory (North Kivu), with the support of the American Jewish World Service (AJWS). ASSODIP, supported by the American NGO Free the Slaves, provided trainings to various service providers in the Masisi mines (North Kivu) on avoiding child exploitation in mines and protecting children's rights. CRONGD, in South Kivu, trained SAESSCAM agents on setting up and managing cooperatives. The GATT-RN Network, supported by AGEH, AJWS, and Jewish World Watch, is involved in monitoring mining sites in North Kivu as part of an early warning mechanism, informing local authorities in the event of any on-site incidents. CERN has set up – with the support of Fastenopfer, CAFOD, CORDAID, CCFD-Terres Solidaires and Secours Catholique – Natural Resource Observatories (*Observatoires des Ressources Naturelles* or ORN) across the country. In some provinces (former Orientale province, North Kivu and South Kivu, Maniema, ex-Katanga), the ORN carry out monitoring of the artisanal mineral sector. In addition, the Pole Institute in Goma, supported by *Brot für die Welt/Bread for the*

*World*, has published several reports on artisanal mining and regularly organises roundtables on the subject.

**Local NGOs have also been involved in building the capacity of mining cooperatives**, in particular Save ACT Mines (supported by the US and Pact), CREDDHO (supported by AJWS) and Best-Sud-Kivu (supported by Wallonie-Bruxelles International and Misereor), CRONGD in South Kivu (with Promines support), APRODEPED and Max Impact in South Kivu (both supported by GIZ). In addition, it is worth mentioning that almost all the NGOs mentioned above carry out important advocacy work towards the Congolese authorities at local, provincial and national levels, calling for improved artisanal sector governance.

There is thus indeed some support from international public institutions for the governance of the artisanal mineral sector in the DRC. However, the **number of these donors seems quite limited** (World Bank, USA, Germany, UK, Fédération Wallonie-Bruxelles/Wallonia-Brussels Federation) and there is **a notable absence of some important partners of the DRC**, in particular that of the EU, given that in the 11th European Development Fund, 620 million euro in bilateral aid was allocated to the DRC over a period of 6 years (2014-2020), 26% of which (160 million) was dedicated to strengthening governance and the rule of law. It is equally surprising that key partners of the DRC such as **Belgium**, which is involved in the governance of the industrial mineral sector, and **France**, are not more engaged with supporting the strengthening of artisanal sector governance. It also seems as though **local NGOs are underutilised by public donors** when it comes to monitoring or improving the functioning of state services. Most aid to local NGOs in this area is provided by private donors (US and European NGOs). However, some NGOs have real expertise regarding the (dys)functioning of the artisanal sector, as well as standards and procedures

for responsible sourcing. **Overall, there seems to be little investment in strengthening cooperatives** by either public or private donors, an area in which local NGOs could be used more, given their expertise and their presence on the ground.

#### **I.4.5 The challenges of formalisation: risks of dispossession and taxation**

The different initiatives presented above aim, generally speaking, to create a formalised framework for the artisanal sector. The establishment of such a system is perceived as necessary and positive by sector actors (artisanal miners, *négociants*), as long as it translates into greater protection for them (security, access to minerals).<sup>124</sup> These actors also expect formalisation to result in better remuneration for their work, in other words better prices for minerals upstream of the export houses. Unfortunately, several initiatives being implemented on the ground risk **making artisanal miners and *petits négociants* (small traders) more vulnerable**. The establishment of cooperatives and the iTSCi contribute to this trend, to the extent that they concentrate the power to control access to the sector and prices even more in the hands of elites, in particular those who have sufficient financial means and a wide enough social network to obtain official approvals, comply with standards<sup>125</sup> and channel production to the international market. Formalisation **risks ‘dispossessing’ artisanal miners** to the advantage of local elites and large businesses.<sup>126</sup>

It is also necessary to highlight the **dysfunctionalities in State services** responsible for formalisation (see points I.1.2 and I.1.3), which quite often contribute to weakening the position of artisanal miners and *négociants* through regular harassment and the collection of illegal taxes. These dysfunctions **discredit and undermine** the process of formalising artisanal mining.

Formalisation also implies the **levying**

**of legal taxes** by State services. The official taxation system for the artisanal sector, from mine to export, is extremely complex, since it involves a large number of State bodies (SAESSCAM, the *Division des Mines*, CEEC, DGRAD, the *Ministère des Mines*, DGDA, OCC, OGEFREM), that subsequently divide receipts between themselves according to several distribution criteria, which depend on the type of taxes, duties and royalties. Since this system is too lengthy to describe in enough detail here, for more information on the subject we refer to the iTSCi analysis produced in 2013.<sup>127</sup> By means of example, the provincial export duty for coltan is around USD 360 per tonne, and about USD 80 per tonne of cassiterite.

In addition to the multiple taxes aimed at financing State services, we should also mention those that **fund the iTSCi** (USD 450 per tonne of 3T exported). There are also taxes levied on cooperatives and export houses, which are pooled into a **provincial basket fund intended for local community development**. This levy has become obligatory in all of the eastern provinces that export 3T and gold. In each province, these funds are managed by a multiparty committee that includes representatives from the provincial authorities and local civil society. Cooperatives contribute the equivalent of 0.4% of the appraised value of 3T and 0.2% of the appraised value of gold to the *basket fund*. Export houses contribute 1.8 % of the export value, equivalent to USD 180 per tonne of cassiterite and USD 360 per tonne of coltan in North Kivu, for example. To benefit from these funds, local communities must draw up a ‘Local Development Plan’, which some have managed to do thanks to the support of local NGOs (in particular those mentioned in the previous section). During our field missions to North and South Kivu, we regrettably found that few communities benefit from these funds, since they are not managed transparently and are subject to the risk of misuse.<sup>128</sup>

<sup>124</sup> Geenen, S. (2016), *op. cit.*, p. 168.

<sup>125</sup> *Idem*, p. 183.

<sup>126</sup> *Idem*, p. 189.

<sup>127</sup> iTSCi (2013), *Governance Assessment. Payments and taxation in the Democratic Republic of Congo (Katanga, Maniema and South Kivu provinces) and Rwanda*, pp. 19-33.

<sup>128</sup> Société civile du Sud-Kivu (2016), *Déclaration des organisations du Groupe Thématique Mines et Ressources Naturelles de la société civile du Sud-Kivu relative aux multiples abus du Ministre Provincial des Mines du Sud-Kivu*.

The key question here is how to introduce legitimate taxes in order to formalise the artisanal sector, without ‘killing’ the formal sector through **a rate of taxation that is disadvantageous compared with the informal sector and neighbouring countries**. There are clearly too many State agencies involved in tax collection and a significant effort must be made to rationalise the total rate of official taxes imposed on artisanal mineral mining and trade. That is why many actors on the ground have been advocating for **the introduction of a ‘one-stop shop’** (*guichet unique*) in charge of collecting all taxes from the artisanal sector. This would support wider efforts to combat mineral fraud in the DRC and to neighbouring countries. Reducing the number of agencies authorised to collect taxes would be an efficient way to tackle illegal taxation by State bodies. The setting up of this ‘one-stop shop’ could also help clarify the overall rate of official taxation in the artisanal sector. In order to be optimal, this rate should enable the formal sector to remain attractive in the face of competition from the informal sector

and from tax regimes in neighbouring countries. Lastly, we believe that an adequate proportion of official taxes should be used to support the work of SAESSCAM (agents’ salaries and operational costs), which could possibly allow this service at last to carry out its role of strengthening the capacity of miners and cooperatives, and more generally, supporting actors in the artisanal sector on the road to formalisation.

