

# REGARDS CROISES

## REVUE TRIMESTRIELLE

N° 30 bis



POLE INSTITUTE



## DRC : THE MINERAL CURSE

*Goma, October 2011*

## **POLE INSTITUTE**

### **Pole Institute is an intercultural institute in the Great Lakes region.**

The Institute is based in Goma, in the eastern North Kivu province of the Democratic Republic of Congo (DRC). The Institute was established by a group of people originating from North and South Kivu provinces who took up the challenge of exchanging views in a crisis context marked by many unfortunate events, and which is characterized by cycles of violence, poverty, bad governance and insecurity.

As a result, **Pole Institute** seeks to provide a space for:

- Analysis and research on the major local challenges and their national, regional and international implications (widespread poverty, social violence, ethnic divisions, absence of moral points of reference, a culture of impunity etc.)
- Analysis and strengthening of the survival strategies of populations living in a context of war and prolonged crisis
- Analysis of war economies to develop approaches to strengthening local populations and their economic activities
- Action research and lobbying in partnership with local, regional and international actors and institutions.

### **Purpose:**

Promote dignified and inclusive societies in which free individuals and peoples act, in order to contribute to:

- Establishment of a SOCIETY in which each person finds her/his place and rediscovers the 'other', through development of a culture of permanent negotiation and identification of positive, common values;
- Creation of a new type of independently minded PERSON who is anchored in his/her identity but remains open to the world.

### **Policy:**

- Initiate, develop, strengthen and publicize avant-garde ideas on peacebuilding, reconstruction and peaceful cohabitation of populations living in crisis zones;
- Initiate the emergence of a culture of negotiation (as opposed to a culture of death) based on the common interests of each and every one.

## **REGARDS CROISÉS**

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# **DRC : THE MINERAL CURSE**

**Most of the articles have been  
translated from french to  
English by Linda Herbertson**

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## PREFACE

On 16 March 2011, one week after the lifting of President Joseph Kabila's temporary ban on mining operations in the eastern provinces of the country (Maniema, North Kivu and South Kivu), the Standing committee for joint action in the mining sector, supported by the Pole Institute, met at the Utamaduni Centre. The purpose of the meeting was not so much to take stock of the consequences of the six month suspension but rather to analyse the issues at stake and the challenges the economic players in this sector will now have to face.

Around the table that day were the economic operators in the mining sector, representatives from the public services, the army, researchers from North and South Kivu and delegates from the local cooperatives of artisanal diggers of Walikale.

The successive presentations and discussions were extremely rich and inspirational for the team from the Pole Institute who attended the meeting. These we have condensed some of our reminiscences into this file, to which may be added other testimonies from the players in this highly complex sector.

Onesphore Sematumba, director of Information and Advocacy at the Pole Institute, asked the following question: "**The mining economy in Eastern DRC: after the Joseph Kabila's hammer, Barack Obama's anvil?**" After six months of a total stoppage of mining, the economic operators were authorised to resume operations only 22 days before the coming into force of the Dodd-Franck Act, Session 502, known as the Obama Law, which lays down drastic regulatory conditions for the importing of minerals from the DRC and neighbouring countries no later than 1<sup>st</sup> April 2011<sup>1</sup>. For the players in the sector, this law is tantamount to a de facto embargo, and they advocate a moratorium.

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<sup>1</sup> The "Securities Exchange Commission" has postponed the application of Dodd-Franck Act section 1502 to the end of 2011. But the withdrawal of the heavyweights of the electronics and domestic appliances industry from the local minerals market in the eastern Congo has caused a de facto boycott that has put an end to several activities related to the mining sector.

For Sematumba, prohibiting mining operations at a time when it was a race against the clock to comply with the new American legislation was an appalling mistake, among so many others.

In his article entitled "**Mining companies resume operations in Eastern DR Congo: the issues at stake and the challenges**", Aloys Tegera, director of Research at Pole Institute, sketches an eloquent portrait of the net losses suffered by the provincial government during the six months suspension and identifies the challenges awaiting the sector in the near future. Tegera particularly stresses the incongruity on the part of the Congolese leaders to aspire to industrial scale mining without laying the foundations in terms of road and power infrastructure or that of obliging artisan diggers to organise themselves in cooperatives in order to access the mining sites. The researcher advocates the recognition and strengthening of the initiatives underway in favour of transparency and traceability "to avoid throwing out the baby with the bathwater as the American legislation has done".

Primo Pascal Rudahigwa, journalist and associate researcher at Pole Institute, visited Walikale territory one month after the lifting of the temporary presidential ban on mining. After the local and provincial authorities reopening parade, mining operations are struggling to resume. "The traders and everyone involved in mineral transactions were disappointed to observe that no sooner was the ban lifted than the mineral trading companies closed their doors from 1<sup>st</sup> April 2011." To escape the reigning poverty, "all the traders, diggers and prostitutes who were waiting for the manna from Walikale have made for Manono in Katanga province, where a large quantity of cassiterite is also produced...". Rudahigwa nonetheless ends his article by mentioning some progress made in the Walikale mining circuit, including the demilitarisation of all the mining sites which are now under the control of the Mining Police (Police des Mines).

Véronique Isenmann, a development aid volunteer from Eirene Suisse who works at Pole Institute, attended the meeting of the Standing committee for joint action for the first time and drew some conclusions, which are so simple they could be said to be self-

evident. “When the mines close”, she said, “no-one has enough to eat”. And another: “When the mines close, the small diggers start digging their graves”. And again: “The people in the mining sector are not all rogues”. Obvious facts that stare us in the face but which did not cross the minds of the decision-makers who brought to a six-month standstill an economy that thousands of men and women depend on. We shall provisionally close the file with this testimony from an outside observer.

I say provisionally because this file is not an end in itself. And the results expected from the Standing committee for joint action in the mining sector in Eastern DRC cannot be limited to mere files. We have to take another important step and commence concerted action to consolidate a sector that is the livelihood of a great number of our citizens and make our "pledge of goodwill" – as local stakeholders – “to work for responsible transparency of the mineral supply chain in the Eastern DR Congo”, as Tegera wrote in his article.

*Onesphore Sematumba*  
*October 2011*

## Part I

### THE MINING ECONOMY IN EASTERN DRC: AFTER JOSEPH KABILA'S HAMMER, BARACK OBAMA'S ANVIL?

*By Onesphore Sematumba  
Director of Information*

On 1<sup>st</sup> March 2011, the Congolese Mining Minister signed decree no. 0034/ CAB/MINES/01/2011 lifting the temporary ban on mining activities in the provinces of Maniema, North Kivu and South Kivu, which was to come into force ten days later. The ban had been announced verbally by President Joseph Kabila on his visit to Goma on 9 September 2010, before being formalised by Ministerial decree eleven days later. The ban on mining operations in Eastern DRC therefore lasted six months. Six long months, day for day, during which it was assumed that not one ounce of gold, not one gram of cassiterite, wolframite, or coltan - these "blood minerals" – would be extracted from the mining quarries in the targeted provinces nor transported from the trading companies to the companies who use the minerals in the four corners of the globe. As a reminder, the official reason for the ban was the existence of links "between the illegal exploitation and illicit trade in mineral resources, the proliferation and traffic of weapons by armed mafia groups and the persistent insecurity in the provinces of Maniema, North-Kivu and South-Kivu" and the "necessity of safeguarding State sovereignty and re-establishing the authority of the state over the soils and sub-soil of the provinces concerned." The ban was also supposed to put an end to the "interference of agents and people external to the services recognised by the Mining Code in the mineral substances operating and trading circuit." **All these factors were an obstacle, President Joseph Kabila deemed at the time, to reducing the poverty of the Congolese population in this part of the country.**

Six months later, has the picture fundamentally changed and can we now assume that clean minerals will now be extracted from the

mines in the east and that provisions have been implemented for the sector to operate legally and efficiently? Do we now have a clear roadmap to make the period following the end of the ban radically and positively different from the period before the ban?

## **1. THE APPALLING MISTAKE WAS PREDICTABLE**

- *A selective measure*

Examining the string of reasons leading to the ban on the mining of minerals, it can be seen that the measure should have applied to all the provinces in the country and not just the three provinces of North Kivu, South Kivu and Maniema. It should be noted that Joseph Kabila mentioned only the first two provinces in his speech at Goma and that Maniema was only added to this red list later by the Minister. Indeed, as pointed out by Father Didier de Failly, from the results of a round table organised in February 2011 by an organisation in Bukavu, "the participants and particularly the artisan diggers said this measure was discriminatory, due to the fact that in other provinces such as Ituri (Eastern province) and Kisengo in North-Katanga to mention only these, armed groups are present, the local population is poor, the involvement of the police and military authorities is observed, as is the presence of children... But they can carry on since the measure does not apply to them." And if we had to take into account the fact that these minerals do not benefit the Congolese population in terms of reducing poverty, then all the mines and quarries in Katanga and Grand Kasai should have been closed. The stopping of mining operations in the aforementioned provinces was therefore perceived as extremely discriminatory, unless it was supposed to be a test before extending the measure. Otherwise, we cannot understand the real motivation behind this long quarantine which literally shattered the real livelihoods of Congolese families directly or indirectly dependent on the mining sector.

- *The mines have had an adverse effect on children's enrolment at school*

Small scale mining in DRC is often accused of taking pupils and

teachers out of the classroom and plunging them into the depths of the mines in the hope of becoming rich. A temporary ban at the beginning of the school year should therefore have refilled the classrooms. This was not the case, according to Father De Faily:

"The mines kept the children out of school; when they were closed down, the parents became so poor that even the rare children who did attend school couldn't do so any more for lack of funds". In DRC, the cost of education is almost entirely paid for by the parents, from kindergarten to University, despite the provisions in the constitution stipulating that education is free and compulsory for the first three years of primary school.

- *A measure for self-strangulation*

If the government had been aiming for economic strangulation it could not have found a better rope than this measure. According to John Kanyoni, economic operator, the mining sector contributes \$2 million to the revenue of the province of North Kivu even though, he specifies, only \$800,000 reaches the coffers of the state; the volume of transactions is in excess of \$20 million dollars per day. For Primo Pascal Rudahigwa, researcher and journalist, "it is generally accepted that the revenue from mining in North-Kivu represents a considerable proportion - 2/3 – of official revenue.