Successful formalisation inevitably requires increased investment in **strengthening the governance** of the artisanal mineral sector in the DRC. Without such investment, formalisation risks penalising workers at the very bottom of the value chain. In addition to action being taken in the DRC, measures are also necessary with regard to neighbouring countries: without the harmonisation of mineral prices and fiscal regimes at a regional level, the lure of fraud and of the black market will remain strong and will continue to hinder efforts to formalise Congolese artisanal mining.

## Part II Accompanying Measures envisaged by the EU and its Member States

In March 2014, the European Commission and the European External Action Service (EEAS) published, at the same time as the draft European Regulation, a **Joint Communication** entitled ‘Towards an Integrated EU Approach for the responsible sourcing of minerals originating in conflict-affected and high-risk areas.’<sup>129</sup> This document describes the EU strategy to: (1) secure a higher level of participation by EU companies in the due diligence mechanism envisaged by the future Regulation, but also to (2) ensure the adoption of a global, comprehensive and coherent approach to responsible sourcing from conflict-affected or high-risk areas. The Communication proposes thirteen types of measures covering three different areas of intervention: five types of **incentivizing measures for the private sector**,<sup>130</sup> three types of **measures for policy dialogue with third countries**,<sup>131</sup> as well as five types of **development cooperation measures**.<sup>132</sup> The Communication is not binding, but it has a degree of force since it has the approval of the highest political entities within the Commission.

In October 2014, **EurAc** published an initial analysis of the measures proposed in the Joint Communication, based on lessons learned from the situation in the DRC.<sup>133</sup> One of the development cooperation measures announced in the Communication aims at ‘building further capacity [of third countries] to implement the national due diligence frameworks.’<sup>134</sup> **EurAc** lamented the fact that no detail had been given in the Communication on the types of actors who will benefit from this capacity-building and pointed to the

need for **capacity-building of local actors** (administrations, Congolese businesses, artisanal miners, mining cooperatives, civil society). **EurAc** also highlighted the lack of information as to how, in concrete terms, the EU intended to strengthen **policy dialogue with the national governments of the Great Lakes region** affected by the mining of and illegal trade in minerals originating from the DRC.

In a letter sent to the European Parliament on 18 March 2015, the EU’s High Representative, Federica Mogherini, and the Commissioners for Trade and for Development, Cecilia Malmström and Neven Mimica, announced the allocation of **20 million euro to the accompanying measures for the 2016-2020 period** (see Appendix I) The letter recognises that the future European legislation on responsible mineral sourcing will produce good results if it contributes to a wider effort **to strengthen governance** in producing countries, in particular in the Great Lakes region. In the same letter, the EU also commits to **supporting local civil society**.

The **European Parliament** has also taken position on the matter, having voted on 20 May 2015 to adopt Amendment no. 55,<sup>135</sup> which proposes to introduce an article (15a) on accompanying measures directly into the text of the Regulation (see Appendix II). The amendment also calls for accompanying measures to include targeted development cooperation with third countries, including support for **‘placing local enterprises in a better position** to comply with this Regulation.’ The Parliament also requests that the Commission ‘present

<sup>129</sup> JOIN(2014) 8 final.

<sup>130</sup> These actions include financial and visibility assistance to businesses that source responsibly and the insertion of a performance clause in some of the European Commission’s public procurement contracts.

<sup>131</sup> 1. Existing policy dialogues in relation to development trade and security; 2. Specific dialogues with countries where the majority of smelters/refiners are located (China, Malaysia, Indonesia, Thailand and Russia); 3. ‘Resource Diplomacy’ developed since 2008 in the framework of the EU’s Raw Materials Initiative.

<sup>132</sup> 1. Transposing the OECD Due Diligence Guidance into the national due diligence frameworks and legislation of third countries; 2. Building the capacity of countries to implement national due diligence frameworks; 3. Supporting political dialogue in the countries concerned between local and central government authorities, civil society organisations and business operators; Creating visibility for the actions carried out and the results achieved by the producer countries; 5. Joint projects on sustainable mining and good governance, also taking into account the specific nature of artisanal mining.

<sup>133</sup> EurAc (2014), *European draft Regulation on responsible mineral sourcing. What lessons can be learning from the Democratic Republic of Congo?*

<sup>134</sup> [http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc\\_152228.pdf](http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152228.pdf)

<sup>135</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0204+0+DOC+PDF+Vo//EN>

an annual performance report of the accompanying measures implemented.’

By means of the position adopted by the EU Council on 17 December 2015, **Member States** have expressed their support for measures aimed at assisting small and medium-sized enterprises (SMEs) to implement due diligence in their supply chains. They also call on the EU High Representative, Federica Mogherini, to regularly evaluate financial and political support to the specified regions, **in particular the Great Lakes region**, in order to ensure the consistency of European policy, and **to encourage and strengthen good governance**, the rule of law, and the sustainability of mining activity.

In Part II, we review the different measures already taken or envisaged by the EU and its Member States. Some of the information presented in the sections below relates to measures that are still under consideration by the EU or its Member States and on which no decision has yet been taken. Some of the information is therefore only hypothetical. We nonetheless take the liberty of including it, because it allows us to present a relatively complete picture of the EU’s and its Member States’ approach with regard to the accompanying measures. A **brief evaluation of the proposed measures** is presented in section II.9, with the aim of (1) verifying whether they respect the commitments made in the various declarations of the EU and its Member States and (2) identifying potential gaps, taking into account the current state of affairs in the artisanal sector as presented in Part I.

## **II.1 Incentivising measures for the private sector**

The measures announced in the Joint Communication include **financial and visibility assistance to companies that source responsibly**. The Commission (DG Growth) is said to be working on a project that aims to assist European SMEs to comply with the provisions of the Regulation. SMEs could thus benefit from funding, but unfortunately we

were unable to gain information about the budget proposed for this project or about the criteria enterprises must meet to access funding. According to the Communication, allocated funds may be granted under the COSME programme for the competitiveness of enterprises and SMEs.<sup>136</sup> We should also note the existence of a public-private partnership launched by the Netherlands, the **European Partnership for Responsible Minerals (EPRM)**. This initiative partly falls under the incentivising measures envisaged for the private sector (for details, see section II.8)

Another incentivising measure proposed in the Joint Communication is the inclusion of a performance clause relating to responsible sourcing in some European public procurement contracts, in particular for the purchase of products containing 3T and/or gold. In this way, the Commission aims to encourage stakeholders downstream in the supply chain to procure from enterprises, in particular smelters and refiners, that conform to the provisions of the OECD due diligence guidance. To our knowledge, this measure has not yet been put into practice. The Joint Communication also announces that the Commission will encourage Member States to add similar performance clauses in contracts signed by their national authorities, in compliance with the European Public Procurement Directive. To this end, the Commission plans to develop ‘recommendations and implementing guidance to Member State authorising officers’.

## **II.2 Promotion of the OECD Due Diligence Guidance**

The EU provided 1 million euro in financial support to the OECD Secretariat to promote the Due Diligence Guidance in different producer (e.g. Colombia and the DRC) and transit (e.g. China) countries. This funding was granted through the former Instrument for Stability (IfS), now the Instrument contributing to Stability and Peace (IcSP). After it ended in December 2015, this project was renewed

<sup>136</sup> (EU) Regulation no. 1287/2013 of 11 December 2013 established a programme for the competitiveness of companies and SMEs (COSME) (2014-2020).

for a three year-period (2017-2019) with an increased funding of 3 million euro from the IcSP. These funds are intended to support the dissemination of OECD norms, capacity-strengthening of States and companies, advocacy for the implementation of the OECD Due Diligence Guidance, and the organisation by the OECD of Forums in Paris and meetings in the DRC and other countries about due diligence.

### II.3 Support to ICGLR

The EU contributed 3 million euro in ex-IdS funding for three years (2014-2016) to support the ICGLR to implement the six tools of the **Regional Initiative against the Illegal Exploitation of Natural Resources (RINR)**. This funding was mainly used for the technical capacity-strengthening of the ICGLR Secretariat (in Burundi) and focal points in DRC and Rwanda. Responsibility for the project's implementation was entrusted to German development cooperation (GIZ). This project was closed in 2016, but **the EU plans to extend it for another 3 years**. This time, funding should be provided through European Development Fund (EDF) funds allocated to the Economic Community of Central African States' (ECCAS) Regional Indicative Programme (RIP) for 2014-2020. Of the 10 million euro allocated to ICGLR through the ECCAS PIR programme, 3.62 million euro are to be ring-fenced for combatting the illegal mining of mineral resources (six ICGLR tools). This new project should also strengthen ICGLR initiatives in relation to the private sector.

### II.4 The EU-UN Partnership on Land, Natural Resources and Conflict Prevention

Launched in 2008, the EU-UN Partnership aimed to strengthen the capacities of local non-state actors in the Great Lakes Region (Burundi, DRC, Rwanda, Uganda) in the resolution of community conflicts linked to natural resources, mainly land

and minerals.<sup>137</sup> The EU contributed 3 million euro in ex-IdS funding to the Partnership, 1.5 million euro of which was put towards the 3rd phase of the project (2013-2014). The main activities funded during this phase were the organisation of two workshops bringing together civil society from the Great Lakes region, support for strengthening regional civil society coordination, and grants to NGOs for 12-month projects. The amount allocated towards grants for NGOs was 600,000 euro. We are not in a position to confirm or not the continuation of EU funding for this Partnership. Discussions are said to be underway between the EU and a number of UN agencies, but as of yet no decision has been taken.

On the other hand, the EU is said to be considering allocating some 4 million euro in IcSP funding for the 2017-2020 period to responsible mineral sourcing projects in Africa. The projects funded will not involve the Great Lakes region however, instead focussing on three West African countries (the Ivory Coast, the Central African Republic, Burkina Faso). Another option could be the EU-ACP Programme managed by the Development Commission (DEVCO). One of the Programme's projects concerns the management of mineral resources. DEVCO has contributed 11.3 million euro to its 14 million euro budget. Initially planned for 2 years, the programme has been extended until the end of October 2018. Unfortunately, it cannot be considered as one of the accompanying measures to the Regulation on responsible mineral sourcing because it does not relate to 3T or gold: it focuses exclusively on low value minerals such as cement or construction stones. In addition, the project does not include the DRC.

### II.5 Support for monitoring cross-border activity

The EU is said to be considering the launch of a new institutional support programme for the monitoring of cross-border economic, commercial

<sup>137</sup> UN Interagency Framework Team for Preventive Action and EU, *EU-UN Partnership on Land, Natural Resources and Conflict Prevention – The Great Lakes region: A Pilot Project*.

and social activity between Burundi, the eastern DRC and Rwanda, with the allocation of 20 million euro in EDF funds under the ECCAS RIP 2014-2020 framework. If the project is approved, it would be managed by DEVCO. However, the European Commission has not yet taken any decision regarding the approval of this project.

## II.6 European Parliament support for the Panzi foundation

With the aid of a 2.2 million euro European Parliament grant, the Panzi Foundation has launched a project entitled ‘**socio-economic reintegration of children and sex-workers living near artisanal mines**’. Project funding began in June 2016, marking the start of a 36-month project period. This grant will fund the socio-economic reintegration of children and sex-workers living near artisanal mines in the Mwenga territory (South Kivu). The aim of the project is to improve their living standards and, more specifically, to increase the school attendance of children working in mines and to reduce the number of adolescents and sex-workers in and around the mines. In order to achieve this, the project will offer ‘catch-up’ schooling to children, and professional training to adolescents and sex-workers to assist them in finding alternative employment. Medical aid will be provided to sex-workers in order to fight sexually transmitted diseases and avoid unwanted pregnancies. The project also includes a component aimed at raising the awareness of local stakeholders with regard to child protection and human rights.

## II.7 German support to transparency in the raw materials sector

Germany is an important partner of the DRC,<sup>138</sup> contributing around 260 million euro annually towards various sectors: bilateral development cooperation (21%), humanitarian aid (9%), conflict prevention and support for

stabilisation (7%), support to civil society (3%) and involvement with multilateral organisations and the EU (60%). Since 2006, Germany has provided a total of 23 million euro for a programme called ‘Strengthening transparency in the raw minerals sector’, implemented jointly by BGR and GIZ. This programme has the overall aim of supporting an increase in the contribution of the mining sector, both industrial and artisanal, to sustainable development in the country. It has two main components: (1) support to sector governance and (2) the implementation of a mineral traceability and certification mechanism in the DRC. We regard the second component, which aims to support the formalisation of the artisanal sector, as forming part of the accompanying measures to the European Regulation on responsible mineral sourcing.

This component resulted in a project entitled ‘Support for Implementing a Certification System for Conflict Minerals’. Most of the project’s activities have been described above: the development of CTC standards, of a process to certify artisanal mining sites and the implementation of the ICGLR certification mechanism (see section I.4.2); and support to State agencies and civil society in strengthening the governance of the sector (see section I.4.4). After a first phase between 2009 and 2013, a second phase of the project was launched, which aims to guarantee the compliance of 20% of artisanal gold and 3T mining sites with CTC standards. This second phase will close at the end of 2017. GIZ and BGR are working on a possible extension of the project into a third phase beginning after 2017. Prior to this, in March 2017, an evaluation of the current phase is to be carried out. Based on this, the German Ministry for Economic Cooperation and Development will decide whether or not to extend the project.

<sup>138</sup> Ambassade de la République fédérale d’Allemagne en RDC (2015), *La coopération germano-congolaise : Un partenariat pour un développement équitable, durable et pacifique*, p. 5. This estimate is based on 2013 and 2014 statistics.

## II.8 European Public-Private Partnership for Responsible Minerals

In 2016, the Netherlands launched a new initiative which was to become an accompanying measure to the European Regulation on responsible mineral sourcing: a public-private partnership, called the European Partnership on Responsible Minerals (EPRM), which aims to (1) **increase the proportion of minerals produced in a responsible manner in conflict-affected and high-risk areas**, and (2) **to support socially responsible mineral mining** that contributes to local development. The EPRM concentrates on 3T and gold and is aimed at all conflict-affected and high-risk areas across the globe. The members of the EPRM are currently finalising the project's organisational structure, and the EPRM should soon become operational.