This revenue comes not only from mining operations but also from related services such as air transport of minerals and trade in staples and manufactured products. For the Kilambo route (Walikale) alone, the loss of public earnings amounted to \$3,600,000 after 6 months at a rate of 20,000 dollars per day collected there before the closure, not counting diverted revenue."

It is essentially thanks to this pipeline that the provincial government was able to meet its obligations, in particular for paying the agents under its management. And as soon as this source dried up, labour unrest was observed at the level of the provincial Government of North Kivu, the provincial Assembly and the Municipality of Goma.

- *Reinforcing isolation and exacerbating insecurity*

In DRC, certain territories are so isolated that they constitute islets

lost in the middle of nowhere. Walikale, in North Kivu, is a perfect illustration of this. There are no usable roads connecting this resource-rich province to the capital of the province, Goma, which is only 164 kilometres away. Unless you take a long detour of 1,600 kilometres by way of Kisangani in the Eastern Province, which is the same distance as the Kenyan port of Mombassa, on the Indian Ocean. With no road network and no railway, this Territory is only connected to the rest of the province by air, small aircraft that land on a track, Kilambo, in the middle of the jungle, bringing back to Goma a few passengers but especially basic products such as kerosene, cooking salt, washing powder and soap, etc. On the way back, they load packages of "materials", the local name for raw minerals such as cassiterite or coltan. With Shabunda, in South Kivu, which is in the same situation. With the temporary ban on mining, the small aircraft have been grounded and whole populations abandoned in their isolation: "These small aircraft allowed people from the interior to come to Bukavu for funerals and weddings, etc.

The fact that there are no aircraft makes mobility and day-to-day living in general difficult", according to one participant.

- *A "blank" period in a context of urgency*

For the economic operators, the period of the ban was time wasted in the race against the clock to comply with the demands of the Obama law, as the new American legislation in the form of the Dodd-Frank Act Session 1502 is known here. On the one hand, initiatives like ITRI could not work as their operating funds are drawn directly from the sales of the trading companies (\$50 per ton exported); secondly, the products could not be labelled as they were under official seal.

## **2. THE RARE POSITIVE EFFECTS**

The picture was not totally bleak for everyone during the ban on mining operations in the Eastern DRC. For some people, it was an opportunity to take stock of the situation. According to Eric Kajemba, this chance to reflect came after the fact, including for those who initiated the measure. Others, like Patient Semuswa, feel that the

positive effect of the measure will be verified over the long term, in particular if young people can distance themselves from the get rich quick illusion of manna coming out of the mines and start to explore and make use of all the potential their environment has to offer, for farming mainly. Farming, the population of Walikale, weaned off of minerals for a time, tried it out. Disappointed by the lack of impact that "their" wealth has had on their daily lives, the locals of this territory were among the rare people to applaud the presidential measure of September 2010 with both hands. Six months later, Batende Ndoole, from ADECADEWA, tries to see the positive side. The population welcomed the measure, he says. It gave us an opportunity to think about diversifying economic activities, in particular redeveloping agriculture. However, he hastens to add: "The population "were struggling": It takes time before you can take advantage of the products of farming".

During this period, a hundred pilot trading centres were identified with the support of MONUSCO, many others will be identified later till there are 400; 400 policeman have just been trained at Kapalata (Kisangani) and most of them will join the Mining Police in Walikale; the fly in the ointment is that most come from the Mai Mai groups that were previously active in that same Walikale territory.

But could all this not have been done without grabbing a whole sector by the throat?

### **3. AFTER JOSEPH KABILA'S HAMMER COMES BARACK OBAMA'S ANVIL!**

The economic operators in the mining sector in Eastern DRC had no time to rejoice in the lifting of the ban, for the heavy sword of the Dodd-Franck Act is hanging over them. This law was signed by President Obama on 21 July 2010, and the regulations required by Section 1502 must be adopted no later than 270 days after the enactment, making the cut-off date 1 April, 2011. The mining sector in the Eastern DRC therefore only had a life expectancy of 22 days, which were mainly devoted to finding ways to evacuate products in stock, another obstacle course, when you have to cross whole provinces to find a road!- and when the Governor of each of the provinces introduces a tax on traffic.

Nonetheless, many initiatives were taken in DRC by the sector stakeholders themselves, the Congolese State, Civil society and even the international community, to formalise the mining industry, ensure transparency and traceability, as Aloys Tegera explains in this dossier. But it appears that all these efforts were neither known about nor acknowledged, as if there were a kind of law of silence about everything positive that is done in this domain and that only the alarms and alerts of the NGO's, which are systematically hostile to the mining economy in DRC, should be taken into account.

#### **4. THE MILITARY IN THE MINES: BETWEEN GUARDING ANTAGONISTIC INTERESTS AND THE BUSINESS OF RANK**

According to a military analyst, members of the state military organisation FARDC are actively involved in the mining economy, in the operating chain and in taxation, and are in unfair competition with the legitimate operators. This state of affairs continues, despite the temporary ban on mining activities. According to a local member of civil society in Omate, Walikale, "during the 6-month ban, the members of the military and their wives survived by gathering mineral rocks due to a lack of logistics (machines, fuel); this gathering was done discreetly due to pressure of opinion, particularly with the presence of MONUSCO. This activism can be explained, in his opinion, by the absence of other means of subsistence. One officer of the FARDC has other explanations for the militarisation of the mines. The first is "the greed and corruption of the generals who control mining operations from a distance. A digger, from his hole, has a satellite phone with which he can be in direct contact with a General in Kinshasa", he specifies. This red line between the mining hole and the General in Kinshasa leaves little leeway for the "normal military hierarchy". The isolation of the sites does not facilitate things: According to one participant, "An NCO on duty in the forest holds the actual power and takes orders from neither the Ministry of Defence nor the Chief of Staff".

Apart from the greed of the Generals, the intrusion of men in uniform into the mines can also be explained by the conflicts surrounding property rights, especially when there are different

state-issued valid title deeds covering the same concessions. This turns the mines into a Far West and each party recruits and pays for its own military and police.

The Congolese state – whose governance is weak, according to one official – seems to be incapable of responding to all these abuses, and the international community has its hands tied by strange conventions. For example, in order to "not offend the government of the DRC", MONUSCO cannot "attack the army as an institution" nor "put the Chief of Army Staff onto the list of sanctions, given the duty to cooperate." So who *should* do it? "Only the Congolese government can do it, it's a domain of sovereignty"! A situation that bears a strong resemblance to a game of pretence.

##### **5. CONCLUSION: SHOULD WE PUT THE CASSITERITE BACK INTO THE PITS AND WAIT FOR BETTER DAYS?**

The mining economy in DRC in general and in the eastern part is undergoing a crisis that is both chronic and acute. Chronic, because its malfunctions are not a new phenomenon. It has always been outer directed, that is to say intended to make other people rich. Acute to the extent that over the past few months it has gone through turbulent zones which could put an end to it all together if the bulldozer of the new American legislation is not arrested, at least for a time, in its course. Already certain major customers for the end products have started to desert the Congolese Minerals circuit to avoid going down with the sinking ship. Already the operators are looking to the East, in the direction of China, for a safety belt for a sector which, in order to modernise and industrialise, must try to keep itself afloat.

Unless we want the operators to throw their products back into the pits, and wait for better days, as one concession holder envisaged.

## **MINING COMPANIES RESUME OPERATIONS IN EASTERN DR CONGO: THE ISSUES AT STAKE AND THE CHALLENGES**

*By Aloys Tegera  
Director of Research*

The ban on mining in the former Kivu province was lifted on 10 March 2011, after a six month stoppage following the presidential decision dated 9 September 2010.

A number of conditions were appended to the lifting of the ban, however, including the following:

- The installation of ore processing plants to be promoted
- Mining products to be certified and labelled prior to export
- Artisanal miners to organise in cooperatives to access mining sites
- The purchase and sale of mining products to be organised in trading centres
- The only taxes and duties to be collected are those stipulated by the legislation in force, to be paid at a single collection point
- Mining fraud and smuggling to be combated
- Prohibition on influence peddling by military, civilian and police authorities
- Pregnant women and children not to be allowed on mining sites or to work in the mines
- No minerals to be transported by aircraft
- No mining products to be transferred from one province to another

These resolutions are a response or attempted response to the exercise of due diligence that requires more transparency and traceability in the mineral supply chain in Eastern DR Congo from small-scale miner to trader, trading posts, smelters and right to the end consumer in the domestic appliance and electronics industry. These resolutions are also intended to ensure that human rights are respected, particularly the rights of the most vulnerable, including pregnant women and young children, who are given a prominent

position in aspects of the due diligence. By setting up a single collection point for only those taxes stipulated in the legislation, the Congolese government would like to eliminate the illegal taxes collected by services that have sprung up at border posts or other barriers along the mineral supply chain. However, the conditions for the re-opening of mining operations in the former Kivu province are restrictive regarding access to mining sites for miners who have not organised themselves into cooperatives, and regarding free trade between the different provinces who wish to retain the collection of export duties, and lastly regarding the transport for minerals, to exclude aviation and recommend roads and railways, which are impassable or inexistent in DRC. The president's concern to see small-scale mining transformed into industrial mining constituted one of the main motivations behind the decision to suspend mining operations in the former Kivu province. Industrial mining is easier for the Congolese government to control than the millions of independent artisanal miners whom it is difficult to tax. And yet all the minerals produced in 2010 in the former Kivu province were mined by the sweat of these miners.

#### **1. 2010 mining export balance.**

Mining operations carried on as usual during the first eight months of the year until the complete closure following the presidential decision on 9 September 2010. The quantities of minerals recorded for the month of September 2010 were extracted during the first week and the directive to suspend mining was followed to the letter by all the trading houses until the ban was lifted on 10 March 2011. The stocks of minerals constituted before the presidential decision were quickly sold between 10 March, official date mining resumed, and 31 March 2011, just before the July 2010 American Dodd-Frank act came into force. Here is the table of exports for 2010 including unsold stock and exported stock in March 2011 from Goma and Maniema.