Several actors have joined the initiative since its launch was announced. At the level of **public authorities**, these include the UK and the European Commission (DEVCO). From the **private sector**, the first to join were Apple, the *Conflict-Free Sourcing Initiative* (CFSI), Intel, Philips and Valcambi. Other companies are said to be involved in the process of joining the EPRM, but we know neither names nor numbers. From **civil society**, IPIS and the NGOs Cordaid (Netherlands), Diakonia (Sweden) and Solidaridad (International) are involved.

In terms of **financial contribution** to the project, the above-mentioned companies, considered founding members of the initiative, contribute 30,000 euro each. The 'standard' contribution for companies wishing to join is 10,000 euro. For SMEs, a minimum membership fee of 500 euro has been set. As for NGOs, they do not contribute to the partnership in financial terms, their support consisting essentially in their field expertise. The Netherlands, which has a proposed total budget of 10-15 million euro for the EPRM, has so far released 3 million euro for a period of

three years. The UK has not yet agreed on its budget contribution. The same applies to the DEVCO Commission, which first wishes to evaluate the functioning of the EPRM, since it is not yet fully operational, in order to identify the type of support the Commission could provide.

We should point out here that **DEVCO has apparently released 5 million euro in 2017 for the accompanying measures to the European Regulation**. With this amount, DEVCO wants to focus on three main strands: supporting local authorities, strengthening local communities, and supporting private sector actors to implement due diligence measures. If the EPRM projects meet DEVCO's desired objectives in at least one of these areas, the 5 million euro budget could contribute towards the EPRM.

The EPRM is considered a 'mixed' initiative, insofar that, to achieve its objectives, it includes **some activities aimed at incentivising the private sector**, and others that constitute development cooperation in countries that produce 'conflict minerals'. The activities envisaged in relation to the first type of measures mainly concern the downstream part of the supply chain – in particular in Europe –, aiming to increase the knowledge of SMEs about due diligence and establish a platform to exchange knowledge and best practice on the subject. These measures appear to reflect some of the measures announced by the Commission in its Communication with regard to the private sector (see section II.1 below).

**In relation to development cooperation**, the EPRM involves activities upstream in the supply chain, in particular in mining regions located in conflict-affected or high-risk areas. Two initial projects were selected, one in Colombia and the other in the DRC. The project in the DRC will build on an existing project in Ituri: the 'Just Gold' project run by the NGO PAC, and financed by the US, Canada and the UK,

the objective of which is to develop a traceability system for legally produced and ‘conflict-free’ artisanal gold in the DRC. PAC developed this project through the setting up of a ‘Model Trading House’ (for more detail, see section I.4.3). According to the information we were able to access, the EPRM project will build on the ‘Just Gold’ project in Ituri through **strengthening the position of women in and around mining sites**, and will be directly implemented by PAC. The project aims to **facilitate women’s access to credit**, through the development of a loans scheme managed by women. A simpler and more formalised means for women to access credit should contribute to combatting sexual exploitation in that area (Mambasa territory). PAC is currently preparing to replicate its ‘Just Gold’ project in Butuzi (South Kivu, Walungu territory), but there is no confirmation at this stage that the EPRM will replicate its project on women’s access to credit there too.

## II.9 Evaluation

First, we review **the amounts allocated to the accompanying measures**. The only commitment in this regard is that of the Commission, which announced in March 2015 that it would allocate 20 million euro for the 2016-2020 period (see Appendix I). This total is likely to be reached, given that a budget of 17.2 million euro has already been confirmed for the measures described above (see sections II.2, II.3, II.4, II.6. and II.8). It is sure to increase further once decisions have been taken regarding funding that has been proposed but not yet confirmed (see II.1, II.5, II.8). We should also point out that these funds are not exclusively for the DRC, making it difficult to evaluate the total amount committed by the EU for the DRC. As regards Member States, the picture is more mixed: aside from Germany – whose significant and longstanding commitment to improving the governance of artisanal mining in the DRC should be applauded –, the Netherlands – which launched the EPRM –, and the UK, no other Member

State appears to be developing projects in the DRC in line with the accompanying measures to the European Regulation on responsible sourcing.

In addition to the funds allocated to the accompanying measures, we should also consider the **types of intervention** being funded. Of the three areas of intervention announced by the Joint Communication in March 2014, the **policy dialogue measures** seem to have been largely neglected. As in 2014, **EurAc** notes that there is no clarity as to how, in concrete terms, the EU plans to strengthen dialogue with the governments of the DRC and the Great Lakes region affected by illegal mineral mining and trade from the DRC. We will return to this point below, but here we should point out that in May 2015 the Parliament called for the accompanying measures to include ‘ongoing policy dialogues with third countries and other stakeholders, including the possibility of harmonization with national and regional certification systems’ (see Appendix II).

The proposed **incentivising measures for the private sector** appear to correspond to those announced in the Joint Communication (see section II.1 and II.8). Since these are still being developed, and since we lack information on their content, it is difficult for us to make an accurate assessment of them. In any case, it seems that the measures under consideration meet the demands put forward by the European Council in December 2015, regarding the targeted support of SMEs for the implementation of due diligence. We nonetheless stress the importance of providing (financial and visibility) support to companies that source 3T and gold in conflict-affected and high-risk areas, and not to those that have decided to boycott those areas. These incentives aim, generally speaking, to create favourable market conditions for responsible sourcing within the EU. But to our knowledge at this stage, they provide no guarantee of effectively encouraging companies to source responsibly in conflict-affected or high-risk areas.

The implementation of the accompanying measures should not only aim to strengthen the capacity of companies and market conditions in order to promote the responsible trade in minerals. The EU has focused its Regulation on the upstream section of the supply chain; as such it makes sense that the accompanying measures also focus on this area, in particular in countries known to produce ‘conflict minerals’. At first sight, the proposed **development cooperation measures** seem to respond to this need. Three of the five development cooperation measures announced in the Joint Communication appear to be covered by the planned measures: 1) Introducing the OECD Guidance into the legal frameworks of third countries (section II.2); 2) Strengthening the capacity of countries to implement due diligence standards (section II.2); and 3) Giving visibility to actions carried out and results achieved by countries (section II.3). However, two of the proposed cooperation measures do not seem to be intended by the EU for the DRC at present: 4) Strengthening policy dialogue in countries between (local and central) authorities, civil society organisations and the private sector; and 5) Joint projects on sustainable mining and good governance, which particularly take into account the specific nature of artisanal mining.

On the basis of its understanding of the challenges facing the artisanal sector in the DRC (Part I) and the information presented in sections II.1 – II.8, **EurAc** has identified three key gaps in the approach of the EU and its Member States. The **first gap relates to the lack of resources dedicated to strengthening the governance** of the DRC’s artisanal sector, even though it is one of the major challenges in the fight against ‘conflict minerals’ in the DRC. Several points presented in Part I demonstrate that the problems in the governance of the artisanal sector are amongst the main obstacles to cleaning up the sector and that, without measures aimed at improving this governance, the many international initiatives promoting

the responsible sourcing of minerals produced in the DRC – including the European Regulation –, can only have a limited impact on the ground. The development cooperation measures announced in the Joint Communication include ‘joint projects on good governance.’ Regrettably, there currently appears to be no project planned as part of the EU’s accompanying measures that aims to strengthen the governance of the artisanal sector.

For example, the fight against mining fraud to neighbouring countries hardly gets a mention. True, the EU does provide strong support to the ICGLR to implement the RINR, one of its six tools being the harmonisation of national legislations amongst the countries in the region. Unfortunately, as of now the results of the ICGLR in terms of fiscal harmonisation are inadequate (see section I.1.3). As for the DEVCO project monitoring cross-border activity between Burundi, Rwanda and the eastern DRC (see section II.5), it will not, according to our information, have the objective of combatting the trafficking of minerals from the DRC.

**EurAc** notes that the EU and its Member States are investing few resources in supporting initiatives on the ground that aim to formalise the sector, in particular those relating to the **certification of mining sites and traceability** (this observation obviously does not include Germany, which is highly involved in both of those areas). We do of course note the EU’s support to the ICGLR (see section II.3), which has enabled the strengthening of the ICGLR certification mechanism. But there is no support from the EU or other Member States - apart from Germany - for the certification of artisanal mining sites, even though this process forms the basis for issuing ICGLR export certificates, and it is facing several challenges which threaten its credibility and its extension to new artisanal mining zones (see section I.4.2). Support from the EU or other Member States for this process is desirable since it would enable them to

contribute directly (1) to increasing the proportion of the artisanal sector that complies with due diligence standards and (2) to restoring the confidence of international buyers in artisanal 3T and gold produced in the DRC.

Our investigations have also shed light on the fact that the **gold sector** presents the biggest challenges in terms of combatting armed group interference in mineral mining and trade (see section I.3) and of the formalisation of the artisanal sector (see sections I.4.2 and I.4.3). As far as we can tell, this fact does not appear to be reflected in the accompanying measures envisaged by the EU and its Member States. The only project that specifically focuses on gold is the one the EPRM has decided to implement with PAC in Ituri (see section II.8). Nevertheless, this project focuses on strengthening the position of women in and around mining sites (access to credit), and not on the regulation of gold mining in and of itself. **EurAc** is of the opinion that resources should be made available in order to deal with the problems in the gold sector. The EU and its Member States could usefully support the implementation of a traceability system for gold that is reliable and can be implemented on the ground.

In the 3T sector, we have noted that the implementation of the iTSCi **traceability system** raises several concerns (see section I.4.3). The EU and its Member States do not appear to take this important question into consideration. **EurAc** is of the opinion that it would be useful to support the introduction of at least one other traceability system as an alternative to the iTSCi, in order to create healthy competition in 3T prices, which will be beneficial to artisanal miners and thus to the formalisation of artisanal activity. This system should in particular ensure a more even distribution throughout the supply chain of the costs of traceability, which in the case of the iTSCi are largely born by artisanal miners and small traders.

The **second gap concerns the lack of attention paid to local actors**. As **EurAc** had already highlighted in 2014, the EU seems to have adopted a ‘top-down’ approach, prioritising international agencies (OECD, ICGLR, UN agencies) rather than local actors (administrations, Congolese businesses, artisanal miners and mining cooperatives, civil society), for development cooperation funding. Bearing in mind that the DRC is still today considered a ‘Fragile State’, the interventions envisaged for the promotion of responsible mineral sourcing in the country should therefore include local authorities and involve Congolese civil society. In May 2015, the European Parliament called for ‘targeted development cooperation with third countries, in particular (...) placing local enterprises in a better position to comply with this Regulation’ (see Appendix II).

It is striking that, apart from the programme implemented by Germany, none of the measures envisaged aim to **strengthen the capacity of SAESS-CAM and the *Division des Mines***, even though their actions are widely regarded as contributing to mining fraud and as hindering efforts to formalise the artisanal sector (see section I.1.3). The EU and its Member States should seriously consider adopting measures to strengthen the capacity of these agencies, especially on the basis of the analysis and results of the World Bank’s Promines programme (see section I.4.4).

Another challenging finding regards the absence of measures addressing the **illegal involvement of the FARDC** in 3T and gold mining and trade. The Congolese army is in practice the armed group that interferes the most in the artisanal sector (see section I.3). Contributing to ending this situation should be one of the priorities of the accompanying measures in the DRC. All the more so as the EU and some of its Member States have the tools enabling them to act: their Security Sector Reform (SSR) support programmes in the DRC. The EU in particular has several programmes

in this area, financed by the EDF 2014-2020, specifically PROGRESS(Support Programme for Security Sector Reform – Defence Section), with a budget of 25 million euro, and PARJE (Support Programme Promoting Justice in the East of the DRC), which in particular includes a project to support military justice through strengthening Prosecution Support Cells (2.2 million euro for a maximum 36-month period).<sup>139</sup> At this stage, we have not received any information regarding the possible use by the EU of these programmes to end the impunity of FARDC members involved in the illegal mining and trade of 3T and gold.

Non-state actors seem to have been neglected in the proposed development cooperation measures. We should mention mining cooperatives first of all. The only activities we have identified that strengthen cooperatives are those supported by Promines, GIZ, and Wallonia-Brussels International (see section I.4). Yet cooperatives constitute a key challenge in terms of the formalisation of the sector (see section I.1.4). **EurAc** believes that new projects specifically aimed at building the capacity of cooperatives should be developed by the EU and its Member States.

Another non-state actor largely neglected in the proposed measures is **Congolese civil society**. According to our information, Germany (GIZ) is the only Member State whose development cooperation has directly supported local civil society in addressing artisanal mineral sector governance (see section II.4). From the EU's side, the EU-UN Partnership on Land, Natural Resources and Conflict Prevention seems to be encountering difficulties, whereas it was the only EU-supported project with a strong component aimed at strengthening civil society in the Great Lakes region (see section II.4). As for the project supporting the Panzi foundation for the socio-economic reintegration of children and sex-workers living near artisanal mines, we should point out that it does not aim to address sector govern-

ance. It is a shame that numerous local NGOs with a presence on the ground and expertise in the (dys)functioning of the artisanal sector and in responsible sourcing standards and procedures should not have not received any EU funding (see section I.4.4). The letter of 20 March 2015 signed by the EU's High Representative, Federica Mogherini, and the Commissioners for Trade and for Development, Cecilia Malmström and Neven Mimica, announced that 'assistance is also aimed for civil society organisations (CSOs) and non-state actors performing advocacy and training in the countries concerned, targeting local and central government authorities, CSOs, and business operators thereby contributing to the awareness and capacities of producer countries on due diligence' (see Appendix I). **EurAc** calls on the EU to respect this commitment.

Already mentioned a few paragraphs back, the third gap concerns the **vague-ness regarding plans to strengthen policy dialogue** with the Congolese government and those of the other countries in the Great Lakes region. Indeed, none of the measures announced appear to include policy dialogue specifically focusing on the mining and trade of 3T and gold produced in the DRC. A strengthened dialogue with the **Congolese government** is nevertheless highly necessary in order to address the governance issues mentioned above: the dysfunctions within SAESSCAM and the *Division des Mines*, and the impunity of FARDC members involved in the illegal mining and trade of 3T and gold. On this last point, the EU should use the PROGRESS and PARJE programmes to establish a dialogue with the Congolese authorities with a view to encouraging them to impose sanctions on high-ranking FARDC officers involved in the illegal mining and trade of mineral resources. Such sanctions are necessary in order to send a message to the military chain of command that there will be no more impunity in this matter. **EurAc** also calls for a strengthened policy dialogue **with the countries of the Great Lakes region** with a view

<sup>139</sup> For details, see EurAc (2016), *EU Support to Security Sector Reform in the DRC. Towards an improved governance of Congolese security forces?*

to achieving harmonisation of mineral prices and mining taxation at a regional level. These additional efforts at dialogue are all the more necessary given the poor results achieved by the ICGLR on the issue.