**Official ore exports in 2010 and March 2011 in North-Kivu**

Month 2010	Cassiterite (in T)	Values (\$)	Wolframite (in T)	Values (\$)	Coltan (in T)	Values (\$)	Pyrochlore (in T)	Values (\$)
January	395.550	3 837 451.340	-	-	-	-		
February	702.55	6 599 467.57	-	-	-	-		
March	847.1	7 701 151.75	21.32	155 271.55	-	-		
April	698.5	7 073 237.15	10.1	73 529.55	39	627 189.28		
May	882.77	8 890 931.95	-	-	41.40	621 046.50	44.50	444 570
June	1 042.89	9 879 693.950	7	49 842.84	18.55	278 250		
July	856.030	8 377 353.010	-	-	-	-		
August	896.50	10 094 372	-	-	-	-		
September	367.8	4 238 408	-	-	-	-		
March 2011	1 148	19 260 514	12.1	2 183	54	618 753		
Total (Goma)	7 837.69	85 952 580.72	50.52	288 826.94	152.95	2 145 238.78	44.50	444 570
March 2011 (Maniema)	87	1 444 835			1.4	16 554.20		
Overall total	7 924.69	87 397 415.72			154.35	2 161 793		

*Source: North-Kivu Mining Division*

A comparison of exports in June 2010 and March 2011 shows that cassiterite doubled in price. The decision to suspend mining operations in Eastern DR Congo clearly contributed to the rise in the price of cassiterite on the international market<sup>2</sup>. On the other hand, for coltan, if we compare exports in April 2010 to those in March 2011, the price fell significantly on the international market. As far as wolframite is concerned, unless there is an error in the quotation by the CEEC in Kinshasa, the value of exports in March 2011 was practically negligible.

By selling stock at double the price before mining was suspended, the mining operators do better, even though most of them closed down after the 1<sup>st</sup> April 2011. On the other hand, there was a significant loss of official revenue during the mining ban, in view of the figures collected from the Ministry of Finance of the province of North-Kivu, the OCC<sup>3</sup> and OGEFREM<sup>4</sup>. The latter calculates its own portion of revenue from mining products based on its 8% share of 1% of the export value that is shared by the departments of the Mining Ministry (19%), OCC (23%), CEEC<sup>5</sup> (28%), DGDA<sup>6</sup> (14%), OGEFREM (8%), and the government Treasury (8% via DGRAD<sup>7</sup>)<sup>8</sup>. So, on the basis of the statistics from one of these State beneficiaries of the government levy of 1% of the export value, it is possible to obtain an estimate<sup>9</sup> of the percentage allocated to the other agencies, as we show in the table below.

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<sup>2</sup> Other reasons which may have contributed to the rise in the price of cassiterite are not only anti illegal mining exploitation measures in DRC and Indonesia, but also the Chinese domestic high demand and the replacement of lead by tin in the industry for environmental purposes.

<sup>3</sup> OCC: *Office Congolais du contrôle* – Public Inspection Office.

<sup>4</sup> OGEFREM: Multimodal Freight Management Office.

<sup>5</sup> CEEC: Centre for the Evaluation, Appraisal and Certification of precious and semi-precious substances.

<sup>6</sup> DGDA: *Direction Générale des Douanes et Accises* – Customs and Excise Division.

<sup>7</sup> DGRAD: *Direction Générale des Recettes Administratives, Judiciaires, et de Participations* – Finance Ministry.

<sup>8</sup> Interministerial decree no. 0533/CAB.MIN/MINES/01/2008 and no. 275/CAB/MIN/FINANCES/2008 dated 02 December 2008.

<sup>9</sup> This is an estimate of the percentage shares of DGDA, CEEC, the Mining Ministry and DGRAD for which we were not able to obtain the official revenue figures. We calculate their share of the 1% of the export value on basis of the statistics provided by OGEFREM. It is important to note that the revenue figures provided by OCC have been revised upward compared to their 23% share of the 1% of export value. There may have been other OCC revenue besides its share of the 1% of export value.

These estimations, along with the official revenue figures in our possession, give a clear idea of the loss of earnings that would ensue if the mining sector ceases operation in the former Kivu province.

**Official revenue of the Province of North-Kivu from mining products in 2010 and March 2011 in US\$**

Month 2010	Ministry of Provincial Finance <sup>10</sup>	OCC	OGEFREM	DGDA	CEEC	Ministry of Mines	DGRAD	Totals
January	91 635	10 294	2 982. 073	5 218. 628	10 437. 256	7 082. 423	2 982. 073	130 631.453
February	134 214	26 005	4 653. 973	8 144. 453	16 288. 906	11 053. 186	4 653. 973	205 013.491
March	171 239	26 951	6 207. 757	10 863. 575	21 727. 150	14 743. 423	6 207. 757	257 939.662
April	172 244	37 977	5 735. 775	10 037. 606	20 075. 213	13 622. 466	5 735. 775	265 427.835
May	168 385	26 445	7 070. 521	12 373. 587	24 746. 824	16 792. 487	7 070. 521	262 883.94
June	179 100	30 400	6 883. 717	12 046. 505	24 093. 010	16 348. 828	6 883. 717	275 755.777
July	163 001	27 025	6 267. 897	10 968. 820	21 937. 640	14 886. 255	6 267. 897	250 354.509
August	176 148	35 276	8 337. 132	14 589. 981	29 179. 962	19 800. 689	8 337. 132	291 668.896
September	99 171	15 186	2 583. 802	4 521. 654	9 043. 307	6 136. 530	2 583. 802	139 226.095
October	-	8 226.6	-	-	-	-	-	8 226.6
March 2011	255 677	47 945	12 600. 150	22 050. 263	44 100. 525	29 925. 356	12 600. 150	424 898.444
Total	1 610 814	291 730.6	63 322. 797	110 815. 072	221 629. 793	150 391. 643	63 322. 797	2 512 026.702

*Sources: Ministry of Finance, the Economy, Trade and Portfolio of the Province of North-Kivu, OCC, and OGEFREM.*

<sup>10</sup> The currency used in the accounting system of the Finance Ministry in the province of North-Kivu is the Congolese franc. The bank exchange rate as at 15 April 2011 is \$1 = FC 920. This revenue comes from: the tax on the sale of precious substances of artisanal production, share of SAESSCAM remunerative tax, permit for the artisanal mining of precious and semi-precious substances, remunerative taxes on the appraised value of precious substances, permit for the export of mining products other than gold and diamonds, permit for the purchase of mineral substances other than gold and diamonds, mining duty on industrial production, permit for the transfer of minerals to other provinces and transaction fines.

The loss of revenue for a province like North-Kivu is enormous if we consider that the official revenue analysed represents approximately 30% of total monthly revenue, while this does not include the revenue from other services such as Transcom<sup>11</sup> which collected US\$800 for every movement carried out by the aircraft transporting the ore. The same can be said for the other taxes related to the formal or informal trade that had grown up around mining activities. This is a serious blow for the treasury of the province. The provincial members of parliament say they are already owed several months' pay, and for the Mayor of the town of Goma, the six months' pay owed to officials is directly due to the temporary ban on mining activities. This situation will inexorably become exacerbated with the negative effects of the American Dodd-Frank Act which some end consumers of minerals have already begun to implement.

## **2. A de facto boycott imposed by the Dodd-Frank Act.**

The lifting of the temporary ban on mining activities on 10 March 2011 in the former Kivu province will only have been of short duration. Section 1502 of the American Dodd-Frank act of 21 July 2010 stipulates that American companies must disclose to the Securities and Exchange Commission (SEC) the purchase of mining products from conflict zones, in particular the country of origin and the efforts of due diligence deployed to this effect from 1<sup>st</sup> April 2011. The Malaysian smelters, and American end consumers such as Apple, have already stated that they will no longer buy ore from the Eastern DR Congo if these conditions are not met. The withdrawal of the heavyweights in the electronics and domestic appliances industry is a fatal blow for the ore produced in the African Great Lakes region and seriously reduces their leeway for access to the international market. This is in spite of the different initiatives intended to contribute to the transparency and traceability of the ore from Eastern DR Congo, in particular: iTSCi<sup>12</sup> labelling initiated by ITRI<sup>13</sup>, the certification of so-called conflict minerals (cassiterite, coltan,

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<sup>11</sup> Provincial Transport and Communications Division.

<sup>12</sup> iTSCi: ITRI Tin Supply Chain Initiative

<sup>13</sup> ITRI: International Tin Research Institute

wolframite and gold) by the German BGR<sup>14</sup>, the regional certification of these four mining products by CIRGL<sup>15</sup>, due diligence for the minerals supply chain that the OECD<sup>16</sup> is currently setting up, and the planned MONUSCO<sup>17</sup> trading centres at Isanga, Itebero and Rubaya in North-Kivu and Numbi and Mugogo in South-Kivu.

This de facto boycott on ore from the African Great Lakes, against a background of global financial crisis, is already strangling the local economies and dealing a death blow to the subsistence economies of the populations involved in the mining sector. The leeway for action of the mining operators in Kivu is diminished and the temptation to turn towards the market in Southern Asia is great. Among the 31 mineral trading companies operating in North-Kivu in 2010 identified by the SAESSCAM<sup>18</sup>, only three are Chinese owned (Donson International, T.T.T Mining and Huaying), and one belongs to an Indian company (Afromet). However, among the 21 expatriates working in the purchasing of mining products in North-Kivu in 2010, 10 are Chinese, 4 Indian, 3 Lebanese, 3 Russian and 1 French. We may suppose that if the Chinese and the Indians, who feel less concerned by the American Dodd-Frank Act, continue to buy mineral products from the former Kivu province as they did before the September 2010 ban, the vast majority of Congolese trading companies will automatically turn towards the Chinese or Indian markets, especially if these markets pay better prices.

### **3. Interpretation of the new mining regulation measure.**

The prohibition on the transfer of mining products between provinces was followed to the letter as soon as the ban was lifted. The governor of Maniema quickly blocked mining products from the trading companies in Goma in North-Kivu, whose large stocks were located at Kindu before the ban. As the mineral stocks located at Njingala and Mubi in the Walikale territory in North-Kivu could no

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<sup>14</sup> BGR: German Federal Institute for Geosciences and Natural Resources

<sup>15</sup> CIRGL: International Conference for the Great Lakes Region

<sup>16</sup> OECD: Organisation for Economic Cooperation and Development

<sup>17</sup> MONUSCO: United Nations Organization Stabilisation Mission in the DR Congo

<sup>18</sup> SAESSCAM: Small-scale-mining technical assistance and training service

longer be transported by air under the new regulations, they are sent to Kisangani then on to Goma. The governor of the Eastern province has also blocked them in that province. The Mining Ministry in Kinshasa had to pronounce a six day moratorium from 18 to 23 March 2011 to allow the mining operators to evacuate their products by all available means, including air.<sup>19</sup> This confusion in the application of the new regulations reveals the discrepancy between the official discourse on consolidating the mining sector and the reality on the ground. Also, the different initiatives for labelling (ITSci), certification (BGR and CIRGL), and authorising sales points (trading centres) come up against a number of challenges.