To conclude, we should highlight the **risks of measures being inconsistent and of the lack of coordination between donors** (EEAS, DEVCO, DG Growth, DG Trade, Parliament, Member States, regions). Dialogue and coordination mechanisms between the different donors should therefore be

envisaged. We should bear in mind that in May 2015, the Parliament asked the Commission to ‘present an annual performance report of the accompanying measures implemented’ (see Appendix II). In December 2015, the EU Council called on the EU High Representative, Federica Mogherini, ‘to regularly evaluate financial and political support to the specified regions, **in particular the Great Lakes region**, in order to ensure the consistency of European policy, and **to encourage and strengthen good governance**, the rule of law, and the sustainability of mining activity’.

# Part III Conclusion and recommendations

The EU has decided to focus most of the measures in its Regulation on responsible mineral sourcing on the upstream part of the 3T and gold value chain. It therefore makes sense for the accompanying measures to also focus upstream, in particular in ‘conflict mineral’ producing areas.

In the case of the DRC, these measures should take into account the impact of the Regulation on local development. Indeed, discourse primarily linking artisanal mineral mining with violence and conflict dynamics in the eastern DRC ‘only captures part of the reality’<sup>140</sup>. EurAc’s position takes into consideration the driving role played by the artisanal sector in the local economy. It offers many jobs that the formal economy is unable to provide and also has a multiplier effect in other sectors of the Congolese economy (see section I.2). **Artisanal mining** is vital for people’s economic survival and **should therefore be supported** rather than fought against. If it were better regulated, the sector could bring greater benefits to local populations than the industrial sector, in particular in terms of numbers of jobs, wealth redistribution, and environmental protection. Some consider the disappearance of artisanal activity in favour of industrial mining inevitable, on the grounds that industrial mining is less problematic when it comes to human rights. However, several international experts have demonstrated that there are direct links between the alarming increase in human rights violations in some countries and the mining industry.<sup>141</sup>

According to EurAc, the EU should avoid focusing its development cooperation

measures solely on mitigating the potentially negative socio-economic impact of the Regulation on local people.<sup>142</sup> For example, some are in favour of the idea of allocating funds to encourage artisanal miners to change sector, by proposing alternative employment, in particular in the area of agriculture. The offer of alternatives, even though interesting and definitely useful, cannot be the only response to the economic challenges linked to artisanal mining. Our field visits have clearly highlighted that a significant proportion of artisanal miners do not want to change sector. According to some estimates, only half of miners would be prepared to change job if the opportunity presented itself.<sup>143</sup> Supporting access to alternative sources of income is thus one angle worth exploring, which could have results, but it does not in itself offer a structural solution to the fundamental challenge of cleaning up the artisanal mining sector.

It would seem that the artisanal sector’s main problems (armed group interference, fraud and illegal export to neighbouring countries, weak impact in terms of community development) are largely rooted in the ineffective support of the Congolese state agencies, from which some other countries in the region (Burundi, Rwanda, Uganda) also profit. In the case of the DRC, the accompanying measures to the new Regulation on responsible mineral sourcing should therefore **prioritise strengthening the governance of the artisanal mining sector**.

Some of the measures we are proposing to the EU and its Member States inevitably imply an approach aimed at ‘formalising’ the Congolese artisanal

<sup>140</sup> Geenen, S. (2016), *op. cit.*, p. 214.

<sup>141</sup> Ruggie, J. (2006), *Interim Report of the Special Representative of the Secretary-General on the Issue of human rights and transnational corporations and other business enterprises*. E/CN.4/2006/97; Stavenhagen, R. (2003), Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. E/CN.4/2003/90.

<sup>142</sup> Some fear similar effects to those observed in the DRC after President Kabila suspended 3T and gold exports at the end of 2010.

<sup>143</sup> Geenen, S. (2016), *op. cit.*, p. 89-91, 219.

mining sector. This formalisation, largely informed by standards and procedures developed by foreign partners, can sometimes be another obstacle to artisanal miners' access to mineral resources and mining benefits.<sup>144</sup> Thus it is our responsibility to propose solutions **to avoid artisanal miners and their dependents becoming more vulnerable as a result of the reorganisation of the artisanal sector in the DRC.** To avoid the exclusion and dispossession of artisanal miners, the accompanying measures should aim to strengthen, on the one hand, the capacity of artisanal miners but also, on the other, their role in the different initiatives implemented on the ground. Involving them more in the formalisation will add strength to the initiatives on the ground because miners are not 'weak' actors: they also have a degree of power to influence sector practice.<sup>145</sup> Consulting artisanal miners on some of the accompanying measures being developed by the EU and its Member States, and involving them closely in their implementation, should make these measures more effective.

Considering that the EU Regulation on responsible mineral sourcing will not enter into force until 2021, the EU and its Member States have sufficient time to develop, finance and implement solutions to fill the gaps identified in the accompanying measures currently envisaged for the DRC (see section II.9). In that regard **EurAc** proposes that, between now and 2020, the EU and its Member States implement the **following recommendations:**

### In general

- A.** Given that no Member State – except Germany, Great Britain and the Netherlands – currently appears to be developing projects along the lines of **the accompanying measures to the European Regulation for the DRC**, we strongly urge the other 25 EU Member States to develop such measures without further delay.
- B.** Considering the importance of the artisanal mining sector for the econ-

omy of the eastern DRC provinces and the communities that depend on it, accompanying measures should also be developed that **support the formalisation of the artisanal mining sector** and that secure its **coexistence with the industrial mining sector;**

- C.** Considering the risks of dispossession and weakening artisanal miners and small *négociants* inherent in various initiatives aimed at formalising the artisanal sector, accompanying measures for the DRC should be developed that **incentivise actors to join the formal sector**, in particular allowing them to sell their products at **attractive prices** compared to those in the informal sector. We refer in particular to future simplified supply chain (closed-pipe) projects, which could be supported by the EU or one its Member States.
- D.** Considering the limited attention given to local actors in the majority of the accompanying measures envisaged by the EU and its Member States, we recommend the development of measures for the DRC that **involve**, as far as possible, **local state actors** (political decision-makers, administrations) and **non-state actors** (artisanal miners, mining cooperatives, civil society, businesses).
- E.** Considering the risk of inconsistency in the accompanying measures relating directly or indirectly to the DRC, the EU should create a **dialogue and coordination mechanism between donors** with a view to guaranteeing such consistency and ensuring that **an overall and comprehensive European approach for the responsible sourcing of minerals** in the DRC is implemented.

### On incentivising measures for businesses

- 1** The EU should prioritise the granting of financial and visibility assistance, such as envisaged in the incentivising measures, to businesses that responsibly source 3T and gold **in conflict-affected and high-risk areas**, and avoid granting

<sup>144</sup> *Idem*, p. 181, 218.