#### **4. The securing of mining sites and transport routes: A major challenge.**

The mining site of Bisie in Walikale territory in North-Kivu alone represents 70 to 80% of the cassiterite exported from Goma. However, this site has to be reached on foot, which takes 8 hours; each transporter carries a 50 kg sack on his head each day. The isolation and the difficulties of accessing such an important site make security measures absolutely necessary, measures that only the army or the police can offer. The same can be said for all the mining sites. Since the two rebellions from 1996 onwards, Walikale territory has become a haven for uncontrolled armed groups composed of Democratic Forces for the Liberation of Rwanda (FDLR) and local Mai Mai groups who often work in collaboration with them. In these conditions, the national armed forces (FARDC) deployed in Walikale were supposed to track these uncontrolled illegal forces and prevent them from causing harm, and also to ensure the security of people and their property. Unfortunately, rather than being part of the solution, they became an integral part of the problem by becoming involved in small-scale mining, the illegal collection of taxes at barriers they erected themselves, under the pretext of securing the transport routes, and in the trading of minerals. The brigades which have succeeded each other in Walikale to combat the FDLR and their allies have all become involved in the trafficking of minerals or in

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<sup>19</sup> Mining Ministry, letter no. CAB.MIN/MINES/01/0255/2011, Kinshasa, 17 March 2011.

alliance with the traders who request their protection in exchange for money or shares in their business. Some high-ranking army officers even have their own private mines for artisanal mining. They are represented on the mining sites by officers who take orders from no-one and communicate directly with their bosses by mobile phone. The existence of this armed mafia in the mining sector is part of the reason that the mining products from Eastern Congo are considered "blood minerals". One of the sine qua non conditions of due diligence is the demilitarisation of the mining sites. The question to be asked is just how these armed forces, who are accustomed to easy money from the ore mined in their surveillance zones, will give up such a lucrative sector, all the more so since even if they are transferred elsewhere, they remain involved in the business through intermediaries<sup>20</sup>? What constraints will be imposed on the die-hard elements who continued artisanal mining over the past six months despite the ban on mining by presidential decree? Dimanche Katengura, owner of a mining concession in Omate (Walikale, North-Kivu) does not conceal his pessimism regarding the removal of the military from the mining zones: *"It is difficult to get them out of the mines. They often work in collaboration with fictitious companies. And the people pulling the strings are as far away as Kinshasa"*. In a litigation process opposing three overlapping mining titles (SOCAGRIMINE<sup>21</sup>, GEMINACO<sup>22</sup> and MPC<sup>23</sup>,) on the same gold belt at Omate, the military prosecutor's office in Goma has now frozen all operations until further notice. This example of the national army's interference in the artisanal mining of minerals in violation of a presidential decree and its interference in civilian conflicts related to the superimposition of several mining titles in the same mining area lead many observers to wonder whether there is really a clear chain of military command outside of telephone lines.

The demilitarisation of the mining zones constitutes a major challenge. The proposal to deploy 450 policemen who have just completed training at Kapalata in the Eastern province to secure the

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<sup>20</sup> According to our enquiries on the ground at Bisie, colonel Samy Matumo's transfer to Uvira in South-Kivu did not prevent him from keeping his private small-scale mine.

<sup>21</sup> SOCAGRIMINE: Congolese Society for Agriculture and Mines

<sup>22</sup> GEMINACO: *Générale des Mines, de l'Agriculture et du Commerce*

<sup>23</sup> MPC: Mining Processing Congo

mining sites is a step in the right direction. But these policemen must be well paid. Otherwise, there is a blatant risk of robbing Peter to pay Paul!

#### **5. Funding of labelling operations**

The labelling of minerals at their point of origin, initiated by iTSCi, was funded by a levy of US\$50 on each tonne of cassiterite exported from the DR Congo. The mining operators, in discussions with ITRI, had all agreed that the latter should use this levy to build reserves in order to fund the work of labelling in the mining sites. The process had already begun on the site of Numbi in South-Kivu. With the suspension of mining activities over the past six months, paired with impossibility for the trading companies to export the stockpiles of mining products built up before the presidential decision, the funding of the labelling work requires fresh funds and the difficulties of mobilising these funds would make it impossible to start up this basic supply chain activity. Other obstacles of a structural nature handicap the local mining operators.

#### **6. Non-existent or impassable road infrastructure.**

There are no roads suitable for motor vehicles nor dirt tracks between the mining site of Bisie, which produces the majority of the cassiterite in North-Kivu, and the Njingala pick-up point on the Walikale – Lubutu road. The different initiatives underway to achieve greater transparency and traceability in the mineral supply chain will certainly have difficulty working in such an isolated site. In the last declaration of 27 January 2011, the American ambassador in Kinshasa, Mr. Entwistle announced a grant of more than 11 million dollars for a new fund, intended, among other things, to support the road infrastructure between recognised, authorised trading centres and the isolated mining sources such as Bisie. This is indeed good news for the accessibility of such sites and the improvement of security conditions. However, for such an initiative to boost momentum, the national and international market for DRC minerals, which is threatened with a de facto boycott, would have to be viable. For in fact, under section 1502 of the American Dodd-Frank Act of 21

July 2010, American companies are obliged to disclose mining products from the African Great Lakes region, deemed a conflict zone, to the Securities and Exchange Commission (SEC). Some people expect American companies and the smelters that supply them to eschew the risk of buying products from the African Great Lakes region, and turn towards other, conflict-free markets such as Australia, despite higher production costs. Under these conditions, how could the American taxpayer's money be spent on building roads suitable for motor vehicles in remote parts of the DR Congo, between Bisie and Njingala, for example, if American companies no longer buy products from the region?

The Congolese government's decision to give preference to the road and rail transport of mining products according to the new mining regulations and to prohibit the use of air transport between rural, landlocked trading centres and the cities is quite simply unrealistic. For a province such as North-Kivu, which derives two thirds of its official revenue from the export of minerals, the distance of 160 km between the mining sites of Walikale and the town of Goma is impracticable. The only possibility for the mining operators would be to make a major detour from Walikale by way of Kisangani - Mambasa, and export either from Beni or from Goma. A detour of this nature would take much longer (and in business, time is money), would increase transport costs and would expose the products to recurring attack from the illegal or legal armed forces that the very government who is imposing this route is incapable of controlling. Some people are wondering what the real reasons behind such an ostensibly irresponsible decision are. We could imagine that such a decision is designed to discourage "aircraft without borders", such as the aircraft registered in the USA which landed at Goma airport on 3 February 2011 to buy 435 kg of gold bars worth US\$ 6.8 million, or other aircraft of the same type supposedly from neighbouring countries. An aircraft is in any case obliged to land to load products and any suspicion should attract the attention of the relevant security services. The lack of security services or their inability to regulate the flow of imports or exports is apparently offset by authoritarian measures which restrict individual choices and penalise private enterprise.

## **7. Processing mining products to increase added value prior to export.**

The Mining Minister has just granted a six month moratorium to all the authorised trading companies in the tin and derivatives sector to install units to process mining products prior to export.<sup>24</sup> This effort to encourage mining operators to switch from artisanal to industrial production could effectively add value to the mining products from the Eastern DR Congo on the international market. An increase in the number of local small and medium-sized enterprises (SME) would also help to create jobs. This is a legitimate desire. However, in a context of chronic energy deficit, one may wonder how these processing units would operate. The only possible solution would appear to be the use of generators, and the price of fuel oil, currently set at US\$ 1.7 per litre, is steadily increasing. It would be necessary to evaluate the cost to ascertain whether the local mining companies would be able to pay for the plant they would require, and remain competitive on the international market.

The Congolese government's will to switch from artisanal to industrial mining wittingly ignores the fact that this would be impossible for several mining zones, such as Walikale, which are not only isolated and landlocked due to the absence of a road infrastructure, but which have also been living in the dark since time immemorial. If these mining regions are not given the basic infrastructure that is sorely lacking, how could we imagine that within the six month moratorium, that is to say, by September 2011, the mining operators will become industrialised as if by magic in the midst of an energy deficit? Without electricity machines simply do not work, just as a truck load of ore cannot move without a road.

The real difficulties involved in the transition from artisanal to industrial mining also add to the confusion between the status of the holder of a mining concession title and the status of the diggers, when their working methods are identical. In other words, in the absence of basic infrastructure (roads and power), the mining

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<sup>24</sup> Mining Ministry, letter no. CAB.MIN/MINES/01/0241/2011, Kinshasa, 14 March 2011.

methods of the companies, even if they hold a mining title, remains artisanal. And the display of a valid mining permit signed by the competent authority does not seem to impress the diggers, especially when the area covered by the permit is under dispute, as it often is the case.

## **8. Organising the miners in cooperatives**

Under the new mining legislation, diggers will be allowed access to mining sites on condition that they are organised in a cooperative that deals directly with the trading centres. The pragmatic aspect of this idea is understandable. But the daily reality of a miner is quite different. Many miners go into the mine in the morning and come out in the evening with a quantity of ore that they sell to the traders waiting for them with cash in hand. This daily income, which for most miners does not exceed US\$ 10, is used on the spot to buy food and finished products available on the mining site. After a night of revelling with beer and professional prostitutes, the digger returns to the mine the next morning. There is certainly a need to introduce the concept of saving in the mining milieu to teach the miners to set aside a small part of what they earn each day. But this is a learning process that takes time. We would then have to consider to what extent they could organise themselves in cooperatives to deal directly with the buyers. Until such a process can be instigated, only the traders could create cooperatives and ensure the liaison between miners and trading centres. To force the miners to set themselves up in cooperatives to be able to access the mines would purely and simply be a negation of their rights as to how adequately they can care for their families.