<sup>145</sup> *Idem*, p. 215.

such assistance to businesses that choose to boycott those areas.

### On political dialogue with the DRC and other states in the Great Lakes region

**2** The EU and its Member States should **strengthen political dialogue** in the following areas:

- a. **governance** problems in the artisanal mining sector: a dialogue with the Congolese government on this issue is highly necessary, in particular in relation to the dysfunctions in SAESSCAM and the *Division des Mines*. The impunity of members of the FARDC involved in the illicit exploitation and trade of 3T and gold should be directly addressed in the framework of the dialogue between the EU and the DRC. The PROGRESS and PARJE programmes should be used in that context as leverage to encourage the military authorities to impose sanctions on high-ranking FARDC officers involved in illegal artisanal mining activity.
- b. **the harmonisation of mineral prices and mining taxes** on a regional level: dialogue should be strengthened between, on the one hand, the EU and its Member States, and, on the other, the countries in the Great Lakes region, in order to compensate for the inadequate results achieved by the ICGLR on the issue.

### On development cooperation in the DRC

**3** Increase resources and diversify measures to **strengthen the governance** of the artisanal sector in the DRC, particularly in the following areas:

- a. combatting **mining fraud** with neighbouring countries: given the poor results achieved by the ICGLR on this issue, the EU and its Member States should develop other projects which aim to combat cross-border mineral trafficking.
- b. **the process of certification of artisanal mining sites**: support for this process from the EU and other Member States besides Germany

is desirable in order to expand the artisanal mining zones that conform to due diligence standards and restore international buyer confidence in Congolese artisanal 3T and gold production. Another way to support the process would be to promote the creation of incentives for miners to work on sites certified 'green' (e.g. health and training centres).

- c. **the formalisation of the gold sector**: the EU and its Member States should develop specific plans aimed at responding to the many problems in the gold sector (armed group interference, fraud). The setting up of a gold traceability system that is reliable and can be implemented on the ground should be a priority.
- d. **traceability in the 3T sector**: the EU and its Member States should support the introduction of at least one alternative traceability system to the iTSCi, in order to promote healthy competition in 3T prices in the DRC. This system should also ensure that the costs of traceability are more evenly distributed along the supply chain than is the case with the iTSCi model.
- e. **the strengthening of state services** responsible for overseeing the artisanal sector, in particular SAESSCAM and the *Divisions des Mines*. The EU and its Member States should take action in this regard on the basis of the analysis and results of the World Bank's Promines programme. As a priority, technical support should be provided:
  - I. to SAESSCAM to speed up the process of identifying artisanal exploitation zones (ZEAs) and assigning them to recognised cooperatives;
  - II. to the *Ministère des Mines* and provincial governments, on the one hand to assess whether recognised cooperatives are functioning according to principles of democratic decision-making and of redistribution of profits amongst members. Cooperatives that do not comply with these governance principles should be stripped of

their recognition. On the other hand, to speed up the recognition process for cooperatives that are still awaiting official recognition by the *Ministère des Mines*.

- f. the **illegal involvement of the FARDC** in the exploitation and trade of 3T and gold: the EU, through the PROGRESS and PARJE programmes, and Member States with similar programmes, should take advantage of their support for Security Sector Reform (SSR) to combat the impunity enjoyed by FARDC members involved in illicit mineral mining and trade.
- g. The **revision of the 2002 Mining Code**: the EU and its Member States should encourage the Congolese government to resume the process of revising the Code and take into account civil society's demands in relation to the management of the artisanal sector. In particular, the revision should:
  - I. simplify the recognition of ZEAs and their assignment to mining cooperatives, with the aim of securing artisanal miners' access to authorised exploitation zones;
  - II. clarify mechanisms for settling property disputes around mining concessions, in particular between (customary or formal) land title holders and mining title holders.

- h. **mining cooperatives**: the EU and its Member States should develop specific projects aimed at building the capacity of cooperatives. In order to strengthen cooperatives' democratic functioning and their role in defending the interests of artisanal miners, it should be envisaged to call on the services of Congolese NGOs with experience in supporting cooperatives and in the regulation of the sector. Another form of support required by cooperatives is access to credit.
- i. **the role of Congolese civil society**: there are several Congolese non-governmental organisations (NGOs) based in the eastern DRC that are strongly rooted in mining areas and have real expertise in the artisanal sector, as well as in the procedures and standards concerning responsible sourcing. **EurAc** strongly recommends that the EU and its Member States support these NGOs, in particular in their advocacy and training work vis-à-vis the Congolese authorities at national, provincial and local levels.

# Appendix I Letter of 18 March 2015

**FEDERICA  
MOGHERINI**  
HIGH REPRESENTATIVE  
VICE PRESIDENT OF THE EUROPEAN  
COMMISSION

**CECILIA MALMSTRÖM**  
MEMBER OF THE EUROPEAN  
COMMISSION  
TRADE

**NEVEN MIMICA**  
MEMBER OF THE EUROPEAN  
COMMISSION  
INTERNATIONAL COOPERATION AND  
DEVELOPMENT

Brussels, 18. 03. 2015  
*A(2015)*

Honourable Members,

As you know, the Commission and the High Representative adopted in March 2014 the Integrated EU Approach to tackle the linkages between minerals trade and the financing of armed groups in conflict-affected and high risk areas such as the Africa's Great Lakes Region. The Integrated EU Approach consists of a draft Regulation<sup>1</sup> designed to control the imports of tin, tungsten, tantalum and gold into the EU and a joint Communication<sup>2</sup> presenting a set of accompanying measures to be deployed through political, diplomatic, and development cooperation means in order to address the broader dimensions of the problem.

We believe that a solid package of accompanying measures will support the approach proposed under the Regulation and contribute to breaking the link between conflict and exploitation of minerals while allowing the countries concerned to maximise the economic potential of their extractive sector. At the end of the day, legislation on mineral sourcing from conflict-affected and high-risk areas can only produce results if it is part of a wider effort to contribute to good governance. This holds in particular for the Great Lakes region where the EU has been actively engaged in peace-building for more than 20 years.

In this context and based on an assessment of actual needs identified, we intend to dedicate up to €20 million of EU funds for the period 2016-2020 to the promotion of responsible mineral sourcing from conflict-affected and high-risk areas.

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<sup>1</sup> COM(2014)111

<sup>2</sup> JOIN(2014)8 final

Bernd LANGE  
Chairman INTA Committee

Linda McAVAN  
Chairwoman DEV Committee

Elmar BROK  
Chairman AFET Committee

The identified actions include assistance to relevant governments and regional organisations to transpose the OECD Guidance into regional or national due diligence frameworks and legislation to formalise the artisanal and small scale mining sector, and to further build capacity for the implementation of national due diligence frameworks.

Assistance is also aimed for civil society organisations (CSOs) and non-state actors performing advocacy and training in the countries concerned, targeting local and central government authorities, CSOs, and business operators thereby contributing to the awareness and capacity of producer countries on due diligence.

In particular, in the Great Lakes region, future EU assistance will build on current regional efforts aiming at supporting the set-up of conflict free supply chains, such as the International Conference for the Great Lakes Regional Certification Mechanism.