## **9. A subsistence economy that is still not working.**

An observer who visited Walikale during the ban on mining and all commercial activities related to the sector quoted La Fontaine, to describe what he saw, in the following terms: "*They did not all die, but all were struck*". The laying off of thousands of miners, with parents unable to pay school fees, a drop in income for the farmers who supply the mining sites, the lack of staples such as sugar and salt

in the rural areas, are so many ills attributable to the stoppage of mining in the former Kivu province. The credit unions who lent the savings of thousands of households to the traders found themselves bankrupt. Many traders lost their mortgaged homes, the savings of households were buried in property deeds or in unsold stocks of ore; in other words, millions of people were plunged into abject poverty. The lifting of the ban on 10 March did not automatically improve the life of the population. Prohibiting air transport between the urban centres and the rural areas where the mining takes place means that staples do not always reach the population. The thousands of miners who returned to the mines in Walikale and elsewhere will be out of work until the money from the stockpiles from before the ban becomes available. And even when this money becomes available, they will have to reckon with the application of the Dodd-Frank Act.

At a roundtable meeting on mining held on 16 March 2011, attended by the mining operators in North and South-Kivu, the Mining Ministry, the SAESSCAM, the mining cooperative, the trading companies, the traders, the diggers, the traditional chiefs, civil society and independent researchers, it clearly became apparent that Western and especially American companies will not take the risk of buying minerals from the Eastern DR Congo and that the 6 to 12 month moratorium requested before the application of the Dodd-Frank Act will not be granted, despite the various spokespeople who vigorously denounced the harmful consequences the Act will have. It was recommended not to throw out the baby with the bathwater, as the American legislation has done, but rather to step up efforts to support the initiatives underway to increase the transparency and traceability of minerals from the Eastern DR Congo. In particular, these consist of:

- Collecting and harmonising the statistical data from the Government departments and the trading companies
- Supporting the efforts of the SAESSCAM for the identification and regularisation of mining players: exporters, trading companies, traders, diggers, demilitarised mines, etc.
- Centralising information in English and making sure it is distributed

- Encouraging the mining operators to make payments through the bank
- Reinforcing the lobbying of the supreme command of the armed forces to demilitarise the mines
- Drawing the boundaries to separate artisanal from industrial mining sites.
- Requiring an external independent audit after six months to assess the due diligence efforts made by the different initiatives.

A sustained process of this kind would prove the determination of local players to work towards responsible transparency of the mineral supply chain in Eastern DR Congo. The road is long and there are many obstacles but the efforts of the various players will help to improve risk management. However, this would require political will on the part of the Congolese authorities once they realise the implications of the American legislation for the local and national economies.

*Aloys Tegera*  
*April 2011*

## **MINING RESUMES HESITANTLY IN WALIKALE TERRITORY.**

*By Primo Pascal Rudahigwa  
Journalist and Researcher*

### **1. Resuming with a bang**

A month after mining resumed in the former Kivu province, the information team of Pole Institute went to Walikale to observe how operations had evolved since 10 March 2011, the date the national mining minister authorised mineral trading to start up again after the six month suspension of activities by the Chief of State.

According to the Head of the Mining Administration in Walikale, one week before mining resumed, a major population movement was observed from Kisangani, Lubutu, Goma and Bukavu to Walikale. The people were itinerant traders, artisanal diggers and prostitutes, forced into idleness by the ban on September 2010. All the trading centres in Walikale, Mubi and Njingala were once again inundated with these Congolese people looking for gainful employment.

On 10 March 2011, it was the Administrator of Walikale Territory who officially re-launched the mining operations. Ceremonies were held at Mubi and Njingala where the population waited en masse for the starting gun signal to rush into the mine workings full of cassiterite and gold. The message was applauded as if it meant a final end to poverty. The Governor of North-Kivu, accompanied by the provincial security committee and mining experts, also went to Walikale from 12 to 15 March 2011 to inform the local population of the provisions made in Kinshasa for sound practices in mineral mining. These included the withdrawal of the military from the mines, the deployment of the mining police, the removal of the barriers erected by the military and by other armed groups, identification of the diggers, certification of the minerals and the involvement of the operators in the mining sector in the socio-economic development of the inhabitants of Walikale.

## **2. The conflicts persist**

Precisely on the subject of this contribution to Walikale's development, the traditional chiefs of the Wassa, Utunda and Banabangi groups in the Wanianga sector drafted a memorandum addressed to the governor of the province during his stay in Walikale to oppose the companies SOCAGRIMINES<sup>25</sup> and GEMINACO<sup>26</sup> who are fighting over the mining of gold at Umate. The signatories of the memorandum accuse the two companies of having failed to contribute to the advancement of their environment.

The two companies, belonging to two brothers of the Katengura family, were ordered to suspend their mining operations by the Administrator without the technical opinion of the mining administration. In the letter of suspension, the two brothers were invited to settle their differences before resuming activities at the Umate site. Given the reconciliation deed already signed by Sunday Katengura from SOCAGRIMINES and Claude Bujiriri Katengura from GEMINACO, the agents of SOCAGRIMINES in position at Umate did not obey the letter of suspension because, according to the convention between the two brothers, the two companies were to be merged to avoid polemics.

## **3. The Obama Law as sword of Damocles: activities struggling to resume**

By a strange coincidence, mining started up again at the same time as the US law on the trade of minerals from eastern DRC scheduled to come into force on 1<sup>st</sup> April 2011. During industrial relations dialogue organised in Goma on 10 March 2011 by the Provincial Government on the subject of the resuming of mining in North-Kivu, the provincial president of the economic operators in the mining sector, John Kanyoni, already feared the worst concerning the provisions of the American legislation: "... we will find ourselves in a de facto embargo because from 10 March, we will have only twenty days to move stock that has been blocked for six months by the ban and from April 2011

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<sup>25</sup> Société congolaise d'agriculture et des mines

<sup>26</sup> Générale des mines et de l'agriculture au Congo.

no economic operators will be authorised to export their merchandise..."

What is observed on the ground is that after this rush to Walikale, traders and everyone involved in minerals trading were disappointed to find out that no sooner was the ban lifted than the trading companies closed their doors again from 1<sup>st</sup> April 2011.

The Head of the local mining Administration told us that in Walikale territory, particularly in the trading centre at Mubi, only 2 to 3 traders are buying cassiterite. Before the ban the numbers of active traders in this sector were estimated in the thousands.

The price of cassiterite has also dropped significantly, the few remaining buyers impose their prices: US\$3 the kilo, whereas around eight months ago the price for the same amount in the same place was \$7.

812 workers and diggers have already identified themselves at the Bisie mine, whereas in January 2010 they numbered 2,000.

As for production at Bisie, it is currently assessed at approximately 500 kg per day since mining started up again, a long way from the 10 tonnes a day extracted before the closure.

Gold, on the other hand, continues to be fraudulently exploited and the mining administration says it is incapable of putting a stop to this fraud for the moment. According to the same source, almost all the operational traders in Walikale-centre and Mubi are taking part in the clandestine gold trade.

Walikale Mining Bureau has already identified 147 artisanal diggers at Umate which is a significant site for gold.

The official production stated is 5 to 7 grams per day in this site. Before the ban, daily output was estimated at approximately 150 grams.

#### **4. Try somewhere else...**

This drastic collapse in the production of minerals in Walikale is explained by the absence of buyers, who are obeying the American law. All the traders, diggers and prostitutes who were waiting for milk and honey to flow in Walikale have now set off for Manono in Katanga province, where a large quantity of cassiterite is also

produced and exported from Lubumbashi to South Africa by the large companies. The traffic of small planes to Walikale has dwindled because there are no tonnes of minerals to be transported to Goma and living conditions are becoming increasingly difficult because of the financial crisis.

A member of civil society in Walikale, who wished to remain anonymous, told us that the consequences of the US law that is weighing on the population now is the result of bad governance and President Joseph Kabila should pay the price if his government cannot find a definitive solution to this economic crisis that is affecting thousands of Congolese people.

### **5. Some significant advances in the Walikale mining circuit**

Despite the population's disappointment, the mining administration is making some efforts to make the minerals trade transparent.

According to eye witnesses on the ground, since the lifting of the temporary ban in mining, the military are absent from the mines which are currently guarded by the mining Police. All the barriers that had been erected between the mines and the trading centres have disappeared, the army has chased the FDLR (Democratic Forces for the Liberation of Rwanda) away from the important mining sites such as Bisie and Umate.

In addition, the identification process for artisanal miners is currently underway.

Artisanal miners, traders and the trading companies are organising themselves to be able to comply with the new lines of action introduced by the mining ministry. The artisanal diggers in Walikale apparently already have their digging permits issued by the Provincial Mining Division, and the few traders present at Mubi have been given trading permits by the provincial Governor.

At the level of the largest mining sites, the agents of the mines and from SAESCAM<sup>27</sup> are already on site to monitor daily production and issue the associated documents and all these agents have been trained before being deployed in the field.

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<sup>27</sup> Service d'assistance et d'encadrement du small-scale mining

Two trading centres are under construction in Walikale, one for trading from Isanga to Njingala near the road that leads to Kisangani and one from Itebero on the road that leads to Bukavu where all the minerals will be stored for certification. All these efforts to legalise the minerals from Walikale are currently underway until the ITRI comes and establishes itself here to label the minerals.

The process will take a long time and requires the sincere involvement of the Congolese authorities who must make the necessary resources available to facilitate the task of policing the mines - agents from the mining administration and from SAESCAM. To succeed in this requires conscientious leaders who have a concern for the well-being of the local population and who fulfil their commitments to their national and foreign partners.

*Primo Pascal Rudahigwa*  
*April 2011*

## **IT'S ALL IN THE MINE**

*By Véronique Isenmann,*

*Volunteer development worker at Pole Institute from Eirene Suisse*

I was delighted to be asked to attend the meeting of the Standing committee for joint action on the minerals mining sector in eastern DR Congo organised by Pole Institute on 16 March 2011. The quality of the exchanges was impressive. The aim of the round table was to assess the impact of the 6 month ban on mining. I gathered the following key ideas.

### 1) When the mines close, no-one has enough to eat

The mining sector affects a great number of people who all suffer the consequences of the closure of the mines:

- The traditional diggers, the traders, the trading companies, the smelters, the companies who use the minerals to manufacture products and the end users of the products.
- But also the mothers who sell their produce around the mines, the farmers who take advantage of the aircraft transporting minerals to send their produce to the towns, etc. The price of fruit and vegetables has doubled in Goma in 6 months.
- Retail, employment, transport, aviation, banks – the entire economy is adversely affected.