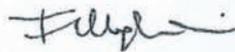
As it is equally important to promote outreach on transparency and due diligence practices in transit and processing countries, funding can also be provided to ensure that operators from these countries increasingly engage in due diligence, notably in key Asian countries.

We already provide assistance on horizontal aspects and dissemination of due diligence to be performed by the Organization of Economic Co-operation and Development (OECD) and will assess how to address issues such as on audit harmonisation and compliance issues, outreach and training activities targeting public authorities, the private sector including SMEs and CSOs involved in the supply chain of minerals from conflict-affected and high-risk areas.

The expected commitments can be delivered by the Development Cooperation Instrument (DCI), 11<sup>th</sup> European Development Fund (EDF), the Instrument contributing to Stability and Peace, the Partnership Instrument and the Competitiveness of Enterprises and SME's Programme.

I hope you will find this information useful in view of the ongoing deliberations in the European Parliament and look forward to a continued fruitful cooperation on this important file.

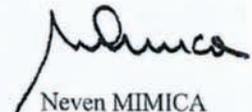
Yours sincerely,



Federica MOGHERINI



Cecilia MALMSTRÖM



Neven MIMICA

Cc: Iuliu WINKLER MEP, Reinhard BÜTIKOFER MEP, Bogdan Brunon WENTA MEP

# Appendix II Amendment 55 of the European Parliament (adopted on the 2 May 2015)

## Article 15a Accompanying measures

1. The Commission shall submit a legislative proposal, as appropriate, within the transitional period setting up accompanying measures in order to enhance the effectiveness of this Regulation in line with the Joint Communication to the European Parliament and the Council entitled 'Responsible sourcing of minerals originating in conflict-affected and high risk areas. Towards an integrated EU approach' (JOIN (2014)0008).

Accompanying measures to ensure an integrated EU approach to the duty of responsible sourcing shall foresee:

- a) support for responsibly sourcing enterprises in the form of incentives, technical assistance and guidance to enterprises, taking into account the situation of small and medium-sized enterprises and their position in the supply chain, in order to facilitate compliance with the requirements of this Regulation;
- b) ongoing policy dialogues with third countries and other stakeholders, including the possibility of harmonization with national and regional certification systems and cooperation with public-private initiatives;
- c) continued, targeted development cooperation with third countries, in particular aid for the marketing of non-conflict minerals and placing local enterprises in a better position to comply with this Regulation;
- d) close cooperation with Member States for the launching of complementary initiatives in the area of consumer, investor and customer information and further incentives for responsible business conduct and performance clauses in procurement contracts signed by the national authorities under the terms of Directive 2014/24/EU of the European Parliament and of the Council<sup>1a</sup>.

2. The Commission shall present an annual performance report of the accompanying measures implemented pursuant to paragraph 1 and of their impact and effectiveness.

<sup>1a</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).



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Created in 2003, the European Network for Central Africa (**EurAc**) has 40 member organisations from civil society in 11 European countries. These organisations work on and in the Great Lakes region. They support civil society organisations in Burundi, the Democratic Republic of Congo (DRC) and Rwanda in their efforts to promote peace, the defence of human rights and development.

**EurAc** concentrates its activities on advocacy towards the European institutions and political decision-makers around 3 central themes for the Great Lakes region: (1) peace and security, (2) democratisation and (3) management of natural resources. Transversely from these fields, the improvement of governance and the strengthening of non-state players as counter-power are priorities of our advocacy work.

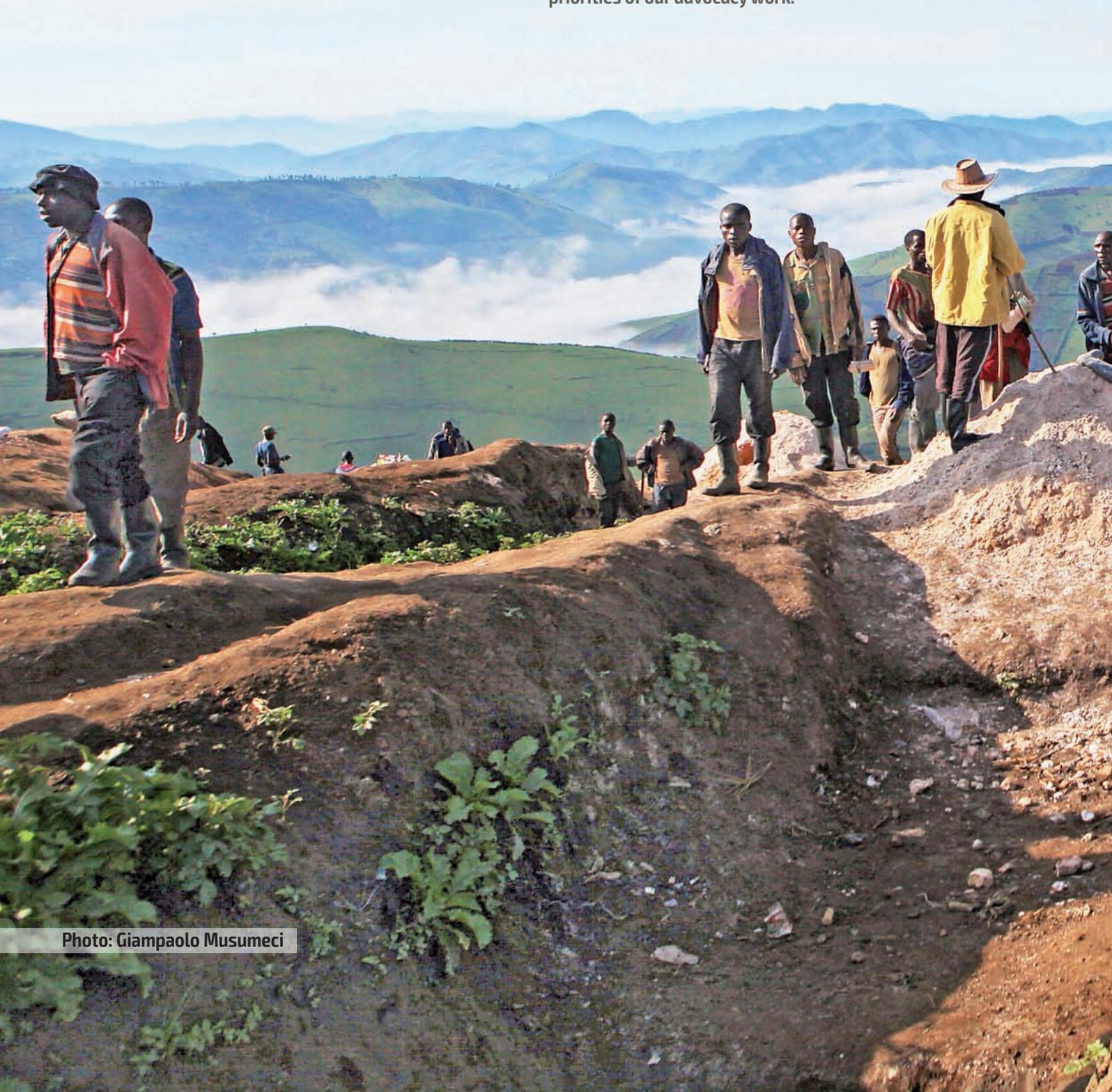


Photo: Giampaolo Musumeci