### 2) When the mines close, the traditional diggers dig their own graves

The traditional diggers have abandoned farming. They no longer know how to do anything other than digging. And even if you tell them that the minerals here are not selling anymore, that no-one will buy them, they continue to dig. But they dig in chaotic conditions, with no monitoring and with no framework. May fall into pits and are killed. Others are buried alive by rival diggers.

### 3) The people in the mining sector are not all rogues

The wish here is to implement a real traceability process. But the sector has only been organised since 2006. There is a learning curve,

and procedures have to be put in place. Hasty embargos will demolish the painstaking work that is underway.

Yes, we talk to each other using cell phone devices that were made using "blood minerals". But we should listen to the players, like those I met at Pole Institute. They are aware of the possibilities and of the issues at stake. They are working on them.

Any harsh decisions from the West will only profit other mafias and throw this region into a deep, long-term economic crisis. The first victims of which will be women.

*What the round table wants:*

"We must make Echoes of the voices of the voiceless heard in the North, the world has to know that we have our own vision and that we want our opinion to be taken into account."

An extended round table could be set up, a joint effort could be made to create an eco-fair label for the minerals, forums could be set up for people to exchange views on the difficulties encountered and on needs... But for pity's sake, with or without technology tarnished by "blood minerals", let us keep our yearning to know and understand each other, and keep our ears wide open to hear what we have to say....

**Date : Wenesday, 16 March 2011**

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## Part II

### THE STRUGGLE FOR CONTROL OF THE LUESHE NIOBIUM DEPOSIT IN RUTSHURU TERRITORY: A BLOODY SAGA UNFOLDS IN EASTERN DRC!

*By Aloys Tegera and Dominic Johnson*

At the foot of Mount Mitumba and the Virunga volcano chain, Lueshe, a site near Bwito in Rutshuru territory, is at the heart of a battle waged by the Germans, the Russians and the Austrians through the intermediary of the Congolese.

On 9 March 1982<sup>28</sup>, the government of Zaire at the time signed a convention with the German company GFE (Gesellschaft für Elektrometallurgie), founding SOMIKIVU (Société Minière du Kivu) with exclusive rights to the Lueshe mine<sup>29</sup>. Under this convention, the Zaire government held a 20% share, GFE 68.68%, COFIMINES 3.08%, SOBAKI 3.08%, Shieldalloy Corporation 1.32%, SOMIKUBI Zaire 0.05%, and SOMINKI 3.82%.

According to the Mining Ministry in Kinshasa, the Lueshe niobium mine has one of the largest deposits of pyrochlore in the world, with reserves estimated at 33 million tonnes, and a production capacity of 808,700 tonnes of niobium per annum.<sup>30</sup> Niobium was mined at Lueshe up until July 1993, when the war in North-Kivu between the Banyarwanda and the Hunde, which started in Ntoto in Walikale territory, reached Bwito in Rutshuru territory<sup>31</sup>. SOMIKIVU was

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<sup>28</sup> Presidential decree no. 82 - 020 dated 09 March 1982. See also TEGERA, A., *Les Banyarwanda du Nord-Kivu (RDC) au XX<sup>e</sup> siècle. Une analyse historique et socio-politique d'un groupe transfrontalier*. Doctoral Thesis in History, Paris I Sorbonne, June 2009, pp. 348 – 351.

<sup>29</sup> Ordonnance-Loi No 82-020, 9 March 1982

<sup>30</sup> JOHNSON, D. and TEGERA, A., *Les Ressources minées: La faillite de la politique minière de la RDC*, Regards Croisés no. 15, Pole Institute, December 2005, p. 81

<sup>31</sup> Clashes between Banyarwanda and Hunde occurred following the move towards democratisation in Africa in the wake of the fall of the Berlin wall and François

forced to stop mining and the mine's majority shareholder, the German company GfE, withdrew from Lueshe<sup>32</sup>. The mine was declared pillaged and the German government partially compensated GfE for its losses<sup>33</sup>. "On the basis of a federal investment guarantee for seven GfE loans to Somikivu, GfE received compensation of 7 million Euros for the civil war-related loss of its creditor rights, and in return it ceded its creditor rights to the Federal government", the German government subsequently explained<sup>34</sup>.

On 16 June 1997, the General Manager of SOMIKIVU, Karl-Heinz Albers, a geologist with GfE, left GfE and at the same time resigned from his office of deputy administrator of SOMIKIVU; GfE stated that a successor had not been appointed "given the exceptional conditions in situ to date".<sup>35</sup> And this is when the confusion began. The position of the German government is that everything that has since happened in Lueshe took place without knowledge or consent of the German majority owner GfE or the German government which in practice holds the GfE rights.

In March 1996, GfE had notified the Congolese Mining Minister that Karl-Heinz Albers no longer represented GfE in DRC and did not have the right to act on their behalf.<sup>36</sup> On 27 March 1998, the Minister

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Mitterrand's speech at La Baule. In the Congo, after a popular consultation in 1991, Mobutu resigned from his MPR party and opened the country up to a multi-party system. The wave of sovereign national conferences reached the Congo in 1992 and the competition between the diverging interests of the ethnic communities was transformed into pure and simple exclusion, and; in the case of the Masisi and Walikale, an exclusion on the basis of the native-non native question between the "indigenous" Hunde and Nyanga populations on the one hand and the "immigrant" Banyarwanda on the other.

<sup>32</sup> The letter from L. Jacob, deputy administrator, on 02 August 1993, confirms that work was stopped since 18 July 1993 and the workers' contracts suspended for *force majeure*.

<sup>33</sup> Letter from Dr. S. Sattelberger and A. Buchloh, Nuremberg, 01 March 2000. In this letter, GfE confirms it received compensation from the German government for "the losses resulting from various receivables based on loans granted to SOMIKIVU which were insured", p. 1 paragraph 3.

<sup>34</sup> Written answer of the German foreign ministry to German MP Hans-Christian Ströbele, 20 June 2006

<sup>35</sup> Letter from Dr. S. Sattelberger and A. Buchloh, on 1 March 2000, p. 1 paragraph 4.

<sup>36</sup> Letter from Dr Siegfried Sattelberger to the Mining Minister, Dusseldorf, 31 March 1996.

Frédéric Kibassa – Maliba asked the deputy administrator of SOMIKIVU to rectify the situation within two months in compliance with the law prohibiting the freezing of mining assets for having ceased production.<sup>37</sup> In April 1998, Karl-Heinz requested a meeting with the Mining Minister to discuss SOMIKIVU resuming mining.<sup>38</sup> Given the tone of the letter, which acknowledges receipt of the Minister's reply, was written on SOMIKIVU's headed notepaper and signed as Deputy Administrator, the Mining Minister supposedly refused the meeting proposed for 22 April 1998.<sup>39</sup> Kinshasa accelerated the pace and the situation turned sour for GFE, for two months later, the Minister officially withdrew all mining titles from SOMIKIVU relative to the Lueshe concession, declared forfeiture of the concession,<sup>40</sup> and the Ministerial decree of 6 April 1999 ratified the decision. The mining rights to Lueshe were then transferred to an Austrian firm, Edith Krall Consulting<sup>41</sup> in a convention signed by the Congolese government<sup>42</sup> and ratified by President Laurent Kabila by decree dated 15 November 1999.<sup>43</sup>

In the meantime, in parallel to his dealings in Kinshasa, Karl-Heinz Albers renewed his contacts with the rebels of the RCD (Rassemblement Congolais pour la Démocratie) in Goma. In a letter to Emmanuel Kamanzi, Head of the Department of Land, Mining and Energy (equivalent of Minister) within the rebel movement, he confirmed that "GFE is still effectively the main shareholder in SOMIKIVU and Karl-Heinz Albers is the deputy administrator"<sup>44</sup>. Mr Kamanzi answered warmly, officially inviting him to restart niobium

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<sup>37</sup> Letter from Frederic Kibassa – Maliba, Mining Minister, no.0593/Cah/Mines/PNN/CNY/98, on 27 March 1998.

<sup>38</sup> Letter from Karl-Heinz, Oberasbach, 09 April 1998.

<sup>39</sup> Letter from Karl-Heinz to the Mining Minister on 07 May 1998.

<sup>40</sup> Letter from Frédéric Kibassa-Maliba, no. 1237/Cab.Mines/FKM/PNN/CNY/98, on 16 June 1998.

<sup>41</sup> Decree no. 267 dated 2 November 1999 authorised the creation of this limited liability joint stock company and Edith Krall Consulting was from then on called Krall Metal Congo. Founded in 1993 and registered in Uganda, Edith Krall Investment Ltd recycled the copper waste.

<sup>42</sup> Convention dated 20 May 1999.

<sup>43</sup> Decree no. 271 approving a mining agreement between the Democratic Republic of the Congo and the Company Krall Metal Congo on 15 November 1999.

<sup>44</sup> Letter from Karl-Heinz Albers on 04 February 2000.

production at Lueshe,<sup>45</sup> and on 14 July 2000, Karl-Heinz resumed production at Lueshe. A legal war between Germans and Austrians<sup>46</sup> for the right to mine Lueshe had just begun, against a background of open war for control of the country between Laurent Kabila and the RCD rebels based in Goma. The dispute between Germans and Austrians concerns so-called Lueshe concession 192 awarded to SOMIKUBI Zaire in 1978 and transferred to SOMIKIVU in 1984<sup>47</sup>.

According to the official statistics, between July 2000 and 2003, the Lueshe niobium mine produced 274 tonnes in 2000, 691 in 2001, 1,346 in 2002 and 733 in 2003<sup>48</sup>. The Lueshe mine's production in the context of a legal dispute between Germans and Austrians through the intermediary of warring Congolese factions allegedly enraged the Austrian contingent allied to the power in Kinshasa,<sup>49</sup> but without the possibility of going to the production site, which was occupied by the RCD rebellion. This was exported by a trading company owned by Albers via Rwanda and the London-based trader A & M.

In August 2001, Karl-Heinz Albers founded the holding company KHA International, sole owner of the technical company KHA-TEC, the trading firm Masingiro, the contract mining company Kiwanda based in Johannesburg and the mining company NMC based in London. Albers was chief executive and main shareholder, paying himself a

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<sup>45</sup> Letter from Kamanzi, head of the mining department, Goma, 17 April 2000.

<sup>46</sup> The German company GFE claiming the validity of the 1982 convention and the Austrian company the 1999 agreement, signed with President Kabila when he did not have control over the east of the country where the Lueshe mine is situated. All the more so since the Lusaka agreement of July 1999 acknowledged the authority of each of the warring factions in the zone under its military control. And during the political negotiations in Sun City in South Africa, it was agreed that the mining contracts signed by various parties during the war were not going to be called into question. As soon as the transition government was formed in July 2003, the Lutundula commission was set up to examine the question of the contracts signed during the period of the war and its report was made public.

<sup>47</sup> Ministerial decree no. 0011 of 6 October 1984.

<sup>48</sup> The fall in production in 2003 corresponds to the end of the hostilities between Kinshasa and Goma and to the signing of a global, inclusive agreement on 17 December 2002.

<sup>49</sup> *Le Phare* newspaper, 23 January 2004, quotes the involvement of Patrick Bolonya, (grandson of M. Bolonya, former planter and livestock breeder in Masisi,) adviser to the Presidency of the Republic alongside Krall Metal Congo.

salary of 17.000 Euros monthly; one of the three members of the supervisory board was the German ambassador to Rwanda, Johanna König<sup>50</sup>.

Krall Metal Congo had to wait for the transition government and the reunification of the Congo in July 2003 to be able to go to North-Kivu. But in the meantime, the new mining code of 2002 financed by the World Bank had progressed and the mining companies who complied with the new regulations had been published on the list on the Mining Registry. The Congolese transitional government, at a cabinet meeting on 6-8 September 2004, recognised Somikivu as the owner of the Lueshe concession<sup>51</sup>. This position has not changed in substance since.

The updated list of mining quarrying permits currently valid according to the provisions of the new mining code - the former permits had been deemed expired or cancelled since 1995 - SOMIKIVU appears on concession 192 of Lueshe I and II<sup>52</sup> but Krall metal Congo is not mentioned.<sup>53</sup> For the mining companies not mentioned on the list, failure to respond within 90 days of the publication in the Official Journal implied the legal presumption of waiver of their mining permits. A rapid response was required and Krall Metal Congo took legal recourse.

On the international level, Krall Metal Congo took Albers to court in Germany for handling stolen goods and complained to the OECD National Contact Point in Austria that buyers of pyrochlore from Lueshe were party to illegal exploitation of natural resources because they were buying from a firm which was not the legal owner. This

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<sup>50</sup> KHA International insolvency report, 2004

<sup>51</sup> Letter from DRC mining ministry to Somikivu, 16 September 2004

<sup>52</sup> Ministerial decrees no. 195/Cab/MINES-HYDRO/01/2002 of 26 August 2002 and no. 001/CAB/MINES-HYDRO/01/2003 of 25 January 2003.

<sup>53</sup> Paragraphs 2 and 3 of article 337 of the mining code stipulates as follows: "Within ninety days starting from the publication of the list in the Official Journal, any person who claims to be a contractor with a valid mining or quarrying permit who is not mentioned on the list must claim their right by providing proof of the validity and regularity of such permit to the address given on the list. After this period has expired, those people who have not responded in compliance with the above provisions are deemed to have automatically forfeited their right".

was unsuccessful: in May 2006 the OECD National Contact Point in Austria stated that it was unable to come to a conclusion as it was not competent to rule on the ownership of Lueshe mine<sup>54</sup>.

In the DRC, Krall Metal Congo seized the Chief Prosecutor of the Republic who, despite the existing position of the government, re-asserted that the mining permits previously granted to SOMIKIVU had been transferred to Krall by decree dated 06 April 1999 and approved by presidential decree dated 15 November 1999<sup>55</sup>. At the same time, the clerk of the High Court in Goma notified SOMIKIVU that it had been deleted from the trade registry of the province of North-Kivu<sup>56</sup>, although this statement was subsequently withdrawn<sup>57</sup>. In parallel to its legal recourse, Krall Metal Congo obtained a ministerial decree<sup>58</sup> confirming its mining permits and rights to concession 192 of Lueshe I and II and published this in a special edition, no. 473, of the Official Journal dated 6 January 2006.

It subsequently turned out that this ministerial decree published in the Official Journal was false, as it had neither the official seal of the Mining Ministry nor the signature of then Minister Ingele Ifoto despite the fact that it had been legalised by the chancellery of the Ministry for Foreign Affairs and international cooperation as well as by the consulate of the Republic of Austria in DRC<sup>59</sup>. The production and publication in the Official Journal of a false document by State departments was a very serious affair in itself. In a letter dated 03 March 2006, the deputy administrator-general of Krall Metal Congo, Michael Krall, apologised to the Mining Minister, explaining that he himself was a victim who had been misled<sup>60</sup>.

This being said, despite the reunification of the country and the installation of a transition government in July 2003, the persistent

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<sup>54</sup> Letter from the Austrian Ministry of Economy and Labour, 26 May 2006

<sup>55</sup> Letter from Tchimanga Mukeba, Procurator General of the Republic, 24 February 2004.

<sup>56</sup> Letter from the Clerk of the High Court, 19 January 2004.

<sup>57</sup> Letter from the Clerk of the High Court, 10 August 2004.

<sup>58</sup> Ministerial decree no. 0988/CAB/MIN/MINES01/2005 of 28 December 2005

<sup>59</sup> Letter from the Mining Minister, Ingele Ifoto, 20 January 2006.

<sup>60</sup> Letter from Michael Krall, Vienna, Monday 03 – 03 – 2006.

insecurity in the East of the country was not conducive to a good business climate. The control over the mining areas by armed groups frightened the international companies operating in the East of the country who were afraid of being accused of financing the war lords. The link between the war and mining in the Eastern Congo had, rightly or wrongly, been established by several reports from the UN and from independent organisations. Concerning Lueshe, allegations had been made that rebel leader Laurent Nkunda was financing his war from the proceeds of Lueshe and had even plundered the mine<sup>61</sup>. These allegations had however never been verified.

Furthermore, in October 2003 mining production in Lueshe came to a halt and Karl-Heinz Albers became embroiled in legal proceedings to the extent that he left the DRC in April 2004 with massive debts and declared his firms insolvent in Germany. On 29 March 2004 he passed control over Somikivu on to his French associate Julien Boillot, second shareholder in KHA International, and three days later Boillot in turn passed the firm on to the Goma-based entrepreneur Modeste Makabuza, a major petroleum products trader to whom Albers owed money<sup>62</sup>. The DRC government subsequently instituted a provisional crisis committee chaired by Makabuza<sup>63</sup>, with the mission to resume production activities.

According to Makabuza, Somikivu's total debts when he took over were \$5.875m, of which \$1.6m was owed to himself; \$2.575m were debts to the former KHA subsidiary NKMC (Niobium Mining Company) which were being paid from the proceeds of cassiterite exports; and a further \$1.24m was owed to the Somikivu employees and \$106,000 to the transport company TMK<sup>64</sup>. Lueshe mine itself and the adjoining processing facilities had been closed in October 2004 and production had not resumed due to the lack of necessary industrial entrants. It was in this toxic business context that the German company GFE expressed its intention, with the agreement of the Federal Republic of Germany, to sell and transfer to the DRC, as a

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<sup>61</sup> Report of the UN Panel of Experts, January 2006

<sup>62</sup> which was owed to KHA subsidiary NMC (Niobium Mining Company)

<sup>63</sup> Letter from the Minister of the Portfolio, 30 March 2005.

<sup>64</sup> Interview with Makabuza in Goma, July 2006

co-associate of SOMIKIVU, its shares in the company representing a total of 70% of the capital<sup>65</sup>. Congolese and German officials visited the mine on several occasions in 2005 and 2006. Note that until today, the intention to buy has been expressed but the Congolese government has not yet bought back GFE's shares.

Instead, new foreign investors have been sought. On 19 February 2006, SOMIKIVU under the direction of Makabuza signed a Memorandum of Understanding with a Russian company called Kluchevsky Ferro Alloy Plant, or KZF. The latter proceeded to create a Congolese company called Congo Russia Industry, or CONRUS Sprl, which signed an exclusive commercial contract with SOMIKIVU for the sale of nobium and, after approval from the Ministry of the Portfolio<sup>66</sup>, CONRUS began the rehabilitation of the Lueshe plant and resumed production activities until they were suspended on 30 September 2008<sup>67</sup>. During this period, CONRUS allegedly produced 144 tonnes of pyrochlore.

The suspension of the activities of SOMIKIVU and its commercial partner CONRUS were part of the climate of war reigning since December 2004 in Eastern Congo between the rebels of Laurent Nkunda's Conseil National pour la Défense du Peuple and the Armed Forces of DRC (FARDC).

The Lueshe mining site, which had been the scene of bitter fighting between the two factions, was under the control of the CNDP forces when the Minister of the Interior, Denis Kalume Numbi, visited Goma in 2008. A letter of complaint from Krall Metal Congo dated 8 August 2008 reporting the theft of 10,800 kg of pyrochlore concentrate attracted the attention of the Congolese government and reinforced the suspicions of a direct link between the financing of the war and the minerals trade in Eastern Congo. Denis Kalume's reaction was unequivocal. The Lueshe mines were a source of financing of Laurent Nkunda's CNDP by means, in his own words, "of a shell company called SOMIKIVU" and that the security council of North-Kivu

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<sup>65</sup> Letter from Dr Thomas Jobsk, 19 June 2006.

<sup>66</sup> Letter no. 1588/MINPF/MC/OOD/JML/2007, 19 October 2007.

<sup>67</sup> Letter no. CAB/MIN/MINES/01/0864, 30 September 2008.

province deemed it necessary to cut off this source of financing of the CNDP by reinstating Krall Metal Congo's mining rights<sup>68</sup>, a position which was re-asserted by the First Advocate General of the Republic, Safari Kasongo, at the beginning of September 2008<sup>69</sup>.

Also in September 2008, Krall Metal Congo sent a letter to the President of the Republic's Office requesting the suspension of SOMIKIVU's activities, to which the deputy head of the President's Office, Professor Jean-Pierre Bosonga Bofeki Louanga, replied by requesting that all the information relative to SOMIKIVU's activities be transmitted to him<sup>70</sup>. And on 26 June 2009, the president of the High Court of North-Kivu published an order confirming the withdrawal of SOMIKIVU's mining rights<sup>71</sup>.

Faced with this legal battle mixed with political decisions, an interministerial commission in charge of examining the dispute between Krall Metal Congo and SOMIKIVU<sup>72</sup> was set up; the commission's report, submitted on 18 March 2009, found in favour of SOMIKIVU, recognising its mining rights to concession 192 according to the provisions of article 337 of the new mining code and recommended ending the suspension of its activities in place since September 2008. On 24 January 2011, the Mining Ministry also extended the validity of SOMIKIVU's mining permit no. 116 till 30 April 2017<sup>73</sup>. On 29 April 2011, the Chief Prosecutor of the Republic confirmed SOMIKIVU as the sole legal exploiter of Lueshe<sup>74</sup>.

Despite these administrative decisions, Krall Metal Congo was not ready to admit defeat and its resistance now opposes the Governor of North-Kivu and his Vice- governor who contradict each other in their official communiqués in favour of one or other party. An official message dated 08 October 2010 and signed by the Vice-governor

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<sup>68</sup> Letter from the Minister of the interior, Denis Kalume Numbi, 27 September 2008.

<sup>69</sup> Letter from the First Advocate of the Republic, Safari Kasongo, 04 September 2008.

<sup>70</sup> Letter from Prof. Jean-Pierre Bosonga Bofeki Louanga, Office of the President of the Republic, Kinshasa, 15 December 2008.

<sup>71</sup> Order no. 088/09 of the President of the High Court, Goma, 26 June 2009.

<sup>72</sup> Decree no. 008 of 19 January 2009.

<sup>73</sup> Ministerial decree no. 0082/CAB/MIN/MINES/01/2010 of 25 March 2010

<sup>74</sup> Letter to the Procureur Général près de la Cour d'Appel de Goma, 29 April 2011

Feller Lutaichirwa Mulwahale supports Krall Metal Congo resuming activities at Lueshe. Governor Julien Paluku's communiqué of 21 July 2011 demands the re-instatement of SOMIKIVU and the start-up of its activities at the Lueshe mine. This contradiction between the Governor and Vice-governor has repercussions within the FARDC, to the extent that following the official installation of SOMIKIVU on 21 August 2011 by the administrator of Rutshuru territory and the commander of the 2<sup>nd</sup> sector of operations Amani Leo, a pitched battle between forces from Nyanzale and the forces securing the Lueshe site ended with two people dead and one injured.

At the same time, Krall has been looking for another foothold into Congolese mining: the gold industry. In 2010, Krall founded the gold mining company "Liso Gold Mines" in London with Krall Metal Congo as "exclusive partner"; Liso has subsequently claimed both to have aided the North Kivu government in foiling a major gold smuggling operation at Goma airport in February 2011 and to have started production at an artisanal gold mine in Walungu district in South Kivu. It subsequently became clear that the latter claim, if true, would have constituted a breach of the DRC government's mining ban in the Kivu provinces between September 2010 and March 2011, and since then the company has been silent as to its activities<sup>75</sup>.

The international companies well accustomed to high risk investments have therefore learnt to swim in the Congolese backwater where the motto is take no prisoners; unfortunately it is always Congolese blood that is spilt against a background of the interests of national or foreign mafia-type organisations, which are well beyond their grasp.

As for the German company GFE, it still has its 70% share in SOMIKIVU being administered by the German federal government. It would change its opinion about keeping its majority share if the conditions of security and the business climate in DRC were to change in the future. It would also keep the secret of the formula for the chemical reagents used and adapted for the production of

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<sup>75</sup> GoMoPa Financial Intelligence Service, 28 September 2011. See also the company website [www.liso-goldmines.com](http://www.liso-goldmines.com)

pyrochlore concentrate at Lueshe. The South Africans, the Russians and the Chinese have all attempted to copy the chemical formula used at Lueshe or to find a similar substitute but have so far been unsuccessful. In spite of its apparent silence, GFE remains a stakeholder to contend with for the future and the control of the Lueshe niobium. It is still looking for a buyer, and according to German sources, Russpessplav, working with Somikivu through its Russian affiliate KZF and its Congolese affiliate CONRUS, is best placed. In the end the battle between Germans and Austrians for the control of Congo's niobium could see Russians as the winners.

*Goma/Berlin  
October 2011*

## **COLTAN EXPLAINED TO MY SON**

*By Aloys Tegera*

Ivan is four and a half years old. His kindergarten teacher doesn't look happy today. She usually switches on her mobile phone to call her husband and her children during the break. But listening to the local radio station this morning, she learnt that the phone she uses is stained with the blood of the thousands of Congolese miners who dig for coltan and cassiterite in the remote areas of Walikalé territory, North-Kivu province in the Democratic Republic of Congo. Deeply disturbed, she tried to find out how such a useful communication tool came to be mixed up with the blood of Congolese miners. When Ivan returned home from school in the evening, he told his father of his teacher's dismay and he in turn tried to understand this phenomenon of blood on a mobile phone he played with occasionally.

North-Kivu province in DRC is traditionally known for its cheese and potatoes, to the extent that only recently it was reputed to be the country's larder. The population, mountain dwellers in villages perched sometimes as high as 2,000 metres in altitude, rise early in the morning to work in the fields or to milk the cows and don't stop work till about 5 p.m., when they meet for a beer and to comment on the latest news heard on the local radio station. People in this area don't read newspapers, they listen to the radio. They, too, have already heard shocking stories that the national and international media broadcast about "blood minerals" from their province of North-Kivu.

It all started in 2000, at the turn of the 21<sup>st</sup> century, when the price of coltan reached \$350 a kilo on the market for precious metals in London. "Coltan" is an abbreviation coined by the Congolese as a name for columbite-tantalite, a mineral that is resistant to very high temperatures and is therefore highly prized by the electronics industry that manufactures mobile phones, computers and rocket reactors. The news that there were pieces of black rock buried in the subsoil of North-Kivu spread like wildfire. The international market predicted a high demand for laptop computers and sophisticated mobile phones like the Blackberry. The major tantalum-producing

companies, such as H.C. Starck in Germany and Cabot in the United States, were anticipating a high demand in coltan in a global market context where the major mines such as Wodgina in Australia and Bernic Lake in Canada were bound by long term contracts and therefore not accessible to the competing foundries. The rush towards other countries that produce coltan was organised and the Democratic Republic of the Congo was ideal because of its small-scale, low-cost mining operations, a consequence of the bankruptcy of the mining industry in the 1980s and '90s.

At that time, the ethnic conflicts that had broken out in March 1993 had already devastated Kivu province and thrown thousands of people out of their homes. They all flocked to the town of Goma, the only remaining peaceful haven. The deterioration of the province and the ruin of its agro-pastoral economy had been exacerbated by two so-called liberation wars waged by the Alliance of Democratic Forces for the Liberation of Congo (AFDL), in the autumn of 1996, and by the Rally for Congolese Democracy (RCD), in August 1998. Against this background of a country in ruins and completely on its knees, the manna of coltan was greeted as a gift from the ancestral gods. Farmers all started to rake their fields in search of the hidden treasure, children deserted the classroom in the hope of earning \$100 a month, a fortune that their own parents had never been able to earn in such a short time, the teachers left idle followed their pupils to the pits to brandish crowbars and hammers instead of chalk. These small-scale miners supplied the majority of the production which they sold to intermediaries called "traders" who in turn supplied the mineral trading posts in Goma. Several trading posts at the time were working with the traders supplying minerals to foundries in Europe and Asia, who in turn supplied the end consumers in the electronics industry. In a divided, ruined Congo wracked by waves of rebellion, the link between the sale of minerals and the funding of the war was easy to make. Reports were issued to this effect by the United Nations and other non governmental organisations. Their slogan: "no blood on my mobile phone", aroused a feeling of guilt in consumers of electronic products all over the world. It was important to stop buying minerals from the Congo to put a stop to the war and bring stability to the African Great Lakes region ...

This simplistic analysis was naturally unconcerned about the fate of the small-scale miners, whose numbers were estimated at 2 million, and who provided a livelihood for dependants (which means a population of 10 to 16 million people depended on revenue from coltan).<sup>76</sup> Certainly, the different rebellions used revenue from the mineral exports to fund their wars, but mining resources are not the only cause of the ills that plague the Congo. The affliction that is sapping the strength of the Congo, a veritable country-continent with multiple potential, also and fundamentally resides in the absence of the State. The Congo is today torn apart, with no basic infrastructure, and no legal or physical security for people or property. This country, which has been bled dry almost to the point of annihilation, has been placed under the stewardship of the international community – through instruments such as MONUSCO – in spite of the democratic elections in 2006. When will this end?

Despite this dire portrait, the players in the national and international lobbies rightly demand more transparency and traceability in the chain of production and commercialisation of the minerals from Eastern DR Congo. The intention is praiseworthy. These activists are reacting in the name of human rights, both because the high numbers of civilian victims are attributed to armed gangs and because the working conditions of the miners are inhuman. They also campaign for a political ecology which would take the environmental and social impact into account in the management of mineral resources. Lastly, they are self-proclaimed economic liberals, in favour of exchange relations being regulated by the market and not by armed militia.

However, these values can hardly be the responsibility of a State that has ceased to exist in several sectors. Without a Congolese State capable of playing a regulatory and structural role, how could the minerals in Kivu be decriminalised?

The American Dodd-Franck Act of July 2010, which will come into force at the end of 2011, is effectively intended to oblige the electronics industries to certify that the minerals bought from the Congo and neighbouring counties are not "blood minerals". But some

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<sup>76</sup> World Bank, Washington DC (2008), *Democratic Republic of Congo: growth with governance in the mining sector*. Report no. 434 02-ZR, p. 56

of the heavyweights in the electronics industry, such as Apple, have deemed it impossible to prove anything in the Congo "jungle", and have simply withdrawn from the local mineral market, creating a de facto embargo. The death of this mining sector in the Congo does not only affect the local farmers, who sold their surplus to the various mining sites, but especially the millions of diggers and their dependants who now have to find an alternative livelihood to survive.

So Ivan, this is how we made the switch from the dairy business to "blood minerals". But, as the saying goes, one country's loss is another country's gain. The death of the Congolese mining sector is a golden opportunity for the Wodgina mines in Australia and the Bernic Lake mines in Canada, which had been forced to close down due to the competition from cheap Congolese minerals and can now resume production in spite of the high overheads. This is the price of globalisation.

*Aloys Tegera, June 2011*

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